

Professor Sullivan
UCC Final Examination
Articles 3/4
Fall 2005

QUESTION ONE

(Worth 4 Points)

Assuming all other elements of negotiability are satisfied, are the following negotiable?

- A. An undated Note: "Pay to the order of Sandy Smart".
- B. A Note: "I, Andy Handy, promise to pay to the order of Larry Rose \$20,000.00 within six months following the death of my Aunt Millie May, or 100 years from today."
- C. A check, otherwise complete, that is made out "Pay to the order of _____....." with no name filled on the line where the payee's name usually goes.
- D. A Note: "I promise to pay to bearer...."

Question Two

(Worth 5 Points)

Assuming the other elements of negotiability are satisfied, is the following promissory note governed by Article 3: Why or why not?

"Rights and obligations of the maker and any holder of the note are subject to the terms and conditions set forth in the Credit Agreement of June 15, 2005.

(Note: The credit agreement does not contain any rights or obligations that condition the maker's promise to pay.)"

Question Three

(Worth 10 Points)

Susan Seller sold Harriet a piano for her business as a concert pianist, taking a promissory note for \$12,000 made payable to the order of Susan Seller. Susan then discounted the note with Andy who paid \$9,999. A few days later, Andy indorsed the note in blank and gave it to his friend Millie. When the note matured, Harriet refused to pay as the piano never played

correctly.

- A. What result when Millie sues? Fully support your answer.
- B. Assume instead that when Millie received the note she sold it to GE Credit for \$7,200. What result when GE sues Harriet? Fully support your answer.

Question Four

(Worth 5 Points)

Patty Smith inadvertently dropped her paycheck while Christmas shopping at Filene's. The check was not endorsed. The thief, Santa Claus, forged Patty's name to the back of the check and then signed his own name below hers. He deposited the check in an account at Sullivan National Bank. Before the check was presented, Patty's employer put a stop payment on the check as requested by Patty. The check was accordingly dishonored and returned to Sullivan National Bank. By this time the thief had withdrawn the money and fled to Bermuda.

Can Sullivan National Bank enforce the check? Fully support.

Question Five

(Worth 5 Points)

Professor Socratic left his checkbook on his desk and it was picked up by Sam Maintenance. Sam wrote a check for \$1,000.00 payable to the order of "John Jolly" a name he made up; then he forged Socratic's name to the drawer's line. He indorsed the check "John Jolly" and Sam Maintenance, and deposited the check in his own account with Fitchburg Bank.

Who is responsible for the loss? Fully support.

Question Six

(Worth 1 Point)

The president of Sullivan Corporation was Jessica Smith. She signed a promissory note as follows:

Sullivan Corporation, Jessica Smith

Is Jessica Smith personally liable? Fully support your answer.

Question Seven

(Worth 5 Points)

Mame, who has a checking account with Sullivan National Bank, has her nephew Timmy living with her for the summer. In June of 2004, Timmy steals a blank check (#231) from his aunt's checkbook, making it out to himself for \$300.00 and forges Mame's name as drawer. The account statement for June is mailed July 2, 2004 and received by Mame the next day reflecting that check #231 for \$300.00 was paid on the 25th of June. In early August, Timmy steals another check and once again makes it payable to himself for \$800.00, and forges Mame's name on the check. In late August, he does it again for \$1,000.00. Payment of both of these checks is reflected on her August statement from Sullivan National Bank which Mame receives September 3rd. Mame goes to Sullivan National Bank on August 10th with the three forged checks seeking recredit. What result? Fully support.

Question Eight
(Worth 15 Points)

Adam Marsh has been negotiating over the phone with Harry Peters, a paintings dealer, for the purchase of a particular painting that Peters advertised for sale in the "Boston Globe." Eventually, Peters offers over the telephone to have the painting in question delivered to Adam's law office, where Adam can inspect it, and make a final determination of whether he wants to pay Peter's asking price of \$35,000.00. The painting is delivered to Adam, who immediately decides he loves it, and that it is worth the asking price.

The next day a well-dressed gentleman appears at Adam's office and introduces himself as Harry Peters. He asks whether Adam has made a decision on the painting. Adam responds affirmatively. He writes a check to the order of Harry Peters for \$35,000.00 payable out of his account at Sullivan State Bank. As it turns out, this gentleman is not Harry Peters but instead Tom, a running buddy of one of Peter's delivery persons. Tom takes the check, forges Harry Peter's signature on the back of it, and then deposits it in his own account with Danvers National Bank.

- A. Assume Tom vanishes town with the money. Adam immediately notifies Sullivan State Bank and demands his account be recredited.
Does Sullivan have to recredit? Fully support.
- B. What if instead, Adam received a call from someone purporting to be Peters, requesting that if Adam wants to keep the painting he should send a check to Harry Peters at a certain address. The caller is really Tom (a thief) an the address is that of Tom himself. Tom gets the check, forges Peters name, and makes away with the money.
Who will suffer the loss? Fully support.

- C. Now suppose that when Peters called to inquire about the painting, Adam told Peter he definitely wanted it. Peters tells Adam that his assistant Katie will soon be coming around to Adam's to pick up a check for the price. Sure enough later that day someone introducing herself as Katie came by and asked for the check. Andy handed over the check. It turned out that woman was not Katie, but rather a customer "Cathy" in Peter's store who overheard the conversation between Adam and Peters. Cathy took the check, forged Peter's signature on it, and deposits it in her account at Danvers Bank. She later withdraws the money and heads to Siberia. Who bears the loss? Fully support.

**PROFESSOR SULLIVAN
QUIZ - ARTICLE 3/4
SUMMER 2005**

1. Discuss whether the following is a negotiable instrument?

“I promise to pay to the order of Professor Socratic that which I owe him by delivering to his place of business an emerald of at least one carat, one month from the date herein.”

/s/ Sam Student

2. Deb writes a check on her account for \$50.00 payable to cash. She loses it, but the check is found by Donna.
 - A. Is Donna a holder? Fully support.
 - B. The check is then stolen from Donna by Harry the thief. Is Harry now the holder? Fully support.

MASSACHUSETTS SCHOOL OF LAW

SUMMER, 2005
UCC-ARTICLES 3 & 4

2 CREDITS

PROFESSOR SULLIVAN

TUESDAY/THURSDAY 9:00 a.m. - 12:30 p.m, or
6:00 p.m. - 9:30 p.m.

Required Text:

1. Problems and Materials on Commercial Law 8th Edition-Whaley
2. UCC Official Text--Selected Commercial Statutes

<u>Date</u>	<u>Day</u>	<u>Problems Due</u>	<u>Cases Due</u>
ARTICLE 3			
7/12/04	Tuesday	83-101	<u>Triffin, Woodworth,</u>
7/14/04	Thursday	102-118	<u>Falls, General, Any Kind Checks Cashed Winter, Jones, Sullivan, Triffin, FDIC,</u>
7/19/04	Tuesday	119 - 135	<u>Sea- Air, Kedzie, Virginia, Herzog, Ward, Floor, Chemical</u>
7/21/04	Thursday	136 - 148	<u>London, Messing, Makei, Norton, Galyen, Mundaca,</u>
ARTICLE 4			
7/26/04	Tuesday	149 - 164	<u>Nichols, Twin City, Walter, Parr, Canty, Patriot Bank</u>
7/28/04	Thursday	165 - 187	<u>Rock Island, First National, Gordon</u>
8/02/04	Tuesday	188 - 215, 217	<u>Leeds, Price, Decibel, Hutzler, The Bank, Falk</u>
8/04/04	Thursday	Final Exam	

QUESTION ONE

In mid-April 2005, Ryan mailed a check (#172) for \$8,000.00 to Betty in payment for some painting work she did for him. The check was paid by Sullivan National Bank on May 4, 2005. In July, Betty called Ryan looking for payment. Ryan assured Betty that long ago he had sent her a check and that the check has been paid. Betty insisted she never received it. Accordingly, Ryan asked for a copy of his check #172. It seems someone took it from Betty's mail before she had a chance to retrieve it. The back bears an obvious forged indorsement in the name of "Betty" and indicates it was deposited into an account at Troy Bank. Ryan contacted Troy Bank, which tells him the account was closed on August 1st. Ryan contacts Sullivan National Bank and demands recredit.

- A. What result? Fully support your answer.
- B. Does the Bank Statement Rule help Sullivan National Bank? Why or why not?

QUESTION TWO

Diane issues a note to Eddy in 2004 in exchange for a valuable vase that Eddy is selling to her. The note calls for Eddy to receive \$10,000.00 on December 23rd, 2004. In need of some cash, Eddy takes the note to Easy Finance. The Finance company agrees to purchase the note for \$3,000.00 payable immediately, and another \$5,000.00 on the maturity date. By the time the maturity date approaches Easy Finance has become aware, as it had not been initially, that the vase was a fake and not an original as Diane had been told. What results when Easy Finance seeks to enforce the note? Fully support your answer.

QUESTION THREE

Assuming all other elements of negotiability are satisfied, are the following negotiable?

- A. A Note: "Pay to the order of Rick Richards," but no date is given.
- B. A Note: "I, Andy Handy, promise to pay to the order of Larry Rose \$20,000.00 within six months following the death of my Aunt Millie May."
- C. A check, otherwise complete, that is made out "Pay to the order of _____....." with no

name filled on the line where the payee's name usually goes.

