

**University of Utah
College of Law
Examination Cover Sheet**

Student Examination Number: _____

Payment Systems / Professor Debora Threedy
May 7, 2002 Spring Semester 2002
Time Allowed: 4 HOURS

General Examination Instructions:

1. Print your Examination Number, the title of the course and the instructor's name on the front of every bluebook used.
2. Number each bluebook (1 of 2, 2 of 2) and place all bluebooks and examination questions inside the first-numbered bluebook.
3. Students must submit the examination questions with the answers.
4. Students who are typing must use the yellow paper provided.
5. Students may not take any bluebooks or scratch paper from the examination room, whether blank or used.

Special Examination Instructions:

* This exam is designed as a two hour exam even though you have four hours in which to take it.

* The exam consists of two parts: Part I consists of 10 short answer questions. Part II consists of a single issue-spotting essay question. Each Part is worth 50% of the grade.

* Because I will grade the exam in two separate steps, please answer Part I, Questions 1 through 10, in the space provided (and ONLY in the space provided) on the exam itself. Please answer Part II separately, in bluebooks or, for typists, on separate pages.

* PAGE LIMITATION FOR Part II: Twelve (12) bluebook pages (or one and a half bluebooks), writing ONLY on ONE SIDE of each page and ONLY on EVERY OTHER LINE. Typists and those using computers may use five pages, double spaced, with no more than 12 characters to an inch and standard margins all around.

* This is an open book exam.

Special Examination Instructions for Part I:

*The answers to the questions in Part I have three parts:

1. The bottom line: Circle the Yes/No or T/F, or fill in the blank.
2. The reasoning: Explain your answer after the "Because" as briefly and concisely as possible, using only the space allotted. You do not need to answer in complete sentences.
3. The authority: Cite the relevant section or sections of the UCC or other statutory source. Identify the section as precisely as possible; if the answer is in a subsection, cite the subsection.

* In some questions, there will be a subpart A and B to the question, using the same fact pattern.

*The notation "/s/" indicates that the following name is a signature.

GOOD LUCK!

PART I

1. On May 1st, Ima Miser received a \$300 dividend check payable to herself. She gave the check to her ne'er-do-well nephew, Atticus Grinch, and asked him to deposit it in her bank account at Texas Bank. She indorsed the check as follows:

For Deposit Only Account No. 77664
/s/ Ima Miser

Instead, Atticus deposited the check in his own bank account at Texas Bank, No. 77466. Texas Bank forwarded the check to First National Bank, the payor bank, which paid the check. A week later, Atticus withdrew the \$300 and spent it at the dog races.

Did First National do anything wrong?

(Circle one) Yes No

Because:

Relevant code section(s):

2. On May 6th, Alice writes a check in the amount of \$100 to Brenda as payment for goods purchased. Brenda and Carl then enter into a contract; in June Carl is to paint Brenda's porch for \$200. Brenda indorses the check to Carl as a down payment. Carl takes without any knowledge of any defects in the goods sold by Brenda. Carl then indorses the check over to his mother as a Mother's Day gift. When his mother attempts to cash the check the next day, it is dishonored as Alice stopped payment due to defects in the goods.

Does the mother have the rights of an HDC?

Yes No

Because:

Relevant code section(s):

3. Megalopolis Bank is located in New York. It is open to the public for carrying on substantially all of its banking functions five days a week. Its banking day ends at 4:00 pm. It is closed on weekends and holidays.

On Tuesday, May 7th, at approximately 10:00 am, Mary Cohen deposits \$2,000 in her bank account at Megalopolis. The deposit is made in person. The deposit is composed of the following items (on each of which Mary is named as payee):

\$900 check: tax refund from the IRS;

\$800 check: check from her insurance company drawn on an account at Fidelity Bank in New York;

\$300 check: graduation gift from her rich aunt in California.

(A) On Wednesday, May 8th, Mary can withdraw in cash the amount of _____.

Because:

Relevant code section(s)

(B) On Thursday, May 9th, she can withdraw in cash the amount of _____.

