

### INSTRUCTIONS

**READ THESE INSTRUCTIONS -- BUT DO NOT READ BEYOND THIS PAGE UNTIL SPECIFICALLY INSTRUCTED TO DO SO**

1. This is a three (3) hour exam consisting of thirty (30) multiple choice questions and two (2) essay questions.
- 2, The multiple choice questions are worth 2 points each for a total of 60 possible points. Essay question 1 is worth 110 possible points. Essay, question 2 is worth 40 possible points. The remaining possible 90 points have already been determined from your performance on the three quizzes this semester.
- 3, I **strongly encourage** you to spend 1 hour (60 minutes) on the Multiple Choice Questions; 1 1/2 (90 minutes) hours on Essay Question 1; and 1/2 hour (30 minutes) on, Essay Question 2.
4. Place your answers to the multiple choice questions on the front page of the multiple choice portion of the exam as instructed in the multiple choice, instructions. **NOTE: No additional time will be available, at the end of the exam, for you to place your answers on the multiple choice answer sheet.** Therefore, you should mark your answers on the answer sheet as you work your, may through the multiple choice questions.
5. If you need to leave the room during the exam due to illness (including nicotine addiction) or incipient incontinence **YOU MUST LEAVE ALL OF YOUR EXAM MATERIALS IN THE ROOM IN WHICH YOU ARE TAKING THE EXAM.** Failure to follow this rule will result in my collecting your bluebooks and multiple choice materials and basing your grade on your performance up to the time that I collected your materials.
6. On the essay questions limit your answers to the number of pages indicated for each question. You should limit your answer to Essay Question 1 to 5 pages in a bluebook and your answer to Essay Question 2 to 1 page in a bluebook, A "page" according to Webster, is "one side of a leaf in a book." Leave the customary margins and do not write more lines than the number of lines printed on the page. I will not read and you will not receive credit for anything written beyond these limits.
- 7, You may have with you and use during the exam your copy of the casebook, West's Selected Commercial Statues, any Handouts distributed by me in class, and class notes or outlines prepared by you personally. This specifically prohibits commercial outlines or handwritten or otherwise copied commercial outlines or other commercial materials.
8. **When the time allocated for the exam is over, stop writing immediately!** Failure to follow this instruction will result in a sanction of 30 points taken away from your score on the examination.
9. When the exam is over turn in all of your examination

materials, including your bluebooks, your essay questions, your multiple choice answer sheet, your multiple choice questions, and any scrap paper you used during the exam in the appropriate box at the front of the room. Violation of this rule will be treated by me as a violation of the Honor Code.

10. You must not talk to **anyone** about the exam or your impressions of the exam until students in Section M have finished taking the exam at 9:30 p.m. on Monday, May 8, 1989. Even then you should take care not to discuss the exam within listening range of anyone who might have had to reschedule the exam due to a conflict.

**11. Failure to follow any of these instructions will leave me with the impression that you are unable to read and understand statutory material and therefore will reflect adversely on your grade on the exam.**

U. I will not answer any questions about the exam once it has started. However, if you "freeze" or are otherwise unable to continue, please see me outside the exam room or in my office and I will do my best to calm you down and get you started. If you find a question ambiguous or difficult to answer because of what you believe is a typographical or other error on the exam itself, answer the question as best as you can. After the exam is over, notify me of the ambiguity or possible mistake in a way which will not reveal which exam is yours.

13. Good Luck!

DO NOT TURN THE PAGE UNTIL SPECIFICALLY INSTRUCTED TO DO SO

Commercial Law II -- Professor Ferriell -- Spring 1989  
Capital University Law School -- Final Exam

ESSAY QUESTION 1 -- 110 Points  
Limit your answer to 5 pages in a Bluebook

On May 1, 1989 American Business Machines, Inc. (hereinafter ABM) issued three checks, all of which were drawn on Farmers and Merchants Bank (FMB), where ABM had its checking account.

