

**PAST FINAL EXAMINATIONS IN
COMMERCIAL PAPER--PAYMENT SYSTEMS (Course No. 6282)**

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This document contains copies of the examinations that I gave in Course No. 6282, Commercial Paper--Payment Systems, on the following dates:

Apr. 22, 2020	May 4, 2006	May 13, 1999
Dec. 12, 2012	Dec. 16, 2004	Dec. 18, 1997
Dec. 14, 2011	Dec. 18, 2003	Dec. 19, 1996
Dec. 15, 2010	Dec. 19, 2002	Dec. 19, 1995
Dec. 13, 2007	Dec. 19, 2000	Dec. 15, 1994
Dec. 14, 2006	Dec. 16, 1999	

Please note: A separate document available on my website contains copies of the examinations that I gave in Course No. 6281, Secured Transactions & Commercial Paper. Problems I, II, and III of those examinations concern Commercial Paper.

Please excuse any formatting errors. The examination files have been converted from different formats several times. Some of the formatting of the older exams may not be the same as it originally was, but the content has not changed.

Take-Home Final Examination In
COMMERCIAL PAPER--PAYMENT SYSTEMS

(Course No. 6282-20; 2 credits)

Professorial Lecturer Gregory E. Maggs

Instructions:

1. Time. You have 24 hours to complete this examination, but you should be able to complete it in about 2 hours.
2. Word Limit. Your answers may not exceed a total of 3000 words.
3. Points. The examination consists of 4 problems worth a total of 120 points. Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.
4. Use of Outside Materials. This is an open-book examination. In completing the examination, you may use any materials.
5. Ambiguities. You should make reasonable assumptions about any facts not stated in the problems. If you find aspects of the problems ambiguous, describe the ambiguity in your answer, and explain why the ambiguity matters.
6. Applicable Law. Assume that the current official version of the Uniform Commercial Code applies in all problems, regardless of any dates or jurisdictions indicated.
7. Citations. You do not have to provide legal citations in explaining your answers. But most students will find it easier to explain their answers if they cite relevant provisions of the U.C.C. and other laws.
8. Suggestions. Draw a diagram of each transaction to avoid confusion. Write a brief answer to each question and then expand your answers as the time and the word limit permit.
9. Retention of the Examination. You may keep this copy of the examination at the end of the examination period.

Good luck!

PROBLEM I.

(30 points)

The following edited excerpt comes from a recent newspaper article, Richard Thompson, *Museum, Creditors to Meet to Resolve Issues*, Jul. 26, 2018:

A court hearing set for Thursday has been put on hold while officials with the long-troubled New Orleans African American Museum of Art, History and Culture seek to ward off a lawsuit over a \$1 million loan held by a group of New Orleans businessmen. The loan to the museum was made in 2016 by First NBC Bank, the New Orleans-based bank that failed in April 2017. The loan was backed by the museum's real estate.

In the aftermath of First NBC's collapse, federal banking regulators assumed control of nearly \$1 billion of its loans. Most of the loans were auctioned off to out-of-state investors. But with the museum's blessing, Cummings bought its [note] directly from the Federal Deposit Insurance Corp., even negotiating with the agency to knock off \$900,000 of additional debt in the process.

He said [that he] worked out a deal to take over the loan to keep it from being sold to an out-of-town buyer that probably would have seized and sold the museum property to recoup a profit.

After buying the note, Cummings said, the museum's board refused to work with his group, leaving it with no choice but to file the lawsuit. "We've tried everything that we know how to do," he said.

[Assume neither NBC Bank nor the FIDC indorsed the note. Note that the FIDC automatically was a holder in due course under federal law. See 3-302 cmt.5.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What must Cummings prove in order to enforce the note?
- B. Does the price that Cummings paid the FDIC for the note affect how much Cummings can recover from the museum?
- C. Is Cummings subject to any defenses the museum might have?
- D. Do the facts suggest any good choices that Cummings might have had other than bringing a lawsuit to enforce the note?

PROBLEM II.

(30 points)

The following edited excerpt comes from a recent newspaper article, Dolly Butz, *Sioux City Contractor Faces Multiple Felony Charges*, Sioux City J., Feb. 13, 2020:

A Sioux City contractor has been charged with a felony for taking more than \$11,000 from a client and then failing to do any work.

According to a criminal complaint filed in Woodbury County District Court, [Mr. T.R.] entered into an agreement to do repair work on a client's home following a 2017 summer hail storm. The client needed a roof, gutters, downspouts, siding and a broken window replaced. The total cost of the repair work was \$18,736.66. The complaint said the client provided a cashier's check for \$9,000 that was made out to [T.R.'s contracting company] and dated Nov. 30, 2017. He signed another [ordinary] check for \$2,245 dated June 20, 2018 and gave it to [T.R.]. The remaining balance was due upon completion of the contract work.

[T.R.] was to start on the repair work on July 27, 2018. That work was to be completed by Aug. 19, 2018. When [T.R.] failed to begin the work, the client attempted to contact [T.R.] via text message, but he only received excuses from [T.R.] as to why the work was not done, according to the complaint. At one point, the complaint said the client asked for his money back, which [T.R.] never paid.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Why might T.R. have wanted the client to pay him with a cashier's check, and why might the client have wanted to pay T.R. with an ordinary check?
- B. Suppose that instead of paying T.R. with checks, the client had signed a note promising to pay T.R. \$18,736.66 in installments, and T.R. had sold the note to a finance company. How might the client's position be different?
- C. If the checks were deposited and presented for payment but returned, what rights might the depository bank have against T.R., the client, and the payor banks?
- D. What advice would you give the client if the client lost the cashier's check before delivering it to T.R.?

PROBLEM III.

(30 points)

The following edited excerpt comes from a recent newspaper article, Megan Sheets & Emily Crane, "*The Thing Is, I'm Not Sorry*," Daily Mail Online, Jul. 22, 2019:

As [A.S.] prepares to spend the next four to 12 years in prison for swindling tens of thousands of dollars from banks and hotels to bankroll her lavish New York lifestyle, the fake German heiress says she would do it all over again.

[A.S.] defrauded financial institutions and Manhattan's social elite into believing she had an overseas fortune of about \$67 million that could cover her jet-setting lifestyle, high-end clothing and lavish hotel stays.

She also resorted to depositing bad checks and transferring funds out before they bounced--a process called check kiting. Between April 7 and April 11 in 2017, prosecutors said [A.S.] deposited \$160,000 in bad checks into her Citibank account and transferred \$70,000 before the checks could bounce. In August, prosecutors said [A.S.] opened a bank account with Signature Bank and deposited \$15,000 of bad checks into the account. She withdrew about \$8,200 in cash before the checks were returned.

Almost as quickly as [A.S.] was arrested, producers and screenwriters were clambering to secure the rights to her story.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. To what extent, if at all, were Citibank and Signature Bank required to give A.S. credit for the checks she deposited?
- B. What rights do Citibank and Signature Bank have against A.S.?
- C. Are there any circumstances in which Citibank and Signature Bank could recover from the banks that "bounced" the checks (i.e., returned the checks to Citibank and Signature Bank)?
- D. If the banks on which the checks were drawn had not returned the checks, what rights would those banks have?

PROBLEM IV.

(30 points)

The following edited excerpt comes from a recent newspaper article, *Man accused of Felony forgery*, York News, Apr. 7, 2020.

[At a convenience store that also sold gas] a vehicle pulled up to a pump and the driver got \$13.50 worth of gas. [T]he man purchased a number of products inside the store as well, with his total bill coming to \$45.31. [T]he man paid for the items and the gas with a check written out for \$71.81 and he was given \$26.50 in change. The check he presented was completely written out, except for the total. And the check was owned by a woman with an address in [another city].

Two days later, the same vehicle pulled into the gas area at that same business and the same man got \$12 worth of gas. He pre-paid \$40 for the fuel. Then he went inside and purchased a number of items that totaled \$118.84. With sales tax, the amount went to \$126.45 and the man provided a check written for \$154.45. He was given \$28 cash back.

[A store] employee said she later had a return on the checks by a bank, with a statement that the account was not located. [A] police officer was able to contact the woman to whom the checks [belonged]. It was established that her checks had been stolen. A few weeks later, the same man--now identified as [J.S.]--returned to the business and got \$32 worth of gas. Once inside the store, he purchased a number of items totaling \$119.21 and he presented a check for \$127.21--he was given \$8 in change.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Is J.S. or anyone else liable for conversion or breach of warranty?
- B. Can the store enforce any of the returned checks?
- C. In determining the parties' liabilities, does it matter whether the store was negligent in taking any of the checks?
- D. Suppose the woman had not closed her account and her bank had paid the checks. Under what circumstances could the bank charge the woman's account?

END OF EXAMINATION

This examination quotes lengthy excerpts from news articles to ensure that the problems are realistic. Please note that words, sentences, and paragraphs were omitted from the quotations without indication by ellipses. Text appearing in brackets was added to the quotations for clarification or other purposes.

Final Examination In
COMMERCIAL PAPER--PAYMENT SYSTEMS
(Course No. 6282-20; 3 credits)
Professor Gregory E. Maggs

Instructions:

Absent special arrangements, you have 3 hours to complete this examination.

The examination consists of 7 problems worth a total of 180 points. You should budget your time according to the points assigned to each problem (3 hours = 180 minutes).

Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.

This is an open-book examination. In completing the examination, you may use any written materials that you have brought with you.

You should make reasonable assumptions about any facts not stated in the problems. If you find aspects of the problems ambiguous, describe the ambiguity in your answer, and explain why the ambiguity matters.

Assume that no statute of limitations applies to any of the problems. Otherwise assume that the current official version of the Uniform Commercial Code applies, regardless of any dates or jurisdictions indicated.

SUGGESTIONS: Keep your answers brief or you will run out of time. Draw a diagram of each transaction to avoid confusion.

You may keep this copy of the examination at the end of the examination period.

Good luck!

PROBLEM I.

(26 points)

The following edited excerpt comes from a recent case:

On September 19, 2007, the Richisons executed a promissory note with Nation One Mortgage Services, Ltd. for a loan in the amount of \$214,200.00. The last page of the Note bears an endorsement from Nation One to Flagstar reading, "[p]ay to the order of Flagstar Bank, FSB without recourse." The Note was secured by a mortgage encumbering property located at 383 Triple Crown Way.

On February 4, 2011, Flagstar filed a complaint for foreclosure alleging that it was in possession of and the holder of the Note; that it was the holder of the Mortgage; that the Richisons were in default of payment on the Note and Mortgage securing the same; and, that a balance of \$209,583.06, plus interest remained outstanding on the Note. Attached to the complaint was a copy of the Note, Mortgage, and a mortgage assignment. Flagstar requested judgment against the Richisons for the outstanding balance on the Note, plus interest and other costs, and that the trial court order foreclosure and sale of the Property.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What must Flagstar do to prove its entitlement to enforce the Note?
- B. What potential liability did Nation One exclude by signing the Note "without recourse"? What potential liability did Nation One not exclude?
- C. The Richisons argued in defense that they were not liable on the Note because Flagstar "assumed the risk" of a default. What arguments might Flagstar make in response?
- D. What might have been some of the advantages and disadvantages to each of the parties in using a negotiable instrument in this transaction instead of an ordinary contract?

PROBLEM II.

(26 points)

The following edited excerpt comes from a recent case:

Flavor Finish provided labor and materials for the painting and resurfacing of an apartment complex owned by e2 Real Estate Partners III. On September 18, 2009, the parties executed a Promissory Note-Guaranty ("Note/Guaranty") guaranteeing repayment of the loan to Flavor Finish. e2 Real Estate made three out of twelve payments due before it defaulted.

Flavor Finish alleged that Ellerkamp signed the Note/Guaranty as a personal guarantor of e2 Real Estate's debt obligation, and it asserted that Ellerkamp and e2 Real Estate should be found jointly liable for the \$9,184.50 remaining due. Ellerkamp asserted that he signed the Note/Guaranty in his representative capacity as an agent of e2 Real Estate. The Note/Guaranty contained [this] signature block under the section "Guaranty":

FOR VALUE RECEIVED, the undersigned do hereby guarantee payment of the above note and agree to remain fully bound until fully paid.

Signed this date: Sept 18, 2009

Borrower: e2 Real Estate Partners III, LLC

By: 
John M. "Mike" Ellerkamp

Title: Manager, e2 Real Estate Partners III, LLC

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What arguments should Flavor Finish and Ellercamp make regarding whether Ellercamp is personally liable?
- B. What advice would you have given Flavor Finish in preparing the note and signature block?
- C. If Ellercamp is held to be personally liable, what rights would he have upon paying Flavor Finish?
- D. Why is it customary for the owner of an incorporated small business to sign notes made by the business in both a representative and non-representative capacity?

PROBLEM III.

(26 minutes)

The following edited excerpt comes from a recent case:

WCC received a check for \$60,452.00 (the "Check") drawn on DDH's account at [Bartow County Bank (the "Bank")] on June 17. WCC deposited the Check into its account at McIntosh Bank in Carrollton that same day, and on June 18 the Check was received by the Bank for payment, downloaded from the Federal Reserve Bank and posted as a payment on the DDH account. The next day, Friday, June 19, WCC's McIntosh Bank account was credited for the amount of the Check and WCC withdrew funds from that account. However, on that same day, an officer from the Bank instructed one of the Bank's check processors to return the Check and place a hold on DDH's account for the specific amount of the Check to prevent it from being paid. A bank employee then returned the item to the Federal Reserve Bank by keying it into a software program that the Bank used for that purpose, which included sending an electronic file to the Federal Reserve with an image of the Check showing that it had been stamped "return reason B uncollected funds hold." The Check, however, was not marked received by the Federal Reserve until Monday June 22. WCC's account was debited for the amount of the check. [The Bank dishonored the Check so that it could transfer funds out of DDH's account to pay a debt owed to the Bank.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Is Bartow County Bank (the Bank) accountable for the check?
- B. May McIntosh Bank debit WCC's account for the amount of the check?
- C. What rights does WCC have against DDH?
- D. Might DDH have a claim against any party?

PROBLEM IV.

(26 points)

The following edited excerpt comes from a recent case:

Michigan Basic Property Insurance Association (MBP) issued a \$69,559.06 check jointly payable to its insured, Joyce Washington, and two lien holders over her property, Countrywide Home Loans and T & C Federal Credit Union. Either Joyce Washington or Cleveland Powell, who acted with Washington's power of attorney, took the check to National City Bank [and] endorsed the check by signing "Countrywide Home Loans," "T & C Credit Union" and "Joyce Washington," interspersed with two additional but illegible signatures. National City [credited] an account shared by Washington, Powell and a corporate entity.

National City presented the check directly to Fifth Third Bank. MBP maintains an account at Fifth Third and wrote the Washington-Countrywide check from its Fifth Third account. Pursuant to a special commercial client account agreement, Fifth Third sent MBP a daily account statement detailing all checks presented for payment against MBP's account. That statement listed the check number, date presented, amount payable and electronic tracing number of the subject check. Fifth Third expected MBP to review the daily account statement and immediately notify it of any checks that should not be paid. MBP did not object to the presentment of the check so Fifth Third withdrew the funds from MBP's account and transferred \$69,559.06 to National City. Fifth Third later sent MBP a monthly account statement including the same item description as the daily statement to memorialize that the check had been paid. MBP raised no objection to the monthly statement.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Is Fifth Third Bank liable to MBP?
- B. Do Countrywide Home Loans and T & C Federal Credit Union have conversion or other claims against any party?
- C. If the check had been dishonored and returned to Washington, what rights would Washington have?
- D. Why were the antifraud measures insufficient to prevent payment of this check? Could they have been improved?

PROBLEM V.

(26 points)

The following edited excerpt comes from a recent case:

Chavez opened a bank account at Mercantil Bank. His account was subject to a Funds Transfer Agreement [FTA] that implemented one of three security procedures offered to Chavez. Chavez chose the first option, which requires the Bank only to verify the signature of written payment orders when delivered in person.

On February 7, the Bank wire transferred \$329,500 from Chavez's account to the account of a beneficiary in the Dominican Republic. This transfer was made pursuant to a payment order dated February 6, that bore Chavez's signature and was delivered in person by a man purporting to be Chavez. No video footage inside or outside of the bank was available because the security cameras were either broken or their recordings were taped over. The subject payment order was processed by Mercantil's employee Gutierrez. In processing the order, Gutierrez confirmed all the information on the subject payment order; the identity of the customer by requesting an identification document, e.g. a passport; the sufficiency of funds by checking the account balance; the existence of an FTA; and the authenticity of the signature.

Following this approval, Mercantil completed the order and transferred funds to a beneficiary in the Dominican Republic. On April 14, while in Venezuela, Chavez checked his account information online and claims that this is when he first learned that his balance was considerably lower than expected. Chavez's demand that the funds be returned by the bank failed.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Under what circumstances might Mercantil Bank have a right to charge Chavez's account for the funds transfer?
- B. Might Mercantil Bank have a claim against anyone besides Chavez?
- C. Did the FTA create a greater risk of funds transfer fraud than an ordinary checking account creates of check fraud?
- D. How might the security procedures have been improved for written payment orders delivered in person?

PROBLEM VI.

(25 points)

The following edited excerpt comes from a recent case:

Roseland visited the Smartrooms showroom, expressing an interest in some wainscot paneling. A Smartrooms employee visited Roseland's home to measure the walls in order to give Roseland an estimate on the paneling. Roseland claims he never received an estimate for the price of the paneling and never ordered or approved an order for the paneling. Despite never placing an order for paneling, Roseland had paneling delivered to his home from Smartrooms without his authorization.

After receiving the unordered paneling, Roseland discovered an unauthorized charge of \$943.54 on his HSBC credit card from Smartrooms. Smartrooms also charged \$943.54 to Roseland's Harris Bank debit card without his authorization. Smartrooms refused to rescind the charges; thereafter, Roseland contacted HSBC and Harris Bank to dispute the unauthorized charges. Harris Bank concluded that the charge from Smartrooms to Roseland's debit card was invalid and removed the charge from Roseland's Harris Bank account.

In support of Smartrooms' claim to HSBC, Smartrooms submitted to HSBC [a] fully performed, written contract between Roseland and Smartrooms for [a] previous cabinetry purchase. Roseland continued to dispute the charge; HSBC informed Roseland that it would not reverse the charge. To date, Roseland is still being held liable for this \$943.54 disputed charge on his HSBC credit card.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What advice would you give Roseland for challenging the charge on his credit card?
- B. Did Roseland have greater protection from fraud on his debit card than his credit card?
- C. Would the charge on the credit card be authorized if Roseland retained and used the paneling?
- D. How can consumers protect themselves from incidents like this?

PROBLEM VII.

