

Professor Sullivan and Professor Dimitriadis
UCC Final Examination
Articles 3/4 - Summer 2013

Question One
(worth 20 points)

The plaintiff sues to recover on the following promissory note:

For value received, Robert Anderson of Nephi, Utah, promises to pay to Great Lakes Nursery Corp. at Wyndham New Hampshire, six thousand-four hundred-twelve dollars (\$6,412.00), payable as follows: \$100 per month beginning October 1, 2015 for 24 months, and then \$111.30 per month for 36 months including interest compounded at 7% per annum added to the principal amount of \$4,750.00. This note may be pre-paid with adjustment of interest at any time. If this note is in default, the holder, after 60 days written notice to the undersigned, may declare the face of the note due and payable if the default is not remedied within 60 days after notice.

/s/ Robert Anderson

The plaintiffs argued they were holders in due course of the note and thus took free of the maker's contract defenses.

Are the plaintiffs correct? Fully analyze.

Question Two
(worth 5 points)

Do the following charges raise a "real" defense or "personal" defense?

- A). Defendants signed the instrument under economic duress.
- B). The check was given in exchange for contract services for which the provider was required to be, but was not, a licensed plumber.

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Over a two-plus week period, Wollard-Glause deposited ten checks into her personal checking account at Hingham Bank. The checks totaled \$124,315.17, and were payable to World Metals, SPEC/STA Metals, or Spec Metals. (Wollard-Glause is the bookkeeper and controller of World Metals and the wife of its President). When World Metals filed a bankruptcy petition, the bankruptcy trustee brought a proceeding against Hingham

claiming the bank improperly allowed Wollard-Glause to deposit the World Metals checks into her personal account. Asserting World Metals' claims, the trustee argued, inter alia, that Hingham "allowed for the breach of transfer warranties providing for good title of the checks."

What result on this claim? Fully support your answer.

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Super Supply agrees to sell Alice Aker and Ben Beau equipment for their shared office suite. As payment for the equipment, Alice and Ben sign a negotiable promissory note for \$10,000 payable to the order of Super Supply. Both Alice and Ben benefit from the equipment and sign the note "Alice Aker and Ben Beau". Thereafter, Alice and Ben have a falling out and Ben moves to a distant state. The due date on the note comes and goes and neither Alice nor Ben pays anything to Super Supply. Super Supply demands that Alice pay the full \$10,000.

Alice comes to you for advice. Fully inform her.

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By this time, Kaplan was becoming suspicious of "Landrum" so she checked her office to determine if anything was missing. She unlocked the file cabinet and with Schultz's assistance discovered that some checks were missing. She immediately informed Bhatia, and the two of them met with Mid-America's manager, Kathy Filafusi who informed them that the missing checks had already been processed by the bank, and that deposits had been made into other accounts of which Kaplan and Bhatia had no knowledge. Kaplan and Bhatia immediately filed a report with the local police.

A total of \$137,445.02 had been taken from Better World's account at Mid-America. Mid-America recovered \$85,516.82 on behalf of Better World, but refused to credit Better World's account for the remaining \$51,928.20, which included three checks totaling \$31,900.20, and a wire transfer in the amount of \$20,020. These checks were as follows: check number 5150 payable to Vichor Company in the amount \$21,326.52, and presented to TCF Bank for deposit on September 10, 2012; check number 5244, also payable to Vichor Company in the amount of \$10,139.39 and presented to TCF Bank for deposit on September 10, 2012; check number 5245 in the amount \$442.29 payable to Ameritech; and check number 5171, which evidenced a wire transfer in the amount of \$20,020.00.

Better World's Bank account with Mid-America listed Bhatia and Kaplan as the only two signatories, and all of the checks purportedly bore Bhatia's Signature. Bhatia later determined that the signatures on the missing checks and the unauthorized wire transfer

application had been forged. Fredich was ultimately arrested and prosecuted for his crimes and pled guilty to the forgeries in a United States District Court.

At the close of the evidence, the trial court found in favor of Better World.

- A). Make Mid-America's argument on appeal.
- B). How should the court rule? Fully support your answer.

Question Six
(worth 15 points)

Payee deposited a check for \$25,000 in depository bank (DB) for collection. The check was drawn by Drawer on her account in Payor Bank (PB) and was presented through banking channels to PB at 10:00 a.m. on day 1. At the time the check was presented, Drawer had \$30,000 in collected funds in her account. At noon on day 2, PB examined the check and noted that paying the check would leave only \$5,000 in Drawer's account. This was of concern to PB because Drawer owed PB \$20,000 on an overdue loan. At 2:00 p.m. on day 2, PB made the bookkeeping entries that were required to set off its \$20,000 claim against Drawer's account. Since this act reduced Drawer's account to \$10,000, PB returned the check, marked "Not Sufficient Funds," to the presenting bank at 6:00 p.m. on day 2. The close of PB's banking day was 5:00 p.m., and it had not opted for an earlier cut off hour. Payee challenged PB's right of set off against the check 26 hours after presentment.

What result? Fully support your answer.

Question Seven
(worth 10 points)

David's dog walker took advantage of David's absence, and took blank checks from the back of David's checkbook. On May 20, a check cleared through David's checking account with his name forged thereto; the amount was \$660.00. The check was returned to David on June 1 of that year. David failed to balance his checkbook until August 1, 2013.

Must the bank re-credit his account? Fully support your answer.

Question One

(worth 5 points)

On December 23, 2012, Litchfield Sand and Gravel ('Litchfield') issued its check no. 1555 in the amount of \$30,000 drawn on Everett Bank, and payable to West Cedar Products ('West'). West deposited the check in its checking account at Princeton Bank ('Princeton') the same day. Also, on December 23, Princeton gave provisional credit for the check, reducing an existing overdraft of \$32,328.71 in West's account by the full amount of the check.

Litchfield contends it issued a stop payment order to Everett on December 27 with respect to check no. 1555. On December 28, Everett returned the check to Princeton's with the notation, "non-collected funds, refer to maker." On January 5, 2013, Princeton resubmitted the check to Everett, and Everett paid the check.

Litchfield (plaintiff) appeals entry of summary judgment in favor of Everett (defendant) in a suit to recover the amount of the check drawn by Litchfield and paid by Everett over the stop payment order.

What result? Fully support your answer.

Question Two

(worth 10 points)

In November of 2012 one James F. Baird, Jr. contacted the Pauls' to sell them an oil lease. He represented himself to be an employee of Western Massachusetts Geophysical Company ('WGMG') and showed plaintiffs a map which purported to show the location and eight test well holes located on the leased property along with purported logs of the eight holes showing oil sand. The Pauls placed a telephone call to WGMG and asked if James Baird was an employee. They were told that a man with the name James "Baird" (spelled B-A-I-R-D) was in charge of data processing. When the Pauls' asked how his name was spelled, James Baird said his name was spelled with an "i".

On November 16, 2012, the Pauls' purchased a cashier's check from defendant Boston Bank in the amount of \$6,400 payable to James Baird. They delivered it to James Baird as consideration for the lease. The next day, the check was cashed by Pittsburg Bank. Baird told the cashier, whom he had known for five years, that his name was misspelled on the check. On request of the cashier he endorsed the check twice, James Baird and James F. Baird, Jr.

On November 18 and 19 the Pauls' became suspicious, and on investigation learned that James Beird was not the same James Baird who was employed by WMG and that no oil exploration had been done on the lease which they had purchased. On Monday morning, November 20th, the Pauls requested Boston Bank to stop payment on the cashier's check. The bank agreed to do so in return for the Pauls' promise to hold Boston Bank harmless. It stamped "payment stopped" on the check and returned it to Pittsburgh Bank. Pittsburgh Bank again demanded payment. Boston Bank concluded it could not legally stop payment and forwarded to Pittsburgh Bank the amount of the check.

Suit was filed by the Pauls' against both banks in March of 2013. In August of 2013, the defendants filed a joint motion for summary judgment. The trial court sustained the motion.

How will the court rule and why?

Question Three

(worth 10 points)

In July 2012, The Penut Company entered into a written contract with Frost and his wholly-owned corporation, Pelham Peanut Company, by which Frost, on a commission basis, was to purchase and store peanuts for The Penut Company during the 2012 crop season in the peanut growing area of Southwest Georgia. During the 2011 crop season, a similar arrangement had existed between The Penut Company and Frost. The manner, time, and quantity of the purchases were left to Frost's discretion.

Carrying out that agreement, The Penut Company turned over to Frost several hundred blank checks signed by The Penut Company and drawn on five banks (including Bank of Camilla) located in Southwest Georgia. Frost usually left the blank checks at The Penut Company's office in Pelham, Georgia, and hired two of The Penut Company's employees, Mrs. Charlene Lawhove, and Mrs. Sue Strickland, to work during their off duty hours computing the totals of each day's purchases and writing on each Penut Company check the appropriate amount and the name of the respective grower-payee. The checks would then be given to Frost or one of his other employees. Some of the named payees actually received their checks. In a number of other instances, to keep current the bank balances of Frost and Pelham Peanut Company, Frost forged the signatures of the payees and then deposited the checks usually to the credit of Pelham Peanut Company. Frost would then issue to the grower a Pelham Peanut Company check in the same amount as The Penut Company check. This fraudulent practice was long continued apparently without discovery, and certainly without complaint. During the preceding peanut season, Frost had so endorsed some 93 checks payable to various payees totaling \$139,291.99. The fraud was apparently not discovered until Pelham Peanut Company checks kept bouncing, totaling \$55,645.33. The growers named as payees in 37 of The Penut Company checks, fraudulently endorsed by Frost, and cashed by the Bank of Camilla, and the growers named in 2 of the checks, totaling \$2,020.63, fraudulently endorsed

by Frost and cashed by Farmers Bank of Pelham, were not paid by either Frost or his corporation. Shortly before his fraud was discovered, Frost borrowed \$20,000 from Farmer's Bank of Pelham and assigned a security commissions claimed to be due him. The Penut Company accepted the assignment.

