

Professor Matthews EXAM No. _____

Spring 1995

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 penalized.
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 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 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.
8. This exam consists of eight fact patterns, labelled A-H. The points are apportioned as follows:

POINTS TIME

A-F 13 points each (Total 78 points) Approx. 23 min. each

G-H 11 points each (Total 22 points) Approx. 20 min. each

PART I. A-F (13 points each)

A. In order to buy equipment for his business, Washington executed a promissory note to Jefferson in Arkansas for \$10,000 to be paid on May 4, 1996. The note bore interest at 10% per annum to be paid at maturity (the relevant federal reserve discount rate was 4%), and stated that:

This note is executed pursuant to a contract of sale of equipment. Rights as to the equipment are governed exclusively by the security agreement executed of even date.

Since Jefferson would not accept Washington's signature alone, Washington acquired the additional signature of his blind Grandmother Adams as maker by telling her the note was an affidavit of his good character. The note was delivered to Jefferson, but Jefferson's indorsement on the note was forged by his bookkeeper, Madison. Madison sold the note for \$9000 to Monroe, who took in good faith and was unaware of any problems. Jefferson has refused to deliver the equipment. The note was not paid when due, and Monroe wishes to collect on the obligation. EXPLAIN his rights and ALL potential defenses should he sue:

1. Washington
2. Grandmother Adams

B. Kennedy left his checkbook on the counter at a bar while he made a quick trip to the restroom. It was stolen by Johnson, who forged Kennedy's signature as drawer on a series of weekly \$100 checks beginning in January of 1995. Johnson drew the checks to himself, indorsed them "Johnson", and delivered them to his roommate Nixon as weekly gifts. Nixon, not knowing they were forged, periodically presented the checks to the drawee, First National Bank. The checks were paid in cash, which Nixon secreted under his mattress.

First National Bank provided monthly statements to Kennedy, and the four January checks were included in the February statement received by Kennedy on February 1. However, Kennedy did not examine his bank statement until May 4, 1995, at which time he discovered the forgeries and now demands that First National Bank recredit his account for every forged check. First National Bank individually examines drawers' signatures only on checks over \$2500. At this point, EXPLAIN the rights of and ALL potential defenses against First National Bank in regard to:

1. Kennedy.
2. Johnson.
3. Nixon.

C. McKinley drew a check on McIlroy Bank payable to Roosevelt for \$1000 for the purchase of a lawnmower. Roosevelt indorsed the check "For Deposit Only, Theodore

Roosevelt," and deposited the check into his account at State Bank on Monday, May 1. State Bank, which was located in the same check processing region as McIlroy Bank, presented it by courier to McIlroy Bank at 4:00 p.m. that same day, May 1. McIlroy Bank had adopted 3:00 p.m. as the cutoff hour for handling items. McIlroy's clerk put the check aside until Tuesday. On Tuesday, May 2, McIlroy Bank provisionally credited State Bank's account at the local clearing house.

On Wednesday, May 3 at 2:00 p.m., McKinley telephoned McIlroy Bank to stop payment of the check because he had changed his mind about purchasing the lawnmower. At 2:15 p.m. on May 3, therefore, McIlroy Bank reversed the credit and mailed the check (postmarked 3:00 p.m., May 3) back to State Bank, marked "Payment Stopped." On Thursday, May 4, State Bank allowed Roosevelt to withdraw the funds in cash and close the account. Roosevelt mentioned to the teller that he was on his way to the horse races in Hot Springs. State Bank did not learn of the stop payment until the check arrived in the mail at State Bank on Monday, May 8. State Bank calls you, its attorney. EXPLAIN its rights and ALL potential defenses in regard to the check as against:

1. McIlroy Bank
2. Roosevelt
3. McKinley

D. Hayes employed Garfield as an agent to purchase cattle on Hayes' behalf. In connection with such a purchase from Arthur, Garfield in February of 1995 executed a promissory note for \$1000 payable to Arthur on June 1, 1995. Garfield signed the note "James Garfield." Arthur, who was in desperate financial straits, fraudulently increased the amount of the note to \$10,000. He then indorsed it "Pay to the order of Cleveland, Benjamin Arthur," and negotiated it to Cleveland for a valuable consideration. Cleveland acted in good faith without notice of any claims or defenses. Cleveland held the note without being paid until June 15, at which time he indorsed it "without recourse, Grover Cleveland" and delivered it to Harrison. Harrison also paid valuable consideration in good faith. At this point, EXPLAIN Harrison's rights and ALL potential defenses in a proceeding against the following:

