

Spring 1991
ADVANCED COMMERCIAL PAPER 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. No late bluebooks will be accepted.
2. All answers must be written in bluebooks. 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 subpart 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 (1991 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 you have made during the semester, but may not be otherwise annotated. You are not permitted to have any other notes or materials with you.
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. If you are graduating this semester, please so indicate in the space above, and on your examination.
6. If any ambiguity 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 labeled, you are entitled to assume that all the prerequisites of that status are met. If an instrument is labeled a "check", you may assume it is in the standard check form.
8. This exam consists of the following parts, divided into subparts as indicated. Please budget your 3 hours carefully. You should apportion it approximately as follows:

	Question Points	Time
I	22	40 min.
II A-D	11 ea.	20 min. ea.
II E-G	8 ea.	15 min. ea.
III Short Answer	10	15 min.
	100 points	180 minutes = 3 hr.

Question I
(22 Points, 40 min.)

Franklin Roosevelt desired to finance the purchase of consumer goods. On September 15, 1990 he received the commitment from Fayetteville Finance Company (FFC) to make a loan of \$10,000 at any time within 60 days for that purpose. The loan was closed on

October 1, 1990. At that time, Franklin signed a note to repay the \$10,000 plus interest of \$1300 on October 1, 1991. He himself wrote in the due date by completing the appropriate blank with a pencil. He also paid at the closing a \$100 commitment fee and \$100 for mandatory credit life insurance on which FFC made a substantial commission. The relevant Federal Reserve@Discount Rate at closing was 9%. The Truth in Lending disclosures revealed a Finance Charge of \$1300 and an Annual Percentage Rate of 13%.

Because Franklin's credit was inadequate, FFC required the co-signature of his wife, Eleanor. Eleanor signed as co-maker and added "payment guaranteed" to her signature.

In desperate need of cash, FFC erased the original due date on the note, replaced it with "January 1, 1991" and indorsed and sold the note in December to State Bank, a Holder in Due Course with whom FCC had had no previous dealings. When the note was not paid in January, State Bank set off against the debt \$500 in a payroll account maintained by Eleanor at State Bank. Since Franklin has filed for bankruptcy, State Bank (after the release of any bankruptcy stay) has brought suit against Eleanor for the remainder. Discuss the potential defenses and counterclaims Eleanor may raise against State Bank under either the UCC or the federal statutes discussed in this course.

Question II A-D

(11 points each, 20 min. each)

A. Johnson's friend, Nixon, was having trouble making the monthly \$400 payment on his furniture. Johnson therefore delivered to Nixon Johnson's payment device, and told Nixon he could use it to make the January payment. Nixon thereafter informed Johnson that he had utilized the device but had returned it to its normal place in the chest of drawers. Unbeknownst to Johnson, however, Nixon had kept the device and continued to use it to make his \$400 payment on the first of each month through June 1, 1991. Johnson received statements showing that month's use on the 15th of each month, but did not look at them until May. On the day of receiving the May statement, Johnson notified the bank of the improper charges. Discuss Johnson's potential liability for each use by Nixon, from January through June, assuming that the payment device was:

- 1) A checkbook, to which checks Nixon had signed Johnson's name.
- 2) A credit card, as to which Nixon had signed his name as an authorized signatory.
- 3) A debit card, as to which Nixon had signed his name as an authorized signatory.

B. Adams and Jefferson opened a joint account with Second National Bank. Adams alone thereafter drew a check on the account to Madison in the amount of \$50-for computer software to be utilized solely by Adams. The software proved defective and worthless, so Adams immediately stopped payment on the check. Meanwhile, Madison deposited the check (without endorsement) into his account at First National Bank. First National, having no notice of any dispute, permitted Madison to withdraw \$25 against the check. First National's bookkeeper then mistakenly overencoded the check for \$500, and presented it for payment to Second National Bank. When the check arrived, the balance in Adam's and Jefferson's account stood at \$0. However, the

bookkeeper at Second National Bank was new and mistakenly paid \$500 despite both the stop order and the fact that the check overdrew the account. At this point, what are Second National Bank's rights against:

- 1) Adams
- 2) First National Bank
- 3) Jefferson
- 4) Madison

C. Coolidge applied for an unsecured loan at the Hoover State Bank to purchase a motor boat for pleasure. Hoover State therefore sought a credit report on Coolidge from Taft Credit Reporting Service, and requested that Taft conduct some personal interviews with former employers. The credit report showed that Coolidge was now 53 years of age, and erroneously reported that he had had trouble holding jobs in the past. Hoover State, concerned about Coolidge holding a job at his age, therefore denied Coolidge the loan unless he could provide some collateral. Hoover State did not reveal to Coolidge that a credit report had been utilized.

Coolidge re-applied on the basis that he would provide a mortgage on his home, and Hoover State thereafter made a loan of \$20,000 on the basis of this collateral. Hoover State made TILA disclosures to Coolidge regarding the Finance Charge, Amount Financed and Annual Percentage Rate, but no other disclosures.

