

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 laptops is 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. (50%--1 1/2 hour)

On September 1, 2008, Davis Flint purchased a used vehicle from Arunah Hubbell Used Cars, Inc., by signing an installment purchase agreement under which Davis Flint agreed to pay \$500 on the 10th of each month for six months commencing on October 10, 2008, to Arunah Hubbell Used Cars, Inc. The installment purchase agreement has a provision at the bottom of the one-page contract that says "NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVER HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER." The installment purchase agreement also (1) grants a security interest in the used vehicle to Arunah Hubbell Used Cars, Inc., to insure that Davis Flint makes the monthly payments and (2) contains an acceleration clause exercisable upon default in any payment under the installment purchase agreement.

In order to raise capital to acquire additional used vehicles, on September 5, 2008, Arunah Hubbell Used Cars, Inc., borrowed money from Benjamin Rockwell Finance Co. by signing a promissory note in the amount of \$1600 and granting a security interest in the installment purchase agreement signed by Davis Flint. In order to perfect its security interest, Benjamin Rockwell Finance Co. required that Arunah Hubbell Used Cars, Inc., sign the back side of the installment agreement and deliver possession of the installment agreement. Arunah Hubbell Used Cars, Inc., so did and added the words "without recourse" under its signature. The security agreement allows Benjamin Rockwell Finance Co. to foreclose on the Davis Flint installment agreement and sell it in a public or private sale only upon the event of default of Arunah Hubbell Used Cars, Inc., on its \$1600 promissory note.

On September 10, 2008, Benjamin Rockwell Finance Co. in order to enhance the value of the Davis Flint installment purchase agreement shaved off the provision concerning debtor defenses in such a manner as could not easily be detected and assigned the Davis Flint installment purchase agreement to Joseph Irwin Bank for \$2650 by delivering the Davis Flint installment purchase agreement to Joseph Irwin Bank.

On October 1, 2008, Joseph Irwin Bank failed and the federal government became the receiver of the assets and liabilities of Joseph Irwin Bank. The federal government arranged for Francis Burpee Bank to take over all the assets and liabilities of Joseph Irwin Bank. Francis Burpee Bank sent a notice to Davis Flint that it now held his installment purchase agreement and Davis Flint was to make all future payments to Francis Burpee Bank.

Meanwhile, Davis Flint has become dissatisfied with the purchased used vehicle, since the engine did not function after the second day of Davis Flint's possession of the used vehicle. Consequently, Davis Flint made no payments on the installment purchase agreement and abandoned the used vehicle, which was vandalized to the extent of leaving

nothing of value. Receiving no payments from Davis Flint, Francis Burpee Bank has sent a demand letter to Davis Flint exercising its right to accelerate the entire amount due and demanding full payment of \$3000 from Davis Flint immediately. Davis Flint refuses to comply with Francis Burpee Bank's demand and tells Francis Burpee Bank that they can take the remains of the used vehicle lying before his house.

Francis Burpee, President of Francis Burpee Bank has entered your associate's office at Suem & Stickem, P.C. Francis Burpee relates the above facts, which his investigations have revealed. Francis Burpee wants to know how Francis Burpee Bank can recover on the Davis Flint installment purchase contract. What is your advice and its reasoning. Be sure to provide your support.

II. (25 %--3/4 hour)

Nicholas Peltier's daughter takes tennis lessons from Sophia DuBois. Nicholas Peltier pays for these lessons once a quarter by writing a check for \$300, payable to Sophia DuBois. Sophia DuBois has a bad habit of losing checks, usually through placing them in her pocket, then forgetting about the check, and washing the garment, thereby destroying the check. This has happened twice before with Nicholas Peltier's checks. When it happens, Nicholas Peltier writes another check.

On November 1, 2008, Sophia DuBois notifies Nicholas Peltier that she can't find the check Nicholas Peltier wrote September 30, 2008, for the quarter then ending. She assumes that it is either lost or destroyed as washed in her laundry as before. Following his normal procedure Nicholas Peltier writes a replacement check and delivers it to Sophia DuBois.

On November 4, 2008, Nicholas Peltier receives his most recent bank statement from George Lee State Bank. Upon examining the statement, Nicholas Peltier notices that the check he wrote Sophia DuBois on September 30, 2008, has cleared and been deducted from his account. Nicholas Peltier obtains a copy of the check from George Lee State Bank and notices that the check has no endorsement of Sophia DuBois on the obverse of the check. Nicholas Peltier contacts Sophia DuBois and she indicates to him that she neither received cash for the check nor had it credited to her account at her bank, Joseph Ferguson National Bank.

Nicholas Peltier is worried that his account will soon have a second \$300 payment subtracted, which will place Nicholas Peltier in a position that some of the checks he recently wrote bounce. Nicholas Peltier has entered your associate's office at the Silk Stocking Law Firm, P.C. Nicholas Peltier wants to know what he needs to do to avoid the impending inconvenience. What is your advice and its reasoning. Be sure to provide your support.

III. (50 %--1 hour)

Otha Gasaway Manufacturing Co. received a bill from Garrett Voshell Supply Co. for \$100,000. On September 3, 2008, Otha Gasaway Manufacturing Co. instructed George Christian State Bank to wire \$100,000 on September 18, 2008, to Franz Josef Stainer National Bank for the account of Garrett Voshell Supply Co. On September 5, 2008, George Christian State Bank wires \$100,000 to Franz Josef Stainer National Bank for Garrett Voshell Supply Co. and debits Otha Gasaway Manufacturing Co.'s account at George Christian State Bank by \$100,000.

On September 10, 2008, Otha Gasaway Manufacturing Co. determined that Otha Gasaway Manufacturing Co. had previously paid Garrett Voshell Supply Co. \$75,000. So Otha Gasaway Manufacturing Co. notified George Christian State Bank and cancelled the order to wire \$100,000.

George Christian, president of George Christian State Bank, has entered your general counsel office at George Christian State Bank, seeking advice concerning the liability of George Christian State Bank in this situation. In particular, George Christian wants to know whether they need to recredit Otha Gasaway Manufacturing Co.'s account, and if so, how to recover the moneys sent to Franz Josef Stainer National Bank. What is your advice and reasoning. Be sure to include your support.