The Penut Company received the peanuts purchased or peanuts of like quantity and quality, and The Penut Company ultimately paid the agreed purchase price to each of the unpaid growers. The Penut Company then brought suit asserting a right to reimbursement. Frost and Pelham Peanut Company did not answer or defend, but unfortunately they are insolvent. Both Bank of Camilla and Farmers Bank of Pelham answered at length. Farmers Bank of Pelham also cross-claimed on The Penut Company's acceptance of Frost's assignment of his commissions.

Address the liability of the banks for payment on the forged indorsements.
Fully support your answer.

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The plaintiffs argued they were holders in due course of the notes and thus took free of the maker's contract defenses.

Are the plaintiffs correct? Fully analyze.

Question Five
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Better World is an environmental engineering firm specializing in providing pollution control services to government and industrial clients. Rose Kaplan is Better World's President, Victor Bhatia is its senior Vice President, and Terri Schulz is its Office Manager.

On June 22, 2012, Nicholas Fredich placed an ad in the Andover Townsman classified section seeking applicants for a fictitious bookkeeping position. He used one of the resumes solicited by this ad in order to obtain a date of birth and social security number of "Robert C. Landrum," whose identity and accounting background he assumed in order to apply for a bookkeeping position with Better World. He and Mario Carasco created a company called Vichor Corporation and opened a bank account for that company at TCF Bank. Fredich intended to use blank checks from Better World's checking account with Mid-America to make deposits into Vichor's account at TCF Bank and then withdraw those funds from that account for his personal use.

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Must the bank re-credit his account? Fully support your answer.

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Question Two

(worth 15 points)

Fred and Mary Smith loaned Gary Verde \$9,000. The loan document said the loan was to be repaid "when you can." Approximately 18 months later, the Smiths sued Verde for the entire amount, claiming default on the note as well as unjust enrichment. The Smiths moved for summary judgment contending Verde was immediately liable for the entire amount, but they were to work out a repayment schedule. Verde moved for summary judgment arguing he did not have to repay the Smiths because he did not have the ability to do so. The trial court denied the Smiths' motion and granted Verde's. The Smiths now appeal.

- A). What would the Smiths argue?
- B). What would Verde argue?
- C). How will the court rule and why?

Question Three

(worth 20 points)

On September 14, 2008, Delco borrowed \$2 million from Country Bank and executed a promissory note in that amount payable to the order of Country Bank. On the same date, three Delco shareholders, (defendant Robert Ginsburg, Gary Ginsburg and Dennis Nicotra), signed agreements of guarantee and suretyship.

In April, 2010, Country Bank filed an action against the defendant and Gary Ginsburg. The complaint alleged that Delco had defaulted on its note and sought monetary damages against the defendants. Nicotra was not named as a defendant in the action. On July 24, 2010, Nicotra executed a satisfaction agreement with a number of creditors, including Country Bank. Delco was not a party to that agreement, in which Nicotra promised to transfer a number of his assets, including his Delco stock to the creditors. In return, the creditors released Nicotra "from any further liability as a guarantor" to identify him with respect to any claim for contribution by other guarantors.

On the same day, July 24, 2010, the creditors who had settled with Nicotra, including Country Bank, signed an intercreditor Agreement to divide the assets obtained in the settlement - neither Delco nor Nicotra were parties to the agreement. Settlement negotiations between opposing counsel in the action by Country Bank against the defendant and Gary Ginsburg commenced in the Fall of 2010. Country Bank had not informed the defendant or Gary Ginsburg of its agreement with Nicotra. The defendant ultimately agreed to settle the case by executing a promissory note, which is the subject of this action.

On October 11, 2010, the defendant executed a promissory note in the amount of \$100,000 payable to Country Bank. The note required the defendant to pay the interest in the amount of 9 % annually, commencing on October 11, 2011, and provided that the entire unpaid balance would be due on October 11, 2015, "together with any costs, expenses and attorney's fees incurred for the collection of (the) note." Additionally, the note waived presentment, protest, demand and notice of dishonor. In return for the defendant's \$100,000 note, on November 8, 2010, Country Bank filed a withdrawal of its action. Country Bank also released various attachments it had placed on the defendant's property and returned both the original Delco note and defendant's guarantee.

In January, 2011, the defendant first learned of Country's July 2010 settlement with Nicotra. The defendant subsequently informed Country that he would not pay the note, and he has not made any payments of either principal or interest.

On April 6, 2012, Country transferred the note to the plaintiff. The note was part of a pool of approximately 106 loans the plaintiffs purchased. On May 5, 2012, the plaintiff informed the defendant that it had purchased his loan from Country Bank and instructed him to send all future payments to Cadle Company. The Plaintiff filed the present action against the defendant seeking monetary damages on the note.

What result? Fully support your answer.

Question Four
(worth 20 points)

A). Customer ordered bank to stop payment on check number 292 drawn on her account number 315 – 726 for \$1,000. The stop order was communicated to bank in plenty of time to act on it. However, since the correct number of the check in question was 280 and not 292, the bank's computer, which was directed to identify only checks on a customer's account which bore the correct check number, did not identify the check, and it was paid. Bank denied liability for violating the stop order because customer failed to identify the check with reasonable certainty.

What result when customer sues bank? Fully support your answer.

B). Would the decision in part A be affected by a clause in the bank's stop order form stating: "In order to stop-payment on a check, you must inform the bank of the exact amount of the item, the number of the check, and your account number," otherwise, our computer may not catch the stop order. Unless this is done the bank will not be responsible for any loss resulting from its failure to stop payment.

Fully support your answer.

Question Five
(worth 20 points)

A). Paul fraudulently induced Martin to write a check drawn on Martin's account at Bank One for \$5,000 payable to Herman by convincing Martin that Paul was Herman, a person of high repute. Paul took the check from Martin, indorsed Herman's name on the back of the check, and deposited the check in Paul's account in Bank Two. The check was presented by Bank Two to Bank One, Martin's Bank, which paid the check. Paul withdrew all the funds in his account in Bank Two and absconded. Martin claims that Bank One cannot debit his account for the amount of the check.

Is he correct? Fully support your answer.

B). Paul induced Martin to write a check on Bank One for \$5,000 to the Red Cross of Cook County by leading Martin to believe that Paul was chair of the local Red Cross chapter. Paul wrote two endorsements on the checks. First, "Cook County Red Cross," and second, "Paul". Paul deposited the check in his account in Bank Two, which presented it to Bank One, Martin's Bank which paid the check. Martin claims that Bank One cannot debit his account for the amount of the check because Paul forged the endorsement by writing "Cook County Red Cross," on the back of the check.

Is this correct? Fully support your answer.

Question Six
(worth 15 points)

Randy requested that Bank One issue a cashier's check for \$10,000, which he intended to use to pay for goods that Paul agreed to sell to Randy. Randy paid for the cashier's check by giving Bank One an ordinary check for \$10,000 drawn on his account at Bank Two. At Randy's request, Bank One made the check payable to Randy, who indorsed and delivered it to Paul, who then delivered the goods to Randy. When Paul presented the cashier's check to Bank One for payment, it dishonored the check because Randy's check was returned by Bank Two for insufficient funds. Bank One refused to pay the cashier's check on the grounds that it had been fraudulently induced to issue the check, and was protected from expenses or consequential damages. Does Bank One have reasonable grounds to believe the defense is "available against Paul?" Fully support your answer.

ANSWER ALL ESSAY QUESTIONS IN BLUE BOOK

Essay One

(worth 10 points)

You come in to work one morning to find a voice message from Carlos Garth asking for an urgent appointment to discuss a problem with his bank. When you meet with him later that morning, he explains that he is the President and sole shareholder of Garth Management Group, Inc. (GMI), a corporation that manages rural estates for absentee landowners. Carlos tells you that GMI has had its only bank account at Sullivan Bank for the last three years. The signature card for GMI (executed at the time the account was opened) listed as authorized signatures on the account Garth's daughter, Mary Garth, and his son-in-law, Fred Vincent, who took over the operational control of GMI from Garth about five years ago. Because GMI has been losing money ever since Mary and Fred took over, Carlos finally lost patience two weeks ago and decided to regain control of the corporation. He convened a shareholder's meeting at which he voted his shares to elect himself the sole director of the corporation. Acting in that capacity he removed Mary and Fred as officers and named himself as President.