(25 points)

The following edited excerpt comes from a recent case:

On September 4, 2009, the Bank issued a letter of credit in favor of the [John Gilday and other employees of Elemco Testing Company, Inc.], which provided for payment of the sum of \$50,000 upon presentation of the instrument together with a sight draft and "a final Order of the United States Bankruptcy Court certifying that Elemco Testing Company, Inc. has failed to satisfactorily remit funds due." By its stated terms, the letter of credit was to expire on September 4, 2010, one year after its issuance.

On September 1, 2010, three days before the stated expiration date of the letter of credit, John Gilday presented the instrument to the Bank, accompanied by a signed sight draft and a final order of the Bankruptcy Court, dated August 10, 2010, which found that Elemco Testing Company, Inc., had "failed to satisfactorily remit funds due to EIB." The Bank refused to make payment, taking the position that under the terms of [an] agreement reached in the Bankruptcy Court the letter of credit had actually terminated on May 13, 2010, when the Bankruptcy Court authorized the [applicant] Elemco to close on a sale of [its] assets.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. May the Bank assert an agreement between Elemco and Gilday and the other employees as a basis for refusing to honor the letter of credit?
- B. Could the Bank alternatively have refused to honor the letter of credit because the presentation did not comply?
- C. If the Bank paid the letter of credit, what rights would it have?
- D. What advice would you have given the Bank in the formation and performance of this transaction?

END OF EXAMINATION

For your reference, please note that words and punctuation were omitted from the preceding quotations without indication by ellipses. Text appearing in brackets was added to the quotations for clarification and other purposes. Because this is an open-book examination, the names of the cases upon which these problems are based will be revealed at a later time.

Final Examination In
COMMERCIAL PAPER--PAYMENT SYSTEMS
(Course No. 6282-10; 3 credits)
Professor Gregory E. Maggs

Instructions:

Absent special arrangements, you have 3 hours to complete this examination.

The examination consists of 7 problems worth a total of 180 points. You should budget your time according to the points assigned to each problem (3 hours = 180 minutes).

Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.

This is an open-book examination. In completing the examination, you may use any written materials that you have brought with you.

You should make reasonable assumptions about any facts not stated in the problems. If you find aspects of the problems ambiguous, describe the ambiguity in your answer, and explain why the ambiguity matters.

Assume that no statute of limitations applies to any of the problems. Otherwise assume that the current official version of the Uniform Commercial Code applies, regardless of any dates or jurisdictions indicated.

SUGGESTIONS: Keep your answers brief or you will run out of time. Draw a diagram of each transaction to avoid confusion.

You may keep this copy of the examination at the end of the examination period.

Good luck!

PROBLEM I.

(26 points)

The following edited excerpt comes from a recent case:

Daniel had trouble making payments on [his home mortgage] note and began receiving default notices from Wachovia [the holder of the note]. At trial, [Daniel's father] Thomas testified that on October 16 or 18, he took \$375,000 in \$100 bills to a Wachovia branch as a payment on the note. Thomas testified he left the cash with a bank employee and asked for a receipt. He was told a receipt would be mailed to him after the amount was verified. Thomas never received a receipt. In January, Daniel received the original note in the mail in a Wachovia envelope. The note had been stamped "Paid" on October 18. The original note was admitted in evidence at trial.

Wachovia employees testified they had no record of the \$375,000 cash payment. Davis, customer relations manager for Wachovia, testified about Wachovia's normal audit procedures it follows when a note is paid and that there was no record of those procedures in the loan file for the note.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. If Daniel defaulted on the note by not making installment payments, under what circumstances would Wachovia have an immediate right to full payment of the note?
- B. If Thomas in fact paid Wachovia, what risks did he face in allowing the bank merely to promise to send him a receipt?
- C. What are more secure ways of acknowledging full or partial payment of a note?
- D. In a suit by Wachovia against Daniel to enforce the note, what arguments should Daniel make?

PROBLEM II.

(26 points)

The following edited excerpt comes from a recent case:

As part of an automobile insurance agreement, United Automobile Insurance Company (UAIC), the check's drawer, issued a check for \$1,288.64 payable to "Patrick Bretton, Brandy Bretton and DBD Motor Co., Inc." The Brettons and a representative of DBD Motor endorsed the check, and the Brettons cashed the check at 1/2 Price Checks Cashed (Half-Price), at which point Half-Price became the holder of the check. Half-Price endorsed the check and deposited it with its own bank. When Half-Price's bank presented the check to UAIC's bank--the drawee--for acceptance, however, UAIC's bank dishonored the check by refusing payment, and the check was returned to Half-Price marked "Refer to Maker." Half-Price notified UAIC of its claim and requested payment. But UAIC denied liability and refused to pay.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What rights, if any, would Patrick Bretton, Brandy Bretton, DBD Motor, or UAIC have upon paying or repaying Half-Price?
- B. What liability, if any, does UIAC's bank have to each of these parties?
- C. What rights do the Brettons and DBD Motor have against UIAC under the automobile insurance agreement?
- D. If the Brettons and DBD Motor had not indorsed the check when they cashed it at Half-Price, how would the lack of indorsement have affected Half-Price's rights?

PROBLEM III.

(26 points)

The following edited excerpt comes from a recent case:

On August 23, at a Flagstar [Bank] branch in Castleton, Sapp presented a check in the amount of \$125,000 for deposit into the business account of SF LLC ("the LLC Account"). The LLC Account was given a provisional settlement of \$125,000. Flagstar lost the check. Two months later, on October 27, Flagstar notified Sapp of the loss and sought his assistance in identifying the source of the check. Sapp was unable or unwilling to disclose the maker of the \$125,000 check that had been deposited. Flagstar, unable to debit a particular account without the lost check, charged-back the deposit to the LLC Account on November 11. As the majority of the \$125,000 had been removed in transactions over the preceding months, the charge-back resulted in a negative balance of \$123,093.65.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Did Flagstar Bank have a right to charge back the credit that it had given to SF LLC for the deposited check?
- B. Under what circumstances, if any, might Sapp have an incentive not to identify the drawer of the check?
- C. To what extent, if any, would identifying the drawer of the check help Flagstar Bank?
- D. How would the rights of the parties be different if Flagstar Bank had presented the check for payment, and it was the payor bank who lost the check and was unable to identify the drawer?

PROBLEM IV.

(26 points)

The following edited excerpt comes from a recent case:

Doe, whose true identity is unknown, pretending to be one Andrew Collins, a purchaser of a boat from 3A Marine Service, obtained a loan from Bank of America ["the Bank"], which issued him a check for \$109,615.00, payable to 3A Marine Service, purportedly as a down payment on that boat. Doe then opened an account with Schwab in the name of 3A Marine Service, endorsed the name of 3A Marine Service on the check, and deposited it in the Schwab account.

Schwab accepted the check for deposit, and allowed wire transfers in the sum of \$88,615.00 from the proceeds. About a month thereafter, the Bank notified Schwab that the check had been fraudulently endorsed, and sent Schwab a debit advice charging back to Schwab's account the full \$109,615.00 check amount. Schwab thereupon demanded that the Bank reverse that debit and re-fund or re-credit the debit. [There is a real company called 3A Marine Service but neither Doe nor anyone named Andrew Collins had authority to act on behalf of 3A Marine Service.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Did Bank of America have a right to recover the payment that it had made to Schwab?
- B. What rights, if any, might Schwab now assert?
- C. What factors made this fraudulent scheme successful? Why might Doe have thought obtaining a check from Bank of America (as he did) was better than simply using a forged check to open an account at Schwab?
- D. How should Bank of America and Schwab have tried to prevent this fraud?

PROBLEM V.

(26 points)

The following edited excerpt comes from a recent case:

During the morning of January 21, Comerica [Bank] was alerted to phishing e-mails sent to its customers by a third-party attempting to lure the customers into providing their confidential identification information.

Mr. King, Experi-Metal's Vice President, forwarded [one such] phishing e-mail to [his colleague] Mr. Maslowski at 6:48 a.m. on January 22. The e-mail instructed the recipient to click on an attached link to complete a "Comerica Business Connect Customer Form." At approximately 7:35 a.m., Mr. Maslowski clicked on the link and was directed to a website where he responded to a request for his confidential secure identification and login information. By doing so, Mr. Maslowski provided a third-party with immediate online access to Experi-Metal's Comerica bank accounts from which the individual began initiating wire transfer payment orders from Experi-Metal's Sweep Account--one of two accounts from which online wire transfer orders were authorized. Between 7:30 a.m. and 2:02 p.m., ninety-three fraudulent payment orders totaling \$1,901,269.00 were executed using Mr. Maslowski's user information. The majority of these payment orders were directed to accounts at banks in destinations where most cyber-crime has been traced (i.e. Russia and Estonia).

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Is it possible for Experi-Metal to obtain cancellation of any of the payment orders?
- B. On what grounds might Comerica argue that Experi-Metal is liable for the payment orders?
- C. Could Experi-Metal recover from Comerica in tort if it could show Comerica was negligent in not stopping the fraud when it had advance notice of the phishing scheme and could observe the large number of suspicious transfers?
- D. In what ways could Experi-Metal and Comerica attempt to prevent this type of fraud from succeeding in the future?

PROBLEM VI.

(25 points)

The following edited excerpt comes from a recent case:

On February 12, Kasper went to the 24 Hour Fitness club in Pasadena. He put his gym bag and wallet in a locker and closed the locker with a padlock. His wallet contained \$200 and four credit cards. When he returned to his locker after exercising, he saw that the padlock was gone. His gym bag and wallet were not inside the locker. Kasper called the police and filed a report the following day. He also called his wife immediately after noticing the theft and asked her to cancel the credit cards. Kasper's wife told him that some of the issuers had already called to notify Kasper of suspicious charges at a Target store. Kasper's credit cards were used to buy several gift cards ranging from \$350 to \$400 in value at two Target stores.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What are the likely liabilities of Kasper, Target, and the issuers of the credit cards for the charges?
- B. Suppose the thief had instead stolen a debit card and checkbook and used the debit card and forged checks to make purchases. How would the parties' liabilities be different?
- C. Would Kasper's liability be different under questions (A) and (B) if he had negligently failed to lock his locker?
- D. From the perspective of the thief, what were the strengths and weaknesses of the criminal scheme in this case?

PROBLEM VII.

(25 points)

The following excerpt comes from a recent case:

City of Maple Grove entered into two developer's agreements with Dingman Development, LLC to establish new subdivisions. The developer's agreements consisted of several parts, including requirements that Dingman complete and pay for certain improvements incident to the developments and procure and furnish to Maple Grove letters of credit which Maple Grove could draw upon to pay any deficiencies in Dingman's performance.

Marketline Construction Capital issued three documents to Maple Grove, each labeled a "letter of credit." Each document identified Dingman as the applicant. In the aggregate, the three documents required Marketline to pay \$228,930 if drawn upon by Maple Grove. The documents contained the following language:

Available against drafts drawn at sight on Marketline Construction Capital bearing the clause: "Drawn under standby letter of credit number [number indicated] of Marketline Construction Capital," and accompanied by the following document: A certificate purportedly signed by the city administrator of the city of Maple Grove stating: "We are drawing under your standby letter of credit No. [number indicated] as Dingman Development, LLC has failed to install and pay for the petitioned items listed in Exhibit B."

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Why did the parties seek to use standby letters of credit instead of commercial letters of credit?
- B. Marketline argued the documents were not in fact letters of credit based on the language above. Is Marketline correct?
- C. If Marketline had issued documents that do not meet the definition of letters of credit, would Marketline have no liability?
- D. Suppose Dingman Development defaulted on its obligations and the three documents are in fact letters of credit. What rights would Grove City have?

END OF EXAMINATION

For your reference, please note that words and punctuation were omitted from the preceding quotations without indication by ellipses. Text appearing in brackets was added to the quotations for clarification and other purposes. Because this is an open-book examination, the names of the cases upon which these problems are based will be revealed at a later time.

Final Examination In
COMMERCIAL PAPER--PAYMENT SYSTEMS
(Course No. 6282-20; 3 credits)
Interim Dean Gregory E. Maggs

Instructions:

Absent special arrangements, you have 3 hours to complete this examination.

The examination consists of 7 problems worth a total of 180 points. You should budget your time according to the points assigned to each problem (3 hours = 180 minutes).

Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.

This is an open-book examination. In completing the examination, you may use any written materials that you have brought with you.

You should make reasonable assumptions about any facts not stated in the problems. If you find aspects of the problems ambiguous, describe the ambiguity in your answer, and explain why the ambiguity matters.

Assume that no statute of limitations applies to any of the problems. Otherwise assume that the current official version of the Uniform Commercial Code applies, regardless of any dates or jurisdictions indicated.

SUGGESTIONS: Keep your answers brief or you will run out of time. Draw a diagram of each transaction to avoid confusion.

You may keep this copy of the examination at the end of the examination period.

Good luck!

PROBLEM I.

(26 points)

The following edited excerpt comes from a recent case:

Southern Plumbing issued a check for \$288.00 to Robert Olivarez as an advance for work to be performed. Several hours later, Olivarez informed Southern Plumbing that he could not perform the work and he would destroy the check. Robert Zamora, on behalf of Southern Plumbing, told Olivarez he would place a stop-payment order on the check. However, Olivarez endorsed and cashed the check at The Money Box. When The Money Box presented the check to the bank for payment, the check was returned with the notation, "payment stopped." According to The Money Box, it notified Southern Plumbing that the check had been returned, and that The Money Box expected payment of the check and a \$20.00 returned check fee. When the check and returned check fee were not paid, The Money Box sued Southern Plumbing for the amount owed on the check plus interest, the returned check fee, and reasonable attorney's fees.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What proof must The Money Box present to prevail in its lawsuit against Southern Plumbing, and how might The Money Box establish this proof?
- B. What liability does Olivarez face?
- C. When does the UCC provide for recovery of attorney's fees from the drawer of a dishonored check, and may the Money Box recover attorney's fees from Southern Plumbing in this case?
- D. What advice would you have given Southern Plumbing in its dealings with Olivarez?

PROBLEM II.

(26 points)

The following edited excerpt comes from a recent case:

Citibank alleges Maniaci defaulted in the payment of [his] credit card [bill]. It alleges it is due \$4905.95 together with legal fees in accordance with the credit card agreement. Citibank retained Northland Group, Inc. to assist it in collecting the amount due on the credit card.

Maniaci's attorney sent a letter and a check in the sum of \$925 to Northland. The letter stated the check was "in full settlement of the amounts claimed" to be due on the credit card. The letter further indicated "Negotiation of the within draft shall constitute a full Accord and Satisfaction, notwithstanding any restriction on your endorsement." The letter stated if Northland did not want to accept the check in payment in full, the check should be returned to Maniaci's attorney. Northland received and negotiated the check.

Maniaci admits he had used the credit card. He further concedes he made the charges. He does not contest the amount Citibank alleges is due.

The credit card agreement specifically provides "Citibank . . . can accept late or partial payments, as well as payments that reflect 'paid in full' or other restrictive endorsements, without losing any of our rights under this Agreement."

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Absent the quoted provision in the credit card agreement, could Citibank still collect the unpaid balance of the original \$4905.95 credit card debt from Maniaci?
- B. What advice would you give Citibank regarding the quoted provision in its credit card agreement?
- C. Suppose Maniaci's \$925 check was dishonored and returned because Maniaci had insufficient funds in his bank account. What rights would Citibank and Northland Group have?
- D. If Citibank cannot recover the \$4905.95 debt from Maniaci, may it charge back any amount to the merchants who took the credit card in payment?

PROBLEM III.

(26 minutes)

The following edited excerpt comes from a recent case:

Vadde opened a regular checking account with Bank of America. On June 14, Vadde deposited a check for \$40,705, drawn on the Ulster bank. The check was made payable to Vadde's husband, and also included his endorsement. Vadde's husband averred that he received the check from "Chief Joseph Sanusi, the then Governor of the Central Bank of Nigeria, for reimbursement of expenses while doing business with him and his government."

Between June 16 and July 8, Vadde wrote checks, made cash withdrawals, and transferred all funds in excess of the deposit. On July 8, the check was dishonored by the Ulster bank and returned to Bank of America. Mr. Sanusi, a supposed trusted friend and well-respected international banker, issued to Vadde's husband an invalid, fraudulent, and counterfeit check.

Vadde may have been a victim of a Nigerian check scheme. The scheme begins when a person is contacted by e-mail and advised that if she endorses and deposits a check into her checking account and then wires funds to another individual, the depositor may keep a portion of the funds from the check for herself. After the victim acts as instructed, the bank notifies her that she has passed a counterfeit check. At this point, the victim already has wired funds from her account. [Assume that the Ulster bank is not a local paying bank with respect to Bank of America.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. When, and to what extent, did Bank of America have to give Vadde credit for the check that she deposited?
- B. In determining the liability of the parties, is the date when Bank of America presented the check to the Ulster Bank relevant?
- C. What rights might Bank of America have against parties other than the Ulster bank?
- D. Under what circumstances is the Nigerian check scheme, as described by the court, likely to succeed for its perpetrators?

PROBLEM IV.

(26 points)

The following edited excerpt comes from a recent case:

As a claims adjustor [for an entity called ORM], Mrs. Clark had the authority to direct the issuance of settlement checks to given payees at particular addresses. ORM maintained a checking account at Chase.

Mrs. Clark submitted payment claims and requested that fifty-four checks be issued and made payable to claimants purportedly in settlement of the claims brought by each payee against ORM. The payees on those fifty-four checks were real persons with potential claims; however, the payees were not pursuing their claims, and they did not know about the purported settlements submitted by Mrs. Clark. These fifty-four fraudulent checks total \$125,228.30.

In requesting the settlement checks, Mrs. Clark directed that the checks be made payable to the potential claimants, but that they be mailed to a post office box belonging to herself. Mrs. Clark would then retrieve the checks from the post office box. Mrs. Clark forged the payee's signature and deposited the funds into her personal checking account at Hancock Bank.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. May Chase charge ORM's account for these checks?
- B. What rights would Hancock Bank have had if Chase had timely dishonored and returned the checks?
- C. What were the strengths and weaknesses of Mrs. Clark's fraudulent check scheme, and how could she have "improved" the scheme to further her unlawful purposes?
- D. Would the liabilities of the parties or the difficulty of detecting the fraud have been different if Mrs. Clark had used funds transfers instead of checks for her scheme?

PROBLEM V.

(26 points)

The following edited excerpt comes from a recent case:

Guardian Angel attempted to purchase a \$99,000 Certificate of Deposit (CD) [see § 3-104(j)] from MetaBank. Guardian Angel initiated the purchase by electronically transferring funds to the Federal Home Loan Bank, where MetaBank maintained an account.

In return for the wire transfer, Guardian Angel received what appeared to be a legitimate CD issued by MetaBank. Guardian Angel [later] learned that the CD had been fraudulently issued by an employee of MetaBank, Ms. Pickhinke.