D. A Note: "I promise to pay to bearer...."

QUESTION FOUR

Mame, who has a checking account with Sullivan National Bank, has her nephew Timmy living with her for the summer. In June of 2004, Timmy steals a blank check (#231) from his aunt's check book, making it out to himself for \$300.00 and forges Mame's name as drawer. The account statement for June is mailed July 2, 2004 and received by Mame the next day reflecting that check #231 for \$300.00 was paid on the 25th of June. In early July, Timmy steals another check and once again makes it payable to himself for \$800.00, and forges Mame's name on the check. In late July, he does it again for \$1,000.00. Payment of both of these checks is reflected on her July statement from Sullivan National Bank which Mame receives August 3rd. Mame goes to Sullivan National Bank on August 10th with the three forged checks seeking recredit. What result? Fully support.

QUESTION FIVE

Fran Flamboyant has a checking account with Sullivan National Bank. After treating several of her friends to an expensive round of golf, she pays the course owner, Benchside Golf Course, with a personal check. The next day, Fran decides that the course did not live up to her expectations. Fran contacted the Sullivan National Bank and issues a stop payment order on the check.

- A. Assuming the check has not been paid, is the bank obligated to follow the stop payment order? Fully support your answer.
- B. Assume the bank does not pay the check, but returns the item with a notice that it has been dishonored due to a stop-payment order given by the drawer. The unpaid check eventually makes it way back into the hands of the golf course owner, James Clever. Does James have any course of action against the Bank for its refusal to pay the check? Support your answer.
- C. Now, suppose that even though the stop payment order is received by the bank in plenty of time before the check is presented, the bank by mistake pays the check over the stop-payment order. It deducts the amount of the check from Fran's account. Fran sues. What result? Fully support your answer.

QUESTION SIX

- A. Who gives the transfer warranties?
- B. Who receives the transfer warranties?
- C. What does the transferor warrant to be true?

QUESTION SEVEN

Is a post-dated check properly payable before its date? Fully support.

QUESTION EIGHT

The president of Sullivan Corporation was Jessica Smith. She signed a promissory note as follows:

Sullivan Corporation, Jessica Smith

Is Jessica Smith personally liable? Fully support your answer.

QUESTION NINE

Sullivan Enterprises contracted to sell some televisions to Biers Inc. for the price of \$150,000.00, with a delivery date of May 1. Sullivan had received, at the time of the signing of the contract, a note signed by Biers Inc payable to the order of Sullivan Enterprises for the amount of \$150,000.00 due June 1, 2005. The televisions were delivered as promised on 5/1/2005. The televisions were delivered before 5/1/2005 as promised, but unfortunately, Biers discovered some problems in the televisions. Biers decided that although the televisions didn't conform to the contract, Biers Inc. could correct the problem for \$14,000.00.

Assume the note is held by Sullivan: Must Biers pay Sullivan the full \$150,000.00 on 6/1/2005? Fully support your answer.

Professor Sullivan
Quiz-UCC 3/4

1. Fill in blanks:

Negotiability refers to _____

Negotiation refers to _____ .

2. Define a Negotiable instrument.

3. True or False

A promise or order is unconditional if it is

A. governed by another writing _____

B. subject to another writing _____

4. Do confession of judgment clauses destroy negotiability?

5. Must a writing be dated so not to violate the requirement that the instrument be payable on demand or at a definite time?

6. Must checks contain order or bearer language to be negotiable?

7. Define a holder

8. What is the effect of forgery of the payee's name?

9. What are the two ways a payee can negotiate?

10. What are the requirements of Holder in due course status?

11. Is a drawee a holder?

Is a maker a holder?

12. Explain the too closely connected doctrine.

13. What is the shelter rule?

14. List the real defenses?

15. True or False

Negotiation is effective to transfer an instrument although negotiation is done by a minor.

16. What does Jus Tertii mean?

17. Explain the doctrine of merger?

18. How can an agent escape personal liability?

Professor Sullivan
UCC Final Examination
Articles 3/4
Fall 2004

QUESTION ONE

Worth 5 Points

Diane issues a note to Eddy in 2004 in exchange for a valuable vase that Eddy is selling to her. The note calls for Eddy to receive \$10,000.00 on December 23rd, 2004. In need of some cash, Eddy takes the note to Easy Finance. The Finance company agrees to purchase the note for \$3,000.00 payable immediately, and another \$5,000.00 on the maturity date. By the time the maturity date approaches Easy Finance has become aware, as it had not been initially, that the vase was a fake and not an original as Diane had been told. What results when Easy Finance seeks to enforce the note? Fully support your answer.

QUESTION TWO

Worth 4 Points

Assuming all other elements of negotiability are satisfied, are the following negotiable?

- A. A Note: "Pay to the order of Rick Richards," but no date is given.
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QUESTION THREE

Worth 15 Points

Adam Marsh has been negotiating over the phone with Harry Peters, a paintings dealer, for the purchase of a particular painting that Peters advertised for sale in the "Boston Globe." Eventually, Peters offers over the telephone to have the painting in question delivered to Adam's law office, where Adam can inspect it, and make a final determination of whether he wants to pay Peter's asking price of \$35,000.00. The painting is delivered to Adam, who immediately decides he loves it, and that it is worth the asking price.

The next day a well-dressed gentlemen appears at Adam's office and introduces himself as Harry

Peters. He asks whether Adam has made a decision on the painting. Adam responds affirmatively. He writes a check to the order of Harry Peters for \$35,000.00 payable out of his account at Sullivan State Bank. As it turns out, this gentleman is not Harry Peters but instead Tom, a running buddy of one of Peter's delivery persons. Tom takes the check, forges Harry Peter's signature on the back of it, and then deposits it in his own account with Danvers National Bank.

- A. Assume Tom vanishes town with the money. Adam immediately notifies Sullivan State Bank and demands his account be recredited. Does Sullivan have to recredit? Fully support.
- B. What if instead, Adam received a call from someone purporting to be Peters, requesting that if Adam wants to keep the painting he should send a check to Harry Peters at a certain address. The caller is really Tom(a thief) and the address is that of Tom himself. Tom gets the check, forges Peters name, and makes away with the money. Who will suffer the loss? Fully support.
- C. Now suppose that when Peters called to inquire about the painting, Adam told Peter he definitely wanted it. Peters tells Adam that his assistant Katie will soon be coming around to Adam's to pick up a check for the price. Sure enough later that day someone introducing herself as Katie came by and asked for the check. Andy handed over the check. It turned out that the woman was not Katie, but rather a customer "Cathy" in Peter's store who overheard the conversation between Adam and Peters. Cathy took the check, forged Peter's signature on it, and deposits it in her account at Danvers Bank. She later withdraws the money and heads to Siberia. Who bears the loss? Fully support.

QUESTION FOUR

(Worth 5 Points)

Mame, who has a checking account with Sullivan National Bank, has her nephew Timmy living with her for the summer. In June of 2004, Timmy steals a blank check (#231) from his aunt's check book, making it out to himself for \$300.00 and forges Mame's name as drawer. The account statement for June is mailed July 2, 2004 and received by Mame the next day reflecting that check #231 for \$300.00 was paid on the 25th of June. In early July, Timmy steals another check and once again makes it payable to himself for \$800.00, and forges Mame's name on the check. In late July, he does it again for \$1,000.00. Payment of both of these checks is reflected on her July statement from Sullivan National Bank which Mame receives August 3rd. Mame goes to Sullivan National Bank on August 10th with the three forged checks seeking recredit. What result? Fully support.

QUESTION FIVE

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- A. Assuming the check has not been paid, is the bank obligated to follow the stop payment order? Fully support your answer.
- B. Assume the bank does not pay the check, but returns the item with a notice that it has been dishonored due to a stop-payment order given by the drawer. The unpaid check eventually makes its way back into the hands of the golf course owner, James Clever. Does James have any course of action against the Bank for its refusal to pay the check? Support your answer.
- C. Now, suppose that even though the stop payment order is received by the bank in plenty of time before the check is presented, the bank by mistake pays the check over the stop-payment order. It deducts the amount of the check from Fran's account. Fran sues. What result? Fully support your answer.

QUESTION SIX

(Worth 3 Points)

- A. Who gives the transfer warranties?
- B. Who receives the transfer warranties?
- C. What does the transferor warrant to be true?

QUESTION SEVEN

(Worth 2 Points)

- A. Is a post-dated check properly payable before its date? Fully support.
- B. What if the customer gave the bank oral notice of the date on the check? Fully support.

QUESTION EIGHT

(Worth 1 Point)

The president of Sullivan Corporation was Jessica Smith. She signed a promissory note as follows:

Sullivan Corporation, Jessica Smith

Is Jessica Smith personally liable? Fully support your answer.