His problem came when he went to the bank to remove Fred and Mary from the signature card. When he explained the situation, the account officer told Carlos that the bank would freeze all funds in the account until Carlos presented the bank with a letter from Mary and Fred consenting to their removal from the account. The bank officer relied on the following provision in the account agreement:

If another person or entity makes a claim against funds in your account, or if we have reason to believe there is or may be a dispute over matters such as the ownership of the account or the authority to withdraw funds; we may in our sole discretion, (1) continue to rely on current signature cards, resolutions, or other account documents, (2) freeze all or part of the funds until the dispute is resolved to our satisfaction, or (3) pay the funds into an appropriate court of law for resolution.

You are satisfied that Carlos has complied with all of the appropriate corporate formalities. His problem is that Mary and Fred are out of town (on a walking tour of old cathedrals). Can Carlos force the bank to release the funds? Full support your answer.

Essay Two

(worth 10 points)

In 2008 Plaintiff's wanted to purchase a building located at 712 West Street, Canton, Massachusetts. The building was in foreclosure and a federal government agency, the United States Department of Housing and Urban Development (HUD) held the mortgage. To accomplish the purchase, plaintiffs retained John F. Parr, an attorney who has since been disbarred. Parr advised plaintiffs that before HUD would consider plaintiffs as a potential purchaser, plaintiffs were required to establish a fund in the amount of the purchase price by obtaining cashier's checks. Parr further advised Plaintiffs that the cashiers checks must be made payable to himself and David L. Kelly, an alleged HUD employee who was authorized to make the sale. In fact, David L. Kelly does not, and never did, exist. David L. Kelly is a fictional person.

Plaintiff's purchased the following three cashier's checks from Andover Bank, totaling \$712,500.00: (1) \$350,000.00, payable to Klaus Wieske, dated March 1, 2008, check no. 404885; (2) \$125,000.00, payable to David L. Kelly and John F. Parr, dated May 24, 2008, check no. 407067; and (3) \$237,500.00, payable to David L. Kelly and John F. Parr, dated June 26, 2008, check no.410255. Plaintiffs delivered each check to Parr.

The first check was specially indorsed by Klaus Wieske in the following manner:

EARNEST MONEY FOR 712 WEST

Pay to the order of:

John F. Parr

David L. Kelly

Klaus A. Wieske (signature)

All three cashier's checks were cashed by Parr at defendants Hollywood State Bank (check no. 1), First Security Trust & Savings Bank (check no. 2), and Greater Massachusetts Title Insurance Company (check no. 3), respectively. When cashed, each check bore the signature of both Parr and Kelly, the fictional person. Upon presentation, Andover Bank made payment on the three checks.

On May 24, 2009, Plaintiffs filed a complaint against Andover Bank alleging that Andover breached a contract with plaintiffs by making payment on the cashier's checks without the endorsement of David L. Kelly. On December 9, 2009, Andover Bank filed a motion for summary judgement, asserting that it had paid the cashier's checks in the ordinary course of business in good faith and without knowledge that Kelly was a fictitious payee. To its motion, Andover Bank attached an affidavit from the personal

assistant at HUD in the regional office, who attested that no one by the name of David Kelly was employed by HUD in the entire United States during this time period. What result? Fully support your answer.

Essay Three

(worth 5 points)

Debbie issues a check “payable to the order of Eddy,” which she promptly gives to Eddy. Eddy signs the back of the check, “Pay to Polly Smart: /s/ Eddy.

- A). Is Eddy a holder of the check? Support your answer.
- B). Is Smart a holder of the check? Support your answer.

Essay Four

(worth 5 points)

Gabby drew a check payable to Harry Happy and handed it to him on May 15. On the very next day, Harry indorsed the check over to Izzy. Izzy deposited in her checking June 30th. The check was returned unpaid to Izzy’s bank. Does Izzy have the right to sue Harry? Support your answer.

Essay Five

(worth 5 points)

Susan Libby, attorney-at-law, represented Fred Rameriza in a personal injury action. When a settlement was reached, Susan issued a check out of her account with Methuen Bank (#1031) in the amount of \$8,450.00 to Fred, representing his proceeds from the settlement. About 4 days later, she mistakenly issued a second check (#1040) to Rameriza for the same amount. Five days hence, when she became aware of her mistake, Libby called Rameriza and advised him the second check had been issued in error. She instructed him to destroy this second check. She called the bank and gave an oral stop payment order on check #1040. Some 18 months later, Rameriza deposited this check into his account and the Methuen Bank paid it. Rameriza was not easily available for suit, so Libby brought an action against Methuen Bank arguing it should not have honored the check.

What result? Full support your answer.

Essay Six

(worth 5 points)

Paula Kaldeer owns and operates a large cleaning business. Paula gives one of her employees a title, Director of Purchasing, and asks the Director to acquire new purchasing equipment. Alice, the new Purchasing Director, arranges for the purchase of a piece of equipment at a cost of \$55,000. The seller agrees to take payments in the form of a note payable in a series of 12 monthly payments. The note says that "Paula Kaldeer, as purchaser agrees to pay to the order of Sam Seller". The monthly payments at the bottom of the note, on a line labeled 'Purchaser/Borrower,' Alice Adams signs, as agent for Paula Kaldeer.

- A). Is Paula obligated on the Note? Fully support your answer.
- B). Is Alice obligated on the Note? Fully support your answer.

Essay Seven

(worth 5 points)

During mid-July 2010, Anne sent a check, #1010 for \$8,000 to Betty in payment for some home painting work. The check was drawn on Sullivan National Bank "SNB". The statement SNB sent to Anne covering July's checks indicated that check #1010 for \$8,000 was paid on July 20, 2010. In November, Betty contacted Anne looking for payment. Anne told Betty she had sent the check long ago to which Betty insisted she never received it. Anne called SNB who produced a copy of the check. The back of the check reflected an indorsement which was forged. The check had been deposited into an account in a Dartmouth, N.H. bank. Accordingly, Anne contacted SNB seeking re-credit. What result? Fully support your answer.

Professor Sullivan
UCC Final Examination
Fall 2010 - Articles 3/4
Objective Questions

ANSWER ALL OBJECTIVE QUESTIONS ON ATTACHED ANSWER SHEET

Question One

(worth 1 point)

Which clause(s) in an otherwise negotiable promissory note destroys negotiability?

- i) Maker hereby grants the payee a security interest in the collateral described below.
 - ii). Maker agrees to let the holder select an attorney for the maker; at any time the holder directs, said attorney is hereby given the authority to confess judgment against the maker in any appropriate court.
 - iii). Maker agrees that signing this note also indicates acceptance of the contract of sale for which it is given.
- A. iii only
 - B. ii and iii
 - C. ii only
 - D. None of the above.

Question Two

(worth 1 point)

The following clause in a promissory note destroys negotiability:

- A). Payable 120 days after my rich aunt Alice dies.
- B). Payable on my next birthday.
- C). Payable 30 days after sight.
- D). Payable on November 8, 2012, but if my potato crop fails that year, payment shall be extended until November 8th of the following year.

Question Three

(worth 1 point)

Which clause in a promissory note creates bearer paper?

- i. Pay to the order of Sally Smart or bearer.
 - ii. Pay to bearer.
 - iii. Pay to the order of cash.
 - iv. Pay to a Happy Halloween.
-
- A). ii only
 - B). ii and iv
 - C). ii, iii, and iv
 - D). All of the above.

Question Four

(worth 1 point)

Harry, a used car salesman, sold Milly a lemon for her business, taking in payment a promissory note for \$15,000 made payable to the order of Harry. Harry discounted the note with Adam, a local money broker, who paid \$12,800.00 and took the note without knowledge of the underlying transaction. Harry then gave the note to his son Jim after indorsing it in blank. When the note matured, Milly refused to pay Jim because the engine on the car had quit. Which of the following statement is true?

- i. Jim is a holder in due course.
 - ii. Harry is a holder in due course.
 - iii. Milly will not have to pay for the car, a pile of junk.
-
- A). i only
 - B). ii only
 - C). i and ii
 - D). iii only

Question Five

(worth 1 point)

Andy was the payee on a promissory note signed by John Jones on its face. The note calls for John to make 12 monthly interest payments before the note matures. Andy sold the note at a discount to Bradford Bank ("BB"). If the note has written on it in big letters, a notation in black markers "Missed paying first installment," can BB attain HIDC status?

- A) Yes, because only one installment was overdue and holder in due course status

will be achieved as long as less than three (3) months are overdue.

- B). Yes, because the overdue interest is interest.
- C). No, because the overdue interest is interest as opposed to principal.
- D). No, because the holder takes with notice of overdue interest.

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Student I.D. Number: _____

ANSWER SHEET

1. A B C D
2. A B C D
3. A B C D
4. A B C D
5. A B C D

Professor Sullivan
Articles 3 and 4
Final Examination
Summer 2002

Question One - Worth 30 Points

In October of 2001, Andy's Mobile Homes sold to Rosa Richards a camper. The contract covering the camper was dated December 15, 2001, but the closing on the camper did not occur until January 15, 2002. At that time Rosa executed the installment sales contract and security agreement. The installment sales contract states that the buyer promises "to pay to the seller" monthly installments for a period of 15 years. Thereafter, Andy's Mobile Homes assigned its contractual rights to Guaranty Investment Corporation. Guaranty Investment Corporation took possession of the contract and of the manufacturer's certificate of origin. It issued a check to Andy's Mobile Homes for \$69,112.12 dated January 14, 2002 which was not delivered until sometime later. On January 17, 2002, Continental Bank purchased an assignment of Guaranty's rights in the installment sales contract for \$69,200.00. Continental notified the buyers that their loan payments were to be made to Continental. It filed a lien and security agreement to perfect its security interest in the collateral. On approximately February 12, 2002, Guaranty's check was returned for insufficient funds. After Andy's effort to collect Guaranty's check was unsuccessful, it filed an action for rescission of the assignment to Guaranty praying for the restoration of all rights, and for re-delivery of all documents. Andy's also sought to recover all payments and documents received by Continental under the assignment of the installment sales contract from Guaranty. What result? Fully support.