MetaBank refused to honor the CD and it became apparent that Pickhinke had used a similar scheme to defraud approximately fifty other entities that had attempted to purchase CDs from MetaBank.

Guardian Angel asserts two distinct claims. Guardian Angel's first theory is that MetaBank was a "receiving bank" that violated § 4A-302(a)(1) by failing to execute a "payment order." Its second theory is that MetaBank was a "beneficiary's bank" that violated § 4A-404(a) by accepting a "payment order" and thereafter failing to pay the amount of the order to its "beneficiary," Guardian Angel.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What arguments might MetaBank make in response to Guardian Angel's argument under § 4A-302(a)(1)?
- B. What arguments might MetaBank make in response to Guardian Angel's argument under § 4A-404(a)?
- C. What arguments might Guardian Angel make for why MetaBank or Pickhinke is liable on the certificate of deposit?
- D. Would Guardian Angel face any liability on the certificate of deposit if Guardian Angel negotiated it to a third-party after indorsing it without recourse?

PROBLEM VI.

(25 points)

The following edited excerpt comes from a recent case:

On or about May 10, Volovnik delivered his car to Benzel for repairs, and Benzel provided Volovnik with a "loaner" vehicle to use while his car was being repaired. Volovnik provided Benzel with a credit card to pay for the repairs to his car.

On or about May 12, Volovnik was involved in an auto accident with another car, causing approximately \$4,000 in damages to the loaner car. When Benzel was made aware of the accident, it informed [Volovnik] that Benzel would be billing him for the damages directly via the credit card on file. Volovnik expressed to Benzel that he would not grant Benzel permission to bill the damages to his credit card. Nevertheless, Benzel billed \$4,000 to [Volovnik]'s Chase credit card. Volovnik never signed a credit card receipt for the charge.

At the end of May, [Volovnik] notified Chase, the card issuer, that the charge billed for repairs to the loaner car was fraudulent. Chase declined to remove the charge from [Volovnik]'s account. Instead, Chase assessed an "over limit" fee, closed the account for exceeding its credit limit, and threatened that, if Volovnik failed to pay the balance, then his account would be reflected negatively on his credit report.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What arguments should Chase and Volovnik make regarding whether Chase has a right to charge Volovnik's account?
- B. To what extent and under what circumstances might Chase charge back the amount of the charges to Benzel?
- C. How might Volovnik attempt to resolve its dispute with Chase other than through litigation in court?
- D. Although it did not happen in this case, when a charge is disputed, why might a card issuer like Chase tend to side with the cardholder rather than the merchant?

PROBLEM VII.

(25 points)

The following excerpt comes from a recent case:

PVF ordered 3,800 feet of thirty-inch pipe from LaBarge for a total price of \$143,613.40. Matthew Mannhard, a LaBarge salesman, reviewed PVF's credit history, and informed PVF that LaBarge would not sell the requested pipe on open credit. Therefore, he gave PVF the following payment options: sending a cashier's check via overnight mail, wire transferring the funds, or obtaining a letter of credit. PVF chose to obtain a letter of credit.

PVF then contacted First Bank to arrange for First Bank to issue a standby letter of credit in the amount of \$144,000.00 for the benefit of LaBarge. The letter of credit states: "We hereby establish our Standby Letter of Credit No. 180 in your favor for the account of PVF available by your drafts on us payable for any sum of money not to exceed a total of \$144,000 . . . when accompanied by this Irrevocable Letter of Credit" and by LaBarge's statement certifying that invoices to PVF "remain unpaid 30 days or more after invoice date" and by copies of the invoices.

PVF did not make any payment for any of the pipe. LaBarge attempted to draw on the letter of credit in the amount of the total price of all pipe it had shipped to PVF. [But] Labarge could not locate the original letter of credit and only had [a] facsimile copy. It mailed the facsimile, along with the relevant unpaid invoice copies and its certificate that they remained unpaid for thirty days, to First Bank. First Bank would not honor the letter of credit.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What factors might PVF have considered in deciding which of the offered payment options to use?
- B. Why was the letter of credit described as a "Standby" letter of credit, and could another kind have been used?
- C. If LaBarge accuses First Bank of wrongful dishonor, what arguments and evidence should each party offer?
- D. In addition to LaBarge's possible claim against First Bank, what other claims might the parties have against each other?

END OF EXAMINATION

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Final Examination In
COMMERCIAL PAPER--PAYMENT SYSTEMS
(Course No. 282-20; 3 credits)
Professor Gregory E. Maggs

Instructions:

1. You may keep this exam at the end of the examination period.
2. Absent special arrangements, you have 3 hours to complete this examination. The examination consists of 7 problems worth a total of 180 points. You should budget your time according to the points assigned to each problem (3 hours = 180 minutes).
3. Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.
4. This is an open book examination. In completing the examination, you may use any written materials that you have brought with you.
5. You should make reasonable assumptions about any facts not stated in the problems. If you find aspects of the problems ambiguous, describe the ambiguity in your answer, and explain why the ambiguity matters.
6. Assume that the current official version of each article of the Uniform Commercial Code applies, regardless of any dates or jurisdictions indicated.
7. SUGGESTIONS: Keep your answers brief or you will run out of time. Draw a diagram of each transaction to avoid confusion.

Good luck!

PROBLEM I.

(26 points)

The following edited excerpt comes from a recent case:

C-Wood Lumber Company, Inc. (C-Wood) operates a sawmill and a kiln dry facility....

Ms. McWilliams began embezzling from C-Wood not long after becoming secretary/treasurer. The company's lack of any internal controls made it relatively easy for Ms. McWilliams to carry out her scheme. She was generally the only employee who opened the mail, kept the books, and made the deposits. No one supervised her or checked her work. Accordingly, Ms. McWilliams simply endorsed checks received by C-Wood with "C-Wood Lumber Co., Inc. by Diana McWilliams, Sec. & Treas." and then deposited these checks either into her personal account or into her children's accounts at the Wayne County Bank.... Ms. McWilliams used the scheme to embezzle between \$445,672.99 and \$512,653.89 from C-Wood.

... The tellers at Wayne County Bank were aware that Ms. McWilliams was endorsing checks payable to C-Wood and then either cashing these checks or depositing them into her personal accounts or into her children's accounts. However, they never questioned Ms. McWilliams directly about this practice....

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. May the banks that paid the checks charge the drawers of the checks?
- B. What claims, if any, does C-Wood have against the drawers of the checks, Wayne County Bank, or the payor banks?
- C. What is Ms. McWilliams's liability under U.C.C. article 3?
- D. What steps should C-Wood have taken to protect itself?

PROBLEM II.

(26 points)

The following edited excerpt comes from a recent case:

... Eagle Ridge contracted with Wolfe to construct a building on Eagle Ridge's property, also known as Cox Ford Recreation Park. On October 27, after completion of the work, Wolfe sent Eagle Ridge a final invoice for \$27,031.75. On October 30, Eagle Ridge sent Wolfe a check for \$12,000.00 as partial payment on the final invoice, thus leaving slightly over \$15,000.00 unpaid under the invoice. On November 15, Eagle Ridge sent a check, number 1031, to Wolfe in the amount of \$10,461.94. Written on both the front and back of the check were the words, "Full & Final Payment." The check was accompanied by a "Debit Memorandum" labeled, "Corrections to Final Cox Ford Recreation Park Invoice, dated October 27." This document listed several areas in which Eagle Ridge believed the final invoice was inaccurate and overcharged Eagle Ridge in the amount of \$4,569.81.

On June 8, Wolfe attempted to cash check 1031. Above Wolfe's endorsement of the check was a stamp stating, "Deposited without prejudice & with full reservation of all rights to balance.... It is not an accord or [sic] satisfaction...." Eagle Ridge's bank, Fifth Third, refused to cash the check because it was more than six months old.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What rights does Wolfe have against Eagle Ridge and Fifth Third?
- B. If Wolfe asks Eagle Ridge to replace check 1031, what advice would you give Eagle Ridge?
- C. If Fifth Third had paid check 1031, what liabilities would the parties now have?
- D. How could the parties have used a standby letter of credit to reduce concerns about each other's performance of the contract?

PROBLEM III.

(26 minutes)

The following edited excerpt comes from a recent case:

HMA ... is a business engaged in real estate development. HMA deposited a large check in its account with U.S. Bank. HMA then wrote a check on its U.S. Bank account to pay obligations HMA owed Barnes Bank. U.S. Bank paid the check that HMA wrote to Barnes Bank.

In the meantime, the maker of the check that HMA deposited, a check we will call the Woodson check in honor of its maker, stopped payment on it. When the Woodson check was returned to U.S. Bank, that bank swept remaining funds from HMA's account....

Wells Fargo received the Woodson check as part of its Friday, August 3 banking day. This meant that the midnight deadline would occur at midnight on the bank's next banking day, Monday, August 6. HMA contends that because [the] law designates Saturday as a banking day, the midnight deadline was not Monday, but Saturday.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What information would the court need in order to decide whether the midnight deadline was Saturday or Monday, and why might the decision matter?
- B. Under what circumstances would U.S. Bank be a holder in due course of the Woodson check and how would this status affect its rights?
- C. What liability, if any, might Barnes Bank face?
- D. Why might U.S. Bank have paid the check that HMA wrote to Barnes Bank without knowing for sure whether the Woodson check would be paid?

PROBLEM IV.

(26 points)

The following edited excerpt comes from a recent case:

On January 27, Cletus J. Hollywood (the "Decedent"), 84 years of age, died testate.

Between April 12 and July 6 Decedent [had] resided with his daughter Mary Ann and her husband, Daniel T. Andersen, at the Andersens' home.... During this time, Decedent's mental status progressively worsened

Decedent's son James C. Hollywood was duly appointed as Administrator ... of the Estate. While administering the Estate, the Administrator discovered that the Decedent's accounts at various financial institutions where Decedent had been a customer were either closed or substantially diminished during the time Decedent resided with the Andersens. Further inquiry revealed that checks drawn on the accounts were signed in Decedent's name by Mrs. Andersen.

The Estate alleges that First National, First Union, and Citizens (the Banks) paid checks on Decedent's accounts that had been forged by Mary Ann Andersen....

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What claims might the Estate bring against the Banks and how should they be resolved?
- B. Could the Estate recover from the payees of the checks under a theory of conversion or any other theory?
- C. What is Mary Ann Anderson's liability under article 3?
- D. If James Anderson had wanted to prevent this fraud from occurring, what legal and practical difficulties might he have faced?

PROBLEM V.

(26 points)

The following edited excerpt comes from a recent case:

Plaintiff Phil & Kathy's, Inc. filed this suit seeking to recover \$1,500,000 ... [from] defendant Safra National Bank....

On July 2, plaintiff's authorized agent, Phil Giannino ... asked Harris Bank to wire \$1,500,000 from plaintiff's account to defendant, who was to put the money into a designated beneficiary account.... The beneficiary account was misidentified, making payment to the beneficiary impossible. Plaintiff was made aware of this on July 3. [The intended beneficiary] advised plaintiff to change the name on the payment order to "Blue Vale" in order to have the payment order properly processed. Giannino returned to Harris on July 3 and made a second \$1,500,000 payment order, this time to Blue Vale. After Giannino left Harris Bank on July 3 an agent for Harris Bank sent ... urgent wires to defendant asking it to amend the original payment order so that Blue Vale would receive the payment.

Defendant received the second payment order, and processed it on the next business day, which was July 7 due to the Independence Day holiday. The second order was successfully credited to Blue Vale's account by defendant. On July 9, defendant credited Blue Vale with the \$1,500,000 as specified by the wire orders amending the initial payment order. [Plaintiff had intended to make only one payment to Blue Vale.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Must Phil & Kathy's, Inc. pay Harris Bank for both payment orders?
- B. Could Safra National Bank have accepted the July 2 payment order even though it misstated the name of the beneficiary?
- C. May Phil & Kathy's, Inc. recover from Safra National Bank?
- D. What should Phil & Kathy's, Inc. have done after learning that the first payment order misidentified the beneficiary?

PROBLEM VI.

(25 points)

The following edited excerpt comes from a recent case:

... Chase [Bank] mailed Mary Borg a credit card application to her residence.... The application invited Mrs. Borg to apply for the card over the telephone and provided a telephone number and a code number that the card applicant was required to furnish during processing of the application.... Davis [a nurse's aid who took care of Mrs. Borg in her home] intercepted the application and applied for the credit account under the guise of Mary Borg.... [S]omeone purporting to be Mary Borg called the number identified on the credit card application and provided the code number that corresponded with the mailing sent to Mrs. Borg.... Chase issued a single card with a credit limit of \$7,000 and mailed it to the Borg residence....

... James and Mary Borg discovered the existence of the credit card, ... unauthorized charges, and ... forged checks drawn from [their] joint checking account.... The Borgs later discovered that approximately \$86,000 had been charged to the Chase credit account and had been paid for by funds from the joint checking account. After learning that several transactions had occurred in and around ... Davis's hometown, James Borg informed Davis that she was no longer welcome to work at the Borg residence.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Do Mrs. Borg and Chase have any claims against each other?
- B. What claims might the bank at which Mrs. Borg has her checking account assert against Mrs. Borg, Davis, and Chase?
- C. Does Mrs. Borg have a claim against Davis for restitution or conversion?
- D. What advice would you give Chase for recovering its losses in this cases and avoiding future losses?

PROBLEM VII.

(25 points)

The following excerpt comes from a recent case:

[The Golf Club borrowed money from Citicapital to build a golf course, signing a promissory note. Plaintiff Morgan Creek Residential and defendants Earl Kemp and Richard Haws signed the note as accommodation co-makers.] Additionally, at the request of the Golf Club and defendants, plaintiff obtained ... an unconditional letter of credit in the sum of \$1.4 million for the benefit of Citicapital, as security for the Loan. The issuing bank was Northern Trust Bank. The terms of the letter of credit allowed Citicapital to call the letter of credit upon any default in the loan from Citicapital to the Golf Club....

In July, several unpaid contractors filed mechanics' liens against the real property on which the golf course was being built. As a result of this and other issues, Citicapital gave notice of a Loan default and opportunity to cure. The Golf Club, through its members, failed to take any action to cure the Loan default.

Citicapital then called the letter of credit and was paid the sum of \$1.4 million by Northern Trust Bank. As a result of the contractual relationship with Northern Trust Bank, plaintiff was required to and did immediately provide the sum of \$1.4 million to Northern Trust Bank to satisfy the draw on the letter of credit.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What claims might Morgan Creek Residential assert?
- B. Why might Citicapital have insisted on the letter of credit?
- C. If you had been representing Citicapital in this transaction, what wording would you have proposed for the letter of credit?
- D. If Northern Trust Bank had refused to pay the letter of credit even though Citicapital made a conforming documentary presentation, what rights would Citicapital have?

END OF EXAMINATION

For your reference, please note that some words and punctuation were omitted from the preceding quotations without indication by ellipses. Text appearing in brackets was added to the quotations for clarification and other purposes. Because this is an open-book examination, the names of the cases upon which these problems are based will be revealed at a later time.

Final Examination In
COMMERCIAL PAPER--PAYMENT SYSTEMS

(Course No. 282-20; 3 credits)

Professor Gregory E. Maggs

Instructions:

1. This is a controlled examination. You must return this copy of the examination to the proctors at the end of the examination period.
2. This examination is being given as part of the flexible examination scheduling pilot program. You may not discuss any aspect of this examination with anyone until all students have taken the examination (i.e., until the end of the 6:00 p.m. examination session on December 14, 2006).
3. Absent special arrangements, you have 3 hours to complete this examination. The examination consists of 7 problems worth a total of 180 points. You should budget your time according to the points assigned to each problem (3 hours = 180 minutes).
4. Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.
5. This is an open book examination. In completing the examination, you may use any written materials that you have brought with you.
6. You should make reasonable assumptions about any facts not stated in the problems. If you find aspects of the problems ambiguous, describe the ambiguity in your answer, and explain why the ambiguity matters.
7. Assume that the current official version of each article of the Uniform Commercial Code applies, regardless of any dates or jurisdictions indicated.
8. SUGGESTIONS: Keep your answers brief or you will run out of time. Draw a diagram of each transaction to avoid confusion.

Good luck!

PROBLEM I.

(26 points)

The following edited excerpt comes from a recent case:

Sometime in January of 2001, [Mr. Kim Griffith] discovered a certificate of deposit¹ issued by Mellon Bank, N.A., in the amount of \$530,000 which had matured on August 4, 1975. The certificate was unexpectedly discovered in one of several books Griffith had purchased from an unnamed individual. Griffith had not given value for the certificate itself. On its face, the certificate had not been marked paid. After discussions with Mellon concerning the instrument's validity, Griffith filed suit based on the bank's failure to honor the certificate and demanded nearly \$2.5 million in principal and interest. Mellon raised the defense that the certificate had been paid.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Mellon presented no evidence for its defense, but argued that the court should presume payment given the passage of time. What arguments might Griffith make for why the court should presume the instrument had not been paid?
- B. If Griffith sues to enforce the note, who has the burden of proof on the issue of whether the certificate of deposit has been paid and how might this burden be met?
- C. Under what circumstances, if any, could Mellon be liable on the certificate of deposit to Griffith even if evidence shows that Mellon Bank already had paid it?
- D. Would the statute of limitations in § 3-118(e) provide a defense if Griffith filed suit in 2001?

¹"A certificate of deposit is a note of the bank." U.C.C. 3-104(j).

PROBLEM II.

(26 points)

The following edited excerpt comes from a recent case:

On or about October 12, [Shawn Sheth] entered into negotiations with James A. Camp for Camp to provide certain services to Sheth by October 15. To that end, Sheth issued Camp a check for \$1,300. The check was postdated to October 15.

On October 13, Camp negotiated the check to Buckeye [Check Cashing, Inc.] and received a payment of \$1,261.31. Apparently fearing that Camp did not intend to fulfill his end of the contract, Sheth contacted his bank on October 14, and issued a stop-payment order on the check. Unaware of the stop-payment order, Buckeye deposited the check with its own bank on October 14, believing that the check would reach Sheth's bank by October 15. Because the stop-payment order was in effect, the check was ultimately dishonored by Sheth's bank. [Camp in fact did not perform the services promised to Sheth.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Sheth argued that by not "taking any steps to discover whether the postdated check issued by Sheth was valid, Buckeye failed to act in a commercially reasonable manner."
1. Why might it matter whether Buckeye acted in a commercially reasonable manner?
 2. How might Buckeye respond to Sheth's argument?
- B. If Camp had indorsed the check without recourse, to what extent would he have avoided liability?
- C. What advice would you give Sheth for future transactions?

PROBLEM III.

