

Payment Systems

Final Examination

December 18, 1998

Professor Claxton

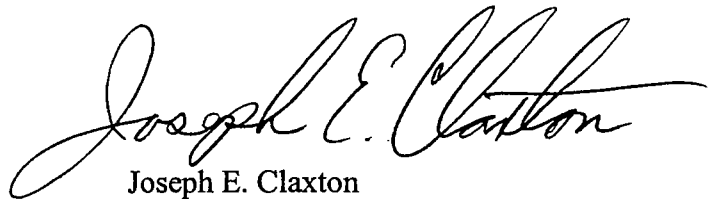
This examination contains sixteen (16) sections, each on a separate page. You are to respond to each section on the page on which it is typed (front only).

Payment Systems

Materials for the Final Examination

You are authorized to bring your 1998 Foundation Press statutory supplement to the final examination. You are authorized to write anything from any source in your supplement. Everything written in it must be written your own hand--nothing can be physically written in a 1998 supplement by another person and then handed over to you for your use, and nothing can be typed.

This notice is intended to be simple and straight-forward, but please do not hesitate to ask me about it if you have any questions. The notice repeats announcement made in class.



Joseph E. Claxton
Professor of Law
November 17, 1998

cc: Dean Sabbath
Dean Donovan

1. The term "negotiable instrument" is defined in Section 3-104 of the Uniform Commercial Code. What is the function of negotiable instruments in the world of business and commerce?

2. Your assignment is to complete the following statement. Write your responses below the statement.

Under the UCC and traditional principles of commercial law, the ultimate loss on a forged check is likely to fall on _____(1)_____ because _____(2)_____.

3. Your assignment is to complete the following statement. Write your responses below the statement.

Under the UCC and traditional principles of commercial law, the ultimate loss on a check on which the indorsement is forged is likely to fall on _____ (1) _____ because _____ (2) _____.

4. Explain the concept of "merger" in the law of negotiable instruments.

5. Attorney Barbara Bombastic opened a CLE lecture on the topic of negotiable instruments with the following statement:

If the holder-in-due-course doctrine did not exist, we would have to invent it.

What could she possibly have meant by such a statement?

6. Assume that Drawer issues a check to a real payee to pay an existing obligation. After delivery, Thief steals the check and forges Payee's indorsements. Thief deposits the check for collection in Depository Bank. The check subsequently is paid by Payor Bank. Payee reports the theft to Drawer who discovers, too late, that the check has been paid.

Could the Payee have an action in conversion against Depository Bank? Explain your response.

7. In the process of negotiation, does it make any difference whether a particular negotiable instrument is "order paper" or "bearer paper"? Explain your response.

8. The maker of a note and the payee of that note were locked in a dispute about the amount of the underlying debt. The maker of the note ultimately issued a check to the payee of the note for one-half of the amount in dispute. On the front of the check the words "Final Payment" were written. The following language was set forth on the back of the check:

By his indorsement, the payee accepts this check in full satisfaction of all claims against the drawer of this check.

The payee crossed out the language on the back of the check and wrote the following language as a substitute text:

This check is accepted under protest and with full reservation of rights to collect the unpaid balance for which the check is offered in settlement.

The payee then indorsed the check and deposited it in his account. One month later, the payee brought an action against the maker of the note to recover the remaining half of the debt. What result and why? Explain your response.

9. Payee, by fraud, induced Maker to issue a note to Payee. Payee negotiated the note to X, who took the note as a holder in due course. After the instrument became overdue, X negotiated the note to Y. Y had notice of Payee's fraud. What are the rights (if any) of Y against Maker on the note? Explain your response.

10. Explain the effect of the UCC's so-called "safe harbor" provision as it applies to a drawee/payor bank which has the misfortune to deal with a forged check or a check on which the amount payable has been altered.

11. The maker of a note issued it in connection with the purchase of consumer goods. The seller of the goods, who failed to complete delivery of the goods to the maker/purchaser, "discounted" the note to Billy Bob's Finance Emporium. Billy Bob's Finance Emporium took the note as a holder in due course. The maker of the note refused to complete a sequence of payments for the goods. What are the rights (if any) of Billy Bob's Finance Emporium against the maker of the note? Explain your response.

12. Ron sold 10,000 widgets to XYZ, Inc. Don, who was Ron's identical twin brother, appeared at the office of XYZ and stated that he was there to pick up XYZ's check in payment for the widgets. The treasurer of XYZ knew Ron -- and was absolutely convinced that Don actually was Ron. (Neither the treasurer nor any other officer or employee of XYZ was aware that Ron had a twin brother.)

Don walked one block down the street to Mega Bank, which happened to be the drawee bank. (XYZ had done all of its banking business with Mega for over ten years.) Don provided the bank with a photographic I.D. indicating that he was Ron. The bank, acting in complete good faith, cashed the check for Don (a.k.a. Ron). Don has not been seen since the day the check was cashed. XYZ has brought suit against Mega demanding that XYZ's account with Mega (an account which had been charged with the amount of the check) be recredited in the full amount of the check. What result and why? Explain your response.

13. Joker was the payee on a note made by Batman. Joker negotiated the note to Catwoman. Batman, acting in complete good faith, later paid Joker the full amount due on the note. Catwoman subsequently appeared at the entrance to Batman's cave and demanded payment on the note. Batman refused to pay, saying that he already had paid the debt and had a receipt from Joker to prove it. Catwoman sued Batman in the Court of Superheroes to recover on the note. What result and why? Explain your response.

14. Aunt Sally, a kind and trusting soul, co-signed a note with her nephew, Sly. Young Sly had decided to go into the business of producing widgets, and he gave the note to the seller of a used widget-making machine. The note amounted to ninety percent of the amount of the purchase price that Sly paid for the used widget-making machine. Aunt Sally had no interest in widgets or the production of widgets. She just wanted to help her nephew. "Young Sly has a problem with his credit history," Aunt Sally told her friend Millicent, "but he's just a kid. He's getting his life on track now." Sly is 41 years old.

After a long struggle, Sly succeeded in paying off the full amount of the note plus interest. He then brought suit against Aunt Sally, demanding that she pay Sly an amount equal to one-half of Sly's total payments to the seller of the widget-making machine. (Sly's lawyer was one of his fraternity brothers from the glory days at State U., Max "Meathead" Mullet.) In the lawsuit brought by Sly against Aunt Sally, what result and why? Explain your response.

15. The language set forth below has been proposed for inclusion in the new Model Uniform Code for Checking Transactions (UCCT). As the Reporter for the Drafting Committee, you are responsible for explaining the meaning of the language to the members of the National Conference of Lawyers and Laypersons on Uniform State Laws. Please write your explanation below the proposed language.

If a check is presented to and received by a payor bank, the bank is accountable for the amount of the check, whether properly payable or not, if the bank, in any case in which it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline.

16. Jones was the treasurer of the Hardwood Lumber Company. Hardwood maintained several business accounts with the Gullible Bank of Podunk. Jones also had a personal checking account at Gullible.

A local home building contractor issued a check payable to the order of Hardwood in the amount of \$29,000. Jones, who was trusted completely by the personnel at the Gullible Bank, took the check to the bank and proceeded to deposit it in his own personal checking account. Three days later, Jones issued a check on the account for the entire \$29,000. The check was payable to Gullible and was applied to a substantial personal debt owed by Jones to Gullible. Hardwood discovered what had happened and brought suit against the Gullible Bank to recover \$29,000. What result and why?