Question Two - Worth 20 Points

A writing dated, August 1, 2002, reads "I, Professor Ableson, promise to pay to the order of Manny Hernandez the sum of \$2,000 and also deliver him title to the estate known as Happy Acre one month from the date hereon." Does this qualify as a negotiable instrument? Fully support your answer.

Question Three - Worth 15 Points

- A. Deb writes a check on her account for \$1,000 payable to "Cash". She loses this check, which is found by Fred. Is Fred a holder? Why or why not?
- B. Assume the check (from above) is stolen from Fred by Freda the thief. Is Freda now a holder? Why? Fully support?
- C. Freda transfers the check to Tom's Grocery Store in return for some bread, milk and \$990.00 in cash. Is Tom's Grocery a holder?

Question Four - Worth 10 Points

Andrew Smith writes a check payable to Paula James on her account with the Elm Street branch of the Andover Bank. On Monday morning, Paula deposits this check in her own checking account with the Elm Street branch of the Andover Bank.

- A. What are the obligations of the Elm Street branch with respect to this check? Fully explain.
- B. What if Paula's account with Andover Bank is held at the Main Street branch of the bank?

Question Five - Worth 10 Points

Andy has a checking account with the Sullivan National Bank. He writes a check for \$623.00 to Beth. Beth signs the back of the check and deposits it in her own bank account. The check is presented to Sullivan National Bank. At the time of presentment, Andy's balance exceeds \$1,000.00.

- A. May Sullivan National Bank honor this check? Fully explain.
- B. How would you answer the preceding question if at the time Andy's balance was \$100.00.

Question Six - Worth 15 Points

Paul Mathews took his wife on a weekend cruise. Paul paid for the trip with a personal check. The following Monday, Paul decided that the cruise did not live up to his expectations. Accordingly, Paul contacted his bank and issued a stop payment order on the check.

- A. Is the bank obligated to accept the stop payment order and dishonor the check? Why?
- B. Assume the check is presented to Paul's bank and the bank does not pay it but instead returns the check with a notice that it has been dishonored due to a stop payment order. Does the cruise line (payee) have any cause of action against the bank for its refusal to pay the check? Fully explain.
- C. Assume that even though the stop payment order was received by the bank in plenty of time before the check was presented, the bank by mistake pays the check over the stop-payment order. What liability does the bank have? Fully explain.

I promise to pay \$5,000 to the order of Sam Penniless on August 15, 2002

Professor Socratic

Is this a negotiable instrument? Fully explain.

Professor Sullivan
Final Exam
Articles 3/4
Fall 2002

1. Are the following instruments negotiable? Fully support your answer.
 - A. I promise to pay \$14,000 to the order of Sandra Small on February 1, 2002.

/s/ Harriett Happy
 - B. To: Mandy Moneybucks December 1, 2002

Pay to the order of Sam Student \$2,000.00 on December 23, 2002.

/s/ Professor Susan Socratic
 - C. I, Danny Adams, promise to pay to the order of Rachel Rose \$30,000.00 within six months following the death of my aunt, Annette Aire.

/s/ Danny Adams
2. Linda writes a check "Payable to the order of Polly Potter" and gives it to Polly. Polly endorses her name on the back of the check. The next thing she knows, the check is missing. It has either been stolen or lost.
 - A. Is the thief or finder a holder of the check? Why or why not.
 - B. What if Polly had signed her name on the back of the check under the legend "Pay to Nate Novice" before the check went missing? Would any thief or finder of this check be a holder? Fully explain.
3. Mercury Corporation is a well-known enterprise in Massachusetts. Someone introducing herself as Wilma Flint, the President of Mercury Corporation, rushes into an office of Andover Bank and is ushered into an office of a senior loan officer.

Wilma hands this officer her card, which bears all the markings of a card of the type of representative of Mercury would be expected to have and identifies her as "Wilma Flint, President." Wilma tells the officer that she is in town on other matters, but has just been presented with the possibility of acquiring some property in Worcester, Massachusetts that she thinks would be particularly good for her corporation. The seller is in a rush, however, and is demanding a \$200,00 deposit in the form of a bank check by the end of the day. Wilma would like to manage to borrow this money on behalf of Mercury from Andover

Bank. The loan officer is more than eager to comply. He has a cashier's check in the form Wilma requests drawn up. He gives this to Wilma, asking only that she sign a standard form note naming Mercury Corporation as the borrower. Wilma signs the note promising to repay the \$200,000.00 at a stated rate of interest, as "Wilma Flint, President, Mercury Corporation." The bank soon becomes aware, but not before the cashier's check it has issued has been paid, that the person who presented herself as Wilma Flint, President of Mercury Corporation, is not who she claimed to be. She is instead, one up-and-coming conartist named Connie. The business card that Connie presented at the bank was not issued by Mercury Corporation, but had been clearly printed up by Connie.

Query: Who is obligated on the note? Fully support your answer.

4. Andy issued a check for \$10,000 to Betty. Betty negotiated this check over to Cathy, taking and asking for nothing to return.
 - A. Can Cathy qualify as a holder in due course of the check? Fully support your answer.
 - B. What if the reason Betty negotiated the check to Cathy was to pay her for some services Cathy had already performed for her?
 - C. What if Cathy is given the check in exchange for her promise to perform certain services in the future for Betty, but which she has not yet performed?
5. Freda, a customer of Sullivan National Bank, writes a check out of her account for \$12,200.00. The check is presented to Sullivan National Bank on Tuesday morning. On Tuesday evening, Sullivan National determines that Freda's account contains only \$10,500 in available funds, and hence it will dishonor the check. It returns the check to the presenting bank Wednesday morning. As it turns out, by Wednesday afternoon, Freda has deposited another \$3,000.00 in cash into her account. She argues that had the bank waited until later on Wednesday, there would have been no need to dishonor this check, and that in addition, had the new funds not come into her account, the bank would have been able to return the check prior to its midnight deadline at the end of the day on Wednesday. Did Sullivan National wrongfully dishonor the check? Fully explain.
6. Fran Flamboyant has a checking account with Sullivan National Bank. After treating several of her friends to an expensive round of golf, she pays the course owner, Benchside Golf Course, with a personal check. The next day, Fran decides that the course did not live up to her expectations. Fran contacted the Sullivan National Bank and issues a stop payment order on the check.
 - A. Assuming the check has not been paid, is the bank obligated to follow the stop payment order? Fully support your answer.
 - B. Assume the bank does not pay the check, but returns the item with a notice that it has

been dishonored due to a stop-payment order given by the drawer. The unpaid check eventually makes it way back into the hands of the golf course owner, James Clever. Does James have any course of action against the Bank for its refusal to pay the check? Support your answer.

- C. Now, suppose that even though the stop payment order is received by the bank in plenty of time before the check is presented, the bank by mistake pays the check over the stop-payment order. It deducts the amount of the check from Fran's account. Fran sues. What result? Fully support your answer.

Final Examination
UCC Articles 3 and 4
Fall 2001
Professor Sullivan

Question One - Worth 10 Points

In November of 2001, a teller at Sullivan National Bank is presented, over the counter, a check for \$10,000 payable to "Cindy Kahn", purportedly drawn on the account of the Com. Corp. The person presenting it is able to give the teller several pieces of identification showing that she is indeed Ms. Kahn and furthermore that she is an employee of Com. Corp. She explains that the check represents a year-end bonus that she just received from her employer. She asks that the teller accept the check and issue her in return a cashier's check for the same amount. The teller makes inquiries of the bank's computer system and determines that Com Corp. has more than enough to cover the check, and also that the bank has not received a stop-payment order with respect to it. The signature of Com's treasurer on the check looks close enough to the official signature that the bank has on record. The teller accepts the check being presented by Cindy, and issues her a cashier's check for \$10,000. About an hour later, the Sullivan National Bank is contacted by Com's treasurer: he has just been made aware that one blank check is missing from the company's checkbook. When he gives the bank the number of the missing check, he is informed that a check bearing that number has already been paid. The treasurer assures the bank manager that he never signed any such check and any signature appearing thereon is a forgery. Cindy is nowhere to be found. The certified check that was issued to her is presented to Sullivan National Bank several days later, after Cindy apparently used it to open an account on a distant shore.

- A. Would Sullivan National Bank be within its rights to refuse to pay the cashier's

check? Fully explain.

- B. What if Cindy had used the treasurer's check at a local car dealership in exchange for a car in which she fled the scene? The dealership then deposits the check for collection. Could Sullivan refuse to pay the cashier's check? Fully support.