The first check was for \$1000 to the order of Lumpy Lawyer in payment for legal services billed to ABM by Lumpy. Lumpy received the check in the mail on May 2 and immediately went to his bank, First Attorney's Trust (hereinafter FAT), indorsed the check with his name, and deposited the check into his account at FAT. The next morning, May 2, FAT presented the check to FMB.

in the meantime, late in the day on May 1, after Lumpy's check had been mailed by ABM, ABM discovered that Lumpy had not performed any of the legal services that ABM had paid him for. The head bookkeeper at ABM called FMB and requested FMB to stop payment on the check. Although the bookkeeper gave FMB's manager ABM's account number, the number of the check, the name of the payee, and the amount of the check, FMB's manager told the bookkeeper that FMB's policy, clearly stated in the account agreement between FMB and ABM, was to refuse to honor oral stop payment orders.

Therefore, the next morning, May 2, ABM's bookkeeper went to FMB and filled out a "stop payment request" form with all of the appropriate information. At about the same time, and before FMB had time to act on this written stop payment order, a clerk at FMB examined the signature on Lumpy's check, examined ABM's account to make sure that there were sufficient funds in its account, charged the check to ABM's account, and stamped the check "PAID". The check was placed in a file to be sent to ABM at the end of the month with ABM's monthly statement.

The second check was for \$3000 to the order of Howard Earnabuck. This check had been prepared by Dorothy Gale, who was employed by ABM as a clerk in the bookkeeping department. One of Dorothy's responsibilities was to prepare checks to ABM's creditors for signature by Amy Accurate, ABM's full-time accountant.

The check prepared by Dorothy for Howard was, however, part of Dorothy's scheme to defraud her employer who owed no money to Howard Earnabuck. Howard was really Dorothy's boyfriend and co-conspirator. Amy Accurate nevertheless signed the check after reviewing the bill purportedly from Howard which Dorothy had fraudulently prepared as part of her scheme. After signing the check Amy had her secretary mail it in an envelope addressed to Howard. Upon receipt of the check Howard endorsed it in blank and cashed it at the "Corner Grocery." Corner Grocery deposited it in its account at City Bank & Trust (CBT)- CBT forwarded the check to ABM's bank FMB, which paid the check.

The third check was for \$1,000 and payable to the order of "Paula payee" for consulting services rendered to ABM. This check was properly signed by Amy and mailed to Paula. Upon receipt of the check, on May 2, Paula placed it on her dresser, intending to deposit it the next day. In her rush to get ready for work the next morning,

May 3, however, Paula forgot to take the check with her. It was stolen later that day by Tilly Thief who burglarized Paula's home. Tilly carefully forged Paula's signature to the back of the check and wrote "Pay to the order of Tilly Thief" above the forgery of Paula's signature. Later that day Tilly indorsed the check in blank and convinced the bartender at the Bowery Bar & Grill to cash the check for her from the money in the Bowery's cash register at the end of the evening. Bowery deposited the check in its account at First State Bank the next morning, May 4. First State Bank placed Bowery's signature on the check and the next day, May 5, sent the check to Second Bank and Trust which presented it to FMB on May 6.

On May 6, FMB examined the check, examined ABM's account to make sure that there were sufficient funds in its account, charged the check to ABM's account, and stamped the check "PAID". The check was placed in a file to be sent to ABM at the end of the month with ABM's monthly statement.

Paula discovered the theft upon her return home in the early evening on May 3 and informed Amy Accurate of the theft the first thing in the morning May 4. ABM did not inform its bank, FMB, of the theft, until May 8, after it had obtained an "affidavit of forgery" from Paula.

DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES

ESSAY QUESTION 2 -- 40 points  
Limit your answer to 2 pages in a Bluebook

On January 15, Dollie Dawson drew a check on Merchant's Bank for \$750 payable to the order of Phil Philson, in payment for some gardening that Phil had done for Dollie. Phil obtained \$745 cash for the check at Tom's Tavern after writing "pay to Tom's Tavern, Phil Philson" on the back of the check. Tom's Tavern wrote its name on the check and cashed it at its own bank, Barkeeper's National Bank which gave Tom's \$750 in cash for the check. Barkeepers indorsed and on January 19, sent the check to Merchant's Bank. On January 20, a Monday, Merchant's Bank returned the check to Barkeeper's National Bank marked "Dishonored - Insufficient Funds." On January 24, Friday, Barkeepers phoned Tom's Tavern and told Tom that the check had returned unpaid. On Monday, January 27, Tom mailed a letter to Phil Philson stating that the check had bounced. Phil received the letter on January 31. Phil made no effort to notify Dollie.