(26 points)

The following edited excerpt comes from a recent case:

At issue is a claim by NBT [NBT Bank] seeking to recover the face value of a \$706,000 check (the "Disputed Check") that was drawn on an FNCB [First National Community Bank] account and deposited at NBT by a participant in a check-kiting scheme. NBT forwarded the Disputed Check to the Federal Reserve Bank of Philadelphia. When the Disputed Check was presented by the Reserve Bank to FNCB for payment, FNCB recognized that the drawer had overdrawn its account. Thus, FNCB sought to dishonor the Disputed Check and to return it to the Reserve Bank.

The parties agree that the Disputed Check was physically delivered to the Reserve Bank prior to the midnight deadline. The parties also agree that FNCB prepared the Disputed Check as a "qualified return[ed] check." However, FNCB erroneously encoded the magnetic strip with the routing number for PNC Bank (which otherwise has no connection to this appeal), rather than NBT. The parties agree that NBT did not suffer damages as a result of this encoding error.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. After the Disputed Check was presented, what actions did FNCB have to take to avoid being accountable or otherwise liable for the check?
- B. Does it matter whether the "Disputed Check was physically delivered to the Reserve Bank prior to the midnight deadline" as the parties have agreed?
- C. Why might the encoding error on the Disputed Check not have caused NBT to suffer a loss?
- D. How might the Check 21 Act reduce the risk of loss from check kiting schemes?

PROBLEM IV.

(26 points)

The following edited excerpt comes from a recent case:

A customer of Foster Bank named Choi deposited in her account a check for \$133,026 that listed her as the payee. The check had been drawn on Wachovia Bank by a company called MediaEdge that had an account with that bank. Foster presented the check to Wachovia for payment. Wachovia paid Foster and debited MediaEdge's account. Now as it happened the actual payee of the check as originally issued had not been Choi; it had been a company called CMP Media. When CMP Media told MediaEdge that it had not received the check, an investigation ensued and revealed that Choi had somehow gotten her name substituted for CMP Media on the check she'd deposited with Foster. By the time this was discovered, Choi had withdrawn the money from her account and vanished, while Wachovia had destroyed the paper check that Foster had presented to it for payment. It had done this pursuant to its normal practice, the lawfulness of which is not questioned. It had retained a computer image of the check, but whether the image is of the original check drawn on Wachovia, with an alteration, or a forged check, cannot be determined.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Exactly how might Choi have committed this fraud by forging a check as opposed to altering the original check?
- B. If Choi had stolen the original check and then altered it, what rights would MediaEdge and CMP Media have against Choi?
- C. Why might it matter whether the check was a forged check as opposed to an original check with an alteration?
- D. Unable to decide whether the check was forged or altered, the court said: "So the case comes down to whether, in cases of doubt, forgery should be assumed or alteration should be assumed." What policy arguments might support presuming that the check was altered?

PROBLEM V.

(26 points)

The following edited excerpt comes from a recent case:

Zengen, Inc. ("Zengen") opened account number 88-012-298 (the "298 Account") at Comerica Bank (the "Bank"). In connection, a Business Signature Card and a Funds Transfer Authorization agreement were executed by Zengen's Chief Executive Officer, Johnson Liu, and its Chief Financial Officer, Fung Yen. Yen embezzled \$4.6 million from Zengen by directing four funds transfers from the 298 Account to an account Yen opened in the name of Zengen at Chinatrust Bank. [The] four payment orders facially appeared to be signed and authorized by Johnson Liu (as was customary, they were faxed to the Bank for processing and payment). These transactions appeared on Zengen's monthly bank statements. Presumably because Zengen's account statements were addressed to Yen as the company's Chief Financial Officer, the latter's defalcation was not discovered immediately. Zengen first learned something was amiss [six months later]. By that time, Yen had disappeared with the company's financial records.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. If Zengen and Comerica had agreed that Comerica would accept faxed payment orders "purportedly signed and authorized by Johnson Liu," could Comerica charge Zengen's account?
- B. Zengen claimed that Comerica was negligent in "failing to call Zengen to verify the authority to issue the Payment Orders." How should Comerica respond to this claim?
- C. May Zengen or Comerica Bank recover from Chinatrust Bank in restitution?
- D. How might the liability be different if, instead of sending fraudulent funds transfers, Fung Yen had forged checks drawn on Zengen's account at Comerica Bank, deposited the checks in Chinatrust Bank, and then withdrawn the money?

PROBLEM VI.

(25 points)

The following edited excerpt comes from a recent case:

[Mary Mincks] applied to have a credit card issued to her by Citibank. The application listed Mary as the cardholder and showed her home address as the billing location. Mary requested that her husband, Chuck, also be authorized to use her credit card account.

In February, Chuck received a solicitation to order merchandise from Purchase Plus Buyers Group ("PPBG"). After reviewing the solicitation, Chuck decided to order some high-definition postcards that he could use to contact potential customers for a home business that he had started. The order form was sent by fax from Lamar, Missouri, to PPBG's office in Westerville, Ohio. Chuck used Mary's Citibank credit card to pay the \$7,600 purchase price for the postcards. [PPBG did not deliver the merchandise because it went out of business. Repeated efforts to obtain a refund failed.]

On September 28, the Mincks sent a letter to Citibank invoking their rights to have their account credited in the amount of \$7,600. Citibank took the position that it was not able to assist the Mincks because it had not received their letter within 60 days of the disputed charge.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Did the failure to notify Citibank within 60 days of the charge bar the claim against Citibank?
- B. What other arguments might Citibank possibly have made in opposing the demand that it recredit the account?
- C. If Citibank must recredit the account, who will bear the loss in this case?
- D. If Citibank had not authorized Chuck Mincks to use the credit card, would the liability of the parties be different?

PROBLEM VII.

(25 points)

The following edited excerpt comes from a recent case:

In 1999, the Cheyenne River Sioux Tribe formed a corporation ("the Corporation") to operate a [buffalo] farm. To finance the enterprise, the Corporation sold \$4.65 million in bonds and granted the bondholders a security interest in the buffalo herd and slaughter-house equipment. U.S. Bank, N.A. ("the Bank") issued an irrevocable standby letter of credit in the amount of \$2.2 million. The letter stated that Morgan [the trustee for all bondholders] could draw upon it by submitting documentary evidence indicating either that the Corporation defaulted on its bond payments and that Morgan foreclosed on the herd and equipment, or that the Bank had declined to permit the letter to automatically renew.

The Corporation defaulted on its obligation to the bondholders, and Morgan did not foreclose on the herd or equipment. On May 14, 2003, one day before the letter expired, Morgan submitted a draft for the full amount of the letter and certified that the Bank declined to permit it to automatically renew. The Bank had not sent Morgan a non-renewal notice, but Morgan asserted that the letter [of credit] itself constituted a non-renewal because it included an expiry clause stating that "this letter of credit shall not be automatically extended beyond May 15, 2003, the final expiration date." The Bank disagreed and declined to honor Morgan's draw.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What were the terms and conditions for payment of the letter of credit and why might the parties have chosen them?
- B. Why might Morgan have decided to seek payment from the Bank rather than from the Corporation?
- C. On what grounds might Morgan argue that the Bank wrongfully dishonored the letter of credit?
- D. If the Bank wrongfully dishonored the letter of credit, what action might Morgan take and what remedies might it seek?

END OF EXAMINATION

For your reference, please note that words and punctuation were omitted from the preceding quotations without indication by ellipses. Text appearing in brackets was added to the quotations for clarification and other purposes. Because this is an open-book examination, the names of the cases upon which these problems are based will be revealed at a later time.

Final Examination In
COMMERCIAL PAPER--PAYMENT SYSTEMS
(Course No. 282-20; 3 credits)
Professor Gregory E. Maggs

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Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.

This is an open book examination. In completing the examination, you may use any written materials that you have brought with you.

You should make reasonable assumptions about any facts not stated in the problems. If you find aspects of the problems ambiguous, describe the ambiguity in your answer, and explain why the ambiguity matters.

Assume that no statute of limitations applies to any of the problems. Otherwise assume that the current official version of the Uniform Commercial Code applies, regardless of any dates or jurisdictions indicated.

SUGGESTIONS: Keep your answers brief or you will run out of time. Draw a diagram of each transaction to avoid confusion.

You may keep this copy of the examination at the end of the examination period.

Good luck!

PROBLEM II.

(26 points)

The following edited excerpt comes from a recent case:

In the mid-1990's, Rivera sold Talcott an investment for "somewhere in the amount of \$75,000." The investment produced no returns. On January 10, Rivera telephoned Talcott and talked him into sending him a check for \$10,000 made out to Guarino, which was to be used for travel expenses to obtain a return on the original \$75,000 investment.

Guarino appeared at [Any Kind of Checks Cashed, Inc.] and presented the \$10,000 check to Nancy Michael, a supervisor with the company. Guarino showed his driver's license and the Federal Express envelope from Talcott in which he received the check. She asked him the purpose of the check. [Guarino] told her that he was a broker and that the maker of the check had sent it as an investment. She was unable to contact the maker of the check by telephone. Based on her experience, Michael believed the check was good. After deducting the 5% check cashing fee, Michael cashed the check and gave Guarino \$9,500. The next day she deposited the check in the company's bank. [The check was returned unpaid because Talcott had stopped payment on it after discovering that Rivera and Guarino were trying to defraud him.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Under what circumstances could Any Kind of Checks Cashed, Inc. recover from Talcott or Guarino?
- B. The Court observed that "it is unusual for a small businessman such as a broker to conduct business through a check cashing store instead of through a traditional bank" and that Guarino previously had not done business with Any Kind of Checks Cashed, Inc. Why might these facts matter?
- C. Why might Guarino have chosen to use a check cashing company instead of a bank in perpetrating his fraudulent scheme?
- D. If Talcott's bank had failed to stop payment on the check, what rights would Talcott and the Bank have?

PROBLEM II.

(26 points)

The following edited excerpt comes from a recent case:

Vibert Gabriel and Zophia Kost lived together until the end of 1999. On June 26, 2000, Ms. Kost gave Mr. Gabriel a check for \$5,000.00 drawn on her account at Greenpoint Bank. The check had been certified by the Bank at Ms. Kost's request. The check contains the word "gift" on the memorandum line. Mr. Gabriel presented the check for payment at Greenpoint Bank, but the Bank refused payment, advising Mr. Gabriel that it had been instructed not to pay by Ms. Kost. Ms. Kost stated: "The only reason I gave Mr. Vibert Gabriel [the] \$5,000 check is he promise (sic) me that if I help him to pay off some of his bills he will come back home but as soon as I [realized] he was only saying that to get more money out of me I put a stop payment on it."

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What liability would Greenpoint Bank have faced if it had paid Gabriel contrary to Kost's instruction?
- B. If Gabriel sues Kost, what defenses might she raise?
- C. If Gabriel sues Greenpoint Bank, may Greenpoint Bank assert any of Kost's defenses?
- D. What advice would you have given the parties?

PROBLEM III.

(26 points)

The following edited excerpt comes from a recent case:

The dispute arises out of a check-kiting scheme. The Disputed Check (i.e., the check, for \$706,000), was drawn on an FNCB account by Human Services Consultants, Inc. On March 8, the Disputed Check was proffered for deposit at NBT by an entity called Human Services Consultants Management, Inc.

NBT gave provisional credit to the depositor for the amount of the Disputed Check. NBT also transmitted the Disputed Check to the Reserve Bank for presentment to FNCB. The Reserve Bank then forwarded the Disputed Check to FNCB, and FNCB received it on March 12.

On March 13, FNCB determined it would not pay the Disputed Check because of the absence of sufficient funds in the account on which the check was drawn. That same day, FNCB sought to return the Disputed Check to NBT through the Reserve Bank. The parties agree that the Disputed Check was physically delivered to the Reserve Bank prior to 11:59 p.m. on March 13. In addition to sending the Disputed Check back to the Reserve Bank on March 13, FNCB also sent a notice to NBT which indicated that it did not intend to pay the Disputed Check. In addition, on the morning of March 14, FNCB executives telephoned NBT officials and telefaxed a letter to NBT, advising NBT that FNCB had decided to dishonor the Disputed Check.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Is FNCB accountable for the Disputed Check?
- B. Why did FNCB call NBT in addition to returning the check?
- C. If FNCB did not encode the Disputed Check as a "qualified returned check" before returning it, would that omission have affected its liability?
- D. Who is likely to bear the loss in this case and how could that loss have been prevented?

PROBLEM IV.

(26 points)

The following edited excerpt comes from a recent case:

Lor-Mar/Toto, Inc. ("Lor-Mar"), a customer of 1st Constitution Bank ("Bank"), maintained a business checking account. On May 28, [Lor-Mar] notified the Bank that the Bank was authorized to honor checks bearing a stamped facsimile signature of [corporate officer] Van Middlesworth.

Beginning on June 19, a series of five unauthorized checks were drawn against [Lor-Mar's] account. The total sum of the unauthorized checks equaled \$24,350.00. All five checks bore what appears to be the stamped facsimile signature of Van Middlesworth as was provided to the Bank on May 28. However, the unauthorized checks were a different stock and color than [Lor-Mar's] regular checks.

The Bank honored all five checks and charged [Lor-Mar's] account accordingly. The five checks were debited from June 24 to July 1 and appeared on statements covering the periods May 31 through June 28. Upon reviewing the statements, [Lor-Mar] discovered and reported the unauthorized charges to the Bank in July.

For each of the five checks, we can assume the forger produced the checks using modern desktop publishing technology with a genuine check of Lor-Mar as a model.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What rights does Lor-Mar have?
- B. May 1st Constitution Bank recover from the depository banks that presented the checks?
- C. Could 1st Constitution Bank avoid liability by showing that it exercised ordinary care in examining the five checks before deciding to pay them?
- D. What advice would you give 1st Constitution Bank and Lor-Mar for avoiding this type of problem in the future?

PROBLEM V.

(26 points)

The following edited excerpt comes from a recent case:

Appellants [TME Enterprises, Inc. and James L. McDaniel] were the victims of a fraudulent investment scheme in which \$1 million they sent by wire transfer ended up with Vieri Gaines Guadagni (Gaines). Appellants made the wire transfer through their bank, Pacific Business Bank, to an account Gaines maintained at Norwest Bank. Although appellants believed the account specified in their wire transfer was a trust account for the benefit of appellant James McDaniel and designated in the wire transfer "Vieri Gaines Guadagni, Trustee fbo [i.e., for benefit of] McDaniel" as the named beneficiary, the account was in fact the joint personal checking account of Gaines and his wife, Janet Guadagni. Gaines's business associate, John Sposato, as part of the fraudulent investment scheme, provided appellants with Gaines's account number and convinced appellants that Gaines would hold the wired funds as a trustee for appellants' benefit. Ultimately, the funds were all withdrawn from the Bank.

At the time of the transaction, Norwest Bank used an automated system for processing incoming wire transfers. Because appellants' wire transfer specified a valid, existing account number at Norwest Bank, the transferred funds were posted to that account.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Must Pacific Business Bank or Norwest Bank refund the money?
- B. Might Norwest Bank be liable for negligence in accepting the wire transfer if it had notice of prior fraud by Gaines?
- C. How could Appellants have ensured that their investment could only be put into an actual trust account?
- D. If Gaines had issued a forged payment order purporting to be from Appellants (instead of inducing Appellants to send the payment order), how would the parties' rights be different?

PROBLEM VI.

(25 points)

The following edited excerpt comes from a recent case:

In May 1999, Yvon Carrier hired Joan Smith as the office manager for [Carrier Enterprises]. While she was not given authority to sign company checks, she prepared checks for Yvon to sign. Smith also was responsible for opening the mail and presenting invoices to be approved for payment.

Yvon Carrier has an active credit card account with Citibank that he uses for both business and personal expenses. During the course of her work, Smith obtained access to Carrier's Citibank card. Between August 2000 and September 2002, Smith incurred \$120,520 in charges on the card. These charges were paid regularly using checks issued on bank accounts of Carrier Enterprises.

Smith obtained Yvon Carrier's signature on checks to Citibank by presenting him with a blank check, often catching him on his way out of the office and claiming she needed a signature right away. Smith subsequently would fill in Citibank as the payee. It was not his usual practice to review the bills attached to the checks that were presented for his signature. Carrier testified that Citibank mailed statements on his account monthly, but he would only review the statements if they were placed on his desk. Smith never placed any statements on his desk.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Were the checks issued to Citibank properly payable?
- B. To what extent did Citibank have a right to payment?
- C. Does it matter that Carrier used his card "for both business and personal expenses?"
- D. How could Carrier have prevented this fraud from occurring?

PROBLEM VII.

(25 points)

The following edited excerpt comes from a recent case:

This lawsuit concerns a \$7.5 million personal loan Lodwrick Cook, a senior executive at Global Crossing, Ltd. borrowed from [Private Bank] and failed to repay.

On July 26, 2001, Private Bank agreed to loan Cook \$7.5 million upon delivery of a letter of credit. On that same date, at Global Crossing's request, JPM [Bank] issued an Irrevocable Standby Letter of Credit in the amount of \$7.5 million to Private Bank. [The letter of credit required JPM to pay Private Bank \$7.5 million upon presentation of a "drawing certificate" stating that Cook had defaulted.] Cook simultaneously executed a promissory note providing that the Loan was due on July 5, 2002. Also on July 26, 2001, Cook signed a reimbursement agreement providing that he and his wife would reimburse Global Crossing "for the amount of any drawing on the [Letter of Credit]."

On January 28, 2002, Global Crossing declared bankruptcy. On July 5, 2002, an event of default occurred under the note because Cook failed to pay Private Bank the principal balance. Private Bank presented a drawing certificate to JPM, and JPM honored presentment and [paid] \$7.5 million to Private Bank.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Did JPM have a duty to verify the factual assertions in the drawing certificate before honoring the presentation?
- B. What rights does JPM have?
- C. Why might Private Bank have insisted on receiving a letter of credit issued by JPM at Global Crossing's request, rather than an ordinary contractual guarantee by Global Crossing?
- D. If Global Crossing does not reimburse JPM, what rights will Global Crossing have against Cook and his wife?

END OF EXAMINATION

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Assume that the current official version of each article of the Uniform Commercial Code applies, regardless of any dates or jurisdictions indicated.

SUGGESTIONS: Keep your answers brief or you will run out of time. Draw a diagram of each transaction to avoid confusion.

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Good luck!

PROBLEM III.