Question Two - Worth 9 Points

Andy has a personal checking account with Andover Bank. He keeps his checkbook on top of the desk in his home office. Chad, a rug cleaner, was hired by Andy to clean his rugs. When Andy was out of the room, Chad stole a blank check (#1001) out of his checkbook when Chad was alone in the room. Chad fills this check out for \$1,600.00 naming himself as payee and forging Andy's name on the drawer's line. Chad deposits this check in his own account with Lawrence National Bank and the check is paid by Andover Bank on January 13, 2001. By the end of the first week of February, Chad had cleaned out his account with the Lawrence Bank and disappeared.

Andover Bank sends Andy a monthly statement of his account activity for the month and his balance at the end of January. This statement is mailed off by the Bank on February 3rd and received by Andy on February 6th. It clearly shows that check #1001, in the amount of \$1,600.00, was paid by the bank on January 13. Andy reviews this statement on February 9th and immediately notices this entry. He has no recollection or record of drawing any check in this amount. Furthermore, he looks at his checkbook and finds that check #1001 is missing. The next day he goes to the bank and speaks to a bank officer. Together they look at the check itself, which was retained by the bank as are all checks paid out of Andy's account, as provided for in the account agreement. Andy is willing to sign an "Affidavit of Forgery" to the effect that the signature on the drawer's line of check #1001 is not his. Indeed, as the bank officer can see, the signature is nothing like Andy's normal signature.

Andy demands that Andover Bank recredit his account with the \$1,600.00.

- A. Must Andover Bank comply with this demand? Fully support your answer.
- B. What if instead Andy had left his January bank statement unopened on his desk for a month or so? He does not notice the questionable item until early March when he immediately brings it to the attention of the bank. May Andover Bank refuse to recredit? Fully support.
- C. Finally, suppose that Andy does not spot the problem or chooses not to do anything about it until he reviews his various financial records in preparation for doing his taxes for the year 2001. He does not go to the bank complaining of the payment of this forged check until March of 2002. What result here? Fully explain.

Question Three - Worth 12 Points

Frank, the new treasurer of the Dot Corp., writes out a check for \$28,200.01 payable to Supplies, Inc. to cover a bill for supplies that Supplies has furnished Dot Corp. Frank puts the check in an envelope correctly addressed to Supplies Inc. and delivers this envelope, along with his outgoing mail that has piled up during the day, to Dot Corp's mailroom. Polly, an employee in the mailroom, takes the envelope for herself. She signs the reverse of the check "Supplies Inc." and under that with her own name. She deposits this check into her own account at Detroit Savings Bank. She withdraws this money once Detroit Savings Bank makes it available and vanishes. Dot Corp. eventually discovers what has happened.

Query: What party or parties do you believe will end up bearing the loss? Fully support your answer.

Questions Four - Worth 10 Points

Jennifer James signs a writing dated December 1, 2001, stating that, "I promise to pay to the order of Robert Riggles \$16,400.00 if he conveys to me title to his 1999 Ford Mustang automobile, one week from this date."

- A. Discuss whether this is a negotiable instrument? You must fully justify your answer with a discussion of the code.
- B. What if the writing signed by James had read, "In consideration of his agreement to convey me title to his 1999 Ford Mustang automobile, I, Jennifer James promise to pay to the order of Robert Riggles \$16,400 one week from this date.". Would this writing be a negotiable instrument? Why or why not?
- C. Suppose that the writing had initially stated that James "promises to pay to the order of Robert Rogers" the sum on the date set. It also contains a sentence, stating that, "this note and any rights or obligations arising hereunder are subject to a contract of purchase and sale entered into between Jennifer Jones and Robert Rogers on the same date as the date hereof." Would this writing qualify as a negotiable instrument? Fully support your answer.
- D. What if the writing James signs reads "In accordance with a Contract of Purchase and Sale entered into between myself and Robert Riggles on this date, I promise to pay to the order of the said Robert Riggles \$16,400 one week from the date hereof." Is this a negotiable instrument? Fully support your answer.

Question Five - Worth 9 Points

Ginnie writes a check on her account for \$1,000.00 payable to "cash". She loses the check, which is found by Harry.

- A. Is Harry a holder? Fully explain.
- B. The check is stolen from Harry by Theo the thief. Is Theo now the holder of the check? Fully explain.
- C. Theo transfers this check to Anna, of Anna's Grocery Store in return for \$700 in cash? Is Anna a holder? Why or why not?

Professor Sullivan
Final Examination
Article 3 and 4
Summer 2001

Question One

The Easy Bank was the assignee from Roger Bean of a promissory note and purchase money mortgage executed and delivered by the defendant. The note executed April 28, 1999 contains the following stipulation:

"This note with interest is secured by a mortgage on real estate of even date herewith, made by the maker hereof in favor of the said payee, and shall be construed and enforced according to the laws of the State of Massachusetts. The terms of said mortgage are by this reference made a part hereof."

Roger Bean had assigned the promissory note and mortgage in question to the Easy Bank to secure their own note. Easy Bank sued defendant alleging a default on the note.

Defendant answered with a defense of failure of consideration on the part of Roger Bean.

What result? Fully support your answer.

Question Two

- A. Drawer draws a check to the order of Denise Lowe. The check is delivered to Denise Lowe. Is Denise Lowe a holder?
- B. Denise Lowe signs her name on the back of the check "Denise Lowe" and hands over the check to Millie Fay. Is Millie Fay a holder?
- C. Without signing her name to the above check, Millie Fay hands over the check to Polly Hayes. Is Hayes a holder?
- D. A check payable to Denise Lowe and not yet endorsed by her is stolen by Sam Snitch. Snitch signs Lowe's name on the back of the check and takes it to Victory Supermarket, where in front of the cashier, he signs his own name and gives the check to Victory. Is Victory a holder?
- E. On the facts of problem D, suppose Victory endorses the check and transfers it to Fanny Florist. Is Florist a holder?

Question Three

The check in question was drawn on an account in Sullivan National Bank ("SNB") in the name of Boutique, Inc. Checks furnished by SNB to Boutique Inc. were stolen and one of these was filled in with the amount of \$8,000.00 payable to the order of "Boutique #3." This name was fictitious, since no "Boutique #3" existed. The signature of D.M. Smith, present of Boutique Inc., was forged to the check in a credible likeness of the signature of that officer on file with SNB. The forged check was endorsed "Boutique #3 For Deposit Only, Account No. 12755 Ronda Cousin," and was deposited in an account opened under that number in the name of "Boutique No. 3" in Hanover Bank. Hanover credited this account with the \$8,000.00, indorsed the check "pay any bank p.e.g.," (which in banking parlance means "prior endorsements guaranteed") and forwarded it for collection through banking channels to SNB, which ran the check through its computer and in accordance with its practice, compared the signature with the signature of D.M. Smith on file, failed to discover the forgery, and paid Hanover Bank for the check.

About 16 days later, Hanover advised SNB the \$8,000.00 check was forged and that it intended to make a claim. What result? Fully support your answer.

Question Four

Ms. Sanders drew check number 102, payable to Chris Mango in the amount of \$1,700.00, on her checking account at Sullivan National Bank. Believing this check was lost, Sanders cashed another check in the amount of \$1,750.00 and gave Mango \$1,700.00 cash. Unbeknownst to Sanders, Mango had deposited the \$1,700.00 check in his account at another bank. The check, having run its course through normal banking channels arrived at Sullivan National Bank at a time when Sanders had insufficient funds in her account to cover it. Accordingly, the check was stamped "insufficient funds" and returned to the Federal Reserve Bank of Boston, the last endorser.

Eleven days later, Sanders placed a stop-payment order on the \$1,700.00 check she had issued to Mangos. On the stop-payment form provided by Sullivan National Bank, Sanders specified the correct account number, check number and payee. She placed a question mark in the space provided for the date of the check. She wrote the amount of the check as to which she sought to stop-payment as \$1,750.00.

About 10 days after Sanders wrote the stop-payment order, check number 102 was presented to Sullivan National Bank for payment and, there then being sufficient funds in Sanders' account, was paid by Sullivan National Bank. The next day, a Sullivan Bank clerk, while in the process of hand sorting checks for filing, noticed the stop-payment order for check number 102 and, failing to notice the check had been paid, stamped the check "payment stopped". Sanders' account was then erroneously credited \$1,700.00 and the check forwarded to the Federal Reserve Bank. Months later, due to an unexplained delay in the system, the Federal Reserve Bank returned check number 102 to Sullivan Bank. Sullivan Bank, recognizing that it paid the check, debited Sanders account, reversing the erroneous credit. This debit created an overdraft in Sanders' account of \$1,379.68. Sullivan Bank sued to collect. Sanders counterclaimed for the wrongful payment of a check over a stop-payment order, abuse of process, and gross negligence. What result?

Final Examination - Essay
Article 3 & 4 - UCC
Professor Sullivan
Fall 2000

Question One - Worth 10 points

- A. Professor Socratic purchased a car for herself from Easy Motors, signing a promissory note for \$40,000 payable to the order of Easy Motors. Easy sold the note to Sullivan Finance Company for \$28,000.00. The car fell apart within 30 days, and Professor Socratic refused to pay. What result?
- B. If the owner of Easy Motors owed her friend \$10,000 and gave her the note with the understanding the extra was a Christmas gift, is the friend a holder in due course? Fully explain.