MASSACHUSETTS SCHOOL OF LAW

SUMMER, 2004
UCC-ARTICLES 3 & 4

2 CREDITS
PROFESSOR SULLIVAN
TUESDAY/THURSDAY 6:00 - 9:30 PM.

Required Text:

1. Problems and Materials on Commercial Law 7th Edition
2. UCC Official Text--Selected Commercial Statutes

<u>Date</u>	<u>Day</u>	<u>Problems Due</u>	<u>Cases Due</u>
ARTICLE 3			
7/13/04	Tuesday	82-103	<u>Triffin, Woodworth, Falls, General</u>
7/15/04	Thursday	104-118	<u>Winter, Jones, Sullivan, FDIC, Sea-Air, Kedzie</u>
7/20/04	Tuesday	119 - 135	<u>Virginia, Herzog, Ward, Floor, Chemical</u>
7/22/04	Thursday	136 - 148	<u>London, Messing, Makel, Norton, Galyen, Mundaca, Nichols</u>
ARTICLE 4			
7/27/04	Tuesday	149 - 164	<u>Twin City, Walter, Parr, Canty</u>
7/29/04	Thursday	165 - 185	<u>Rock Island, First National, Gordon</u>
8/03/04	Tuesday	186 - 214	<u>Leeds, Price, Decibel, Hutzler, The Bank, Falk</u>
8/05/04	Thursday	Final Exam	

Article 3/4
Final Examination
Professor Sullivan
Summer 2004

Question One

(Worth 10 Points)

Assuming the other elements of negotiability are satisfied, is the following promissory note governed by Article 3: Why or why not?

“Rights and obligations of the maker and any holder of the note are subject to the terms and conditions set forth in the Credit Agreement of June 15, 2004.

(Note: The credit agreement does not contain any rights or obligations that condition the maker’s promise to pay.”)

Question Two

(Worth 10 Points)

MK Entros (“MK”) agreed to pay \$7,200.00 to a contractor for installing a hot tub in her house. The contractor, William Handy agreed to accept a promissory note as payment. So MK executed the following note:

Promissory Note

In consideration for installing a hot tub in my home, the undersigned promises to pay \$7,200.00 to _____ on August 1, 2004.

Handy negotiated the note to Ron Glad on May 1, 2004. At Ron’s insistence, Handy inserted Ron’s name (Ron Glad) on the blank line on the note.

On the due date, Ron presented the note to MK for payment. MK refused to pay because Handy had improperly installed the hot tub, resulting in damage to her home. Ron seeks your advice. Fully analyze all issues presented.

Question Three

(Worth 10 Points)

Lonley Lorreta is studying in MSL's library when she happens to spy a piece of paper in front of Professor Sullivan's office. She picks it up and discovers it is a check written by Professor Dickinson and payable to Louise Registrar and the back of it bears what appears to be Louise's signature. Is Lorretta a holder of this instrument? A holder in due course? Fully explain.

Question Four

(Worth 10 Points)

Sullivan Industries, a firm located in Worcester, Massachusetts arranged to buy some merchandise from Santa Corporation of San Diego, California. Santa agreed to send the merchandise to Sullivan after receiving payment. Sullivan writes out a check drawn on its account with the Easy Bank of Commerce and mailed it to Santa. Santa deposited this check in its account with Ocean State Bank. This check was then properly forwarded - to the Worcester Bank via the Los Angeles Fed and the Boston Fed. The Boston Fed presents the check to the Worcester Bank which dishonors it because Sullivan Industries does not have sufficient funds in its account. The Worcester Bank promptly returns the check to the Boston Fed. The Boston Fed then promptly returns it to the Los Angeles Fed. The Los Angeles Fed then promptly returns it to the Ocean State Bank. The dishonored check arrives at the offices of the Ocean State Bank on a Wednesday morning. There it lies for a week, until an officer of the bank calls Santa Corporation to inform them that the check previously deposited bounced and the amount would be withdrawn from their account. Assume Santa shipped out the merchandise just hours before. Does Santa Corporation have recourse against Ocean State Bank? Fully support your answer.

Question Five

(Worth 10 Points)

The Dean, who oversees a law school, decides to give holiday bonuses to all law school employees, except Professor Socratic. When the bookkeeper drew up the checks, he inadvertently drew up one for Professor Socratic. The Dean noticed the check and pulled it from the pile, leaving it on the corner of his desk. Somehow Professor Socratic becomes aware of the check and removes it from the Dean's desk. The Dean notices the check is missing and has a stop-payment placed on the check. The check, however, is deposited by Professor Socratic in his own checking account because he believes he is entitled to it. The check is ultimately dishonored and return to Professor Socratic by his bank.

Does Professor Socratic have a cause of action? Fully explain.

Question Six

(Worth 15 Points)

Mame, who has a checking account with Sullivan National Bank, has her nephew Timmy living with her for the summer. In June of 2003, Timmy steals a blank check (#231) from his aunt's check book, making it out to himself for \$300.00 and forges Mame's name as drawer. The account statement for June is mailed July 2, 2003 and received by Mame the next day reflecting that check #231 for \$300.00 was paid on the 25th of June. In early July, Timmy steals another check and once again makes it payable to himself for \$800.00, and forges Mame's name on the check. In late July, he does it again for \$1,000.00. Payment of both of these checks is reflected on her July statement from Sullivan National Bank which Mame receives August 3rd. Mame goes to Sullivan National Bank on August 10th with the three forged checks seeking recredit. What result? Fully support.

Question Seven

(Worth 15 Points)

Sullivan Construction Company hired Rudnick Carpentry Company as a subcontractor on a building project. Sullivan agreed it would pay for the plywood that Rudnick needed for the job. As part of the scheme to defraud Sullivan, Rudnick submitted forged invoices for plywood that it never actually purchased. Sullivan wrote Rudnick a check for \$22,000.00 as payment for the forged invoices.

Rudnick immediately negotiated the \$22,000.00 check to Coyne Supply Company in exchange for equipment worth \$5,000.00 and a check from Coyne for \$17,000.00. The next day, Rudnick indorsed the \$17,000.00 check from Coyne in blank and cashed it at Rosa's check cashing company. Coyne and Rosa both acted in good faith without notice of any problems. Later, upon discovering Rudnick's fraud, Coyne and Sullivan each stopped payment on their checks before they were paid. The checks were returned to Rosa unpaid.

- A. May Rosa enforce the \$17,000.00 check against Coyne? Fully support your answer.
- B. May Coyne enforce the \$22,000.00 check against Sullivan? Fully support your answer.
- C. May Sullivan recover from anyone or all of them? Fully support your answer.

Question Eight
(Worth 20 Points)

Does the "imposter rule" apply to the following transactions? Fully support your

answers.

- A. Sandy issued a check, payable to the order of Gwen Thomas, to Betty after Betty informed her, "I'm Betty, Gwen's authorized agent for delivery." Betty forges Gwen indorsement and obtains payment of the check.
- B. Sandy issued a check payable to the order of Gwen Thomas to Betty after Betty tells Sandy that she is Gwen Thomas. Betty never indorses the check, but she does deposit it into an account that she opened in the name of Gwen Thomas.

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MASSACHUSETTS SCHOOL OF LAW

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2 CREDITS

PROFESSOR SULLIVAN

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8/05/04	Thursday	Final Exam	

Professor Sullivan
Final Exam
Articles 3/4
Fall 2002

1. Are the following instruments negotiable? Fully support your answer.
 - A. I promise to pay \$14,000 to the order of Sandra Small on February 1, 2002.

/s/ Harriett Happy
 - B. To: Mandy Moneybucks December 1, 2002

Pay to the order of Sam Student \$2,000.00 on December 23, 2002.

/s/ Professor Susan Socratic
 - C. I, Danny Adams, promise to pay to the order of Rachel Rose \$30,000.00 within six months following the death of my aunt, Annette Aire.

/s/ Danny Adams
2. Linda writes a check "Payable to the order of Polly Potter" and gives it to Polly. Polly endorses her name on the back of the check. The next thing she knows, the check is missing. It has either been stolen or lost.
 - A. Is the thief or finder a holder of the check? Why or why not.
 - B. What if Polly had signed her name on the back of the check under the legend "Pay to Nate Novice" before the check went missing? Would any thief or finder of this check be a holder? Fully explain.
3. Mercury Corporation is a well-known enterprise in Massachusetts. Someone introducing herself as Wilma Flint, the President of Mercury Corporation, rushes into an office of Andover Bank and is ushered into an office of a senior loan officer.

Wilma hands this officer her card, which bears all the markings of a card of the type of representative of Mercury would be expected to have and identifies her as "Wilma Flint, President." Wilma tells the officer that she is in town on other matters, but has just been presented with the possibility of acquiring some property in Worcester, Massachusetts that she thinks would be particularly good for her corporation. The seller is in a rush, however, and is demanding a \$200,00 deposit in the form of a bank check by the end of the day. Wilma would like to manage to borrow this money on behalf of Mercury from Andover

Bank. The loan officer is more than eager to comply. He has a cashier's check in the form Wilma requests drawn up. He gives this to Wilma, asking only that she sign a standard form note naming Mercury Corporation as the borrower. Wilma signs the note promising to repay the \$200,000.00 at a stated rate of interest, as "Wilma Flint, President, Mercury Corporation." The bank soon becomes aware, but not before the cashier's check it has issued has been paid, that the person who presented herself as Wilma Flint, President of Mercury Corporation, is not who she claimed to be. She is instead, one up-and-coming conartist named Connie. The business card that Connie presented at the bank was not issued by Mercury Corporation, but had been clearly printed up by Connie.

Query: Who is obligated on the note? Fully support your answer.