(26 points)

The following edited excerpt comes from a recent case:

Noble loaned \$3,000 to Michael Baker and Amy Baker. [Michael Baker's father, Bobby] Baker became aware of the debt owed by Michael and Amy to Noble and informed Michael that he would pay the debt owed to Noble. Baker drafted a check for \$3,000 payable to Noble. The check was drawn on Baker's account at Colonial Bank and indicated on the memorandum line that it was "[f]or repayment of loan for Michael & Amy Baker." Baker stated that at the time he wrote the check he had not spoken with Noble about the matter and that he was given no consideration by Noble in exchange for issuing the check to Noble. Noble deposited the check into his checking account at the Alabama Exchange Bank. Subsequently, Noble was informed by his bank that a "stop payment" order had been issued on the check. [Colonial Bank returned the check to the Alabama Exchange Bank, which returned it to Noble.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. If Noble sues Bobby Baker, may Baker successfully assert lack of consideration as a defense?
- B. If the check's memo line had said "Payment in full of all debts owed by Michael & Amy Baker," would Noble's rights against Michael and Amy Baker be different?
- C. When Colonial Bank returned the check to the Alabama Exchange Bank, what rights did the Alabama Exchange Bank have?
- D. How would Noble's rights differ if Colonial Bank had certified the check before Bobby Baker gave it to Noble?

PROBLEM II.

(26 points)

The following edited excerpt comes from a recent case:

Martin Monaco, then vice-president of Scodek Construction Corporation, advanced certain moneys to the financially troubled corporation. In response, William Decker, Scodek's president, executed two promissory notes in favor of Monaco--one in the amount of \$25,000 and one in the amount of \$47,000. Decker personally guaranteed the payment of both notes. Monaco thereafter experienced personal financial difficulties and obtained a loan from [Anthony Cardarelli] in the amount of \$24,500. Apparently lacking the funds to repay that loan, Monaco assigned the promissory notes to [Cardarelli].

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. How should Decker have signed the notes if he wanted to make Scodek the primary obligor and wanted to guarantee payment himself only if Scodek were to default?
- B. Why might it make a difference whether Monaco signed or did not sign the notes before assigning them Cardarelli?
- C. If no defenses are asserted, how much is Cardarelli entitled to recover on the notes and how much is Cardarelli entitled to recover on the loan that he made to Monaco?
- D. What rights would Scodek have if it mistakenly paid Monaco after Monaco assigned the notes to Cardarelli?

PROBLEM III.

(26 points)

The following edited excerpt comes from a recent case:

Wayne Kooistra maintained accounts at both American and Farm Credit, through which he perpetrated an elaborate check-kiting scheme. On [Wednesday] August 22 through [Friday] August 24, twenty-three drafts executed by Kooistra, drawn on Farm Credit, were deposited by Kooistra into his American checking account. The drafts at issue total over six million dollars. American forwarded the drafts to Wells Fargo, and Wells Fargo received the drafts on August 23, 24, and 27 respectively. Wells Fargo forwarded the drafts to Farm Credit, and Farm Credit received the drafts on August 24, 27, and 28, respectively. Farm Credit sent the drafts back, en masse, to Wells Fargo, and Wells Fargo received them on August 29. In turn, Wells Fargo sent the drafts back en masse to American on August 30. [By then, Kooistra had withdrawn credit that American had given his account for the checks.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. To what extent did American have a duty to give Kooistra credit for the checks that he deposited?
- B. To what extent is Farm Credit accountable for the checks?
- C. Does Wells Fargo have any claims or liabilities?
- D. In the context of this check kiting scheme, what is a likely reason for Farm Credit's delay in returning some of the checks?

PROBLEM IV.

(26 points)

The following edited excerpt comes from a recent case:

Allianz Life Insurance Company had a checking account at Wells Fargo bank. Charles Schwab, a securities brokerage firm, received a check for \$287,651.23 made out to it and drawn on Allianz's account at Wells Fargo. The check was presented to Schwab for deposit by a man who called himself James M. Carden and said he wanted to open a brokerage account in his name. Schwab opened an account in Carden's name, credited the account with the face amount of the check, and deposited the check in a bank in which Schwab has an account. [Wells Fargo paid the check.] Two weeks later Carden faxed Schwab directions to wire various amounts of money in his Schwab account, adding up to almost all the money in it, to accounts in other financial institutions. Schwab made the transfers as instructed. Allianz [later] discovered that Carden had forged the \$287,651.23 check. There had been two earlier suspicious checks drawn on Allianz's account at Wells Fargo.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What steps should Allianz take at this point?
- B. Why might it be relevant that two earlier suspicious checks were drawn on Allianz's account at Wells Fargo?
- C. Is the bank at which Schwab deposited the check liable for conversion, liable for breach of warranty, liable in restitution, or liable under any other theory?
- D. Suppose the check had not been forged but instead Allianz had issued the check to Schwab at the direction of someone impersonating Carden, a person to whom Allianz actually owed money. How would Allianz's rights change?

PROBLEM V.

(26 points)

The following edited excerpt comes from a recent case:

Regatos was permitted to make wire transfers out of his CBNY [Commercial Bank of New York] account from his home in Brazil without dealing directly with the New York office. Regatos described the procedure he used as follows. First, Regatos would sign a payment order form and fax it to the CBNY office in Sao Paulo, Brazil. He would then follow up with a phone call to Abadi [an employee in the Sao Paulo office] confirming that she had received the fax. Regatos would then verbally approve the amount of the payment order. After receiving confirmation, Abadi would fax the payment order form to the New York office. In New York, a CBNY employee would check the signature on the faxed payment order against Regatos' signature card, which the Bank kept on file.

On March 23, \$450,000 was wired out of Regatos' CBNY account to Citibank. On April 6, another \$150,000 was wired to Citibank. Regatos contends that he neither initiated nor authorized these transfers. [But Abadi testified:] "I have examined the payment orders here in issue. I am certain that telephonic verification of these payment orders would have been received by the Sao Paulo office before dispatching them to New York." [It is to be assumed that both Regatos and Abadi are telling the truth and that there is no other evidence.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. How might fraud in the funds transfers have occurred?
- B. May CBNY charge Regatos for the two funds transfers?
- C. If Abadi did not exercise reasonable care in obtaining telephonic verification of these payment orders, may Regatos recover from CBNY for negligence?
- D. What steps could Regatos and CBNY take to prevent similar problems from arising in the future?

PROBLEM VI.

(25 points)

The following edited excerpt comes from a recent case:

DBI had an AMEX corporate credit card account, which it authorized certain employees to use. DBI appointed Kathy Moore as the Accounting Manager. In that position, Moore controlled accounts receivable, accounts payable, corporate checking, and all other financial aspects of DBI's business. On August 10, AMEX added Moore as a cardholder on DBI's corporate account at Moore's request and without DBI's knowledge or approval. From August to May, Moore charged \$133,254.79 in unauthorized charges for clothing, travel, jewelry, and other personal items. During this period, AMEX sent DBI ten monthly billing statements, each listing Moore as a corporate cardholder and itemizing her charges. Moore paid for these charges with thirteen DBI checks made payable to AMEX. Most of these checks were signed or stamped in the name of Alan L. Storm, the president of DBI; none were signed in Moore's own name. On May 31, DBI notified AMEX of Moore's fraudulent charges and requested a refund of \$133,254.79.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. If DBI had told AMEX that Moore's charges were fraudulent immediately after receiving the first billing statement showing the charges, what liability would DBI, AMEX, and the merchants who took the charges have?
- B. To what extent would delay in reporting unauthorized charges to AMEX affect liability?
- C. If Moore had paid the merchants with checks drawn on DBI's corporate account instead of paying them with the AMEX card, how would DBI's liability differ?
- D. How should DBI and AMEX have sought to prevent this type of fraud?

PROBLEM VII.

(25 points)

The following edited excerpt comes from a recent case:

In May, J.P. Doumak, Inc. entered into an agreement to sell a quantity of fabric to John Michaels, Inc. To facilitate this sale, Michaels procured [a letter of credit] issued by Westgate Financial Corp. The [letter of credit] set forth Westgate's commitment to pay Doumak the purchase price for the fabric upon Doumak's presentation to Westgate of specified documents evidencing Doumak's performance (the invoice, bill of lading and packing list) and, in addition, a "written demand * * * for payment * * * prior to August 21." Doumak, having shipped the fabric to Michaels, sent Westgate the evidentiary documents required by the letter of credit [on June 30]. Doumak's correspondence did not, however, contain any language demanding or requesting that payment be made at that time. Notwithstanding the letter of credit's express requirement that a demand for payment be made prior to August 21, the first time Doumak contacted Westgate after June 30 was September 7 when Doumak belatedly sent Westgate a letter demanding payment.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Is Westgate liable to Doumak?
- B. What are the rights and liabilities of Michaels?
- C. How would the rights of the parties be different if Westgate had called the document that it issued to Doumak a guaranty instead of a letter of credit?
- D. In the future, would Doumak do better to insist on payment by credit card rather than by letter of credit?

END OF EXAMINATION

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Final Examination In
COMMERCIAL PAPER--PAYMENT SYSTEMS
(Course No. 282-20; 3 credits)
Professor Gregory E. Maggs

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Assume that the current official version of each article of the Uniform Commercial Code applies, regardless of any dates or jurisdictions indicated.

SUGGESTIONS: Keep your answers brief or you will run out of time. Draw a diagram of each transaction to avoid confusion.

You may keep this copy of the examination at the end of the examination period.

Good luck!

PROBLEM I.

(26 points)

The following edited excerpt comes from a recent case:

Mrs. J.W. Baker is the named holder of a CD [(i.e., a "certificate of deposit")] in the principal amount of \$100,000 that was issued by Commercial National Bank. The CD provides that it is payable "to the order of Mrs. J.W. Baker in current funds on the return of this Certificate properly endorsed 90 days after date with interest at the rate of 5.75% per annum." The CD further states that there shall be "[n]o interest after maturity." Finally, the CD features a notation, in all-capital letters that are at least as large as any other type in the text, that it is "NONTRANSFERABLE." [Twelve years after issuance of the CD], the Bakers' lawyer advised the bank of [Mrs. Baker's] intent to present the CD for payment. The CD was in fact presented, but payment was refused. [The bank refused to pay because the period of limitations applicable to ordinary contracts in the state is 5 years.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Do the terms of the certificate of deposit prevent it from being a negotiable instrument?
- B. Why would it matter to Mrs. Baker whether the certificate of deposit is a negotiable instrument?
- C. Why might Commercial National Bank prefer to issue a certificate of deposit that is not a negotiable instrument?
- D. Would U.C.C. articles 3 and 4 have any relevance to a certificate of deposit that is not a negotiable instrument?

PROBLEM II.

(26 points)

The following edited excerpt comes from a recent case:

Thomas Peeso, a member of the Navy Federal Credit Union ("Navy FCU"), obtained a cashier's check from Navy FCU in the amount of \$7,000. The check was made payable to Mr. Peeso. Mr. Peeso delivered the check to Nation's Auto, a used car dealership, [to pay for a car]. He indorsed the check as follows: "[Peeso's Signature] Payable to Nation's Auto." Nation's Auto deposited the check in its account at Patriot Bank. Patriot Bank credited Nation's Auto's account in the amount of \$7,000. Patriot Bank then submitted the check to Navy FCU for payment through the Federal Reserve System. Navy FCU returned the check to Patriot Bank [because Nation's Auto had not indorsed it]. Patriot Bank returned the check to Nation's Auto. When Patriot Bank attempted to reverse the credit it had given for the check, however, it discovered that the account was overdrawn.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Were Peeso, Nation's Auto, and Patriot Bank ever holders of the cashier's check?
- B. What rights does Patriot Bank have against the other parties?
- C. Does Nation's Auto have any rights against Peeso?
- D. What were the advantages and disadvantages to Peeso of asking Navy FCU to make the cashier's check payable to Peeso instead of payable to Nation's Auto?

PROBLEM III.

(26 points)

The following edited excerpt comes from a recent case:

Attorney David W. Hubert opened [a checking account designated as "the IOLTA account"] with Seafirst for real estate closing funds. [Paralegal Gail] Williams was an authorized signer. Ms. Williams kited checks between Seafirst and her own accounts at Key Bank and other banks. The significant events by date are:

September 16 (Wednesday): Ms. Williams deposits into the IOLTA two checks totaling \$193,866.44 drawn on her own account at Key Bank. Seafirst provisionally credits the IOLTA and forwards the checks to Key Bank for collection. Ms. Williams executes three wire transfers from the IOLTA totaling \$171,710.61 [to accounts she controls at other banks].

September 21 (Monday): Checks arrive at Key Bank.

September 22 (Tuesday): Checks returned to Seafirst [for insufficient funds]. Seafirst charges back the IOLTA for the provisional credit and issues Hubert notice of dishonor of the Key Bank checks. The IOLTA account winds up short by \$63,853.46.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. In carrying out her fraudulent scheme, what did Williams gain by depositing her checks into the IOLTA account before transferring money from the IOLTA account to herself?
- B. To what extent did Seafirst have to give provisional credit to the IOLTA account for the deposited checks?
- B. If Key Bank had returned the IOLTA checks on September 23 instead of September 22, could it have avoided liability?
- C. If Seafirst had delayed in revoking the provisional credit given for the deposited checks, how might the delay have affected Seafirst's rights?

PROBLEM IV.

(26 points)

The following edited excerpt comes from a recent case:

United Catholic Parish Schools (UCPS) employed Janet Gittus as its bookkeeper. Gittus wrote checks on UCPS's account with Bank One in payment of Gittus's personal credit card debt. When UCPS learned of Gittus's embezzlement, it demanded that First Financial [the issuer of the credit card] return \$59,038.92, which First Financial had received from Bank One in payment of the checks. First Financial refused, and UCPS sued for conversion. As an affirmative defense, First Financial asserted that it was a holder in due course and therefore not subject to a claim of conversion.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. How should a court evaluate UCPS's conversion claim and First Financial's affirmative defense to this claim?
- B. Could UCPS recover from First Financial under a theory of restitution or some other theory besides conversion?
- C. What rights do UCPS and Bank One have with respect to each other?
- D. In the future, how should UCPS and Bank One attempt to prevent losses from this kind of embezzlement?

PROBLEM V.

(26 points)

The following edited excerpt comes from a recent case:

Centre-Point, a Nigerian bank, entered into a Test Key Agreement with Amex, a New York bank. The agreement addressed security precautions required for the handling of financial transactions [in Centre-Point's] investment account with Amex. On August 18, Centre-Point instructed Amex by telex to debit its account in the sum of \$1,598,226.93 and to invest the same on a 90-day fixed deposit. Amex never debited the account and never reinvested the money. Centre-Point subsequently learned that two fraudulent payment orders were made against its account on August 19. The first fraudulent payment order [was] returned due to deficiencies in the account number provided. Amex, however, paid the second fraudulent order to an off-shore account on August 20, in the amount of \$702,976.63. Centre-Point argues that if Amex had properly debited its account pursuant to its August 18 instruction, there would not have been funds available in the account to be drawn upon by the fraudulent payment order.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. May Amex cancel the second fraudulent payment order?
- B. Under what circumstances could Amex charge Centre-Point for the second fraudulent payment order?
- C. May Centre-Point recover from Amex for negligence?
- D. How would the rights of the parties have differed if Amex had paid a check for \$702,976.63 that was fraudulently drawn on Centre-Point's account instead of accepting the second fraudulent payment order?

PROBLEM VI.

(24 points)

The following edited excerpt comes from a recent case:

While Tonette Hauff and David Hauff were married, Tonette applied for and received a Citibank credit card account. Although it was Tonette's account, she authorized David to obtain a card and become an authorized user of her account. In preparation for their subsequent divorce, Tonette and David paid off [but did not close] the account. After the divorce, the credit cards expired, Tonette left the marital home, but Citibank sent renewal cards to Tonette at that home. Without telling Tonette, David fraudulently took possession of the new cards, he activated them through a telephone call with Citibank, and he made charges using the new cards.

The Additional Cards provision [of Tonette's agreement with Citibank] simply provided: "You may request additional cards on your account for others. However, if you do, you must pay us for all charges made by those persons, including charges for which you may not have intended to be responsible. You must notify us to revoke permission for any person you previously authorized to use your account."

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What arguments should Tonette and Citibank make on the question of whether Tonette is liable for David's charges?
- B. Under what circumstances, if any, might Citibank recover from the merchants at which David made the charges?
- C. What advice would you give Citibank for drafting its credit card agreements in the future?
- D. What should Tonette have done differently to avoid the dispute that she had with Citibank?

PROBLEM VII.

(26 points)

The following edited excerpt comes from a recent case:

Jiangyin Foreign Trade Corporation ("JFTC") agreed to purchase 1,000 metric tons of styrene monomer from Voest-Alpine Trading USA Corporation ("Voest-Alpine"). At Voest-Alpine's insistence, JFTC obtained a letter of credit from the Bank of China for the purchase price of \$1.2 million. The letter of credit provided for payment to Voest-Alpine after it delivered the monomer and presented several designated documents to the Bank of China. By the time Voest-Alpine was ready to ship its product, the market price of styrene monomer had dropped significantly from the original contract price. After shipping the monomer to JFTC, Voest-Alpine presented the documents specified in the letter of credit. [Bank of China sent a notice of dishonor saying:] "UPON CHECKING DOCUMENTS, WE NOTE THE FOLLOWING DISCREPANCY: 1. BENEFICIARY'S NAME IS DIFFER[ENT] FROM L/C [letter of credit]. 2. B/L [bill of lading] SHOULD BE PRESENTED IN TRIPLICATE."

[Only one copy of the bill of lading was attached. The beneficiary was identified in the letter of credit as "Voest-Alpine USA Trading" and in the presentation documents as "Voest-Alpine Trading USA."]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. How should a court assess whether Bank of China properly dishonored the letter of credit?
- B. If the listed discrepancies did not warrant dishonor, may Bank of China later identify other discrepancies?
- C. What rights, if any, does Voest-Alpine have against JFTC?
- D. Assume JFTC had implored Bank of China to "find some reason for dishonor because we no longer want to pay \$1.2 million for the styrene monomer." What advice would you have given Bank of China?

END OF EXAMINATION

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SUGGESTIONS: Keep your answers brief or you will run out of time. Draw a diagram of each transaction to avoid confusion.

You may keep this copy of the examination at the end of the examination period.

Good luck!

PROBLEM I.

(28 points)

The following edited excerpt comes from a recent case:

On May 7, Cleo Fields issued a check to Paul Carney in the amount of \$1,300. The check represented an advance payment for plastering work. Fields left the building to tend to other business. When he returned, Carney was not present; Carney's employee was intoxicated and the building was a mess. Fields spoke with Carney on May 8 to complain and told Carney that he was not to cash the check. Cleo Fields contacted the Bank of Zachary, the drawee of the check, and requested the issuance of a stop payment order on the check. On May 9, Carney went to Ancona's Stop and Save, Inc. to cash the check from Fields. Ancona's remitted the face value of the \$1,300 check, less a 2% processing fee, to Carney. The check was deposited into Ancona's bank account on May 11. Subsequently, the check [was] returned because payment had been stopped.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What rights, if any, does Ancona's have against Fields, Carney, and the Bank of Zachary?
- B. If the Bank of Zachary mistakenly had paid the check despite the stop payment order, what could it recover from Fields, Carney, Ancona's, and the depository bank?
- C. If Ancona's requires Carney to return its payment for the check, what rights would Carney have?
- D. What advice would you give Fields for the future if Fields must pay a contractor in advance?