Question Two - Worth 10 points

Is the following note negotiable? Fully explain.

June 1, 2000

"Payable 100 years from today, but if my rich Aunt Alice dies before the note is due, it shall be payable 10 days after the distribution of her estate is made to her heirs."

/s/ Debbie Smith

Question Three - Worth 15 points

Sally Smart operates a small women's boutique. Her business processes a large number of incoming checks (for items that she has shipped to customers all over the country) and outgoing checks (paying for supplies, material, payroll). She has never had any losses from theft, but is worried about the possibility. She tells you she has a lot of customers and workers in and out of her boutique. Because she has only a single very large room that operates as the boutique, it is hard to keep her checkbook and blank checks completely inaccessible. Smart wants to know what she needs to do to be sure she's not stuck with any losses. Consider the following possible scenarios and decide whether Smart would have any liability in any of those scenarios. If so, what should she do to limit that liability.

- A. Gussie Fink, an employee who packages outgoing shipments picks up one of Smart's blank checks, makes it out to himself, and forges Smart's signature as drawer. Gussie then indorses the check and deposits it in his bank. After withdrawing the funds from his account, Gussie then disappears.
- B. Stiffy Byng comes to Smart's office and claims to be Madeline Bassett, a supplier to whom Smart owes money (whom Smart had not met). Smart issues a check to Madeline

Bassett and gives it to Stiffy, who indorses the check in Madeline's name, cashes it, and then departs with the money for the Island of Man.

- C. Gussie is also responsible for depositing incoming checks. In that capacity, Gussie forges Smart's indorsement on an incoming check payable to Smart and deposits the check into Gussie's account.

Question Four - Worth 10 points

The President of Sullivan Corporation was Samuel Sullivan. He signed a corporate promissory note as follows:

"Sullivan Corporation, by Samuel Sullivan."

Who is liable on the note?

Fully explain.

Question Five - Worth 10 points

Curly, Moe and Larry signed the following promissory note:

November 1, 2000

On or after 30 days from date, we promise to pay to the order of Sullivan National Bank, the sum of six thousand dollars (\$6,000.00). We, along with all sureties and subsequent indorsers, waive all rights to presentment, dishonor, notice of dishonor, and protest, and all parties agree to any extension of time granted by the holder to the maker.

Harry Curly
Meagan Moe
Larry Little

Sullivan National Bank indorsed the note in blank and discounted it to Hanson Finance Company. When the note matured Hanson sued only Harry Curley. May he defend on the basis Hanson must sue all three? Fully explain your answer.

Scoring:

Multiple Choice - 1 point (total 13 points)

Question 1 - worth 30 points

Question 2 - worth 16 points

Professor Sullivan

Article 3 and 4 Examination

Fall 1999

QUESTION ONE

Sally Smart operates a small women's boutique. Her business processes a large number of incoming checks (for items that she has shipped to customers all over the country) and outgoing checks (paying for supplies, material, payroll). She has never had any losses from theft, but is worried about the possibility. She tells you she has a lot of customers and workers in and out of her boutique. Because she has only a single very large room that operates as the boutique, it is hard to keep her checkbook and blank checks completely inaccessible. Smart wants to know what she needs to do to be sure she's not stuck with any losses. Consider the following possible scenarios and decide whether Smart would have any liability in any of those scenarios. If so, what should she do to limit that liability.

- A. Gussie Fink, an employee who packages outgoing shipments picks up one of Smart's blank checks, makes it out to himself, and forges Smart's signature as drawer. Gussie then indorses the check and deposits it in his bank. After withdrawing the funds from his account, Gussie then disappears.
- B. Stiffy Byng comes to Smart's office and claims to be Madeline Bassett, a supplier to whom Smart owes money (whom Smart had not met). Smart issues a check to Madeline Bassett and gives it to Stiffy, who indorses the check in Madeline's name, cashes it, and then departs with the money for the Island of Man.
- C. Would your answer to B (above) change if Stiffy doesn't claim to be Madeline herself, but only an employee of Madeline's sent to pick up the check?
- D. Same facts as question A, but instead of writing the check to himself, Gussie writes a check to Madeline Bassett, intending to give the check to Gussie's friend Harold Stinker-Pinker. After Gussie gives the check to Pinker, Pinker forges Bassett's indorsement and cashes the check..
- E. Some facts as question D, but Gussie is the person in Smart's office responsible for issuing checks.
- F. Gussie is also responsible for depositing incoming checks. In that capacity, Gussie forges Smart's indorsement on an incoming check payable to Smart and deposits the check into Gussie's account.

QUESTION TWO

Betty Banker calls you to inquire about a package of promissory notes her bank wants to acquire. None of the notes mature during the next five years, but in each of them the borrower has missed one or more of the recent scheduled monthly payments. The seller of the notes has not yet accelerated the dates of maturity of the notes or otherwise responded to the defaults. The bank plans to acquire the package of notes on a deeply discounted purchase price, reflecting the fact that the notes currently are in default. Betty says that she does not need you to examine the notes to determine whether they are negotiable in form, that the seller of the notes is the current holder of the notes, and that Betty obtains proper indorsement in connection with the purchase. She wants you to tell her whether the bank's knowledge that the borrowers have missed payment will prevent the bank from becoming a holder in due course of the notes. She tells you the notes have two different types of payment schedules. Some call for a series of amortizing monthly payments (part interest and part principal), while others call for monthly payments of interest only, with the entire principal due in a single "balloon" payment on the dates of maturity. What do you tell her?

Professor Sullivan
Final Examination
Article 3 and 4
Summer 2000

Question One

The Easy Bank was the assignee from Roger Bean of a promissory note and purchase money mortgage executed and delivered by the appellant. The note executed April 28, 1999 contains the following stipulation:

"The note with interest is secured by a mortgage on real estate, of even date herewith, made by the maker hereof in favor of the said payee, and shall be construed and enforce according to the law of the State of Massachusetts. The terms of said mortgage are by this reference made a part hereof".

Roger Bean assigned the promissory note and mortgage in question to the Easy Bank to secure their own note. Easy Bank sued defendant alleging or default on the note. Defendant answered with a defense of failure of consideration on the part of Roger Bean.

What result? Fully support your answer.

Question Two

- A. Dawn draws a check to the order of Denise Lowe the check is delivered to Denise Lowe. Is Denise Lowe a holder?
- B. Denise Lowe signs her name on the back of the check "Denise Lowe" and hands over the check to Millie Fay. Is Millie Fay a holder?
- C. Without signing her name to the above check, Millie Fay hands over the check to Polly Hayes. Is Hayes a holder?
- D. A check payable to Denise Lowe and not yet indorsed by her is stolen by Sam Snitch. Snitch signs Lowe's name on the back of the check and takes it to Victory Supermarket, where in front of the cashier, he signs his own name and gives the check to Victory. Is Victory a holder?
- E. On the facts of Problem D, suppose Victory indorses the check and transfers it to Fanny Florist. Is Fanny Florist a holder?

Question Three

The check in question was drawn on an account in Sullivan National Bank ("SNB") in the name of Boutique, Inc. Check forms furnished by SNB to Boutique Inc. Were stolen and one of these forms was filled in with the amount of \$8,000.00 payable to the order of "Boutique Inc. #3."

This name was fictitious, since no "Boutique Inc. #3" existed. The signature of D.M. Smith, president of Boutique Inc., was forged to the check in a credible likeness of the signature of that officer on file with SNB. The forged check was endorsed "Boutique Inc. #3 For Deposit Only, Account No. (Op12755) Randa Cousin," and was deposited in an account opened under that number in the name of "Boutique Inc. No. 3" in Hanover Bank. Hanover credited this account with the \$8,000, endorsed the check "Pay Any Bank P.E.G.," which in banking parlance means "prior endorsements guaranteed and forwarded it for collection through banking channels to SNB, which ran the check through its computer and in accordance with its practice, compared the signature with the signatures of D.M. Smith on file, failed to discover the forgery and paid Haran for the check.

About 16 days later, Hanover advised SNB the \$8,000 check was forged, and that it intended to make a claim. What result? Fully support your answer.

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Final Examination
Articles 3 and 4
Summer 1999
Professor Sullivan

QUESTION ONE

Betty Banker calls you to ask about an unusual check that has landed on her desk. This morning's ATM deposits included a \$20,000 check where the drawer had crossed out the printed words "to order of" and written in pen "only to". The result is the check states: "Pay only to Tim Burns". It appears from the back of the check that Burns cashed the check at Smart Drugs in downtown Andover. Smart Drugs, in turn, deposited the check into its account at First State Bank (Betty's Bank). Betty wants to know if the check is valid and any advice you have as to what she should do.

QUESTION TWO

D&S and Sullivan Siding are construction and general contracting companies. They share the same office in Worcester, Massachusetts. E. Givens was an employee of both corporations and performed various administrative duties for them.

D&S and Sullivan Siding perform construction work at job sites throughout the Northeast. On Wednesday morning of each week the foreman at each job site telephoned Givens and gave her the names of the employees working on the job site and the number of hours they worked. Givens then conveyed this information to Automated Payroll ("AP") whose office was in Boston, Massachusetts. Under a contract with D&S and Sullivan Siding, AP prepared payroll checks for the two companies. After preparing the payroll checks based on the information provided by Givens, AP sent the checks to the offices of D&S and Sullivan Siding in Worcester for authorized signatures. Givens was not an authorized signatory. After the checks were signed, Givens sent the checks to the job site foreman for delivery to the employees.

