

Professor Matthews EXAM No. _____

Fall 1997

NEGOTIABLE INSTRUMENTS FINAL EXAMINATION

Instructions:

1. You have 3 hours (plus 15 minutes) to complete this exam. I will collect your answers in the room in which the exam is handed out at 11:45 a.m. Late bluebooks will be appropriately penalized.
2. All answers must be written in bluebooks (unless you are using a manual typewriter). Please write on only one side of a page, but you do not need to double space. Please number your answers to correspond to the question and sub-part you are answering, but you need not answer in any particular order.
3. Assume that the transaction takes place in Arkansas and that the UCC (current Arkansas version) applies to the transaction unless otherwise indicated.
4. You are permitted to use your copy of the UCC and relevant statutes which may have notations (such as those you have made during the semester), but may not be otherwise annotated. Any other notes or materials should be placed at the front of the room before the examination begins.
5. You are required to turn in your copy of the test along with your answers. Label both with your exam identification number. Please number your bluebooks.
6. If any ambiguity or typographical error appears in any question, state the ambiguity, make your assumption, and proceed accordingly.
7. "HDC" means holder in due course. If a party is so labelled, you are entitled to assume that all the prerequisites of that status are met. If an instrument is labelled a "check" or a "note", you may assume that it meets the Article 3 requirements for that type of instrument unless one of the elements is put in issue by the facts of the particular problem.
8. This exam consists of six fact patterns, labelled A-F, and a Short Answer Section. The points are apportioned as follows:

POINTS TIME

PART I (A-F) 16 points each 27 min. each

PART II Short Answer 10 points 18 min.

TOTAL 100 points 180 minutes

Part I. A. Washington purchased a snow blower from Adams Appliances, for which he drew a check in the amount of \$500 on First National Bank. Jefferson, who was employed by Adams to do minor repairs around the store, removed the check from a stack on the bookkeeper's desk. Jefferson indorsed the check "Pay to Jefferson, John Adams", and added his signature. "Thomas Jefferson". Jefferson then delivered the check to Monroe in payment for Monroe's promise to build a chain link fence around Jefferson's property.

Monroe inadvertently held the check for 45 days, then presented it over the counter to First National Bank. \$500 was paid in cash by the teller. In the interim before presentment, Monroe had built half the chain link fence, and the snow blower had proven defective. Washington suffered \$600 in damages when the blower jerked out of his hand and through his picture window.

Monroe has just received a demand from First National Bank that he pay back the \$500.

1. Discuss the legal rights, obligations and defenses of Monroe in regard to First National Bank. Explain your conclusions.

If Monroe repays First National Bank, explain Monroe's legal rights, obligations and defenses in regard to:

2. Washington

3. Adams

4. Jefferson

5. How would it affect your response in regard to First National Bank if Jefferson were instead Adams' bookkeeper? Explain.

B. Lincoln drew a check (on which he had covered over with white- out the "order of" language) on First New York Bank in the amount of \$100 payable to Johnson for tax preparation services. Johnson erased the dollar amounts, and replaced them with the words and figures for \$1000. Johnson then deposited the check into his account at First Arkansas Bank without indorsement, which account had a current balance of \$500.

The check was presented to First New York through an intermediary bank on Monday, December 1. First New York gave provisional credit that day, but on Tuesday reversed the credit and dishonored the check despite the fact that there were sufficient funds in the account. At 4:00 p.m. on Tuesday, First New York sent the check on its `return` journey by entrusting it to disreputable Fly-by-Night Courier Service. The dishonored check was received by First Arkansas on Tuesday, December 9.

Unfortunately, First Arkansas had allowed Johnson to withdraw \$1000 out of the account on Monday, December 8. First Arkansas has heard rumors that Johnson may have departed for Tahiti. At this point, what are First Arkansas Bank's rights against, and any potential defenses of: (Explain your conclusions).

1. First New York Bank
2. Lincoln
3. Johnson (assuming he can be located)

C. Hayes, who was 17 years old, was in arrears on his \$700 rent for November. However, Hayes had been told by a local realtor that the apartment should only be renting for half that price. When landlord Arthur came to collect, Hayes argued that he should only have to pay \$350. Arthur got angry and made ugly threats about having Hayes prosecuted, so Hayes drew a check payable for \$700 to Arthur on State Bank. Hayes then called State Bank at 1:00 p.m. to stop payment on the check. State Bank's telephone receptionist informed Hayes that she would pass on the information, but that Hayes would have to come in personally to make the stop order legally binding.