WHAT RIGHTS WILL BARKEEPER'S NATIONAL BANK HAVE AGAINST TOM'S TAVERN, PHIL PHILSON, AND DOLLIE DAWSON?



Use the following fact pattern to answer questions 1-5

Dolores Drawstring owed \$500 to her nephew, Peter Planter, who had done some gardening work for Dolores. On May 1, 1989, Dolores wrote a check in the amount of \$500 to the order of Peter, on her account at Perrysburg National Bank. On May 2, she delivered the check to Peter when he stopped by to check on Dolores' garden. Peter took the check home and placed it in the locked desk drawer in his bedroom. That night, while Peter was asleep, Peter's evil brother, Tom, carefully picked the lock on Peter's desk and stole the check.

The next morning, May 3, Tom signed Peter's name to the back of the check and gave it to Bill Bruiser, to whom Tom owed \$500. Bill wrote "pay to the order of Bill Bruiser" above the place where Tom had signed Peter's name, but Bill had no notice that the check had been stolen and even if he had been familiar with Peter's real signature, Tom did such a good job forging Peter's name that it would have taken a handwriting expert to detect that it was a forgery.

That same day, at 1 p.m., Bill deposited the check into his account at Developer's National Bank and withdrew \$300 from the account which, prior to Bill's deposit, contained only \$100.

That evening, May 3, Developer's National Bank sent the check to Downtown City Bank because Developer's National Bank did not belong to the same clearinghouse as Perrysburg National Bank. On the morning of May 4, Downtown City Bank, which maintained an account at Perrysburg delivered the check to Perrysburg and demanded payment.

By this time, Peter had discovered that his check from Dolores was missing and asked Dolores to stop payment on the check. On May 3, Dolores called Perrysburg National Bank and instructed the bank to stop payment on the check, telling the bank her account number, the amount of the check, the number of the check and the name of the payee.

Despite Dolores' efforts, Perrysburg did not send a notice of dishonor of the check until the morning of May 6.

1. Was the \$500 check finally paid by Perrysburg National Bank:

- a. No, because Dolores issued a valid stop payment order.
- b. No, because Perrysburg sent notice of dishonor to Downtown City Bank
- c. Yes, because the process of posting had been completed prior to Perrysburg's notice of dishonor.
- d. Yes, because Perrysburg's midnight deadline had passed.

2. If the \$500 check was finally paid by Perrysburg National Bank, will Perrysburg be able to recover the amount of the check from Downtown?

- a. No, because once payment is final the Payor bank cannot recover from the person making presentment.
- b. Yes, because Downtown is in breach of its presentment warranty.
- c. No, because Perrysburg failed to honor Dolores' valid stop payment order.
- d. Yes, because Downtown wrongfully converted the check.

3. Perrysburg National Bank is a

- I. Collecting Bank
- II. Depository Bank
- III. Payor Bank

- a. I only
- b. II only
- c. III only
- d. I and III

4. If Perrysburg National Bank pays the check but is then able to recover the \$500 from Developers City Bank, which of the following theories is Downtown's best argument for Downtown to recover the \$500 from Developer's National Bank?

- a. Transfer Warranty.
- b. Presentment Warranty.
- c. Conversion.
- d. Right of Charge-back.

5. On what theory will Peter be most likely to recover from Perrysburg National Bank?

- a. Transfer Warranty
- b. Presentment Warranty
- c. Conversion
- d. Failure to Honor Stop Payment Order

Use the following fact pattern to answer questions 6, 7 and 8.