In 1998, Givens began conveying false information to AP about employees and hours worked. On the basis of this false information, AP prepared payroll checks payable to persons who are actual employees but had not worked the hours Givens had indicated. After obtaining authorized signatures from officers of D&S and Sullivan Siding, Givens cashed the checks at Easy Bank and deposited them into her checking account at Easy Bank, presenting numerous checks at one time. Givens continued this practice for over a year, forging 100 indorsements until the V.P. of D&S discovered the embezzlement after noticing payroll checks payable to employees who had not recently performed services for the corporation.

D&S and Sullivan Siding brought an action for damages against Easy Bank and Givens in connection with the above activities. What result?

QUESTION THREE

Tommy Lind comes to you with a problem about a \$15,000.00 check that his wife Rose wrote recently on their joint bank account. The account contained only \$6,000.00 at the time, and Tommy had declined to purchase overdraft protection from the bank at which he maintained the account. Still, the bank honored the check and has now written Tommy a letter threatening unspecified "serious consequences" if he doesn't reimburse the bank for the amount of the check.

- A. Is Tommy liable for the check?
- B. Would your answer change if you learned that Rose and he are estranged and she used the funds to purchase a ticket for a cruise that she took (by herself) to Alaska?

QUESTION FOUR

Damion Presley, Senior Vice President of First Bank calls you to ask about a problem that has arisen at his bank. Damion explains that his problem related to a \$9,000.00 check drawn by his customer Juanita Bell which Damian's bank received for payment on July 12, 1999.

The check was payable to Matasar Realtors and dated September 1 of the current year. Because his bank's new automated check processing system does not examine the dates on checks and because Bell's account at the time contained \$10,000.00, the system paid the check. Upon further examination it appears Bell sent the bank a letter in April. The letter identified Bell's account number and explained that she would be paying her rent for the next year by a postdated check payable to Matasar Realtors. The letter asks the bank not to cash the check to the date indicated. What do you advise?

Professor Sullivan
UCC Articles 3 & 4
Final Examination - Fall 1998

QUESTION ONE

Sam Smart, Senior Vice President of Lending at Easy Bank wants to sell some of the bank's less desirable assets. Accordingly, he faxes a copy of the following promissory note to you to ascertain your view as to the note's negotiability. He wants a firm opinion that the instrument is negotiable. What do you advise?

Sullivan Corporation
Worcester, Mass.
Due: January 2, 2005

For value received, Sullivan Corporation, a Massachusetts Corporation ("corporation"), promises to pay Andy Romero, or registered assigns, on January 2, 2005, the principal sum of \$100,000 in lawful money of the United States of America. The Corporation further promises to pay interest on the principal sum of \$100,000 in lawful money of the United States of America. Interest will be paid semi-annually on July 2 and January 2 of each year after January 2, 1996, until the principal sum hereof has been paid or provision for its payment has been made.

The principal of this note will be payable at the principal office of the Corporation (or at whatever other place may be designated in writing by the Corporation from time to time) upon the presentation and surrender hereof.

IN WITNESS WHEREOF, the Corporation has caused this note to be signed by its duly authorized officers on January 2, 1996.

QUESTION TWO

This morning you meet with a new client named Tim Gunner. Tim operates a pool hall in Lawrence, Massachusetts. He has recently opened a check-cashing business alongside of each of his pool halls. The check-cashing business operates as Tim's Kash Service ("TKS"). The business appears successful; Tim is cashing about 300 checks a day.

Tim tells you that his practice includes requiring the customers to sign the reverse of the check. The clerk checks to make certain that the signature matches the name of the payee on the front of the check. The clerk will then examine the driver's licence to ensure that the signer is in fact the payee. Finally, the clerk stamps the top end of the reverse of each check, just below the signature by the customer. The clerk uses a rubber stamp that reads "Tim's Kash Services." (See next page.)

/s/ Paul Payee

Tim's Kash Service

Tim wants to know what you think of his procedures and if they expose him to any risks. What do you advise?

QUESTION THREE

The Senior Operations Officer at Busy Bank calls you because the bank paid a check over a written stop-payment order. The check was written by Donna Fool and payable to Sandra Short in the amount of \$3,500 apparently for a Knitting Machine. Donna decided she did not want the machine because it was larger than she understood. The machine was too big for the space in her den. Donna immediately went to the bank and filled out the bank's stop-payment order, identifying the account number, as well as the number, amount and date of the check. Unfortunately, a clerk entered the information incorrectly into the bank's computer. As a result, the check came in and was paid the next day by the bank. Donna is furious and insists the bank re-credit.

The bank wants to know if it must re-credit and if they will be out the money. What do you advise?

QUESTION FOUR

The Plaintiffs, A&B Contractors, Inc., and Massachusetts Siding Construction Company, appeal from a summary judgment in favor of the defendant, Sullivan Bank. A&B and Mass. Siding ("Plaintiffs") brought this action for damages against Sullivan Bank, Marty Givens, and Sundry fictitiously named defendants, alleging conversion and negligence, all in connection with the action of Sullivan Bank in cashing, or accepting for deposit, payroll checks on which Givens forged the endorsements of the payees . . .

A&B and Massachusetts Siding are construction and general contracting companies. They share the same office in Andover, Mass. Givens was an employee of both corporations and performed various administrative duties for them.

A&B and Mass. Siding perform construction work at job sites throughout the Northeast. On Wednesday morning of each week, the foreman at each job site telephoned Givens and gave him the names of the employees working on the job site and the number of hours they have worked. Givens thus conveyed this information to Automatic Data Processing ("ADP"), whose offices were in Detroit, Michigan. Under a contract with A&B and Mass. Siding, ADP sent the checks to an officer of A&B and Mass. Siding in Andover, Mass. for authorized signatures. Givens was not an authorized signatory. After the checks were signed, Givens sent the checks to the jobsite foreman for delivery to the employees.

In 1995, Givens began conveying false information to ADP about employees and hours worked. On the basis of this false information, ADP prepared payroll checks payable to persons

who were actual employees but had not worked the hours Givens had indicated.

After obtaining authorized signatures from officers of A&B and Mass. Siding, Givens intercepted the checks, forged the indorsement of the payees, and either cashed the checks at Sullivan Bank or deposited them into his account at Sullivan Bank, after presenting numerous checks at one time. Givens continued this practice for almost a year, forging over 100 endorsements, until Debra Smart, V.P. of A&B discovered the embezzlement after noticing payroll checks payable to employees who had not recently performed services for the corporations. What result on appeal?

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Professor Sullivan

Uniform Commercial Code

Final Exam - Articles 3 & 4

Question: #1 (worth 20 points)

This is an action on a promissory note by the assignee of the payee against the makers. The case was first tried in the District Court of Fitchburg to which it had been remanded by the Superior Court. There was a finding for the plaintiff in the sum of \$1,630.12. At the request of the defendants, the case was retransferred to the Superior Court for trial by jury. Upon conclusion of the evidence the court allowed a motion by the plaintiff for a directed verdict to which the defendants excepted.

At the trial the plaintiff introduced in evidence the note (see attached), a completion certificate signed by the defendants and the District Court's finding for the plaintiff. The defendants admitted the authenticity of the signatures on the note and the completion certificate. As a witness for the defendants, one Charles D. Fahey testified that he was the plaintiff's Boston branch manager at the time the defendants' note was purchased, and that the plaintiff purchases instalment contracts regarding automobile and property improvement purchases. He described the procedures by which purchases of commercial paper are arranged by the plaintiff; these procedures included a credit check on the "customer," i.e., the maker of the note which the plaintiff is planning to purchase. The defendants attempted to introduce through Fahey a credit report obtained by the plaintiff on Allied Aluminum Associates, Inc. (Allied), the payee of the note. The defendants excepted to the exclusion of this evidence. They offered to prove that the excluded report, which was dated "3-31-89," contained the following statement: "The subject firm is engaged in the sale of storm windows, doors, roofing, siding, and bathroom and kitchen remodeling work. The firm engages a crew of commission salesmen and it is reported they have been doing a good volume of business. They are reported to employ high pressure sales methods for the most part. They have done considerable advertising in newspapers, on radio, and have done soliciting by telephone. They have been criticized for their advertising methods, and have been accused of using bait advertising, and using false and misleading statements. The Boston Better Business Bureau has had numerous complaints regarding their advertising methods, and have reported same to the Attorney General. FHA has had no complaints other than report of this from Better Business Bureau and have warned the firm to stop their practice."

The defendants excepted to the exclusion of testimony by the

defendant Dora Ingel concerning certain of her negotiations with Allied. An offer of proof was made which indicates that this testimony might have been evidence of fraud or breach of warranty on the part of Allied.

Following transfer to the District Court of Fitchburg, removal to the Superior Court, transfer to and trial in the District Court of Fitchburg, and retransfer to the Superior Court, the action is tried before you. Write your opinion.