4. Andy issued a check for \$10,000 to Betty. Betty negotiated this check over to Cathy, taking and asking for nothing to return.
 - A. Can Cathy qualify as a holder in due course of the check? Fully support your answer.
 - B. What if the reason Betty negotiated the check to Cathy was to pay her for some services Cathy had already performed for her?
 - C. What if Cathy is given the check in exchange for her promise to perform certain services in the future for Betty, but which she has not yet performed?
5. Freda, a customer of Sullivan National Bank, writes a check out of her account for \$12,200.00. The check is presented to Sullivan National Bank on Tuesday morning. On Tuesday evening, Sullivan National determines that Freda's account contains only \$10,500 in available funds, and hence it will dishonor the check. It returns the check to the presenting bank Wednesday morning. As it turns out, by Wednesday afternoon, Freda has deposited another \$3,000.00 in cash into her account. She argues that had the bank waited until later on Wednesday, there would have been no need to dishonor this check, and that in addition, had the new funds not come into her account, the bank would have been able to return the check prior to its midnight deadline at the end of the day on Wednesday. Did Sullivan National wrongfully dishonor the check? Fully explain.
6. Fran Flamboyant has a checking account with Sullivan National Bank. After treating several of her friends to an expensive round of golf, she pays the course owner, Benchside Golf Course, with a personal check. The next day, Fran decides that the course did not live up to her expectations. Fran contacted the Sullivan National Bank and issues a stop payment order on the check.
 - A. Assuming the check has not been paid, is the bank obligated to follow the stop payment order? Fully support your answer.
 - B. Assume the bank does not pay the check, but returns the item with a notice that it has

been dishonored due to a stop-payment order given by the drawer. The unpaid check eventually makes it way back into the hands of the golf course owner, James Clever. Does James have any course of action against the Bank for its refusal to pay the check? Support your answer.

- C. Now, suppose that even though the stop payment order is received by the bank in plenty of time before the check is presented, the bank by mistake pays the check over the stop-payment order. It deducts the amount of the check from Fran's account. Fran sues. What result? Fully support your answer.

Professor Sullivan
UCC Final Examination
Articles 3/4
Fall 2003

QUESTION ONE

Worth 9 Points

Assuming the other elements of negotiability are satisfied, decide whether the language in the following notes or drafts is “payable to order or bearer”.

- A. A check otherwise complete that is made out “Pay to the order of _____” with no name filled in.
- B. A note, “I promise to pay to Richard Roselle.”
- C. A note, “I promise to pay to bearer....”

QUESTION TWO

Worth 9 Points

Consider whether the following would be “payable on demand or at a definite time.”

- A. “Pay to the order of Sam Student on sight.”
- B. “Pay to the order of Sam Student with no date given.”
- C. “I, Diane Sullivan, promise to pay to the order of Nancy Wilson \$10,000 within 6 months following the death of my uncle, Andy Adams.”

QUESTION THREE

Worth 5 Points

Mercury Corporation is a well-known enterprise in Massachusetts. Someone introducing herself as Wilma Flint, the President of Mercury Corporation, rushes into an office of Andover Bank and is ushered into an office of a senior loan officer.

Wilma hands this officer her card, which bears all the markings of a card of the type of representative of Mercury would be expected to have and identifies her as “Wilma Flint, President.” Wilma tells the officer that she is in town on other matters, but has just been presented with the possibility of acquiring some property in Worcester, Massachusetts that she thinks would be particularly good for her corporation. The seller is in a rush, however, and is demanding a \$200,000.00 deposit in the form of a bank check by the end of the day.

Wilma would like to manage to borrow this money on behalf of Mercury from Andover Bank. The loan officer is more than eager to comply. He has a cashier's check in the form Wilma requests drawn up. He gives this to Wilma, asking only that she sign a standard form note naming Mercury Corporation as the borrower. Wilma signs the note promising to repay the \$200,000.00 at a stated rate of interest, as "Wilma Flint, President, Mercury Corporation." The bank soon becomes aware, but not before the cashier's check it has issued has been paid, that the person who presented herself as Wilma Flint, President of Mercury Corporation, is not who she claimed to be. She is instead, one up-and-coming conartist named Connie. The business card that Connie presented to the bank was not issued by Mercury Corporation, but had been clearly printed up by Connie.

Query: Who is obligated on the note? Fully support your answer.

QUESTION FOUR

Worth 9 Points

Fran Flamboyant has a checking account with Sullivan National Bank. After treating several of her friends to an expensive round of golf, she pays the course owner, Benchside Golf Course, with a personal check. The next day, Fran decides that the course did not live up to her expectations. Fran contacted the Sullivan National Bank and issues a stop payment order on the check.

- A. Assuming the check has not been paid, is the bank obligated to follow the stop payment order? Fully support your answer.
- B. Assume the bank does not pay the check, but returns the item with a notice that it has been dishonored due to a stop-payment order given by the drawer. The unpaid check eventually makes it way back into the hands of the golf course owner, James Clever. Does James have any course of action against the Bank for its refusal to pay the check? Support your answer.
- C. Now, suppose that even though the stop payment order is received by the bank in plenty of time before the check is presented, the bank by mistake pays the check over the stop-payment order. It deducts the amount of the check from Fran's account. Fran sues. What result? Fully support your answer.

QUESTION FIVE

Worth 5 Points

In March of 2003, Theo is invited to make an investment in Sullivan Estates, which she is assured by its promoter DeAnn Sullivan, is going to be a fast-growing and highly profitable real estate venture. Theo acquires an interest in this company by giving a note payable to Sullivan Estates for \$400,000.00 payable 3 years from the date of signing. By the time the note is due, it has been discovered that DeAnn Sullivan had been convincing people (including Theo) to invest by knowingly giving them false information and projections.

- A. When the note matures in 2006, will Theo have to pay? Why or why not?
- B. Assume that Sullivan Estate had sold the note to Andover Savings Bank. Is the bank entitled to the \$400,000? Fully support your answer.

QUESTION SIX

Worth 9 Points

Please make sure to fully support your answers.

- A. What does the transferor of an instrument warrant to be true?
- B. Who receives the transfer warranties?
- C. May the transfer warranties be disclaimed?

QUESTION SEVEN

Worth 4 Points

Anne has a checking account at Lawrence Savings Bank. Anne's furnace stopped working one cold winter night so she called Bulger's Furnace Repair. Tom, the repairman for Bulger's was able to steal a book of blank checks (#1000-1024) from Anne's desk. Tom filled out the check for \$2,000.00 naming himself as payee and forging Anne's name on the drawer's line. He deposited this check in his own account at Sullivan National Bank and the check was paid by Lawrence Savings Bank on January 31, 2003. Tom repeated this procedure at a number of other homes. He then closed out his account at Sullivan National Bank and vanished to part unknown.

Lawrence Savings Bank sent Anne her January statement on February 5th but she did not review it until April 1st. It clearly reflects the forged check. Anne demands recredit of the \$2,000.00. What result? Fully support.

Article 3/4
Final Examination
Professor Sullivan
Summer 2003

Question One

(Worth 10 Points)

Is a check, otherwise complete, that is made out “Pay to the Order of _____” with no name filled in on the line for the payee, a negotiable instrument? Support your answer.

Question Two

(Worth 10 Points)

A writing dated July 25, 2003, reads “I, Professor Sullivan, promise to pay to the order of Minnie Aman the sum of \$350,000.00 and also deliver her title to the estate known as Happy Acre one month from the date reflected hereon.” Does this qualify as a negotiable instrument? Fully support your answer.

Question Three

(Worth 10 Points)

Lonley Lorreta is studying in MSL’s library when she happens to spy a piece of paper in front of Professor Sullivan’s office. She picks it up and discovers it is a check written by Professor Dickinson and payable to Louise Registrar and the back of it bears what appears to be Louise’s signature. Is Lorretta a holder of this instrument? A holder in due course? Fully explain.

Question Four

(Worth 10 Points)

Sullivan Industries, a firm located in Worcester, Massachusetts arranged to buy some merchandise from Santa Corporation of San Diego, California. Santa agreed to send the merchandise to Sullivan after receiving payment. Sullivan writes out a check drawn on its account with the Easy Bank of Commerce and mailed it to Santa. Santa deposited this check in its account with Ocean State Bank. This check was then properly forwarded - to the Worcester Bank via the Los Angeles Fed and the Boston

Fed. The Boston Fed presents the check to the Worcester Bank which dishonors it because Sullivan Industries does not have sufficient funds in its account. The Worcester Bank promptly returns the check to the Boston Fed. The Boston Fed then promptly returns it to the Los Angeles Fed. The Los Angeles Fed then promptly returns it to the Ocean State Bank. The dishonored check arrives at the offices of the Ocean State Bank on a Wednesday morning. There it lies for a week, until an officer of the bank calls Santa Corporation to inform them that the check previously deposited bounced and the amount would be withdrawn from their account. Assume Santa shipped out the merchandise just hours before. Does Santa Corporation have recourse against Ocean State Bank? Fully support your answer.

Question Five

(Worth 10 Points)

The Dean, who oversees a law school, decides to give holiday bonuses to all law school employees, except Professor Socratic. When the bookkeeper drew up the checks, he inadvertently drew up one for Professor Socratic. The Dean noticed the check and pulled it from the pile, leaving it on the corner of his desk. Somehow Professor Socratic becomes aware of the check and removes it from the Dean's desk. The Dean notices the check is missing and has a stop-payment placed on the check. The check, however, is deposited by Professor Socratic in his own checking account because he believes he is entitled to it. The check is ultimately dishonored and return to Professor Socratic by his bank.