PROBLEM II.

(24 points)

The following edited excerpt comes from a recent case:

Kathy Couchot and Jean Couchot executed a note in favor of Star Bank in the amount of \$6,317.48. The purpose of the loan from Star Bank was to enable Jean Couchot to pay the funeral expenses of her son. To disburse the proceeds of the loan Star Bank issued a check to "Kathy Couchot or Jean Couchot" and Jean cashed the check and received the loan proceeds. Jean used the loan proceeds to pay her son's funeral expenses and to pay tax arrearages and insurance on [Kathy's] residence. Jean made no payments on the loan to Star Bank.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. How much may Star Bank recover from Kathy and from Jean?
- B. What rights would Kathy and Jean have against each other if they each paid a portion of the note?
- C. What rights and liabilities would Star Bank have if it had issued the check to an impostor, pretending to be Jean?
- D. What risks did Kathy and Jean face in executing the note to Star Bank?

PROBLEM III.

(28 points)

The following edited excerpt comes from a recent case:

Channel Equipment Company leased heavy equipment to Behrens Construction. Behrens delivered checks for \$60,344.09 and \$62,082.46 to Channel as payment for obligations reflected in August invoices. The checks were drawn on Behrens's account with [Community State] Bank. On October 17, [Channel] deposited both checks into a joint account at First Prosperity Bank and the checks were presented to [Community State] Bank prior to 3:00 p.m. on Friday October 18. The Bank returned the checks marked "not sufficient funds" on Tuesday, October 22.

After receiving notice that the checks would not be paid, [Channel] took steps to recover payment from Behrens. The money garnered fully satisfied the August invoices. Additional debts from Behrens remain unsatisfied.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Is Community State Bank accountable for the checks?
- B. Did Channel have a right to recover payment for the August invoices from Behrens after October 22?
- C. Under what circumstances would First Prosperity Bank have a duty to give Channel credit for the checks as of October 22?
- D. Does anyone have a claim for restitution?

PROBLEM IV.

(24 points)

The following edited excerpt comes from a recent case:

Joseph Walton sustained physical injuries at West Feliciana High School where he was a student. Attorney Trudy Avants was retained by Walton's mother, Delores Carpenter, to represent them in a personal injury action against the West Feliciana school board. [The school board] and Avants agreed to settle the claim for \$50,000. The [school board] issued a settlement check made payable to:

"TRUDY AVANTS ATTORNEY FOR MINOR CHILD JOSEPH WALTON, MOTHER DELORES CARPENTER"

The check subsequently was endorsed by Avants and by two unknown individuals who fraudulently signed the names of Carpenter and Walton. The settlement check later was presented for payment to Fleet National Bank.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Is the check properly payable?
- B. Do Walton and Carpenter have a claim for conversion?
- C. To what extent is the school board liable?
- D. If Carpenter informs Fleet National Bank what happened, what action should Fleet National Bank take?

PROBLEM V.

(28 points)

The following edited excerpt comes from a recent case:

[TCD, a company owned by Xenos Yuen, offered to buy property from Hoover.] Hoover asked TCD to demonstrate its good faith by depositing the purchase price in a Stewart Title Co. escrow account at Moody Bank. Yuen arranged for the Bank of East Asia to wire transfer \$156,108.10 to Stewart Title's account at the bank. The transfer order was received, and the money credited to Stewart Title's account.

Over the next couple of days, Yuen and a Stewart Title representative, made numerous calls to [Moody Bank] about whether the funds had been transferred. Sandra Messinger, the bank's wire transfer clerk, repeatedly told [them] that the bank did not have the funds. Messinger did not pull up Stewart Title's account history. Had she done so, she would have seen that \$156,108.10 was deposited into Stewart Title's account. Hoover refused to close the deal because Stewart Title told Hoover it had not received the money. Yuen discovered a month later that the money had been in Stewart Title's account all along; by then, [Hoover] had made other arrangements and it was too late.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What are the rights of TCD and Bank of East Asia with respect to each other?
- B. May TCD recover from Moody Bank under U.C.C. article 4A or common law?
- C. Would it have been less risky for TCD to send the payment to Stewart Title using a check instead of a wire transfer?
- D. What should TCD have done immediately upon hearing that Moody Bank did not have the funds?

PROBLEM VI.

(24 points)

The following edited excerpt comes from a recent case:

[After Citibank issued Mark Gifesman a credit card, Gifesman asked Citibank for a second card on his account in the name of Alexei Popov.] The request was made at the behest of Vladislav Kharkover, a Russian acquaintance. Kharkover agreed to pay for charges arising out of the use of the Popov card and to pay [Gifesman] a \$25 monthly fee. The Popov card was used extensively in Germany, resulting in charges totaling \$36,076.66. We know nothing about how the card came to be used in Germany rather than in Russia. [Gifesman has refused to pay the charges.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Citibank argued that "the Kharkover stipend, without more, made use of the Popov card an authorized use." Is this argument correct?
- B. Gifesman argued that the charges were unauthorized because they far exceeded the card's credit limit. Is this argument correct?
- C. To what extent might negligence by Gifesman affect his liability to Citibank?
- D. If the charges were unauthorized, who would bear liability for them?

PROBLEM VII.

(24 points)

The following edited excerpt comes from a recent case:

[A professional hockey team called] the New Orleans Brass applied for an irrevocable standby letter of credit with the Whitney Bank. The Whitney Bank issued the letter of credit in favor of the Louisiana Stadium and Exposition District ("LSED") as a guarantee for rental payments.

The standby letter of credit requires the presentation of a notarized statement purportedly signed by an authorized representative of the Beneficiary [indicating the amount of rent owed and] reading: "We hereby certify that the New Orleans Brass is in default of the Arena Lease Agreement."

[LSED] presented documents to the Whitney Bank, requesting that it honor the letter of credit in the amount of \$216,527, the amount LSED claims it was owed in rent. Thereafter, the Whitney Bank honored the presentation and paid the amount sought. [The Brass allege that LSED overstated the rent owed by \$33,000.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What was the Brass's principal protection against the possibility that LSED might intentionally overstate the rent owed?
- B. If LSED accidentally had overstated the rent owed, what rights and liabilities would the parties have?
- C. If the documents presented by LSED omitted the words "We hereby certify that," what rights would the parties have?
- D. Is it accurate to describe a standby letter of a credit as a "guarantee?"

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IMPORTANT: Assume that the current official version of each article of the Uniform Commercial Code is in force in all of the problems, regardless of the dates or jurisdictions indicated.

SUGGESTIONS: Keep your answers brief or you will run out of time. Draw a diagram of each transaction to avoid confusion.

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Good luck!

PROBLEM I.

(26 points)

The following edited excerpt comes from Commerce Bank v. Rickett, 748 A.2d 111 (N.J. Super. A.D. 2000):

On January 5, 1998, Bruce Rickett [delivered] a check to Commerce Bank (the Bank) issued to him on January 3, 1998 by DeSimone Auto, Inc. in the amount of \$12,000, for deposit into Rickett's checking account with the Bank. The Bank credited Rickett's account and shortly thereafter allowed him to draw against same. The check was drawn upon DeSimone's account at the Bank of Gloucester County for payment of a 1997 Buick LeSabre motor vehicle.

The understanding between Rickett and DeSimone was that the check would not be presented for payment if the motor vehicle was damaged. Shortly after issuance of the check, DeSimone inspected the vehicle and found frame damage. DeSimone telephoned Rickett, advising him to pick up the vehicle and return the check. DeSimone returned the vehicle to Rickett, who accepted it. Thereafter, DeSimone issued a "stop payment" on the check, although the record does not reveal when the "stop payment" was requested. Contrary to their agreement, Rickett had already [deposited] the check on January 5, 1998, and drawn against it. The check was returned by the Bank of Gloucester County to the Bank as unpaid on January 13, 1998.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. To what extent may Commerce Bank recover from Rickett?
- B. To what extent may Commerce Bank recover from DeSimone?
- C. If Gloucester County Bank had paid the check, could it recover from DeSimone, Rickett, or Commerce Bank?
- D. What advice would you give DeSimone for making conditional payments of this type in future transactions?

PROBLEM II.

(26 points)

The following edited excerpt comes from Crystaplex Plastics v. Redevelopment Agency, 92 Cal. Rptr. 2d 197 (Cal. App. 2000):

Crystaplex contracted to supply and install a hockey rink at the Sportspark. The Sportspark is owned by the Redevelopment Agency. Earth Inline Hockey, Inc. ("EIH") contracted with Crystaplex [to do some of the work]. Crystaplex performed its obligations under the contract between September and December 1996. On or about December 6, 1996, the Redevelopment Agency issued a check in the amount of \$31,979 for the hockey rink. The check was made payable jointly to EIH and Crystaplex. The check was sent to EIH and EIH cashed it [without Crystaplex's indorsement and] without paying Crystaplex. Crystaplex discovered these facts in April 1997.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Why would the Redevelopment Agency issue a check to EIH and Crystaplex when its contract was only with Crystaplex?
- B. What rights does the Redevelopment Agency's bank have against EIH and the Redevelopment Agency?
- C. Does Crystaplex have a claim against the Redevelopment Agency or its bank based on conversion or any other theory?
- D. Would the rights of the parties be different if EIH had forged Crystaplex's indorsement?

PROBLEM III.

(26 points)

The following edited excerpt comes from Oak Brook Bank v. Northern Trust Co., 2000 WL 294081 (N.D. Ill. 2000):

Oak Brook Bank has sued Robert G. Hershenhorn for check kiting causing over \$400,000 of loss. Oak Brook also sued The Northern Trust Company. Hershenhorn had checking accounts at both banks. On Tuesday, 10 February 1998, he deposited 25 Northern Trust checks into his Oak Brook account. Each check exceeded \$2,500, and together they totaled \$451,494.76. The next day, Wednesday, 11 February, Oak Brook presented them to Northern Trust. Two days later, Friday, 13 February, Northern Trust picked up the phone between 1546 and 1552 hours [3:36 p.m. and 3:52 p.m.] and orally notified Oak Brook of its decision to dishonor them [for insufficient funds]. It returned the checks to the Chicago Fed, which received them at 1646 hours [4:46 p.m.]. Oak Brook had credited Hershenhorn's account in the amount of \$451,494.76 and had honored checks drawn on that account. Oak Brook paid out \$444,125.76.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. To what extent, if at all, was Oak Brook required to credit Hershenhorn's account for the deposited checks?
- B. Is Northern Trust accountable for the checks?
- C. May Northern Trust recover under a theory of restitution?
- D. What is the likely reason that Northern Trust did not immediately decide to dishonor the checks?

PROBLEM IV.

(26 points)

The following edited excerpt comes from Leeds v. Chase Manhattan Bank, 752 A.2d 332 (N.J. Super. A.D. 2000):

William Leeds and Carol Leeds [and Isabel Gibbs] hired Louis Egnasko, Esq. to represent them in the sale of property in East Orange, New Jersey. Egnasko closed the sale and accepted a settlement check [from the buyer] for \$87,293.56. The settlement check, payable to William Leeds, Carol Leeds, and Isabel Gibbs, was a [cashier]'s check drawn on Summit Bank. Following the closing, Egnasko altered the settlement check by typing "***Louis Egnasko, as attorney for***" above the payee line, so that the check then read:

LOUIS EGNASKO AS ATTORNEY FOR
WILLIAM LEEDS, CAROL LEEDS, ISABEL GIBBS

Egnasko alone endorsed and deposited the check into his account at Chemical Bank. Chemical Bank presented the check for collection in the ordinary course, and Summit honored its own check.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Do William and Carol Leeds and Isabel Gibbs have any claim against the buyer who paid them with the cashier's check?
- B. Do William and Carol Leeds and Isabel Gibbs have any claim against any bank?
- C. What rights do Summit Bank and Chemical Bank have?
- D. If an impostor pretending to be Egnasko had obtained the check from the buyer, forged the payees' indorsements, and deposited the check at Chemical Bank, what would change?

PROBLEM V.

(26 points)

The following edited excerpt comes from Livingston Livestock Exchange v. Hull State Bank, 14 S.W.3d 849 (Tex. App. 2000):

On Friday, September 17, 1993, Livingston deposited a \$48,492.29 check from Mike Pantalion in Livingston's account at Hull Bank. On Tuesday, September 21, 1993, Hull Bank notified Livingston that Pantalion's check was returned for insufficient funds. [Livingston then asked Pantalion to make a substitute payment by funds transfer.]

On Wednesday, September 22, 1993, [Hull Bank] received a telephone call from "Nancy," who identified herself as an employee in the wire transfer department of NationsBank of Houston. This person stated NationsBank had received an incoming wire transfer from the Bank of Santa Fe from Pantalion for the account of Hull Bank and for the further account of Livingston.

[Hull Bank] executed the NationsBank payment order by crediting Livingston's account with the full amount of the \$48,492.29 wire transfer. Livingston returned the check to Pantalion because he thought the wire transfer had been received. [Hull Bank discovered later that Nancy's call was fraudulent and that the Bank of Santa Fe and NationsBank had not participated in any funds transfer from Pantalion to Livingston.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What rights does Hull Bank have against Livingston?
- B. What rights does Livingston have against Pantalion?
- C. Under what circumstances, if any, might Hull Bank charge NationsBank for the amount of the transfer?
- D. What advice would you give Hull Bank?

PROBLEM VI.

(25 points)

The following edited excerpt comes from Crestar Bank v. Cheevers, 744 A.2d 1043 (D.C. 2000):

Mr. Cheevers entered into an agreement with Crestar [Bank] for use of a Visa credit card. After April 1994, he took the credit card out of his wallet to avoid further use because he was experiencing financial difficulties. He could not recall what he did with the card, but thought it may have been lost [when he moved to a new home]. When Mr. Cheevers' account became two months past due in June 1994, Crestar blocked the account from further transactions and mailed Mr. Cheevers a statement informing him that his privileges had been suspended. Despite the block on Mr. Cheevers' account, in October and November, 1994, charges totaling \$3,583.92 were posted to Mr. Cheevers' card from Amtrak automated ticket machines. On November 29, 1994, Crestar sent Mr. Cheevers a billing statement which included the charges from October and November. Mr. Cheevers never received [any statements after April 1994 because of his move].

Crestar argues Mr. Cheevers had a contractual and common law duty to notify the bank that his credit card had been lost or stolen.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Were the Amtrak charges necessarily unauthorized if Mr. Cheevers did not make them himself? (Give examples.)
- B. If the charges were unauthorized, could Mr. Cheevers be required to pay them based on his failure to notify Crestar?
- C. If Mr. Cheevers was negligent in losing his card and failing to forward his mail, how would that affect his liability?
- D. What advice would you give Crestar at this point?

PROBLEM VII.

(25 points)

The following edited excerpt comes from Kenney v. Read, 997 P.2d 455 (Wash. App. 2000):

On February 9, 1996, Rook Broadcasting of Idaho, Inc. and Melinda Read entered into a one-year lease of Ms. Read's radio station. Rook's obligations included the payment of \$5,000 per month. The [lease] required Rook to provide a letter of credit in the amount of \$45,000 to secure [the last] nine monthly payments.

The letter of credit provided that Ms. Read could draw \$5,000 increments to cover missed lease payments or Ms. Read could draw down the entire amount if a substitute letter of credit was not supplied within 10 days of its March 1, 1997 expiration date.

Rook timely made all nine of the monthly payments secured by the letter of credit. Nonetheless, Ms. Read drew down the balance of the letter of credit on February 21, 1997, within 10 days of the letter of credit's March 1 expiration date, because no substitute letter had been provided. [An unstated assumption in the lease was that Rook would provide a substitute letter of credit only if Rook failed to pay the rent.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What rights does the issuer of the letter of credit have?
- B. What rights does Rook have?
- C. What rights would Read have if the issuer of the letter of credit had refused to pay her, citing the unstated assumption in the lease?
- D. How would you have advised the parties to phrase the letter of credit?

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Final Examination In
COMMERCIAL PAPER--PAYMENT SYSTEMS
(Course No. 282-20; 3 credits)
Associate Professor Gregory E. Maggs

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Good luck!

PROBLEM I.

(25 points)

The following statement of facts comes from Vaughn v. DAP Financial Services, Inc., 982 S.W.2d 1 (Tex. App. 1997):

On July 25, 1984, [Joe] Vaughn and Clell Gierhart, vice-president and president respectively of Gierhart/Vaughn Construction Company, signed an open continuing guaranty [contract] individually agreeing to repay all future loans made by Texas American Bank to their company. The guaranty covered a "guaranteed indebtedness" of the company up to \$500,000. On November 4, 1987, Gierhart, in his capacity as president of Gierhart/Vaughn Construction Company, signed a promissory note with Texas American Bank in the amount of \$122,500. No payments were made on the note, which matured on November 3, 1989. Later, Texas American Bank became insolvent, and DAP purchased the note [and guaranty contract] through a loan sale by Team Bank, who was acting as an agent of the FDIC, who in turn was acting as receiver for Texas American Bank.

On the basis of these facts, answer the following questions, and briefly explain your answers:

- A. How could Vaughn and Gierhart personally have guaranteed repayment of the note if they had not already made the separate guaranty contract?
- B. Assume that Texas American Bank never delivered the \$122,500 loan proceeds to the Gierhart/Vaughn Construction Company.
 1. What should Gierhart and Vaughn have done immediately?
 2. Can DAP recover from the Gierhart/Vaughn Construction Company on the note?
 3. Can DAP recover from Vaughn and Gierhart personally on the separate guaranty contract?

PROBLEM II.

(30 points)

The following statement of facts comes from Flatiron Linen, Inc. v. First American State Bank, 1999 WL 717944 (Colo. App.):

On October 16, 1996, Fluffy Reed Foundation, Inc., (FRF) issued a check drawn on its account at [First American State Bank] in the amount of \$4,100 payable to [Flatiron Linen, Inc.]. The bank dishonored that check because of insufficient funds and returned it to [Flatiron Linen]. On October 17, 1996, FRF contacted the bank and stopped payment on the previously dishonored insufficient funds check. On March 26, 1997, an agent of [Flatiron Linen] appeared at the bank and exchanged the previously dishonored check for a cashier's check payable to [Flatiron Linen]. In issuing the cashier's check, the teller failed to notice the stop payment order. The bank recognized its mistake moments later. It immediately notified [Flatiron Linen] and hand delivered a letter requesting return of the cashier's check and stating that the cashier's check would not be honored. Despite this notice, [Flatiron Linen] deposited the cashier's check in its account at [Colorado National Bank] and immediately withdrew the funds. The depositary bank processed the cashier's check, but [First American State Bank] refused to pay. Consequently, the depositary bank debited [Flatiron Linen]'s account for the amount of the [cashier's] check and notified [Flatiron Linen] of the debit [and returned the cashier's check to Flatiron Linen].