1. In November 1991, the appellants, James Frank and Joe Barrett, together with Stanley Stoller, met with a representative of Hershey Estates Corp. in Pennsylvania to discuss the purchase by appellants and Stoller of two radio stations owned by a wholly owned subsidiary of that corporation. The meeting went well and a further meeting to discuss the prospects of obtaining a bank loan was scheduled. At this meeting, John Bauna, V.P. and cashier of Hershey Nat'l Bank informed the purchasers (appellants) that no funds could be loaned to the new corporation they formed unless they were personally responsible for the indebtedness and additionally, requested personal financial statements.

Apparently satisfied that the appellants' financial statements justified the loan, the Bank approved the loan. Both Barrett and Frank are residents of Maryland and Stoller was the man on the scene in Pennsylvania. It is probably because of the inconvenience to appellants of having to travel to Pennsylvania that appellee was made aware of a corporate resolution that authorized Stoller, as President of the new corporation, to sign a valid corporate obligation on his signature alone.

Finally, in April 1992, the new company was ready to draw on its line of credit. Stoller so informed the Bank and obtained the printed form that was to become the May 1, 1991 note in order to have it properly signed by the appellants. Stoller met appellants one night in a Maryland restaurant where the signing took place.

Barrett and Frank both claim that the printed note form they signed that night did not have on it the words "president," "seal," or "sec 'y,'" but that they instructed Stoller to add their respective corporate titles after their names.

Additionally, appellants make the same conclusion about the July 10, 1992 note which they signed in blank when they received it in the mail and returned it to Stoller.

Each note, when presented to the Bank, was complete and no additions were made except to date them and place the Bank number in the lower left hand corner.

The investment did not prove successful and the interest due on the notes became in default.

The Bank made demand on the appellants. Appellants refuse the

Bank's claim.

The notes read as follows:

\$10,000.00

Hershey, PA

May 1, 1992

-----On Demand-----months after date, the maker(s) (jointly and severally) promise to pay THE HERSHEY NATIONAL BANK at its office in Hershey, Dauphin Co.1, PA----Fifty Thousand and no/100---Dollars

EAST PENN Corporation
By S//Stanley Stoller, President
By James Frank
By Joe Barrett

The instrument contained a term authorizing confession of judgment on the instrument if it is not paid when due.

QUERY: Who will prevail? Discuss fully all issues presented.

2. Jones is in the business of wholesaling used cars. He obtained a significant portion of his financing through a "floor arrangement" with Ell. That is, Ell would advance money to Jones for periods of 30 days. As security for these advances, Jones would deliver to Ell the documents of title to specific automobiles which served as collateral. Ell gave his checks to Jones when making these advances.

When a car was sold, or within 30 days, Jones would repay the loan to Ell, plus a "flooring fee" with his check and Ell would release the title to the automobile. At Ell's request, Jones gave him a separate check for the repayment of each loan.

Jones and Ell did business in the fashion almost daily for a considerable period. It was quite common for Jones to repay several loans by giving Ell his checks in appropriate amounts and, on the same day, to "floor" several additional vehicles with Ell and to receive Ells' checks as advances.

Jones maintained his checking account with Community. Because of the financing pattern just described, an examination of the records of his account would have disclosed that a significant portion of Jones' daily bank deposits consisted of checks written by Ell and that a significant portion of the checks written by Jones here payable to Ell.

During the same period Community permitted Jones to maintain his account in a "potential overdraft" position. That is, each morning Jones or his bookkeeper would call the bank to determine the amount necessary to cover the checks drawn on the previous day. Later in the day Jones would make a deposit sufficient to cover the checks. The bank would credit the deposit immediately and the checks would be paid. The amount of this daily overdraft varied from

approximately \$40,000.00 to more than \$100,000.00

On Thursday, December 13, 1991, Mr. S, a V.P. of Community Bank, was requested to investigate Jones' account in connection with a request by Jones for a larger line of credit. Mr. S, discovered the above pattern of large daily potential overdrafts. Thereafter, Mr. S. informed subordinates at the bank that checks written by Jones were not thereafter to be paid unless there were collected funds in Jones' account to cover them. Ell's bank was notified of this decision and, in turn, notified him on Tuesday, December 18, that checks written by Jones were being, or would be, returned.

Ell responded by stopping payment on four checks which represented loans given to Jones from Ell according to the usual practice, before either had any notice that Community intended to begin returning Jones' checks.

Community brings an action against Ell.

Write the opinion of the trial court.

UCCFES92.DS

FINAL EXAM

UCC - Articles 3 & 4

Professor Sullivan

11, 1991

(1) Sara owns a business. Patty has managed the business for Sara for several years, and accounts to Sara on a semi-annual basis. Al is a long-time employee and personal friend of Sara, but he only makes \$79.00 per week. Patty fired Al one day and gave Al a paycheck for \$79.00. Patty next made out a promissory note payable on demand to Al on order for \$79.00. Patty had no authority to sign notes for the business.

Patty informed Sara there wasn't enough cash to pay Al, who agreed to take a note, and asked Sara to endorse the note, which Sara did, believing what Patty said. Patty left a space between the \$ and "seventy-nine." After Sara endorsed it, Patty fraudulently wrote the figure "8" before the figures "79" and wrote "eight" before the words "seventy-nine." Next, Patty forged Al's name on the back, above Sara's signature, endorsed it herself under Sara's signature, and discounted the note at CBT. Patty then went to Spain, permanently.

The Bank made demand to Al, who refused to pay claiming "forgery." The bank now makes demand on Sara. Advise Sara.

(2) Charlie Brown wanted to borrow \$10,000 from the Peanuts National Bank, but the bank told him that it would not loan him the money unless his note was indorsed by four responsible people. Charlie explained his problem to his friend Lucy, and she signed her name to the back of the instrument. Charlie then took the note to another friend Schroeder, who not only signed but also persuaded his friend Pig Pen to add his name below Schroeder's. Finally, Charlie Brown had Peppermint Patty sign her name, at which point he took the note back to the bank, and it loaned him the money. When the note came due, the bank made a presentment of it to Charlie Brown and demanded payment. He had used the money in a business venture that, predictably enough, was a moral but not a financial success, and so he was unable to pay the note (a dishonor). The Peanuts National Bank gave notice of dishonor to all four indorsers, but demanded payment of Peppermint Patty alone. She resisted, claiming she was liable at most for only one-fourth of the amount (\$2,500). Advise Peppermint Patty.

- (3) A, Inc. sold equipment to W for making stereo tapes from master tapes for \$6,039.00. A, Inc. promised to furnish master tapes weekly, from which some 400 individual tapes could be made each week. W purchased the equipment on this representation which ultimately proved false, only one master tape ever having been furnished. A, Inc. ultimately went into bankruptcy and no recovery is possible from them.

The initial \$6,039.00 was paid by W as follows: cash down payment of \$3,018.50 and a promissory note was signed for \$3,019.50, which with interest amounted to \$3,215.08. The note was ultimately discounted to the bank for \$500.00.

Additional Factors:

- The note was taken by the bank without recourse.
- The V.P. of the bank resigned shortly after A, Inc. went into bankruptcy because of the A, Inc. matter and several other matters.
- This V.P. had presumably investigated and determined A, Inc. to be a reputable company.
- There were 33 A, Inc. notes assigned to the bank in default.
- The sales representative of A, Inc. was a former employee of the bank.

The bank sued W on the note. The Court of Common Pleas, X County, entered judgment in favor of defendant, and plaintiff bank appeals. Write the opinion for the Court of Appeals.

- (4) Every Tuesday morning, on my way to work, I stop off at my cousin Janice's home. I give her a check drawn on my account at CBT payable to Lori's Cleaners. The check is signed by me, but I leave the amount blank and Janice completes it when she gets to the cleaners and they present her with my bill for the previous week.

Last Tuesday, Janice went to the cleaners for me, but she brought along her one-year-old daughter, Angela. Lugging in five bags of my clothes in one arm and Angela in the other, Janice became frustrated when Angela threw a temper tantrum, so Janice handed Lori the check and told her to complete it.

My cleaning bill for last week totaled \$200.00. I also owed Lori a personal debt of \$400.00 for taking in (and soon to be let out again) 10 suits at \$40.00 each. I never paid Lori for this bill. Accordingly, Lori filled in the check for \$600.00 and then endorsed the check "without recourse"

and left it on the counter.

Another customer of Lori's noticed the check and took it. The thief changed the amount to \$1,600.00 and, without endorsing it, gave it to Edith in payment of a long overdue debt.

Edith endorsed the check "pay to the order of Filomena, Edith" and gave it as a wedding present to Filomena. Filomena presented it to CBT for payment. I had, however, stopped payment so CBT refused.

What are Filomena's rights on the check against all parties?

- (5) Sam Seller agrees to sell an Egyptian painting to Betty Buyer for \$20,000.00. In payment thereof, Betty gives Sam a personal check for \$20,000.00 drawn on CBT. Betty changes her mind and stops payment on the check.

Please discuss fully:

- A) Sam presents the check at CBT, which cashes it over the stop payment order. Betty demands CBT re-credit her account, but CBT refuses. If Betty sues CBT, what result?
- B) Assume on the other hand the painting was a "fake." Is your answer different?
- C) Suppose instead of cashing the check at CBT, Sam deposits it in his account at Fleet and immediately draws checks on funds deposited. Assume further that Fleet presents Betty's check to CBT, who pays it over the stop order.