Does Professor Socratic have a cause of action? Fully explain.

Question Six

(Worth 15 Points)

Mame, who has a checking account with Sullivan National Bank, has her nephew Timmy living with her for the summer. In June of 2003, Timmy steals a blank check (#231) from his aunt's check book, making it out to himself for \$300.00 and forges Mame's name as drawer. The account statement for June is mailed July 2, 2003 and received by Mame the next day reflecting that check #231 for \$300.00 was paid on the 25th of June. In early July, Timmy steals another check and once again makes it payable to himself for \$800.00, and forges Mame's name on the check. In late July, he does it again for \$1,000.00. Payment of both of these checks is reflected on her July statement from Sullivan National Bank which Mame receives August 3rd. Mame

goes to Sullivan National Bank on August 10th with the three forged checks seeking recredit. What result? Fully support.

Question Seven

(Worth 15 Points)

Fran Flamboyant has a checking account with Sullivan National Bank. After treating several of her friends to an expensive round of golf, she pays the course owner, Benchside Golf Course, with a personal check. The next day, Fran decides that the course did not live up to her expectations. Fran contacted the Sullivan National Bank and issues a stop payment order on the check.

- A. Assuming the check has not been paid, is the bank obligated to follow the stop payment order? Fully support your answer.
- B. Assume the bank does not pay the check, but returns the item with a notice that it has been dishonored due to a stop-payment order given by the drawer. The unpaid check eventually makes its way back into the hands of the golf course owner, James Clever. Does James have any course of action against the Bank for its refusal to pay the check? Support your answer.
- C. Now, suppose that even though the stop payment order is received by the bank in plenty of time before the check is presented, the bank by mistake pays the check over the stop-payment order. It deducts the amount of the check from Fran's account. Fran sues. What result? Fully support your answer.

Question Eight

(Worth 20 Points)

Mercury Corporation is a well-known enterprise in Massachusetts. Someone introducing herself as Wilma Flint, the President of Mercury Corporation, rushes into an office of Andover Bank and is ushered into an office of a senior loan officer.

Wilma hands this officer her card, which bears all the markings of a card of the type of representative of Mercury would be expected to have and identifies her as "Wilma Flint, President." Wilma tells the officer that she is in town on other matters, but has

just been presented with the possibility of acquiring some property in Worcester, Massachusetts that she thinks would be particularly good for her corporation. The seller is in a rush, however, and is demanding a \$200,000 deposit in the form of a bank check by the end of the day. Wilma would like to manage to borrow this money on behalf of Mercury from Andover Bank. The loan officer is more than eager to comply. He has a cashier's check in the form Wilma requests drawn up. He gives this to Wilma, asking only that she sign a standard form note naming Mercury Corporation as the borrower. Wilma signs the note promising to repay the \$200,000.00 at a stated rate of interest, as "Wilma Flint, President, Mercury Corporation." The bank soon becomes aware, but not before the cashier's check it has issued has been paid, that the person who presented herself as Wilma Flint, President of Mercury Corporation, is not who she claimed to be. She is instead, one up-and-coming conartist named Connie. The business card that Connie presented to the bank was not issued by Mercury Corporation, but had been clearly printed up by Connie.

Query: Who is obligated on the note? Fully support your answer.

**PROFESSOR SULLIVAN
QUIZ - ARTICLE 3/4
SUMMER 2003**

1. Discuss whether the following is a negotiable instrument?

“I promise to pay to the order of Professor Socratic that which I owe him by delivering to his place of business an emerald of at least one carat, one month from the date herein.”

/s/ Sam Student

2. Deb writes a check on her account for \$50.00 payable to cash. She loses it, but the check is found by Donna.
- A. Is Donna a holder? Fully support.
- B. The check is then stolen from Donna by Harry the thief. Is Harry now the holder? Fully support.

MASSACHUSETTS SCHOOL OF LAW

SUMMER, 2003
UCC-ARTICLES 3 & 4

2 CREDITS
PROFESSOR SULLIVAN

Required Text:

1. Problems and Materials on Commercial Law 7th Edition
2. UCC Official Text--Selected Commercial Statutes

<u>Date</u>	<u>Day</u>	<u>Problems Due</u>	<u>Cases Due</u>
ARTICLE 3			
7/08/03	Tuesday	82-103	<u>Triffin, Woodworth, Falls, General</u>
7/10/03	Thursday	104-118	<u>Winter, Jones, Sullivan, FDIC, Sea-Air, Kedzie</u>
7/15/03	Tuesday	120 - 135	<u>Virginia, Herzog, Ward, Floor, Chemical</u>
7/17/03	Thursday	136 - 148	<u>London, Messing, Makel, Norton, Galyen, Mundaca, Nichols</u>
ARTICLE 4			
7/22/03	Tuesday	149 - 164	<u>Twin City, Walter, Parr, Canty</u>
7/24/03	Thursday	165 - 185	<u>Rock Island, First National, Gordon</u>
7/29/03	Tuesday	186 - 214	<u>Leeds, Price, Decibel, Hutzler, The Bank, Falk</u>
7/31/03	Thursday	Final Exam	

Professor Sullivan
Articles 3 and 4
Final Examination
Summer 2002

Question One - Worth 30 Points

In October of 2001, Andy's Mobile Homes sold to Rosa Richards a camper. The contract covering the camper was dated December 15, 2001, but the closing on the camper did not occur until January 15, 2002. At that time Rosa executed the installment sales contract and security agreement. The installment sales contract states that the buyer promises "to pay to the seller" monthly installments for a period of 15 years. Thereafter, Andy's Mobile Homes assigned its contractual rights to Guaranty Investment Corporation. Guaranty Investment Corporation took possession of the contract and of the manufacturer's certificate of origin. It issued a check to Andy's Mobile Homes for \$69,112.12 dated January 14, 2002 which was not delivered until sometime later. On January 17, 2002, Continental Bank purchased an assignment of Guaranty's rights in the installment sales contract for \$69,200.00. Continental notified the buyers that their loan payments were to be made to Continental. It filed a lien and security agreement to perfect its security interest in the collateral. On approximately February 12, 2002, Guaranty's check was returned for insufficient funds. After Andy's effort to collect Guaranty's check was unsuccessful, it filed an action for rescission of the assignment to Guaranty praying for the restoration of all rights, and for re-delivery of all documents. Andy's also sought to recover all payments and documents received by Continental under the assignment of the installment sales contract from Guaranty. What result? Fully support.

Question Two - Worth 20 Points

A writing dated, August 1, 2002, reads "I, Professor Ableson, promise to pay to the order of Manny Hernandez the sum of \$2,000 and also deliver him title to the estate known as Happy Acre one month from the date hereon." Does this qualify as a negotiable instrument? Fully support your answer.

Question Three - Worth 15 Points

- A. Deb writes a check on her account for \$1,000 payable to "Cash". She loses this check, which is found by Fred. Is Fred a holder? Why or why not?
- B. Assume the check (from above) is stolen from Fred by Freda the thief. Is Freda now a holder? Why? Fully support?
- C. Freda transfers the check to Tom's Grocery Store in return for some bread, milk and \$990.00 in cash. Is Tom's Grocery a holder?

Question Four - Worth 10 Points

Andrew Smith writes a check payable to Paula James on her account with the Elm Street branch of the Andover Bank. On Monday morning, Paula deposits this check in her own checking account with the Elm Street branch of the Andover Bank.

- A. What are the obligations of the Elm Street branch with respect to this check? Fully explain.
- B. What if Paula's account with Andover Bank is held at the Main Street branch of the bank?

Question Five - Worth 10 Points

Andy has a checking account with the Sullivan National Bank. He writes a check for \$623.00 to Beth. Beth signs the back of the check and deposits it in her own bank account. The check is presented to Sullivan National Bank. At the time of presentment, Andy's balance exceeds \$1,000.00.

- A. May Sullivan National Bank honor this check? Fully explain.
- B. How would you answer the preceding question if at the time Andy's balance was \$100.00.

Question Six - Worth 15 Points

Paul Mathews took his wife on a weekend cruise. Paul paid for the trip with a personal check. The following Monday, Paul decided that the cruise did not live up to his expectations. Accordingly, Paul contacted his bank and issued a stop payment order on the check.

- A. Is the bank obligated to accept the stop payment order and dishonor the check? Why?
- B. Assume the check is presented to Paul's bank and the bank does not pay it but instead returns the check with a notice that it has been dishonored due to a stop payment order. Does the cruise line (payee) have any cause of action against the bank for its refusal to pay the check? Fully explain.
- C. Assume that even though the stop payment order was received by the bank in plenty of time before the check was presented, the bank by mistake pays the check over the stop-payment order. What liability does the bank have? Fully explain.

I promise to pay \$5,000 to the order of Sam Penniless on August 15, 2002

Professor Socratic

Is this a negotiable instrument? Fully explain.