On the basis of these facts, answer the following questions, and briefly explain your answers:

- A. What rights do Flatiron Linen and First American State Bank have against each other?
- B. What rights does Flatiron Linen have against FRF?
- C. What rights does First American State Bank have against FRF?
- D. If Colorado National Bank had not returned the cashier's check to Flatiron, could it have recovered from First American State Bank?

PROBLEM III.

(25 points)

The following statement of facts comes from Kimberly A. Allen Trust v. Firstbank of Lakewood, 1999 WL 304396 (Colo. App.):

On March 14, 1997, the [Kimberly A. Allen] Trust deposited into its account with FirstBank a check drawn on Bank One in the amount of \$110,737.50. A hold was placed on the account pending payment of the check. On March 17, 1997, the first business day after deposit, FirstBank presented the check to [the] payor bank for collection and was given provisional credit.

On March 20, 1997, after [the] payor bank advised FirstBank that the check had cleared, the Trust was informed that the hold on its account had been lifted. However, on March 25, 1997, [the] payor bank notified FirstBank that it was returning the check for insufficient funds. After return of the check, FirstBank charged back the amount of the check, plus a return fee, to the Trust's account.

On the basis of these facts, answer the following questions, and briefly explain your answers:

- A. Did FirstBank have a right to charge back the amount of the check?
- B. If FirstBank had not charged the Trust's account, what rights would it have?
- C. What rights did Bank One have immediately after it paid the check?
- D. How would the rights of the parties have differed if the check had contained a forged drawer's signature?

PROBLEM IV.

(25 points)

The following statement of facts comes from Halla v. Norwest Bank of Minnesota, 601 N.W.2d 449 (Minn. 1999):

Donald Halla employed Lynn Spaeth from 1993 until 1997 to manage five apartment buildings. Between 1994 and 1997, Spaeth stole rent payments totaling more than \$100,000 and deposited them in her Norwest Bank account. The payments consisted of cash and checks [payable to Halla's business]. Spaeth endorsed the checks by forging Halla's name and then signing her name. She withdrew all of the funds from her account before Norwest learned of the theft.

Norwest did not have a policy against accepting for deposit checks that named a business as a payee, or a policy to examine whether individual depositors were fiduciaries.

On the basis of these facts, answer the following questions, and briefly explain your answers:

- A. Can the tenants' banks charge the tenants' accounts for the stolen rent payment checks?
- B. May the tenants or Halla's business recover from anyone under a theory of conversion?
- C. Did anyone breach any warranties?
- D. Halla argued that "Norwest's practice of taking endorsed checks, originally payable to a business, for deposit into a personal account establishes that Norwest failed to exercise ordinary care." Is this correct and why might it matter?

PROBLEM V.

(25 points)

The following statement of facts comes from Credit Lyonnais New York Branch v. Koval, 1999 WL 571058 (Miss.):

Alfred Randolph Koval, a Mississippi citizen, had \$86,986.46 on deposit with a Luxemburg branch of Bank of Credit and Commerce International ("BCCI") when BCCI was liquidated.

The BCCI liquidator notified Koval that Association pour la Garantie des Depots, Luxemburg's deposit protection scheme ("DPS"), would forward \$14,450.45 to his bank account, the maximum amount payable by DPS. DPS is Luxemburg's equivalent to the FDIC.

DPS ordered the bank holding [BCCI's remaining] deposits, Banque et Caisse d'Epargne de L'Etat ("Banque"), to wire \$14,403.54 (\$14,450.45 less wire charges) to Koval. Banque instructed Credit Lyonnais, its correspondent bank in the U.S., to wire the funds. On July 12, 1993, Credit Lyonnais wired \$14,403.54 to Hancock Bank to the account of Koval. The next day, Credit Lyonnais mistakenly repeated the wire.

Realizing its mistake, some months later, Credit Lyonnais asked Koval [to] return the second \$14,403.54 mistakenly wired to him.

On the basis of these facts, answer the following questions, and briefly explain your answers:

- A. May Koval refuse to refund the second payment to Credit Lyonnais?
- B. Are there circumstances under which Credit Lyonnais could cancel its second payment order, and how would cancellation affect the rights of the parties?
- C. To what extent may Credit Lyonnais recover from Banque or DPS?
- D. May Banque charge the BCCI account for either payment?

PROBLEM VI.

(25 points)

The following statement of facts comes from Dillard Department Stores, Inc. v. Owens, 951 S.W.2d 915 (Tex. App. 1997):

Owens opened an account with Dillard [Department Stores] in 1970 and received a charge card in his own name. Owens then married Davis on November 1, 1990. However, shortly thereafter, the couple separated, Davis moved to Kansas, and Owens filed for divorce in Nueces County, Texas, at the beginning of December 1990. While in Wichita, Kansas, Davis obtained from Dillard a temporary charge card on Owens' account on December 22, 1990. Between December 23, 1990, and December 28, 1990, Davis purchased some \$5,000 worth of goods from Dillard on the charge card.

When Owens received the bill for Davis' purchases in January 1991, he protested by sending a letter of dispute to Dillard complaining that the charges were unauthorized. Dillard acknowledged the dispute and requested that Owens come into its Corpus Christi store, examine the receipts and sign an affidavit declaring that the purchases were fraudulently made. Owens did so. Dillard then contacted Davis, who informed Dillard of the marriage. Dillard then sent a letter to Owens on April 1, 1991, denying his assertions of fraud [on grounds that he and Davis were legally married at the time of the purchases].

On the basis of these facts, answer the following questions, and briefly explain your answers:

- A. Were the charges between December 23 and December 28 authorized?
- B. What is Owens's liability for Davis's purchases between December 23 and December 28?
- C. Suppose Davis had obtained a bank credit card using similar tactics. If she used the bank credit card at Dillard, how would the rights of the parties be different?
- D. What advice would you give Owens?

PROBLEM VII.

(25 points)

The following statement of facts come from Strozzo v. Sea Island Bank, 1999 WL 548643 (Ga. App.):

On September 23, 1997, Hampton County Warehouse had Sea Island Bank issue an irrevocable letter of credit in the amount of \$262,500 to the South Carolina Department of Agriculture, Warehouse Division, to satisfy [a] statutory requirement for obtaining a warehouseman's license.

The letter of credit read in part: "[T]he funds under this Letter of Credit [are] available against sight draft(s) accompanied by an affidavit from the Director of the Warehouse Division of the beneficiary stating that the customer, [Hampton], has failed to perform the duties and obligations of a licensed state warehouseman. The affidavit shall state the amounts payable to the beneficiary due to the licensed warehouseman's failure to carry out his obligations."

On July 17, 1998, the South Carolina Department of Agriculture forwarded a sight draft to the Sea Island Bank demanding payment of \$262,500. The accompanying affidavit stated that Hampton received cotton from over fifty farmers for storage in Georgia and South Carolina, but issued them no warehouse receipts. [Instead, Hampton sold the receipts] to mills; never obtained permission from the owners to transfer the [receipts] or to sell the cotton; and never paid the farmers.

On the basis of these facts, answer the following questions, and briefly explain your answers:

- A. Does Sea Island Bank have to honor the sight draft regardless of whether the allegations are true?
- B. If Sea Island Bank honors the sight draft, what rights will it have?
- C. What are the rights of the mills that purchased the warehouse receipts?
- D. What are the rights of the farmers who stored the cotton in the warehouse?

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Good luck!

PROBLEM I.

(26 points)

The following edited excerpt comes from Dal-Tile Corp. v. Cash N' Go, Inc., 487 S.E.2d 529 (Ga. Ct. App. 1997):

GSC obtained a subcontract to perform ceramic tile work for a project on which Blake Construction was the general contractor. To induce Dal-Tile to sell material to GSC, Blake agreed it would pay for the necessary tile. Pearson [who is GSC's president] forged Dal-Tile invoices, sent them to Blake, and obtained a check made to Dal-Tile in the amount of \$97,199.75. Pearson went to Dal-Tile and negotiated the Blake check to the supplier. In return, Dal-Tile drew a check in the amount of \$45,081.70, payable to GSC, representing the difference between the amount owed Dal-Tile for materials [previously delivered to GSC and Blake] and the amount of the Blake check.

Pearson negotiated this Dal-Tile check to Cash N' Go, which recognized Pearson as the authorized representative of GSC and which had previously cashed, without incident, Dal-Tile checks made to GSC and endorsed by Pearson. The next day, Dal-Tile learned of the forged invoices and stopped payment on the check.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What rights does Cash N' Go have?
- B. What rights does Dal-Tile have?
- C. Could Pearson have negotiated the \$97,199.75 check to someone other than Dal-Tile?
- D. May Blake Construction recover from anyone under a theory of conversion or any other theory?

PROBLEM II.

(26 points)

The following edited excerpt comes from DRP, Inc. v. Burgess, 1999 WL 52996 (La. App.):

Elizabeth Burgess left her vehicle with Uptown Auto Specialist (UAS) for repair. Burgess did not retrieve the vehicle until December 30, 1994. On this day, in exchange for her vehicle, Burgess remitted a teller's check to UAS in the amount of \$6,716.90 drawn by Riverland Credit Union (RCU) on Southwest [Federal Credit Union] naming UAS as payee.

Cosma [who is UAS's president] deposited said check into UAS's account with Whitney National Bank. Shortly thereafter, Cosma received notice from Whitney that a stop payment order had been issued by RCU on the check. In addition, Whitney informed Cosma that an \$18.00 service fee had been assessed against UAS.

The record indicates that at the time RCU ordered a stop payment it did so to "accommodate" Burgess's request, and that she had "changed her mind" because she believed she would not receive her car in exchange for the check.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What rights does UAS have against Burgess?
- B. What advice would you give Riverland Credit Union?
- C. To what extent did Whitney National Bank have a duty to give UAS credit for the check?
- D. If Southwest Federal Credit Union had paid the check, could it recover from anyone?

PROBLEM III.

(26 points)

The following edited excerpt comes from Maine Family Federal Credit Union v. Sun Life Assurance Co., 1999 WL 149662 (Me.):

[Sun Life issued three checks for \$40,759.35 each to Daniel, Joel, and Claire Guerrette.] Paul Richard then fraudulently induced the Guerrettes to indorse the checks in blank. Richard deposited them in his account at the [Maine Family Federal] Credit Union on October 26, 1995. The Credit Union immediately made the funds available to Richard.

The Guerrettes contacted Sun Life the next day. Sun Life immediately ordered Chase Manhattan [the drawee bank] to stop payment. Thus, when the checks were ultimately presented for payment, Chase refused to pay, and they were returned to the Credit Union.

The Credit Union received notice that the checks had been dishonored on November 3, 1995, the sixth business day following their deposit. By that time, however, Richard had withdrawn from his account all of the funds represented by the three checks.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Under what circumstances would the Guerrettes have a right to recover possession of the checks?
- B. Would the Guerrettes have a claim against Sun Life if Sun Life had allowed Chase Manhattan to pay the check?
- C. What rights does the Maine Family Federal Credit Union have?
- D. Can anyone recover for breach of warranty?

PROBLEM IV.

(26 points)

The following edited excerpt comes from Getty Petroleum Corp. v. American Express, 683 N.E.2d 311 (N.Y. 1997):

Getty Petroleum Corporation distributes gasoline through dealer-owned stations. Customers who purchase gasoline at a Getty station can pay by cash or credit card. When a customer uses a credit card, Getty processes the transaction, receives payment from the credit card company and then issues computer-generated checks payable to dealers to reimburse them for their credit card sales. Many of the checks, however, are never delivered to the payees. Instead, Getty uses these checks for bookkeeping purposes, voiding them and then crediting the check amount toward the dealer's future purchases of gasoline.

Lorna Lewis was given sole responsibility for voiding checks [that are not delivered]. From April 1991 to October 1992, Lewis stole over 130 of the checks, forged the indorsements of the payees by hand or rubber stamp, and then submitted the checks to credit card companies in payment of her own debt. Chemical Bank, where Getty maintained its checking account, honored each of the checks.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Under what theories, if any, may Chemical Bank charge Getty's account for the checks?
- B. Is Lewis liable for conversion of the checks?
- C. Suppose Getty wants a safer way to accomplish the same objectives as its present system.
 1. What would be wrong with delivering all checks and having dealers void and return them to get credit?
 2. What better alternative would you suggest?

PROBLEM V.

(26 points)

The following edited excerpt comes Corfan Banco Asuncion Paraguay v. Ocean Bank, 715 So.2d 967 (Fla. App. 1998):

On March 22, 1995, Corfan Bank originated a wire transfer of \$72,972.00 via its intermediary Swiss Bank to the account of Jorge Silva, in Ocean Bank. The transfer order bore Silva's name as the recipient and indicated that his account number was 010070210400 (in fact, this was a nonexistent account). Upon receipt of the wire transfer, Ocean Bank noticed a discrepancy in this number and before depositing the money, confirmed with Silva that his correct account number was 010076216406. Ocean Bank did not inform Corfan Bank or Swiss Bank of the error. Once the correct number was confirmed, Ocean Bank credited Silva's account.

The next day, Corfan Bank became aware of the account number discrepancy and, without first checking with either Silva or Ocean Bank, sent a second wire transfer of \$72,972.00 to Silva's correct account number at Ocean Bank. The second transfer order did not indicate that it was a correction, replacement or amendment of the March 22nd transfer. Because the information of the transfer was correct, it was automatically processed at Ocean Bank and was credited to Silva's account. Several days later, Corfan Bank [informed] Ocean Bank that only one transfer was intended. By that time, Silva had withdrawn the proceeds of both wire transfers.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Should Corfan Bank have assumed the first order was accepted when Ocean Bank sent no notice of rejection?
- B. Does Swiss Bank have to refund money to Corfan Bank?
- C. Who may recover from Silva and on what theory?
- D. If Silva is unable to repay the money, can any bank recover from another bank on a theory of negligence?

PROBLEM VI.

(26 points)

The following edited excerpt comes Universal Bank v. McCafferty, 624 N.E.2d 358 (Ohio App. 1993):

In April 1991, McCafferty applied for and received a Mastercard credit card from Universal. Objecting to the family having another credit card, McCafferty's wife returned the cards to Universal. McCafferty then called Universal and asked them to reissue the card but to send it to a different address. McCafferty gave Universal his friend's address and Universal sent the card and the personal identification number for the automatic teller machines to that address. After telling his friend that the card would be coming in the mail, McCafferty asked the friend to notify him upon its arrival. McCafferty's friend, however, did not notify him when the card came but instead used it for purchases and cash advances totaling \$3,800.

Universal then called McCafferty and inquired as to when payment would be made. McCafferty told Universal that he would pay them when his friend paid him. McCafferty's friend never paid him.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Can McCafferty avoid liability on the ground that he never accepted the credit card?
- B. Would you have advised McCafferty to tell Universal that he would pay for his friend's charges?
- C. Suppose McCafferty accepted the card and gave his friend possession, telling him that he could make one \$300 purchase. What would McCafferty's liability be?
- D. What steps could Universal and McCafferty's wife take to prevent similar occurrences in the future?

PROBLEM VII.

(24 points)

The following edited excerpt comes from Bisker v. NationsBank, 686 A.2d 561 (D.C. 1996):

[Bisker sold stock to Bender.] In return, Bisker received Irrevocable Letter of Credit No. 1791 (LOC) issued by NationsBank. Bisker was also to receive a promissory note in the amount of \$800,000 which was non-recourse and secured exclusively by the LOC. The note was executed on May 22, 1987, by Bender. On or about that same day, Bisker received what he believed was the original of the note, but in fact was a photocopy. The LOC, however, required by its express terms that demand for payment on the credit must be accompanied by, inter alia, "1. Original of the promissory note executed May 22nd, 1987."

When payment on the final installment of the note was not made, Bisker, demanded payment on the LOC by NationsBank in the amount of \$595,853.71, representing the outstanding principal, interest and late penalties due. NationsBank refused the demand, asserting that the promissory note accompanying the demand was not the original note but instead a duplicate photocopy. After Bisker confirmed this fact through an expert document examiner, Bender, the original signator, re-signed the copy of the note just above his previous signature.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Did NationsBank have a duty to pay the letter of credit based on the first or second presentation?
- B. What risk would NationsBank face if it had paid the note on an improper presentation?
- C. What advice would you have given Bender when Bisker asked him to sign the photocopy of the note?
- D. Does Bisker have a claim against Bender?

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PROBLEM I.

(25 Points)

The following statement of facts comes from Williams v. ITT Financial Services, 1997 WL 346137 (Ohio App.):

Chris Blair visited Mildred Williams at her house to solicit home-improvement business. Williams was an easy sell, as her house badly needed repair. Her only obstacle was obtaining a loan for the repairs, because she was on a fixed income of \$430 per month.

Blair wrote up a sales contract to repair Williams's kitchen, bathroom, bedroom, gutters, roof, and porch for \$11,500. He told Williams that he would help her obtain financing. Blair talked with Tom Scholl at the Loveland branch of ITT Financial Services ("ITT"), who pre-qualified Williams's loan.

A Blair employee brought Williams to the Loveland branch. ITT made a loan to Williams [who signed a note] in the amount of \$12,936.64. ITT then used some of the principal to consolidate and pay off Williams's credit card debt. Williams signed over the remaining money to Blair, giving it to his employee at the closing.

Williams was not the first customer that Blair had brought to ITT for a loan. In early 1988, ITT ran a credit check on Blair and his home-repair business and made him an "approved referral dealer." Feeling pressure to produce loans, Scholl asked Blair to bring loan referrals to him. ITT approved many of Blair's referrals for loans, but refused to make loans to a small number of these applicants.

Blair never finished the work at Williams's house, and the limited work accomplished was shoddy. Williams, who had made two loan payments, stopped making payments to ITT on her loan after Blair stopped work.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. To what extent, if any, may ITT recover from Williams?
- B. Under what circumstances might ITT recover from Blair?
- C. If ITT sells the note without disclosing the default, what rights would the purchaser of the note have?
- D. Might Williams have arranged to pay Blair in a safer manner?

PROBLEM II.

(25 Points)

The following statement of facts comes from Guaranty Bank & Trust v. Smith, 952 S.W.2d 787 (Mo. Ct. Apps. 1997):

On December 4, 1995, [Lawrence] Smith received a check from Merit Construction Company, Inc. (Merit) in the sum of \$18,198.00 as payment for work performed by Smith. The check was drawn on Merit's business bank account with Guaranty Bank & Trust (GBT). Smith deposited Merit's check in [his] bank account on December 5, 1995.