Jimmy Jordan lives in Columbus, Ohio. In March of this year, he used his credit card, issued by German Village National Bank, to purchase an antique desk for \$2000 at an antique shop in Cleveland, located 120 miles away from Jimmy's home in Columbus. The dealer he bought the desk from described it as at least 100 years old and worth perhaps as much as \$2,500 in the vigorous Columbus antique market. A few weeks after Jimmy got home with the desk he decided to have the desk appraised. The appraiser told Jimmy that the desk was a cheap reproduction, worth no more than \$300.

6. (This question was eliminated by the professor.)

7. Which of the following remedies are available to Jimmy if a court determines that the Antique Dealer was in breach of Contract.

- I. Rejection of the Desk
- II. Revocation of Acceptance
- III. Money Damages Measured by the difference between the Contract Price and the Resale Price

- a. I only.
- b. II only.
- c. III only.
- d. II and III.

8. If the Antique Dealer is in breach of contract, will Jimmy be able to successfully avoid paying the \$2000 credit card bill from German Village Bank?

- a. Yes, but only if Jimmy first makes a good faith effort to settle the dispute with the Antique Dealers
- b. Yes, even though he does not make a good faith effort to settle the dispute because the Dealer is more than 100 miles away from Jimmy's home.
- c. No, because the Antique Dealer is located more than 100 miles away from Jimmy's home.
- d. No, because the charge was for more than \$50.

Use the following fact pattern to answer questions 9, 10, and 11.

Torrence the Thief broke into Joe's house one night while Joe was on vacation, and stole Joe's checkbook. The next day, June 1, 1988, Torrence wrote a check for \$100 payable on one of Joe's checks, payable to himself, and forged Joe's name on the bottom right hand corner of the check. Torrence then took this check to Green Grocery and used it to purchase \$10 worth of groceries, receiving \$90 change, in cash. Green Grocery deposited the check into its account at Grocer's State Bank which forwarded it to Homeowner's National Bank where Joe kept his checking account on which the check was drawn. Homeowner's finally paid the check.

9. In an action by Homeowner's against Grocer's State Bank, the court should rule in favor of --

- a. Homeowner's National Bank because Collecting Banks are liable for conversion when a check is paid over a forged drawer's signature.
- b. Grocer's State Bank Bank because Homeowners is a Holder in Due Course of the Check and is not liable for Breach of Presentment Warranty.
- c. Homeowner's National Bank because Grocer's State Bank has breached its Presentment Warranty of Good Title.
- d. Grocer's State Bank even if Grocer's knew, at the time it acquired the check that Torrence had forged Joe's signature.

10. In an action by Joe, against Homeowner's, to have his account recredited, the court should rule in favor of --

- a. Joe, even if the bank establishes that no-one but a handwriting expert would have been able to detect the forgery.
- b. Homeowner's because Joe negligently contributed to the forgery by Torrence by leaving his checkbook where it could be stolen while Joe was away on vacation.
- c. Homeowner's but only if Joe fails to report the forgery within 14 days of receiving his bank statement containing the forged item.
- d. Joe, unless the bank establishes that no-one but a handwriting expert would have been able to detect the forgery.

11. Grocer's State Bank is a:

- 1. Collecting Bank
  - II. Intermediary Bank
  - III. Depository Bank.
  - IV. Payor Bank
- 
- a. I and III.
  - b. I and II.
  - c. III only.
  - d. IV only.

12. On February 2, 1989, Bob Baker wrote the following on a blank piece of 8 1/2" by 11" paper:

-I promise to pay \$500 to Paul Penniless on January 1, 1990.

/s/ Bob Baker"

Bob then gave the piece of paper to Paul, to whom Bob owed \$475.

Which of the following most accurately describes the obligation incurred by Bob.

- a. It is a negotiable note, governed by article 3 of the UCC.
- b. It is a non-negotiable note, governed by article 3 of the UCC.
- c. It is a non-negotiable draft, governed by article 3 of the UCC.
- d. It is a negotiable draft, governed by article 3 of the UCC.