Question One - Worth 10 Points

In November of 2001, a teller at Sullivan National Bank is presented, over the counter, a check for \$10,000 payable to "Cindy Kahn", purportedly drawn on the account of the Com. Corp. The person presenting it is able to give the teller several pieces of identification showing that she is indeed Ms. Kahn and furthermore that she is an employee of Com. Corp. She explains that the check represents a year-end bonus that she just received from her employer. She asks that the teller accept the check and issue her in return a cashier's check for the same amount. The teller makes inquiries of the bank's computer system and determines that Com Corp. has more than enough to cover the check, and also that the bank has not received a stop-payment order with respect to it. The signature of Com's treasurer on the check looks close enough to the official signature that the bank has on record. The teller accepts the check being presented by Cindy, and issues her a cashier's check for \$10,000. About an hour later, the Sullivan National Bank is contacted by Com's treasurer: he has just been made aware that one blank check is missing from the company's checkbook. When he gives the bank the number of the missing check, he is informed that a check bearing that number has already been paid. The treasurer assures the bank manager that he never signed any such check and any signature appearing thereon is a forgery. Cindy is nowhere to be found. The cashier's check that was issued to her is presented to Sullivan National Bank several days later, after Cindy apparently used it to open an account on a distant shore.

- A. Would Sullivan National Bank be within its rights to refuse to pay the cashier's

check? Fully explain.

- B. What if Cindy had used the treasurer's check at a local car dealership in exchange for a car in which she fled the scene? The dealership then deposits the check for collection. Could Sullivan refuse to pay the cashier's check? Fully support.

Question Two - Worth 9 Points

Andy has a personal checking account with Andover Bank. He keeps his checkbook on top of the desk in his home office. Chad, a rug cleaner, was hired by Andy to clean his rugs. When Andy was out of the room, Chad stole a blank check (#1001) out of his checkbook when Chad was alone in the room. Chad fills this check out for \$1,600.00 naming himself as payee and forging Andy's name on the drawer's line. Chad deposits this check in his own account with Lawrence National Bank and the check is paid by Andover Bank on January 13, 2001. By the end of the first week of February, Chad had cleaned out his account with the Lawrence Bank and disappeared.

Andover Bank sends Andy a monthly statement of his account activity for the month and his balance at the end of January. This statement is mailed off by the Bank on February 3rd and received by Andy on February 6th. It clearly shows that check #1001, in the amount of \$1,600.00, was paid by the bank on January 13. Andy reviews this statement on February 9th and immediately notices this entry. He has no recollection or record of drawing any check in this amount. Furthermore, he looks at his checkbook and finds that check #1001 is missing. The next day he goes to the bank and speaks to a bank officer. Together they look at the check itself, which was retained by the bank as are all checks paid out of Andy's account, as provided for in the account agreement. Andy is willing to sign an "Affidavit of Forgery" to the effect that the signature on the drawer's line of check #1001 is not his. Indeed, as the bank officer can see, the signature is nothing like Andy's normal signature.

Andy demands that Andover Bank recredit his account with the \$1,600.00.

- A. Must Andover Bank comply with this demand? Fully support your answer.
- B. What if instead Andy had left his January bank statement unopened on his desk for a month or so? He does not notice the questionable item until early March when he immediately brings it to the attention of the bank. May Andover Bank refuse to recredit? Fully support.
- C. Finally, suppose that Andy does not spot the problem or chooses not to do anything about it until he reviews his various financial records in preparation for doing his taxes for the year 2001. He does not go to the bank complaining of the payment of this forged check until March of 2002. What result here? Fully explain.

Question Three - Worth 12 Points

Frank, the new treasurer of the Dot Corp., writes out a check for \$28,200.01 payable to Supplies, Inc. to cover a bill for supplies that Supplies has furnished Dot Corp. Frank puts the check in an envelope correctly addressed to Supplies Inc. and delivers this envelope, along with his outgoing mail that has piled up during the day, to Dot Corp's mailroom. Polly, an employee in the mailroom, takes the envelope for herself. She signs the reverse of the check "Supplies Inc." and under that with her own name. She deposits this check into her own account at Detroit Savings Bank. She withdraws this money once Detroit Savings Bank makes it available and vanishes. Dot Corp. eventually discovers what has happened.

Query: What party or parties do you believe will end up bearing the loss? Fully support your answer.

Questions Four - Worth 10 Points

Jennifer James signs a writing dated December 1, 2001, stating that, "I promise to pay to the order of Robert Riggles \$16,400.00 if he conveys to me title to his 1999 Ford Mustang automobile, one week from this date."

- A. Discuss whether this is a negotiable instrument? You must fully justify your answer with a discussion of the code.
- B. What if the writing signed by James had read, "In consideration of his agreement to convey me title to his 1999 Ford Mustang automobile, I, Jennifer James promise to pay to the order of Robert Riggles \$16,400 one week from this date.". Would this writing be a negotiable instrument? Why or why not?
- C. Suppose that the writing had initially stated that James "promises to pay to the order of Robert Rogers" the sum on the date set. It also contains a sentence, stating that, "this note and any rights or obligations arising hereunder are subject to a contract of purchase and sale entered into between Jennifer Jones and Robert Rogers on the same date as the date hereof." Would this writing qualify as a negotiable instrument? Fully support your answer.
- D. What if the writing James signs reads "In accordance with a Contract of Purchase and Sale entered into between myself and Robert Riggles on this date, I promise to pay to the order of the said Robert Riggles \$16,400 one week from the date hereof." Is this a negotiable instrument? Fully support your answer.

Question Five - Worth 9 Points

Ginnie writes a check on her account for \$1,000.00 payable to "cash". She loses the check, which is found by Harry.

- A. Is Harry a holder? Fully explain.
- B. The check is stolen from Harry by Theo the thief. Is Theo now the holder of the check? Fully explain.
- C. Theo transfers this check to Anna, of Anna's Grocery Store in return for \$700 in cash? Is Anna a holder? Why or why not?

Final Examination - Essay
Article 3 & 4 - UCC
Professor Sullivan
Fall 2000

Question One - Worth 10 points

- A. Professor Socratic purchased a car for herself from Easy Motors, signing a promissory note for \$40,000 payable to the order of Easy Motors. Easy sold the note to Sullivan Finance Company for \$28,000.00. The car fell apart within 30 days, and Professor Socratic refused to pay. What result?
- B. If the owner of Easy Motors owed her friend \$10,000 and gave her the note with the understanding the extra was a Christmas gift, is the friend a holder in due course? Fully explain.

Question Two - Worth 10 points

Is the following note negotiable? Fully explain.

June 1, 2000

"Payable 100 years from today, but if my rich Aunt Alice dies before the note is due, it shall be payable 10 days after the distribution of her estate is made to her heirs."

/s/ Debbie Smith

Question Three - Worth 15 points

Sally Smart operates a small women's boutique. Her business processes a large number of incoming checks (for items that she has shipped to customers all over the country) and outgoing checks (paying for supplies, material, payroll). She has never had any losses from theft, but is worried about the possibility. She tells you she has a lot of customers and workers in and out of her boutique. Because she has only a single very large room that operates as the boutique, it is hard to keep her checkbook and blank checks completely inaccessible. Smart wants to know what she needs to do to be sure she's not stuck with any losses. Consider the following possible scenarios and decide whether Smart would have any liability in any of those scenarios. If so, what should she do to limit that liability.

- A. Gussie Fink, an employee who packages outgoing shipments picks up one of Smart's blank checks, makes it out to himself, and forges Smart's signature as drawer. Gussie then indorses the check and deposits it in his bank. After withdrawing the funds from his account, Gussie then disappears.
- B. Stiffy Byng comes to Smart's office and claims to be Madeline Bassett, a supplier to whom Smart owes money (whom Smart had not met). Smart issues a check to Madeline

Bassett and gives it to Stiffy, who indorses the check in Madeline's name, cashes it, and then departs with the money for the Island of Man.

- C. Gussie is also responsible for depositing incoming checks. In that capacity, Gussie forges Smart's indorsement on an incoming check payable to Smart and deposits the check into Gussie's account.

Question Four - Worth 10 points

The President of Sullivan Corporation was Samuel Sullivan. He signed a corporate promissory note as follows:

“Sullivan Corporation, by Samuel Sullivan.”

Who is liable on the note?

Fully explain.

Question Five - Worth 10 points

Curly, Moe and Larry signed the following promissory note:

November 1, 2000

On or after 30 days from date, we promise to pay to the order of Sullivan National Bank, the sum of six thousand dollars (\$6,000.00). We, along with all sureties and subsequent indorsers, waive all rights to presentment, dishonor, notice of dishonor, and protest, and all parties agree to any extension of time granted by the holder to the maker.

Harry Curly
Meagan Moe
Larry Little

Sullivan National Bank indorsed the note in blank and discounted it to Hanson Finance Company. When the note matured Hanson sued only Harry Curley. May he defend on the basis Hanson must sue all three? Fully explain your answer.

Final Examination
Articles 3 and 4
Summer 1999
Professor Sullivan

QUESTION ONE

Betty Banker calls you to ask about an usual check that has landed on her desk. This morning's ATM deposits included a \$20,000 check where the drawer had crossed out the printed words "to order of" and written in pen "only to". The result is the check states: "Pay only to Tim Burns". It appears from the back of the check that Burns cashed the check at Smart Drugs in downtown Andover. Smart Drugs, in turn, deposited the check into its account at First State Bank (Betty's Bank). Betty wants to know if the check is valid and any advice you have as to what she should do.