Coolidge thereafter defaulted on the note. Hoover State elected to foreclose nonjudicially, and sold the home at private sale. The proceeds of the foreclosure sale were \$15,000, although Coolidge claims that the fair market value is around \$60,000. Hoover State has brought suit against Coolidge for the deficiency, and he has contacted you. He says he never wants to see the stupid boat again. Advise him as to his potential defenses and remedies.

D. Bush was the maker of a \$700 note payable to the Bank of Bentonville, which due and payable on May 4. He also had a checking account with that bank. On May 1, Bush drew a check on the account to Reagan in the amount of \$300 for his monthly rent. Before taking the check, payee/landlord Reagan called the Bank of Bentonville to determine whether sufficient funds were in the account, and was assured that the balance was \$1000. Reagan then endorsed and deposited the check into his account at the Bank of Springdale, which presented the check to the Bank of Bentonville through the local clearinghouse on May 2. Bank of Bentonville gave provisional credit on May 2. Early on May 3, Bank of Bentonville deducted the check from Bush's account in such a manner as to "complete the process of posting" under the former Article 3 test.

Later that day, the Bank of Bentonville received information indicating that Bush would not pay his \$700 note. Furthermore, a check drawn by Bush payable to a favored bank customer in the amount of \$200 was presented for payment. Therefore, the Bank of

Bentonville reversed the process of posting Reagan's check, recredited the \$300, and restored the balance to \$1000. It thereafter paid the second check for \$200, set off \$700 against the note owed to itself, and dishonored the check payable to Reagan for insufficient funds. Reagan has turned the check over to the authorities as a hot check, and is seeking to evict Bush. At this point, what are the rights of the following parties against the Bank of Bentonville?

- 1) Bush
- 2) Reagan

Question II E-G

(8 points each, 15 min. each)

E. Garfield worked as a clerk in the payroll department of Grant, Inc. preparing payroll checks. In this capacity, he prepared an extra check duplicating employee Hayes' wages for the month, which Garfield intended to keep for himself. Garfield took the stack of checks to the corporate President, Grant, who signed them as drawer without noticing the extra check. Garfield then endorsed the extra check as "Hayes", and deposited it in Garfield's own account at

Rogers National Bank. The check was forwarded for payment to the drawee, Farmers & Merchants Bank (F & M). F & M's bookkeeper noticed that two checks were drawn to the same employee for the same pay period, but processed the checks for payment anyway. The checks were duly paid, Garfield withdrew the funds from Rogers National, and disappeared. Discuss the likelihood of Grant, Inc. Is forcing the recredit of the account or the recovery of the funds in the following suits:

- 1) Grant, Inc. v. F & M.
- 2) Grant, Inc. v. Rogers National Bank.
- 3) If F & M recredits the account, could F & M shift the loss to Rogers National Bank?

F. Pierce drew a check to Lincoln. Buchanan stole the check, forged Lincoln's endorsement, and deposited the check in Buchanan's account at First State Bank on June 1. First State forwarded the check through an intermediary bank to Second State, another local bank. The check was presented to Second State on June 3, and Second State gave a credit on that date. On June 4, however, Lincoln notified Pierce of the missing check, Pierce notified Second State Bank, and Second State revoked the credit. Second State then sent a notice of dishonor on June 4 through a nonlocal intermediary bank. The notice of dishonor arrived at First State on June 10, but Buchanan had withdrawn the funds on June 9. Lincoln has made demand for the amount of the check from First State Bank. First State calls you. What are its rights and obligations as against:

- 1) Lincoln

- 2) Second State
- 3) Buchanan

G. On July 1, Taylor drew a check on the Bank of Fayetteville payable to Polk in the amount of \$500 for certain services. Because the services were not to be performed until a later date, Taylor postdated the check to November 1. Polk indorsed the check in blank, and Taylor died on July 5. The check was then stolen by Harrison and deposited into his account at McIlroy on July 10. McIlroy presented it to the Bank of Fayetteville, which paid it on July 12 despite its knowledge of Taylor's death. Harrison thereafter withdrew the funds from McIlroy. Explain which party is likely to prevail if the following party makes a claim against the other for a recredit of the account or recovery of the \$200:

- 1) Polk v. Taylor.
- 2) Taylor v. Bank of Fayetteville.
- 3) Polk v. McIlroy.

Question III. Short Answer
(10 points, 15 minutes)

1. Identify the drawer (if any), indicate whether payment of the item can be stopped, and explain why or why not: (4 points)

- a) cashiers check
- b) personal money order
- c) certified check
- d) electronic fund transfer

2. Fayetteville credit card holder utilizes a card issued by a Fayetteville Bank to buy a lawnmower in Tulsa, Oklahoma. The lawnmower will not work. Cardholder has received his Credit card bill for the lawnmower, and Comes to ask you whether he has to pay it. What do you advise him to do? (3 points)

3. A Fayetteville manufacturer wants to ship certain goods by air freight to a buyer in Paris, but is concerned about shipping goods without prior payment. The buyer has indicated that it is willing to furnish a letter of credit from a French bank. Describe the legal relations of the parties and the documents which should be utilized to carry out this transaction. (3 points)