13. Seller, in Santa Silicon, California, entered into a contract to sell 100 personal computers to buyer in Middletown Missouri. The terms of the contract indicated that delivery was to be made "FOB Santa Silicon". After the goods were loaded onto the truck of the company that Seller had contracted with to ship the goods to Buyer, lightning struck destroying all of the computers. It later turned out that neither Buyer nor Seller was insured. In an action brought by Seller to recover the price of the goods, the court should rule in favor of --

- a. Seller, if the goods conformed to the specifications of the contract.
- b. Seller, even if the goods did not conform to the specifications of the contract.
- c. Buyer, if the goods conformed to the specifications of the contract.
- d. Buyer, even if the goods did not conform to the specifications of the contract.

14. Sue Sellperson agreed to sell her old washing machine, used to wash her family's clothes, to her cousin Bill Buyer for a price of \$50. Bill intended to disassemble the machine and used the parts to repair similar washing machines as part of his appliance repair business. The machine was so old that new parts were unavailable for sale to Bill's customers. Part of their agreement was that Bill would send his truck over to pick up the machine, which was sitting in the driveway of Sue's house pending Bill's arrival.

The next day a tornado struck, destroying the washing machine as it sat in Sue's driveway.

As Bill's lawyer you will advise him that:

- a. The risk of lose passed to him when tender of delivery was made because he is a merchant.
- b. The risk of loss passed to him when tender of delivery was made because he intended to use the goods for business purposes.
- c. The risk of lose was on Sue because Bill was a merchant.
- d. The risk of lose was on Sue because she was not a merchant.

Use the following fact pattern to answer questions 15, 16, 17, and 18.

Sellerco Paper Company took two truckloads of its newsprint to the Outerbelt Warehouse Company for storage. The first truckload, containing 100 rolls of newsprint, was stored under a negotiable warehouse receipt issued by Outerbelt. The second truckload, also containing 100 rolls of newsprint, was stored under a non-negotiable warehouse receipt also issued by Outerbelt.

That evening, Sellerco Paper Company then took these two documents to City Distributing Associates which bought both the negotiable and the non-negotiable warehouse receipt. City Distributing, however, asked Sellerco to divide the 100 rolls of newsprint in the second truckload (represented by the non-negotiable) receipt into two equal lots so that City Distributing could resell them more easily. Sellerco wrote out two delivery orders addressed to Outerbelt, each requiring the warehouse to turn over 50 rolls of the newsprint to "City Distributing or Order."

Later that evening, City sold one of the delivery orders to the Morning Gazette, a nearby newspaper, indorsing one of the delivery orders "Deliver to Morning Gazette or order, /s/ City Distributing." An agent of the Morning Gazette immediately called Outerbelt Warehouse Company and informed Outerbelt that the Morning Gazette was the owner of 50 rolls of the Sellerco Paper Company newsprint under a delivery order. The warehouse agent agreed that it was alright for the Morning Gazette to pick up the newsprint the next morning. Late that night an airplane crashed into the warehouse (after the passengers had parachuted to safety) and all the newsprint burned.

15, The principle distinction between a negotiable warehouse receipt and a non-negotiable warehouse receipt is that a negotiable warehouse receipt:

- a. provides for the delivery of fungible goods only.
- b. provides for the delivery of goods to bearer or to the order of a named person.
- c. provides for delivery of goods on demand or at a definite time.
- d. provides for delivery of goods and contains no other promise.

16. The risk of loss as to the newsprint represented by the negotiable warehouse receipt was on:

- a. Sellerco Paper Company because Sellerco is a merchant and the newsprint had not yet been tendered to City Distributing Associates.
- b. Sellerco Paper Company because City Distributing Associates had not yet received the newsprint
- c. City Distributing Associates because Sellerco is a merchant and the newsprint had been tendered to City Distributing Associates.
- d. City Distributing Associates because it had received a negotiable warehouse receipt covering the goods.

17. The risk of loss as to the 50 rolls of newsprint sold to the Morning Gazette was on:

- a. Sellerco Paper Company because Sellerco is a merchant and the newsprint had not yet been tendered to the Morning Gazette.
- b. The Morning Gazette because of Outerbelt's acknowledgment of the Buyer's right to possession of the goods the next morning.
- c. Sellerco Paper Company because the Morning Gazette had not yet had a reasonable time to present the delivery order.
- d. The Morning Gazette because it had received possession of a negotiable delivery order.