Because:

Relevant code section(s):

4. Dan issues a check to Paul Peddler as payment for a used car. Paul indorses the check over to Irene in payment of a debt. Irene knows nothing about the transaction between Dan or Paul or about the condition of the car. Irene then indorses the check over to her daughter, Helen, as a birthday gift. Helen deposits the check in her bank account. Dan stops payment on the check because the car is defective and the payor bank dishonors the check.

A) Because Dan has a defense to payment of the check, did Irene breach a transfer warranty when she negotiated the check to Helen?

Yes No

Because:

Relevant code section(s):

B) Will Dan be able to assert the defense of failure of consideration against Helen?

Yes No

Because:

Relevant code section(s):

5. Alex purchases a second hand sofa at a yard sale and gives the seller, Barbara, a personal check in payment. Thief steals the check from Barbara, writes "Pay to Mr. T" (Mr. T is an alias used by the Thief) on the back of the check and forges Barbara's name. The Thief then gives the check to Charles (who knows the Thief as Mr. T) in repayment of a loan. Charles has no knowledge that the person he knows as Mr. T is in fact a thief and a forger. Thief indorses the check as follows: "Pay to Charles /s/ Mr. T." Charles indorses the check and deposits it at his bank. His bank presents the check for payment to the drawee bank, and it is honored.

A) Assuming Thief has disappeared, who will bear the ultimate loss? _____

Because:

Relevant code section(s):

B) Alex demands that his account be recredited and Barbara sues the drawee bank for conversion: Can they both prevail?

Yes

No

Because:

Relevant code section(s):

6. Marc Gutierre, a foreign student attending the University of Utah, borrows \$2,000 from his grandmother, Isabelle Gutierre. He signs the following note today:

I, Marc Gutierre, promise to pay Isabelle Gutierre, in French francs, an amount equivalent to \$2,000 on January 7, 2003, plus eight months interest. Interest shall accrue at the New York prime rate or 5%, whichever is highest. If I choose, I may extend the due date of the principal for a second term of eight months, although interest will continue to accrue. I waive presentment, dishonor, and notice of dishonor.

/s/ Marc Gutierre

Is this a negotiable instrument?

Yes

No

Because:

Relevant code section(s):

7. Miss Creant steals Ann Miller's checkbook and identification, and then used one of the blank checks to pay for goods purchased from Merchant, who knows nothing of the wrongdoing. Merchant deposits the check into its account. Depository Bank forwards the check to Payor Bank, which honors the check.

Assuming Miss Creant has skipped the jurisdiction, who will bear the loss? _____

Because:

Relevant code section(s):

8. CrainCorp (“CC”) operates a veterinary clinic. Matt Crain is the president of CC with authority to enter into contracts on behalf of the corporation. CC borrows \$50,000 from Seattle Bank. At the insistence of the Bank, Matt persuades his father, John Crain, to sign the note as well.

The signatures on the note appears as follows:

Crain Corp (typed)
By /s/Matt Crain
President

/s/Matt Crain
Guarantor

/s/John Crain
Guarantor for collection only.

The note was due on March 15, 2002. On that date, without consulting his father, Matt negotiated an extension of the repayment date until June 15, 2002, to take advantage of a tax refund coming to the clinic. On March 15, 2002, the clinic had physical assets valued in excess of \$50,000, but only \$10,000 in cash. On June 11, 2002, the clinic’s accountant informs Matt that there was an error made, and the clinic owes the IRS \$10,000. On June 12, 2002, the clinic is mistakenly firebombed by a radical animal rights’ group that thought animal experiments were occurring there, and it turns out the insurance had lapsed. On June 15, 2002, the physical assets are totally destroyed, the bank account is overdrawn, and the note goes into default.

Without considering ability to pay, who, and in what order, will be liable to the bank on the note?

Because:

Relevant code section(s):

9. In the following problem, both banks end their banking day at 2:00 pm and neither are open for business on Saturday or Sunday.

