

FINAL EXAMINATION  
COMMERCIAL PAPER  
PROFESSOR G. FLINT

ESSAY  
PLEASE READ CAREFULLY

**ALL ANSWERS ARE TO BE WRITTEN ON THE BLUE BOOKS PROVIDED WITH THIS EXAM. BE SURE TO NUMBER EACH RESPONSE.**

There are three questions (time and percent indicated). The time for completing the examination is three hours.

1. This examination is "open book". You may use your casebook, statutory supplement, and class notes. Use of cell-phones, calculators and laptops and other electronic devices is not permitted.
2. **Be sure to answer the specific question that is asked. No question asks for a general recitation about a topic from you notes.** Information supplied relating to general material from your notes or some unasked question will not increase your score and consumes you time needed to answer the asked questions.
3. If additional facts are necessary to resolve an issue, specify what additional facts you believe to be necessary and why they are significant. You may not make an assumption that changes or contradicts the stated facts.
4. Quality, not quantity, is desired. Think through and briefly outline your answer before you begin to write.
5. Write legibly. Be sure to formulate your answers in complete sentences and paragraphs with proper grammar. Failure to do so will result in an appropriately lower score.
6. Do not seek an interpretation of language in the question from anyone. If you sense ambiguity or typographical error, correct the shortcoming by shaping the question in a reasonable way and by recording your editorial correction in your answer.

**Under the Honor Code, when you turn in this examination, you affirm that you have neither given, received, nor obtained aid in connection with this examination, nor have you known of any one so doing. If you cannot make this affirmation, you shall note such fact on your examination and must immediately advise the Dean of the reason therefore.**

I. (25%--1/2 hour)

The state securities act provides that it is unlawful to sell any security unless registered or exempt from registration. Davis Flint, a local investment advisor, sold securities without registering them under the state securities act. The securities that Davis Flint sold to nine of his investing clients contained the following language:

“September 15, 2006. This principal sum of \$5000 is invested in the Davis Flint Investment Co. at the rate of ten (10 %) per cent per six month period, interest payable each month on the principal amount of \$5000, due September 1, 2007.”

Davis Flint signed each of these nine writings. The state securities commissioner became apprised of these sales and charged Davis Flint with the criminal offense of knowingly violating the state securities act. The trial court found Davis Flint guilty and sentenced him to two years in prison.

Davis Flint and his trial attorney, John Hartt, have entered your associate’s office at The Silk Stocking Law Firm, P.C., to prepare the appeal. One point of error preserved by John Hartt at trial was that the state securities act states that negotiable commercial paper evidencing an obligation to repay within one year of the date of issuance is not a security as provided in the state securities act. Prepare the appeal. Be sure to include your support.

II. (25 %--1/2 hour)

The City of San Antonio has had financial problems for several years. In order to raise cash, the city has decided to sell some park land. The city solicits sealed bids. Each bid must be accompanied by a certified check. The winner’s check will be presented to the certifying bank, the other checks will be returned. Otha Gasaway sends a check duly certified by George Christian State Bank to the city. George Christian State Bank certifies checks by naming their client, Otha Gasaway, as payee. So Otha Gasaway endorsed the certified check by signing it and adding the words “payable to the City of San Antonio.” Otha Gasaway’s bid is the high bid and is accepted by the city. On the way to the George Christian State Bank, the mayor of the city loses the check. The following day, the city asks Otha Gasaway for another check.

Otha Gasaway has entered your associate’s office at The Blue Blood Law Firm LLP. Otha Gasaway wants to know whether he needs to comply with the city’s request. What is your advice? Be sure to include your support.

III. (50 %--1 hour)

Garrett Voshell bought a hybrid vehicle, guaranteed to make 40 miles per gallon, from James Madison Rogers Motor Car Company. Garret Voshell paid for the vehicle with check no. 1059 drawn on the Franz Josef Stainer State Bank in the amount of \$40,000 payable to James Madison Rogers Motor Car Company. James Madison Rogers endorsed the check by signing "James Madison Rogers Motor Car Company by James Madison Rogers, President". Before James Madison Rogers could take the check to his bank, he misplaced the check. Days later, Chauncy Smith Hubbell, the night custodian for James Madison Rogers Motor Car Company, found the check on the floor. In desperate straights to pay his expenses, Chauncy Smith Hubbell took the check home with him. Meanwhile, Garrett Voshell has discovered that the hybrid vehicle only gets 30 miles per gallon and is preparing to sue James Madison Rogers Motor Car Company for breach of warranty. But Garrett Voshell notes that his check has not cleared at the Franz Josef Stainer State Bank yet. So Garrett Voshell signs a stop order for check no. 1059 with payee James Madison Rogers Motor Car Company and amount of \$40,000. By this time Chauncy Smith Hubbell has determined that he can sell the check. Chauncy Smith Hubbell sells the check to Moses Smith for \$39,000 who promptly writes on the check "payable to Moses Smith". Moses Smith deposits the check, endorsing it with "Moses Smith, for deposit only" at the Francis Burpee National Bank. Francis Burpee National Bank conditionally credits Moses Smith's account with \$40,000 and presents the check to the Franz Josef Stainer State Bank. Franz Josef Stainer State Bank pays the check and debits Garrett Voshell's account at the Franz Josef Stainer State Bank. Francis Burpee National Bank releases the moneys deposited in Moses Smith's account to Moses Smith. When Garrett Voshell reads his monthly statement from Franz Josef Stainer State Bank, he notices check no. 1059 has been paid despite his stop order. Garrett Voshell calls up Franz Josef Stainer, president of Franz Josef Stainer State Bank, points out the payment contra his stop order, and suggests a lawsuit unless his account is recredited with the \$40,000. Meanwhile, James Madison Rogers, through his discussions with Garrett Voshell in attempting to settle their disagreement on the warranty, has learned that Franz Josef Stainer State Bank has the check and is seeking to recover it.

Franz Josef Stainer has entered your associate's office at Stickem and Grabbem, P.C. for advice on what the Franz Josef Stainer State Bank ought to do in this situation. What is your advice? Be sure to provide support.