Meanwhile, Arthur indorsed the check "Chester Arthur" and delivered it to Garfield in payment for gasoline Arthur had charged at Garfield's filling station over the past six months. Garfield had routinely accepted such two-party rental checks from Arthur, but was aware of complaints regarding Arthur's reputation as a landlord. Garfield presented the check for payment to State Bank at 1:30 p.m. State Bank's telephone receptionist had passed on the stop order information, but State Bank's bookkeeper had erroneously entered it into the computer. Therefore, State Bank's teller paid Garfield \$700 in cash.

When Hayes learned of the payment of the check, he demanded that State Bank recredit his account. At this point, what are State Bank's rights and obligations in regard to: (Explain your conclusions).

1. Hayes
2. Arthur
3. Garfield

D. Kennedy allowed his employee, Johnson, to purchase computer equipment on credit from Nixon. Johnson therefore executed the following note for the purchase of printers to be used in Kennedy's business:

December 1, 1996

The undersigned undertakes to pay to the order of Richard Nixon \$10,000, plus interest at the rate of 9%, said sum to be due and payable one year from date. It is acknowledged that this note arises out of a contract for the purchase of computer equipment executed of even date herewith, and that a security interest in such equipment has been given to secure the obligation reflected herein. It is further understood and agreed that said security agreement shall govern all rights in regard to such collateral. Prepayment and acceleration rights governing this note are further subject to said security agreement.

Lyndon B. Johnson

The current relevant Federal Reserve Discount Rate was 3%. Nixon indorsed the note "Pay to Ford, Richard Nixon", and delivered it to Ford as collateral for a \$5000 loan from Ford.

On December 1, 1997 Johnson on behalf of Kennedy paid \$10,900 to Nixon, without realizing that Nixon no longer had possession of the note. At this point, discuss Ford's rights against, and any potential defenses of: (Explain your conclusions)

1. Kennedy
2. Johnson

E. Chretien's payment device was stolen on August 1, and used by the same wrongdoer to make various purchases. The purchases were reflected on the statements received by Chretien on the 5th day of each month following the charges. Chretien never discovered the loss, and failed to examine his statements until December 5. On that date, he discovered the unauthorized payments and notified County Bank. Explain Chretien's rights against County Bank in regard to the following charges:

8/15 9/5 9/15 10/5 10/15 11/5 11/15 12/5

\$100 AUG \$100 SEPT. \$100 OCT. \$100 DEC.

ST. ST. ST. ST.

Assume that the payment device was:

1. Checks on which Chretien's signature as drawer was forged.
2. A credit card issued by County Bank. Chretien's signature was forged on sales slips.
3. A debit card issued by County Bank. Chretien's signature was forged on sales slips.

4. How would your answers change if Chretien had given the user permission to use the device, but only for the initial purchase of \$100 in August?

F. Tyler on September 1 drew a check on Fayetteville Bank payable to the order of Polk for certain repair work on Tyler's home. Tyler signed the check with his nickname only, "Tippiecanoe", and directed Polk to fill in a dollar amount commensurate with the number of hours Polk had worked. Instead, Polk fraudulently filled in the amount of \$1000, and indorsed the check "James K. Polk."

The check was stolen from Polk by thief, who cashed it at Taft's grocery store that same day. Taft was careful to compare Polk's indorsement with his driver's license signature. Taft mislaid the check until December 15, when he delivered the check without indorsement to Wilson in `return` for supplies for the store.

When Wilson presented the check for payment to Fayetteville Bank, the teller dishonored the check on the basis that it was "too old." Wilson, a prominent business person, has been maligning Tyler's financial reputation all over town. Meanwhile, Polk has informed Tyler of the lost check, and claims that Tyler still owes Polk for the services Polk rendered. At this point, what are Tyler's rights and obligations in regard to: (Explain your conclusions)

1. Polk
2. Wilson
3. Fayetteville Bank

Part II. Short Answer (10 points, 18 minutes)

Respond briefly to the following based on the legal principles discussed in this course: (1 point each)

A The following items show up on Truman's monthly checking account/credit card statement from Second State Bank. Can the bank be forced to recredit any of these items?

1. A check payable to the order of Roosevelt and Eisenhower, indorsed by Roosevelt "Franklin D. Roosevelt."
2. A credit card charge for \$100 worth of tulip bulbs Truman ordered from a catalog sent by a California horticulturalist, which bulbs never arrived.
3. A check which was postdated to Jan. 1, 1998.

4. A \$400 overdraft, when the deposit contract contains no reference to the right to overdraft.
5. A check which was paid by the bank 5 days after Truman's death.
- B. What is the effect of certification of a check by a bank on the liability of the parties on the instrument?
- C. What is the "large dollar notice"?
- D. What is the purpose and effect of the FTC notice?
- E. What is the advantage of a documentary draft transaction?
- F. McKinley just learned that a check he held has been dishonored by the payor bank. The check has been signed by 5 indorsers and a drawer. What advice would you give McKinley to protect his rights against those parties?