QUESTION TWO

D&S and Sullivan Siding are construction and general contracting companies. They share the same office in Worcester, Massachusetts. E. Givens was an employee of both corporations and performed various administrative duties for them.

D&S and Sullivan Siding perform construction work at job sites throughout the Northeast. On Wednesday morning of each week the foreman at each job site telephoned Givens and gave her the names of the employees working on the job site and the number of hours they worked. Givens then conveyed this information to Automated Payroll ("AP") whose office was in Boston, Massachusetts. Under a contract with D&S and Sullivan Siding, AP prepared payroll checks for the two companies. After preparing the payroll checks based on the information provided by Givens, AP sent the checks to the offices of D&S and Sullivan Siding in Worcester for authorized signatures. Givens was not an authorized signatory. After the checks were signed, Givens sent the checks to the job site foreman for delivery to the employees.

In 1998, Givens began conveying false information to AP about employees and hours worked. On the basis of this false information, AP prepared payroll checks payable to persons who are actual employees but had not worked the hours Givens had indicated. After obtaining authorized signatures from officers of D&S and Sullivan Siding, Givens cashed the checks at Easy Bank and deposited them into her checking account at Easy Bank, presenting numerous checks at one time. Givens continued this practice for over a year, forging 100 indorsements until the V.P. of D&S discovered the embezzlement after noticing payroll checks payable to employees who had not recently performed services for the corporation.

D&S and Sullivan Siding brought an action for damages against Easy Bank and Givens in connection with the above activities. What result?

QUESTION THREE

Tommy Lind comes to you with a problem about a \$15,000.00 check that his wife Rose wrote recently on their joint bank account. The account contained only \$6,000.00 at the time, and Tommy had declined to purchase overdraft protection from the bank at which he maintained the account. Still, the bank honored the check and has now written Tommy a letter threatening unspecified “serious consequences” if he doesn’t reimburse the bank for the amount of the check.

- A. Is Tommy liable for the check?
- B. Would your answer change if you learned that Rose and he are estranged and she used the funds to purchase a ticket for a cruise that she took (by herself) to Alaska?

QUESTION FOUR

Damion Presley, Senior Vice President of First Bank calls you to ask about a problem that has arisen at his bank. Damion explains that his problem related to a \$9,000.00 check drawn by his customer Juanita Bell which Damian’s bank received for payment on July 12, 1999.

The check was payable to Matasar Realtors and dated September 1 of the current year. Because his bank’s new automated check processing system does not examine the dates on checks and because Bell’s account at the time contained \$10,000.00, the system paid the check. Upon further examination it appears Bell sent the bank a letter in April. The letter identified Bell’s account number and explained that she would be paying her rent for the next year by a postdated check payable to Matasar Realtors. The letter asks the bank not to cash the check to the date indicated. What do you advise?

Professor Sullivan
Final Examination
Article 3 and 4
Summer 2001

Question One

The Easy Bank was the assignee from Roger Bean of a promissory note and purchase money mortgage executed and delivered by the defendant. The note executed April 28, 1999 contains the following stipulation:

"This note with interest is secured by a mortgage on real estate of even date herewith, made by the maker hereof in favor of the said payee, and shall be construed and enforced according to the laws of the State of Massachusetts. The terms of said mortgage are by this reference made a part hereof."

Roger Bean had assigned the promissory note and mortgage in question to the Easy Bank to secure their own note. Easy Bank sued defendant alleging a default on the note.

Defendant answered with a defense of failure of consideration on the part of Roger Bean.

What result? Fully support your answer.

Question Two

- A. Drawer draws a check to the order of Denise Lowe. The check is delivered to Denise Lowe. Is Denise Lowe a holder?
- B. Denise Lowe signs her name on the back of the check "Denise Lowe" and hands over the check to Millie Fay. Is Millie Fay a holder?
- C. Without signing her name to the above check, Millie Fay hands over the check to Polly Hayes. Is Hayes a holder?
- D. A check payable to Denise Lowe and not yet endorsed by her is stolen by Sam Snitch. Snitch signs Lowe's name on the back of the check and takes it to Victory Supermarket, where in front of the cashier, he signs his own name and gives the check to Victory. Is Victory a holder?
- E. On the facts of problem D, suppose Victory endorses the check and transfers it to Fanny Florist. Is Florist a holder?

Question Three

The check in question was drawn on an account in Sullivan National Bank ("SNB") in the name of Boutique, Inc. Checks furnished by SNB to Boutique Inc. were stolen and one of these was filled in with the amount of \$8,000.00 payable to the order of "Boutique #3." This name was fictitious, since no "Boutique #3" existed. The signature of D.M. Smith, present of Boutique Inc., was forged to the check in a credible likeness of the signature of that officer on file with SNB. The forged check was endorsed "Boutique #3 For Deposit Only, Account No. 12755 Ronda Cousin," and was deposited in an account opened under that number in the name of "Boutique No. 3" in Hanover Bank. Hanover credited this account with the \$8,000.00, indorsed the check "pay any bank p.e.g.," (which in banking parlance means "prior endorsements guaranteed") and forwarded it for collection through banking channels to SNB, which ran the check through its computer and in accordance with its practice, compared the signature with the signature of D.M. Smith on file, failed to discover the forgery, and paid Hanover Bank for the check.

About 16 days later, Hanover advised SNB the \$8,000.00 check was forged and that it intended to make a claim. What result? Fully support your answer.

Question Four

Ms. Sanders drew check number 102, payable to Chris Mango in the amount of \$1,700.00, on her checking account at Sullivan National Bank. Believing this check was lost, Sanders cashed another check in the amount of \$1,750.00 and gave Mango \$1,700.00 cash. Unbeknownst to Sanders, Mango had deposited the \$1,700.00 check in his account at another bank. The check, having run its course through normal banking channels arrived at Sullivan National Bank at a time when Sanders had insufficient funds in her account to cover it. Accordingly, the check was stamped "insufficient funds" and returned to the Federal Reserve Bank of Boston, the last endorser.

Eleven days later, Sanders placed a stop-payment order on the \$1,700.00 check she had issued to Mangos. On the stop-payment form provided by Sullivan National Bank, Sanders specified the correct account number, check number and payee. She placed a question mark in the space provided for the date of the check. She wrote the amount of the check as to which she sought to stop-payment as \$1,750.00.

About 10 days after Sanders wrote the stop-payment order, check number 102 was presented to Sullivan National Bank for payment and, there then being sufficient funds in Sanders' account, was paid by Sullivan National Bank. The next day, a Sullivan Bank clerk, while in the process of hand sorting checks for filing, noticed the stop-payment order for check number 102 and, failing to notice the check had been paid, stamped the check "payment stopped". Sanders' account was then erroneously credited \$1,700.00 and the check forwarded to the Federal Reserve Bank. Months later, due to an unexplained delay in the system, the Federal Reserve Bank returned check number 102 to Sullivan Bank. Sullivan Bank, recognizing that it paid the check, debited Sanders account, reversing the erroneous credit. This debit created an overdraft in Sanders' account of \$1,379.68. Sullivan Bank sued to collect. Sanders counterclaimed for the wrongful payment of a check over a stop-payment order, abuse of process, and gross negligence. What result?

MASSACHUSETTS SCHOOL OF LAW

SUMMER, 2003
UCC-ARTICLES 3 & 4

2 CREDITS
PROFESSOR SULLIVAN

Required Text:

1. Problems and Materials on Commercial Law 7th Edition
2. UCC Official Text--Selected Commercial Statutes

<u>Date</u>	<u>Day</u>	<u>Problems Due</u>	<u>Cases Due</u>
ARTICLE 3			
7/08/03	Tuesday	82-103	<u>Triffin, Woodworth, Falls, General</u>
7/10/03	Thursday	104-118	<u>Winter, Jones, Sullivan, FDIC, Sea-Air, Kedzie</u>
7/15/03	Tuesday	120 - 135	<u>Virginia, Herzog, Ward, Floor, Chemical</u>
7/17/03	Thursday	136 - 148	<u>London, Messing, Makel, Norton, Galyen, Mundaca, Nichols</u>
ARTICLE 4			
7/22/03	Tuesday	149 - 164	<u>Twin City, Walter, Parr, Canty</u>
7/24/03	Thursday	165 - 185	<u>Rock Island, First National, Gordon</u>
7/29/03	Tuesday	186 - 214	<u>Leeds, Price, Decibel, Hutzler, The Bank, Falk</u>
7/31/03	Thursday	Final Exam	

Professor Sullivan
UCC Articles 3 & 4
Final Examination - Fall 1998

QUESTION ONE

Sam Smart, Senior Vice President of Lending at Easy Bank wants to sell some of the bank's less desirable assets. Accordingly, he faxes a copy of the following promissory note to you to ascertain your view as to the note's negotiability. He wants a firm opinion that the instrument is negotiable. What do you advise?

Sullivan Corporation
Worcester, Mass.
Due: January 2, 2005

For value received, Sullivan Corporation, a Massachusetts Corporation ("corporation"), promises to pay Andy Romero, or registered assigns, on January 2, 2005, the principal sum of \$100,000 in lawful money of the United States of America. The Corporation further promises to pay interest on the principal sum of \$100,000 in lawful money of the United States of America. Interest will be paid semi-annually on July 2 and January 2 of each year after January 2, 1996, until the principal sum hereof has been paid or provision for its payment has been made.