1. Hayes
2. Garfield
3. Cleveland

E. Building contractor Tyler drew a check on Farmers & Merchants Bank for \$1000 for the purchase of certain roofing materials from Polk. The roofing materials conformed to the contract, but were delivered two weeks late. As a result, \$2000 worth of damage was

caused to the interior of the building.

Polk without indorsing deposited the check into his account at City Bank, which had a balance of \$500 in it prior to the deposit. Polk immediately withdrew \$1000 in cash from the account. Meanwhile, Tyler had timely stopped payment on the check. When the check was presented to Farmers & Merchants, however, the stop order was overlooked and the check was paid to City Bank.

Tyler demands that Farmers & Merchants Bank recredit his account for the \$1000. EXPLAIN Farmers & Merchant Bank's rights and obligations and ALL potential defenses against it in regard to:

1. Tyler
2. Polk
3. City Bank

F. On January 1, Reagan purchased a dishwasher for his home by means of an installment note payable to Ford. Because Reagan was illiterate, his son signed on his behalf "Ronald Reagan" in the lower right corner of the note as Reagan stood by. The note provided for 12 payments of \$100 each "with interest," to be paid on the 15th of each month, and included an acceleration clause. The note also included the requisite FTC notice. Ford indorsed the note "pay to the order of Bush, Gerald Ford," and sold it to Bush. Bush took for value, in good faith, without notice of any claims or defenses.

Reagan missed the January and February payments. On March 1, Bush first advised Ford of the failure to pay by serving him with a complaint on the debt naming Reagan and Ford as defendants. After filing the suit, Bush learned for the first time that Reagan had never used the dishwasher and had been trying to `return` it to Ford for misrepresentations as to its load capacity. Reagan specifically denied in his answer that he had signed the note, and claims that no interest is due since none was specified. EXPLAIN Bush's rights and ALL potential defenses at this point in a suit against:

1. Reagan
2. Ford

PART. II. (11 points each)

G. Harding purchased a money order from Arkansas State Bank in the amount of \$500 to pay his monthly rent to Coolidge. The money order was made payable to Coolidge, included Arkansas' State Bank's printed name in the lower left hand corner, and was signed by Harding in the lower right hand corner. Harding delivered the money order to

Coolidge, but it was stolen by Hoover. Hoover forged Coolidge's indorsement on it.

Harding attempted to stop payment on the money order, but Arkansas State Bank refused to stop payment. When Hoover presented the money order to a teller at Arkansas State Bank, therefore, Arkansas State Bank paid the \$500 in cash.

EXPLAIN the rights of the following and ALL potential defenses in a suit against the indicated party:

1. Coolidge v. Harding
2. Coolidge v. Arkansas State Bank
3. Harding v. Arkansas State Bank
4. Arkansas State Bank v. Hoover

H. Taylor delivered a check to Pierce in payment for \$200 worth of services. The check was dated January 1 and drawn on the Bank of Fayetteville. Taylor had marked out the words "the order of" on the front of the check, but neglected to fill in the amount which he owed. Pierce therefore was able to fraudulently fill in the amount of \$2000. Pierce indorsed the check "Franklin Pierce" on January 1. Unable to decide whether to go through with his fraud, he put the check into his desk drawer.

A thief stole the check from Pierce's drawer, and delivered it to Lincoln in satisfaction of the thief's own \$2000 obligation to Lincoln on January 5. Lincoln took in good faith without knowing of the fraud. Lincoln presented the check for payment to the Bank of Fayetteville on February 5. Since Taylor had died on February 1, the Bank of Fayetteville refused to pay the check when it was presented. EXPLAIN Lincoln's rights and ALL potential defenses in a suit against:

1. Taylor's estate (you may assume these rights are identical to those assertable against Taylor himself)
2. Bank of Fayetteville
3. Pierce