18. The risk of loss as to the 50 rolls of newsprint covered by the non-negotiable warehouse receipt and not yet resold by City Distributing Associates to anyone was on:

- a. Sellerco Paper Company because it has not yet tendered the newsprint to City Distributing Associates.
- b. Sellerco Paper Company because City Distributing Associates had not yet had a reasonable time to present the delivery order.
- c. City Distributing Associates because it received possession of a non-negotiable warehouse receipt covering the goods.
- d. City Distributing Associates because of the bailee's acknowledgment of City Distributing Associates right to possession of the goods.

19. The rules in Article 7 of the Uniform Commercial Code relating to Bills of Lading apply to Bills of Lading involving shipment of goods

- I. within a particular state
- II. from one state to another
- III. from a foreign country to the United States

- a. I only
- b. II only
- c. III only
- d. I and II

20. Which of the following provisions must be included in an agreement for the sale of goods in order for there to be an enforceable contract under article 2 of the UCC.

- a. Price
- b. Time of Delivery
- c. Time of Payment
- d. Quantity

21. Sammy Seller, located in Tulsa, Oklahoma, entered into a contract for the sale of 500 cartons of paperweights to Billie Buyer, located in Salt Lake City, Utah. The delivery terms of the contract were "FOB Seller's Dock, Tulsa." After the goods were loaded from Sammy's loading dock onto a truck owned by the Western States Trucking Company and after the truck had left Sammy's place of business the paperweights were destroyed in an accident caused by Western States' truck driver. The risk of loss will be on:

- a. Sammy Seller because Sammy was responsible for selecting the trucking company that caused the accident.
- b. Billie Buyer because the risk of loss had passed to the buyer under the delivery term.
- c. Sammy Seller because the risk of loss remained on the seller under the delivery term.
- d. Billie Buyer because Billie permitted Sammy to select the trucking company that caused the accident.

22. Casual Consumer entered into a contract with Whipsnade's Auto Emporium for the purchase of a new 1989 Turbo automobile for a price of \$30,000. The contract provided, among other things, that Casual's only remedy, in the case of any defects in the car, was repair or replacement of the defective parts and that Whipsnade would not be responsible for any consequential damages due to any breach of contract on the part of Whipsnade. On the way home from the dealership the new car's engine exploded, destroying the car, Casual Consumer, and all. In an action brought by Casual Consumer's estate, against Whipsnade, in which Whipsnade asserts the limited remedy provision, what will be the estate's best argument for recovery of damages due to Casual's untimely death in the car?

- a. the limited remedy failed of its essential purpose.
- b. rejection of the car under the perfect tender rule.
- c. revocation of acceptance of the car due to its defect.
- d. limitation of consequential damages for personal injury in unconscionable.

23. Clark wanted a birdbath for his garden. He went to the Village Garden Store and selected a birdbath from the models on display at the store and entered into a contract to purchase a birdbath like the one he selected from the Village Garden Store's warehouse. Clark agreed that the Store could deliver the birdbath the next day. The sales clerk called the warehouse and had the warehouse manager place a tag on one of the birdbath's with instructions to deliver it to Clark the next day. That evening a tornado destroyed the Village Garden Store's warehouse and all of the birdbaths similar to the one Clark had agreed to purchase, including the one tagged for delivery to Clark. In an action brought by Clark against the Village Garden Store for breach of contract, the Village Garden Store's best defense will be:

- a. that it is excused from performance because all of the birdbaths in its current stock were destroyed, even though identical birdbaths are available from the Garden Store's supplier.
- b. that it is excused from performance because the tornado destroyed the birdbath that had already been identified to the contract with Clark.
- c. that it is excused from performance because all of the birdbaths in its current stock were destroyed and identical birdbaths are not available from the Garden Store's supplier or anyone else.
- d. that it offered to provide Clark with a birdbath similar to the one he contracted to purchase, but more valuable.