The principal of this note will be payable at the principal office of the Corporation (or at whatever other place may be designated in writing by the Corporation from time to time) upon the presentation and surrender hereof.

IN WITNESS WHEREOF, the Corporation has caused this note to be signed by its duly authorized officers on January 2, 1996.

QUESTION TWO

This morning you meet with a new client named Tim Gunner. Tim operates a pool hall in Lawrence, Massachusetts. He has recently opened a check-cashing business alongside of each of his pool halls. The check-cashing business operates as Tim's Kash Service ("TKS"). The business appears successful; Tim is cashing about 300 checks a day.

Tim tells you that his practice includes requiring the customers to sign the reverse of the check. The clerk checks to make certain that the signature matches the name of the payee on the front of the check. The clerk will then examine the driver's licence to ensure that the signer is in fact the payee. Finally, the clerk stamps the top end of the reverse of each check, just below the signature by the customer. The clerk uses a rubber stamp that reads "Tim's Kash Services." (See next page.)

/s/ Paul Payee

Tim's Kash Service

Tim wants to know what you think of his procedures and if they expose him to any risks. What do you advise?

QUESTION THREE

The Senior Operations Officer at Busy Bank calls you because the bank paid a check over a written stop-payment order. The check was written by Donna Fool and payable to Sandra Short in the amount of \$3,500 apparently for a Knitting Machine. Donna decided she did not want the machine because it was larger than she understood. The machine was too big for the space in her den. Donna immediately went to the bank and filled out the bank's stop-payment order, identifying the account number, as well as the number, amount and date of the check. Unfortunately, a clerk entered the information incorrectly into the bank's computer. As a result, the check came in and was paid the next day by the bank. Donna is furious and insists the bank re-credit.

The bank wants to know if it must re-credit and if they will be out the money. What do you advise?

QUESTION FOUR

The Plaintiffs, A&B Contractors, Inc., and Massachusetts Siding Construction Company, appeal from a summary judgment in favor of the defendant, Sullivan Bank. A&B and Mass. Siding ("Plaintiffs") brought this action for damages against Sullivan Bank, Marty Givens, and Sundry fictitiously named defendants, alleging conversion and negligence, all in connection with the action of Sullivan Bank in cashing, or accepting for deposit, payroll checks on which Givens forged the endorsements of the payees . . .

A&B and Massachusetts Siding are construction and general contracting companies. They share the same office in Andover, Mass. Givens was an employee of both corporations and performed various administrative duties for them.

A&B and Mass. Siding perform construction work at job sites throughout the Northeast. On Wednesday morning of each week, the foreman at each job site telephoned Givens and gave him the names of the employees working on the job site and the number of hours they have worked. Givens thus conveyed this information to Automatic Data Processing ("ADP"), whose offices were in Detroit, Michigan. Under a contract with A&B and Mass. Siding, ADP sent the checks to an officer of A&B and Mass. Siding in Andover, Mass. for authorized signatures. Givens was not an authorized signatory. After the checks were signed, Givens sent the checks to the jobsite foreman for delivery to the employees.

In 1995, Givens began conveying false information to ADP about employees and hours worked. On the basis of this false information, ADP prepared payroll checks payable to persons

who were actual employees but had not worked the hours Givens had indicated.

After obtaining authorized signatures from officers of A&B and Mass. Siding, Givens intercepted the checks, forged the indorsement of the payees, and either cashed the checks at Sullivan Bank or deposited them into his account at Sullivan Bank, after presenting numerous checks at one time. Givens continued this practice for almost a year, forging over 100 endorsements, until Debra Smart, V.P. of A&B discovered the embezzlement after noticing payroll checks payable to employees who had not recently performed services for the corporations. What result on appeal?

Scoring:

Multiple Choice - 1 point (total 13 points)

Question 1 - worth 30 points

Question 2 - worth 16 points

Professor Sullivan

Article 3 and 4 Examination

Fall 1999

QUESTION ONE

Sally Smart operates a small women's boutique. Her business processes a large number of incoming checks (for items that she has shipped to customers all over the country) and outgoing checks (paying for supplies, material, payroll). She has never had any losses from theft, but is worried about the possibility. She tells you she has a lot of customers and workers in and out of her boutique. Because she has only a single very large room that operates as the boutique, it is hard to keep her checkbook and blank checks completely inaccessible. Smart wants to know what she needs to do to be sure she's not stuck with any losses. Consider the following possible scenarios and decide whether Smart would have any liability in any of those scenarios. If so, what should she do to limit that liability.

- A. Gussie Fink, an employee who packages outgoing shipments picks up one of Smart's blank checks, makes it out to himself, and forges Smart's signature as drawer. Gussie then indorses the check and deposits it in his bank. After withdrawing the funds from his account, Gussie then disappears.
- B. Stiffy Byng comes to Smart's office and claims to be Madeline Bassett, a supplier to whom Smart owes money (whom Smart had not met). Smart issues a check to Madeline Bassett and gives it to Stiffy, who indorses the check in Madeline's name, cashes it, and then departs with the money for the Island of Man.
- C. Would your answer to B (above) change if Stiffy doesn't claim to be Madeline herself, but only an employee of Madeline's sent to pick up the check?
- D. Same facts as question A, but instead of writing the check to himself, Gussie writes a check to Madeline Bassett, intending to give the check to Gussie's friend Harold Stinker-Pinker. After Gussie gives the check to Pinker, Pinker forges Bassett's indorsement and cashes the check..
- E. Some facts as question D, but Gussie is the person in Smart's office responsible for issuing checks.
- F. Gussie is also responsible for depositing incoming checks. In that capacity, Gussie forges Smart's indorsement on an incoming check payable to Smart and deposits the check into Gussie's account.

QUESTION TWO

Betty Banker calls you to inquire about a package of promissory notes her bank wants to acquire. None of the notes mature during the next five years, but in each of them the borrower has missed one or more of the recent scheduled monthly payments. The seller of the notes has not yet accelerated the dates of maturity of the notes or otherwise responded to the defaults. The bank plans to acquire the package of notes on a deeply discounted purchase price, reflecting the fact that the notes currently are in default. Betty says that she does not need you to examine the notes to determine whether they are negotiable in form, that the seller of the notes is the current holder of the notes, and that Betty obtains proper indorsement in connection with the purchase. She wants you to tell her whether the bank's knowledge that the borrowers have missed payment will prevent the bank from becoming a holder in due course of the notes. She tells you the notes have two different types of payment schedules. Some call for a series of amortizing monthly payments (part interest and part principal), while others call for monthly payments of interest only, with the entire principal due in a single "balloon" payment on the dates of maturity. What do you tell her?

Professor Sullivan
Final Examination
Article 3 and 4
Summer 2000

Question One

The Easy Bank was the assignee from Roger Bean of a promissory note and purchase money mortgage executed and delivered by the appellant. The note executed April 28, 1999 contains the following stipulation:

“The note with interest is secured by a mortgage on real estate, of even date herewith, made by the maker hereof in favor of the said payee, and shall be construed and enforced according to the law of the State of Massachusetts. The terms of said mortgage are by this reference made a part hereof”.

Roger Bean assigned the promissory note and mortgage in question to the Easy Bank to secure their own note. Easy Bank sued defendant alleging or default on the note. Defendant answered with a defense of failure of consideration on the part of Roger Bean.

What result? Fully support your answer.

Question Two

- A. Dawn draws a check to the order of Denise Lowe the check is delivered to Denise Lowe. Is Denise Lowe a holder?
- B. Denise Lowe signs her name on the back of the check “Denise Lowe” and hands over the check to Millie Fay. Is Millie Fay a holder?
- C. Without signing her name to the above check, Millie Fay hands over the check to Polly Hayes. Is Hayes a holder?
- D. A check payable to Denise Lowe and not yet indorsed by her is stolen by Sam Snitch. Snitch signs Lowe’s name on the back of the check and takes it to Victory Supermarket, where in front of the cashier, he signs his own name and gives the check to Victory. Is Victory a holder?
- E. On the facts of Problem D, suppose Victory indorses the check and transfers it to Fanny Florist. Is Fanny Florist a holder?

Question Three

The check in question was drawn on an account in Sullivan National Bank (“SNB”) in the name of Boutique, Inc. Check forms furnished by SNB to Boutique Inc. Were stolen and one of these forms was filled in with the amount of \$8,000.00 payable to the order of “Boutique Inc. #3.”

This name was fictitious, since no "Boutique Inc. #3" existed. The signature of D.M. Smith, president of Boutique Inc., was forged to the check in a credible likeness of the signature of that officer on file with SNB. The forged check was endorsed "Boutique Inc. #3 For Deposit Only, Account No. (Op12755) Randa Cousin," and was deposited in an account opened under that number in the name of "Boutique Inc. No. 3" in Hanover Bank. Hanover credited this account with the \$8,000, endorsed the check "Pay Any Bank P.E.G.," which in banking parlance means "prior endorsements guaranteed and forwarded it for collection through banking channels to SNB, which ran the check through its computer and in accordance with its practice, compared the signature with the signatures of D.M. Smith on file, failed to discover the forgery and paid Haran for the check.

About 16 days later, Hanover advised SNB the \$8,000 check was forged, and that it intended to make a claim. What result? Fully support your answer.

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