

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 calculators and cleansed 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)

Ananias Carll, President of Ananias Carll Corporation, purchases cars from Davis Flint Incorporated in massive quantities. Ananias Carll typically pays after receiving a statement from Davis Flint Incorporated at each month's end. During the month of December 2010 Ananias Carll Corporation purchased \$100,000 worth of cars from Davis Flint Incorporated.

For the month of January 2011 Davis Flint Incorporated was desperate for money to replace car inventory, so Davis Flint, President of Davis Flint Incorporated, prepared a document (hereinafter the Ananias Carll evidence of indebtedness stating: "I hereby order Ananias Carll Corporation to pay \$100000 owed to Davis Flint Incorporated to John Hartt National Bank on or after February 15, 2011. Signed Davis Flint Incorporated by //Davis Flint, President." Davis Flint took the Ananias Carll evidence of indebtedness to John Hartt National Bank to discount the Ananias Carll evidence of indebtedness at the John Hartt National Bank. Before purchasing the Ananias Carll evidence of indebtedness John Hartt, President of John Hartt National Bank, called by telephone Ananias Carll. Ananias Carll said the Ananias Carll evidence of indebtedness was good and Ananias Carll Corporation would honor it.

In February 2011 John Hartt National Bank merged into Christina Reade State Bank. In order to increase his number of shares in Christina Reade State Bank, John Hartt added a "0" to amount to be paid on the Ananias Carll evidence of indebtedness. The articles of merger, filed with the Secretary of State, provide that Christina Reade State Bank succeeds to all assets, rights, and liabilities of John Hartt National Bank. The merger documents include a bill of sale transferring title of "all instruments" previously owned by John Hartt National Bank to Christina Reade State Bank.

Christina Reade State Bank generally only makes long term loans, so in March 2011 Christina Reade State Bank discounted the Ananias Carll evidence of indebtedness to Jonathan Holmes Bank. Christina Reade appended to the Ananias Carll evidence of indebtedness the following: "without recourse, John Hartt National Bank, by successor Christina Reade State Bank by //Christina Reade, President."

In April 2011 Jonathan Holmes, President of Jonathan Holmes Bank, met with Ananias Carll and requested that Ananias Carll Corporation pay the Ananias Carll evidence of indebtedness. Ananias Carll Corporation paid the \$1,000,000. The next day Ananias Carll called Davis Flint about why the amount was so much and whether it included future purchases. Davis Flint said he made the Ananias Carll evidence of indebtedness only in the amount of \$100,000 not \$1,000,000.

Ananias Carll has entered your associate's office at Suem & Stickem, P.C. Ananias Carll relates the above facts, which his investigations have revealed. Ananias Carll wants to know his options concerning recover of the excess paid on the Ananias Carll evidence of indebtedness. What is your advice and its reasoning. Be sure to provide your support. That response should include an explanation of the complete rights, claims and defenses of each party to the evidence of indebtedness, with relevant code sections and case law.

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

In 2009 Aaron Lynch, a bookkeeping employee for Otha Gasaway Construction Incorporated, desired a raise. So Aaron Lynch devised the following procedure. Each month Aaron Lynch uses an Otha Gasaway Construction check drawn on Andrew Melvin Bank and corporate signature stamp to issue a paycheck to an imaginary employee "Richard Turner" in the amount of \$5000. Andrew Melvin Bank's customer agreement with Otha Gasaway Construction Incorporated provides that Andrew Melvin Bank will recognize the stamp signature as the signature of Otha Gasaway Construction Incorporated. Aaron Lynch endorses each such check with "//Richard Turner" and cashes it at Joseph Moon Grocery Inc. Joseph Moon Grocery Inc. deposits the check in Draper Voshell State Bank which sends it to Andrew Melvin National Bank for payment. Andrew Melvin National Bank sends a statement to Otha Gasaway Construction Incorporated showing the charge against Otha Gasaway Construction Incorporated's account. Aaron Lynch is the Otha Gasaway Construction Incorporated employee that reviews the statement and files it.

This procedure continued until Otha Gasaway, president of Otha Gasaway Construction Incorporated decided to sell the business and uncovered Aaron Lynch's procedure. The buyer's auditors had inquired as to why paychecks were paid to "Richard Turner", but there was no Richard Turner on the employee lists. Otha Gasaway has entered your counsel's office at Readem & Weap, P.C. Otha Gasaway wants to know what the Otha Gasaway Construction Incorporated can do to recover the charges made to Otha Gasaway Construction Incorporated's account at Andrew Melvin National Bank. What is your advice and its reasoning. Be sure to provide your support.

III. (50 %--1 hour)

Franz Stainer National Bank and Samuel Hatton Incorporated have an agreement that electronic funds transfers orders will be authenticated by a security procedure complete with a complicated security code. George Christian, a computer whiz, managed to break the security code at Franz Stainer National Bank. George Christian next hacked into Samuel Hatton Incorporated's computer system and learned that Samuel Hatton Incorporated owed John Queen Corporation \$5,000,000. So George Christian opened a bank account at Francis Kubycek State Bank in the name of John Queen Corporation and indicated to Francis Kubycek State Bank that he expected a large payment by electronic transfer soon. George Christian then send an electronic message to Franz Stainer National Bank purportedly from Samuel Hatton Incorporated and with the proper security codes to wire \$5,000,000 to the account of John Queen Corporation at Francis Kubycek State Bank. On the day specified in the electronic message, Franz Stainer National Bank send electronically \$5,000,000 through the Federal Reserve Sytem to Francis Kubycek State Bank. After the payment arrived George Christian withdrew the \$5,000,000, closed out the account, and absconded. Three months later, John Queen Corporation sends a bill to Samuel Hatton Incorporated for \$5,000,000. Samuel Hatton Incorporated now learns of the fraudulent wire transfer and notifies Franz Stainer National Bank. Samuel Hatton, president of Samuel Hatton Incorporated, has entered your associate's office at The Blue Stocking Law Firm, P.C. Samuel Hatton wants to know what are the chances of Samuel Hatton Incorporated recovering its \$5,000,000. Provide your response and its support. That response should include an explanation of the complete rights, claims and defense of each party with relevant code sections and case law.