24. Downtown Auto Sales entered into a contract with Connie Consumer for the purchase of a new 1989 Ford Accura automobile. The day after Connie signed the contract, but before she had taken delivery of the car, Connie called Downtown and repudiated the contract. She thereafter refused to accept delivery of the car or to pay Downtown Auto Sales any portion of the price of the car. In an action brought by Downtown Auto Sales against Connie for her breach of contract with Downtown, the court should award Downtown:

- a. Specific Performance.
- b. The Contract Price minus the Market Value of the Car, plus incidentals.
- c. The Contract Price minus the Market Value of the Car, plus incidentals and consequential.
- d. The Profit that Downtown would have made on the sale of the car to Connie.

25. Which of the following provisions, if included in an otherwise negotiable instrument, will be most likely to make the instrument non-negotiable?

- a. "Maker additionally agrees and promises that if the holder of this note deems himself insecure at any time, he may so inform the maker, who promises to then supply additional collateral in an amount and kind to be specified by the holder."
- b. "This note is made pursuant to the contract entered into on the above noted date between maker and payee."
- c. "This note is subject to acceleration by the holder upon

failure of the maker to make an installment payment when due under the provisions of this note."

d. "Maker hereby grants the payee a security interest in his automobile to secure repayment of this note."

Use the following fact pattern to answer questions 26, 27, 28 and 29.

Business Enterprise, Inc. issued a negotiable check in the amount of \$2000 to Amy Attorney in compensation for legal services rendered to Business Enterprise, Inc. by Amy. The Business Enterprises clerk responsible for issuing checks made the check payable "to the order of Amy Attorney or bearer" in his own handwriting. Upon receipt of the check Amy indorsed it on the back with her signature and the words "Pay to Clara Attorney -- Happy Birthday". Amy then delivered the check to her mother, Clara Attorney as a birthday gift. The next day Clara indorsed the check by signing her name on the back. On the way to the bank Clara was robbed by Molly Mugger who stole the check from Clara's purse. Molly, who looked very much like Clara and who also had Clara's drivers license to use as identification, cashed the check at Careless Corner Market. Which deposited the check in its account at Suburban National Bank. The next day Suburban presented the check to Business Bank, the bank where Business Enterprises maintained its checking account. By this time Business Enterprises had been informed of the theft and notified Business Bank that the check had been stolen from Clara. Business Bank wasn't sure what to do with the check since it appeared to have Clara's signature on it. Business Bank waited three days before sending notice of dishonor of the check to Suburban Bank. Suburban, which had in the meantime permitted Careless to withdraw the funds represented by the check from Careless's account, gave notice of the dishonor to Careless Corner Market immediately.

26. Who were holders of the check?

- I. Amy Attorney
- II. Suburban National Bank
- III. Careless Corner Market

- a. I only
- b. II only
- c. I and II only
- d. I, II, and III

27. In an action brought by Business Bank against Suburban to recover on the check, the court should rule in favor of --

- a. Business Bank because Suburban is in breach of its transfer warranty of good title.
- b. Suburban Bank because Business Bank finally paid the check and there was no breach of warranty.
- c. Business Bank because Suburban was not a holder in due course of the check.
- d. Suburban Bank because even though there was a breach of warranty by Suburban, notice of dishonor came too late to charge Suburban on its endorser's contract.

28. In a conversion action brought by Clara against Careless, the court should rule in favor of --

- a. Clara because she was the true owner of the check that was converted by Careless when it paid cash to Molly.
- b. Clara because the policy of the UCC is to place the loss in

this situation on the person who dealt with the wrongdoer.

c. Careless because only a Payor Bank can be liable for Conversion.

d. Careless because it was a holder in due course of the check.

29. In any action brought by Business Bank against Careless on Careless's endorsement contract, the court should rule in favor of Careless because --

I. Careless's endorser's contract was discharged due to final payment by Business Bank.

II. Careless's endorser's contract was discharged due to lack of timely notice of dishonor.

a. I only.

b. II only.

c. I and II.

d. Neither I nor II.

30. Which of the following defenses could be asserted against a holder in due course --

a. Fraud in the Inducement.

b. Fraud in the Factum.

c. Insanity that renders the instrument voidable.

d. Theft.