Drawer writes a check for \$10,000 to Payee, who deposits it in Bank of Salt Lake (“BSL”) on Monday. BSL presents the check to the payor bank, Utah State Bank (“USB”), on Tuesday at 4:00 pm. Wednesday is a national holiday. On Thursday, USB determines that Drawer’s account is overdrawn, but because Drawer is a very good customer, USB contacts Drawer before dishonoring the check, and Drawer promises to come in to the bank Friday with a deposit. Despite several phone calls during the day on Friday, Drawer fails to come in with the promised deposit. On Monday morning at 10:00 am, the vice president of USB hops into her car and drives across town to return the check and notice of dishonor to BSL.

Has USB finally paid the check?

Yes No

Because:

Relevant code section(s):

10. Anna Belle, a wealthy art patron, attends the opening of a new gallery and falls in love with a painting. The gallery owner, being well acquainted with her, suggested she take the painting home for a few days. A few days later, Anna Belle calls the gallery owner and tells him that she has decided to keep the painting. She offers to mail him the \$3,800, but the gallery owner says he will send someone to pick it up.

Later that day, a young man rings her door, tells her that he is Jason from the art gallery, and that he has come to pick up the check. Anna Belle gives him the check, payable to Art Mode, the name of the gallery. Still later that day, the gallery owner appears at her door “to pick up the check.” Immediately suspecting she’s been scammed, Anna Belle calls her bank and puts a stop payment order on the check.

Meanwhile, the bogus messenger signed the back of the check “Arthur Mode” and cashed it at a currency exchange. The currency exchange deposits the check which is in due course dishonored, due to the stop payment order.

Who will bear the ultimate loss? _____

Because:

Relevant code section(s):

PART II

Bob Buyer, an Olympic visitor from Philadelphia, purchases a rare first edition from Sam Seller in Salt Lake on February 17th and pays with a check payable to him. The next day, Seller indorses the back of the check “Pay to Convenient Credit” and mails the check to his financier, Convenient Credit, as his monthly repayment on a loan.

The secretary for the manager of Convenient Credit, Sue Suspect, as part of her job, opens the mail and sorts it into three piles: bills, checks, and everything else. With regard to the bills and checks, she makes a photocopy of each and gives the originals to the accountant, who will pay the bills and balance the accounts. She gives the photocopies, plus everything else, to her boss, the manager. She also fills out a bank deposit slip for the checks, but the checks will not be deposited until after the accountant is done posting them in the company ledgers and has indorsed them with the company “For Deposit” stamp. The secretary has no authority to sign on behalf of the company. The checks and deposit slip are physically taken to the bank by any one of the three – the manager, the secretary or the accountant – depending on convenience.

When the check arrives from Sam Seller, the secretary slips it into her purse instead of photocopying it and delivering it to the accountant. Later, she signs the back of the check “Convenient Credit, by /s/Terry Treasurer.” She takes it to a currency exchange and cashes it. The clerk at the currency exchange asks her why she has a check payable to Convenient Credit. She tells him that is her employer and they need some petty cash. The clerk makes her indorse the back of the check and asks for identification. She indorses the check in a fake name and produces some fake i.d.

The currency exchange indorses the check and deposits it with its depository bank on Tuesday at 6:00 pm. The depository bank forwards the check for collection to an intermediary collecting bank Wednesday at 3:00 pm. The same day the intermediary bank forwards the check to the payor bank, but the air cargo plane crashes on its way to Philadelphia. The mail bag is eventually recovered intact from the crash site and the check finally arrives at the payor bank on April 1st. The payor bank honors the check.

In mid-March, when Convenient Credit sends an overdue notice to Sam Seller, he informs them that he sent his payment in on February 18th. After some increasingly irate conversations between Seller and the manager of Convenient Credit, Seller contacts Bob Buyer (whose name and address he had added to his mailing list) to find out if the check had been paid. On April 5th, Buyer informs Seller that the check was paid and sends him copies of the front and back of the check.

Who will bear the ultimate loss? In your answer, be sure to discuss all possible sources of liability: on the underlying obligation; on the instrument; warranty; and negligence or fault-based liability. For each claim, specify who has a legal claim against whom, and the basis for each claim. Please remember the page limitations.

CONGRATULATIONS!

You have finished the exam. Best of luck wherever your future career takes you.