The next day, December 6, 1995, Merit placed a "stop payment" order on the check because of an error in the computation of the amount owed. Merit immediately notified Smith that it had issued a stop payment order on the check and offered Smith a replacement check.

On December 15, 1995, Smith traveled to Kansas City, Kansas, to receive a replacement check from Merit in the sum of \$18,171.75, drawn on the same account as the original check. Smith endorsed the new check [and presented it to GBT], and in turn received a cashier's check.

However, GBT bank failed to promptly stop payment on the first check. Consequently, GBT made payment to Smith on both checks issued from Merit, together totaling \$36,369.75.

GBT bank demanded that Smith reimburse it for the payment it made to Smith on the first check, i.e., \$18,198.00. Smith refused, claiming that Merit owed it additional money as represented by the first check.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Under what circumstances, if any, would Smith have a duty to reimburse GBT for the first check?
- B. May GBT refuse to pay the cashier's check?
- C. To what extent may GBT charge Merit's account?
- D. What advice would you have given Merit?

PROBLEM III.

(25 Points)

The following statement of facts comes from In re Coulter, 1997 WL 662527 (Bankr. N.D. Okla.):

On March 6, 1996, Craig Coulter wrote two checks [on his account at State Bank]. Check number 1130 was payable to [Donald] Worley in the amount of \$50,000 and check number 1129 was payable to Peoples Bank in the amount of \$30,000. On March 6, 1996, Coulter's account had a balance of only \$2,139. Coulter, however, represented to State Bank that he was expecting a wire transfer of funds from Europe and requested that State Bank pay the checks.

On March 6, 1996, Worley deposited check number 1130 into an account at Kingfisher Bank. On March 8, 1996, State Bank received check 1130 [from the local Federal Reserve Bank] and debited Coulter's account. As a result of the \$50,000 debit, Coulter's account had a negative balance of \$47,890.

On March 11, 1996, State Bank received check number 1129 and debited Coulter's account in the amount of \$30,000. As a result of the debit, Coulter's account reflected a negative balance of \$77,920. Again, notwithstanding the lack of funds in Coulter's account State Bank elected not to dishonor [the] check.

State Bank never received the wire transfer of funds promised by Coulter. On March 15, 1996, State Bank advised Peoples Bank and Kingfisher Bank by telephone of its intent to dishonor the two checks and returned the two checks to Peoples Bank and Kingfisher Bank. State Bank reversed the debits and credited Coulter's account in the amount of \$80,000.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Should State Bank have reversed the debits and credited Coulter's account?
- B. When, if at all, did Kingfisher Bank have to give Worley credit for check 1130?
- C. Can Kingfisher Bank revoke any credit given to Worley?
- D. May Peoples Bank now enforce check 1129 against Coulter?

PROBLEM IV.

(30 Points)

The following statement of facts comes from Stowell v. Cloquet Co-Op Credit Union, 557 N.W.2d 567 (Minn. 1997):

[Randall Stowell opened a checking account at the Cloquet Co-op Credit Union in 1984.] In the fall of 1992, Robert Nelson moved into a cabin located on the same country road as Stowell's house. Soon after he moved in, Nelson stole a number of Stowell's checks and, from November 1992 to September 1993, forged Stowell's signature on fifty of the stolen checks and cashed them at various banks and businesses. As a part of his fraudulent scheme, Nelson removed Stowell's Credit Union account statements out of Stowell's mail each month to prevent Stowell from discovering the forgeries.

In December 1992, Stowell realized that he had not received an account statement from the Credit Union for the previous month. After waiting a few more weeks for the statement to arrive, he informed an employee of the Credit Union's branch office that he had not received it. Although the Credit Union mailed a duplicate statement to Stowell's correct address, Stowell never received the duplicate either. In fact, due to Nelson's theft, Stowell did not receive any items of mail whatsoever from the Credit Union between December 1992 and September 1993. During this period, Stowell periodically contacted the Credit Union and complained that his account statements had failed to arrive.

Nelson's forgery scheme was finally discovered on September 15, 1993. Upon reviewing Stowell's account statements, Stowell and the Credit Union discovered that between November 13, 1992 and September 15, 1993 Nelson had forged fifty checks on Stowell's account in the total amount of \$22,329.34.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. To what extent may Stowell recover from the Credit Union?
- B. Are the banks and businesses that cashed the checks liable for conversion, breach of warranty, or anything else?
- C. What is Nelson's liability in connection with the checks?
- D. How should Stowell have protected himself in this situation?

PROBLEM V.

(25 Points)

The following statement of facts comes from Community Bank v. Stevens Financial Corp., 966 F. Supp. 775 (N.D. Ind. 1997):

HomeSide agreed to purchase a certain first mortgage on residential property in California from Stevens Financial [for] \$489,466.84. Pursuant to the agreement, HomeSide [was to] transfer the proceeds to Stevens Financial's designated warehouse lender -- Community Bank -- where Stevens Financial held an account.

On or about March 20, 1996, HomeSide received amended instructions from Stevens Financial to wire the purchase proceeds for the mortgage to a different warehouse lender--Chase Manhattan Bank of New York. Subsequently, on March 28, 1996, in order to finalize the purchase of the mortgage, HomeSide wired funds in the amount of \$489,466.84, by mistake, to Community Bank, directing Community to credit Stevens Financial's account.

Community Bank received the wire transfer in the amount of \$489,466.84 from HomeSide on March 29, 1996. Community Bank accepted the payment order and credited Stevens Financial's account. On that date, Stevens Financial was in default on a prior commercial promissory note executed and delivered by Stevens Financial to Community Bank [in] 1995. Subsequently, on April 1, 1996, Community Bank set off \$125,274.59 of the funds credited to Stevens Financial's account in order to square the obligations Stevens Financial owed to Community Bank pursuant to the 1995 Note. [Stevens Financial did not transfer the mortgage to HomeSide.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Under what circumstances, if any, could HomeSide have canceled the mistaken payment order?
- B. Absent cancellation, does HomeSide have claims against any receiving bank?
- C. What rights does HomeSide have against Stevens Financial?
- D. If HomeSide had agreed to pay Stevens Financial by check, how would the risks have been different?

PROBLEM VI.

(25 Points)

The following statement of facts comes Hyland v. First USA Bank, 1995 WL 595861 (E.D. Pa. 1995):

In February, 1994, First USA Bank issued a Gold Visa Card to Richard Hyland and Sharka Brod Hyland of Philadelphia, Pennsylvania]. In May, 1994, the Hylands traveled to Greece for a vacation, where they purchased an oriental carpet from Aris Evangelinos, the owner of an antique store in Nauplia, Greece. They paid \$2,070.57 for the carpet with the Visa Card issued by the Bank.

The Hylands contend that in order to induce them to purchase the carpet, Evangelinos made express warranties that the carpet was an antique Kilim, circa 1930, that it was woven and embroidered with pure silk with a cotton warp, and that it had been colored with vegetable dyes. Upon inspection by a United States carpet expert, the Hylands discovered that these express warranties were false. The Hylands contacted the Bank and the merchant to obtain a credit.

The Bank directed them to return the carpet to the merchant. They did so via Federal Express. However, the carpet was intercepted by Greek Customs, who informed the Hylands that a duty of approximately US \$1,240 would have to be paid before the carpet could be released. The Hylands refused to pay the duty, and the carpet was ultimately confiscated by Greek Customs.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What, if anything, may the bank recover from the Hylands?
- B. What concerns, if any, should Evangelinos now have?
- C. Would your previous answers change if the purchase of the carpet exceeded the Hylands' authorized credit limit?
- D. What advice would you have given the parties?

PROBLEM VII.

(25 Points)

The following statement of facts comes Vass v. Gainesville Bank & Trust, 480 S.E.2d 294 (Ga. App. 1997):

All American Bonding Company, Inc. ("All American") provided a standby letter of credit payable to Robert G. Vass, Sheriff of Hall County, in the amount of \$100,000 to secure its outstanding bail bond obligations. The letter of credit [issued by Gainesville Bank & Trust ("GBT")] required that the Sheriff present a signed statement to GBT certifying that invoice(s) had been presented to All American for payment but remained unpaid for 30 days after presentment. The letter further required that claims made thereunder "must be presented on or before, 4/18/94, but subject to a claim made accruing prior to that date unless the Letter of Credit is canceled by the Sheriff of Hall County."

On April 7, 1994, shortly before the expiration of the letter of credit, Vass, as Sheriff, presented a written demand to All American, requesting payment of \$46,079 for judgments for delinquent bail bonds pledged by All American. After All American refused this demand, Vass presented a written draft for payment under the letter of credit to GBT on April 18, 1994, the last day under the terms of the letter of credit. GBT refused to honor the demand [because] All American contacted GBT and instructed the bank [that] 30 days had not passed since Vass presented the invoice to it. Vass made another demand to GBT on May 9, this time certifying that the invoice had been unpaid for 30 days after its presentation to All American.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Should GBT have relied on All American's instruction in refusing to pay Vass's April 18th draft?
- B. What rights would GBT have if it had paid Vass's April 18th draft?
- C. What action should GBT take with respect to the May 9th presentation if it does not understand the meaning of the phrase "subject to a claim made accruing prior to that date" in the letter of credit?
- D. If GBT does not honor the May 9th presentation, what rights will Vass have?

END OF EXAMINATION

For your reference, please note that words were omitted from the preceding quotations without indication by ellipses. Text appearing in brackets was added to the quotations for purposes of clarification.

Final Examination In
COMMERCIAL PAPER--PAYMENT SYSTEMS
(Course No. 282-20; 3 credits)
Associate Professor Gregory E. Maggs

Instructions:

You have 3 hours to complete this examination.

The examination consists of 7 problems worth a total of 180 points. You should budget your time according to the points assigned to each problem (3 hours = 180 minutes).

Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.

Please write your answers in test booklets or type them on separate paper. Keep your answers brief or you will run out of time.

In completing the examination, you may use your textbook, statute book, and syllabus, and any notes that you have prepared substantially yourself. You may not use commercial outlines.

You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.

IMPORTANT: Assume that the current official version of each article of the Uniform Commercial Code is in force in all of the problems, regardless of the dates or jurisdictions indicated.

You may keep this copy of the examination at the end of the examination period.

Good luck!

PROBLEM I.

(25 Points)

The following statement of facts comes from New England Savings Bank v. Bedford Realty, 680 A.2d 301 (Conn. 1996):

In August, 1986, Stelle M. Mahler obtained a mortgage loan in the amount of \$372,000 from New England Savings Bank (New England). At that time, Mahler executed a note evidencing her promise to repay the loan and executed a mortgage deed to New England on her residence in Madison. In 1991, Mahler transferred the mortgaged property to Bedford, as a result of which, New England accelerated the loan, claiming the transfer violated a nontransfer clause in the mortgage deed.

[A New England official has] testified that the original promissory note executed by Mahler is missing and that she has been unable to locate it. She [has] stated, however, that New England regularly maintained a copy of the note in the loan collection file.

[Before recovering from Mahler] New England became insolvent and the Federal Deposit Insurance Corporation (FDIC), was appointed as receiver of New England's assets. The FDIC assigned New England's interest in the mortgage loan executed by Mahler to Citizens Savings Bank (Citizens). Thereafter, Citizens assigned its interest in the [missing] note to GHR.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Can GHR be sure that it took its interest in the note from competing claims of ownership?
- B. Is GHR entitled to enforce the note against Mahler?
- C. If Mahler does not pay the note, does GHR have any rights against Citizens or the FDIC?
- D. Does Bedford have any liability on the note?

PROBLEM II.

(25 Points)

The following statement of facts comes from Framingham Auto Sales, Inc. v. Workers' Credit Union, 1996 WL 630297 (Mass. App. Ct., Oct. 3, 1996):

On a Friday in December, 1992, a week before Christmas, a Mrs. Lori Baron opened an account at Nashoba Credit Union (Nashoba) with a deposit of \$100. On Tuesday, December 22, she made a \$1,000 deposit in the account, and the next morning she returned and deposited a \$50,000 check drawn on the Bank of Boston. On Monday, December 28, Mrs. Baron obtained a cashier's check for \$30,000 from Nashoba, which was debited to her account and made payable to her. Mrs. Baron endorsed the cashier's check in blank and gave it to her husband, who, that same afternoon, visited Framingham Auto Sales, selected a pickup truck for purchase, and gave [the cashier's check] in payment. The truck cost \$23,301 and Framingham Auto Sales gave Mr. Baron, as change, a check for \$6,699 (i.e., \$30,000 less 23,301). Mr. Baron drove away with the truck and cashed the check.

The following day the Bank of Boston dishonored the \$50,000 check Mrs. Baron had deposited in her Nashoba account, and the check was returned to Nashoba with a report to the effect that the Barons' Bank of Boston account had been closed. When the \$30,000 cashier's check was presented for payment, Nashoba, in turn, dishonored it.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Could Nashoba have refused to allow Mrs. Baron to withdraw \$30,000 from her account to pay for the cashier's check?
- B. What rights did Nashoba have against Mrs. Baron upon learning that the \$50,000 check was dishonored?
- C. What claims may Framingham assert against Mr. and Mrs. Baron under article 3?
- D. To what extent is Nashoba liable to Framingham?

PROBLEM III.

(25 Points)

The following statement of facts comes from NBD Bank v. Standard Bank & Trust Co., 79 F.3d 37 (7th Cir. 1996):

The parties are the victim of a check-kiting scheme by an individual with accounts maintained at both NBD Bank and Standard Bank. On Thursday, November 18, 1993, the individual presented to NBD Bank for deposit into accounts maintained at NBD Bank checks totalling \$3,997,406.75 drawn upon various accounts maintained at Standard Bank. The individual also deposited in accounts at Standard Bank checks totalling \$4,025,000 drawn on accounts maintained at NBD Bank. [The individual did not have sufficient balances to pay any of the checks.] The next day, Friday, November 19, NBD Bank presented these checks for payment to Standard Bank through Standard Bank's clearing bank, LaSalle National Bank, and NBD Bank was provisionally credited with these amounts, while Standard Bank went through the same procedure in the reverse and was provisionally credited with the amounts it claimed as well. Upon discovering the fraud, NBD Bank dishonored the \$4,025,000 in checks presented to it and caused them to be returned before midnight on Monday, November 22, the next business day. Standard Bank, upon receiving NBD Bank's notice, similarly dishonored the checks presented to it by NBD Bank and caused them to be returned on Tuesday, November 23.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Did NBD or Standard become accountable for the checks?
- B. Assume that Standard mistakenly had failed to return the checks and that, as a result, NBD had given the individual credit for their full amount.
 - 1. What rights would Standard have against the individual?
 - 2. What rights would Standard have against NBD?
 - 3. Could NBD revoke the credit given to the individual?

PROBLEM IV.

(25 Points)

The following statement of facts comes from Glazer v. First American National Bank, 1996 WL 521383 (Tenn. Sept. 16, 1996):

[Dr. Louis Glazer, an anesthesiologist,] hired Beverly Brinkley to process checks written by insurance companies on behalf of his patients. Brinkley's duties included receiving the checks as they came into the office; updating the patient records on the office computer so as to reflect the payment received; and then depositing the checks, which were always made payable to Dr. Glazer, in his business accounts at FANB [First American National Bank].

In the fall of 1989, Brinkley began embezzling funds from Dr. Glazer by cashing the insurance checks and keeping the money for herself. Typically, Brinkley would accomplish this by simply forging Dr. Glazer's signature as an endorsement on the checks before she approached the teller's window, although sometimes the FANB tellers cashed the checks without any endorsement whatsoever. After cashing an insurance check, Brinkley would then hide her wrongdoing by deleting the corresponding patient data from the office computer.

In this manner, Brinkley was able to embezzle in excess of \$100,000 over almost a two-year period. Perhaps because of their familiarity with Brinkley, during this period the bank employees never verified the purported endorsements on the checks against Dr. Glazer's signature card; nor did they ever contact his office to inquire about Brinkley's authority to cash the checks.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. May Dr. Glazer recover from the insurance companies that wrote the checks?
- B. Did FANB convert any of the checks by cashing them?
- C. If Dr. Glazer could show that FANB failed to exercise ordinary care, how would that help him?
- D. What should Dr. Glazer have done to prevent this type of fraud?

PROBLEM V.

(25 Points)

The following statement of facts comes from General Electric Capital Corporation v. Central Bank, 49 F.3d 280 (7th Cir. 1995):

Duchow's Marine, Inc., financed its inventory of boats with a loan from General Electric Capital Corporation (GECC). [By agreement, Duchow was required to deposit proceeds from its sales into a "blocked" account at Central Bank which required GECC's signature for withdrawals.] Duchow maintained a separate account at Central Bank for revenues from other sources; we call this the regular account. In November 1990 Duchow sold a yacht to Gray Eagle, Inc., and directed the customer to remit \$215,370 of the purchase price to the regular account. By issuing this instruction Duchow set out to defraud GECC.

Gray Eagle instructed its bank to make a wire transfer, giving it the number of Duchow's regular account. Gray Eagle's bank asked Banker's Bank of Madison, Wisconsin, to make the transfer on its behalf. Banker's Bank made the transfer by crediting Central Bank's account at Banker's Bank, but it bobtailed [i.e., abbreviated] the instructions. Banker's Bank told Central Bank that the credit was for Duchow's benefit. That's all; the payment order omitted account identification. A clerk at Central Bank routed the funds to the first account she found bearing Duchow's name: the blocked account. This credit was made on November 23, 1990. Entirely by chance, Duchow's fraudulent scheme had been foiled.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Did Banker's Bank have a duty to transmit the entire instructions, including the number of the blocked account?
- B. If Gray Eagle has paid its bank for the payment order, does it have right to a refund under article 4A?
- C. If Banker's Bank had included the number of the blocked account, could Central Bank still have chosen to look only at Duchow's name when paying the ordermaking the credit?
- D. If Banker's Bank informs Central Bank of the error, may Central Bank debit the blocked account and credit the regular account?

PROBLEM VI.

(25 Points)

The following statement of facts comes from Towers World Airways v. PHH Aviation Systems, 933 F.2d 174 (2d Cir. 1991):

In February 1988, PHH issued a credit card to Towers to purchase fuel and other aircraft-related goods and services for a corporate jet leased by Towers from PHH. World Jet Corporation was responsible for maintaining the aircraft. An officer of Towers designated Fred Jay Schley, an employee of World Jet, as the chief pilot of the leased jet and gave him permission to make purchases with the PHH credit card in connection with non-charter flights, which were used exclusively by Towers executives. Notwithstanding [World Jet's] agreement to pay the cost of fuel on chartered flights, which provided service for other clients, Schley used the credit card to charge \$89,025.87 to Towers in connection with such [chartered] flights, prior to the cancellation of the card in August 1988.

Nothing about the PHH card or the circumstances surrounding the purchases gave fuel sellers reason to distinguish the clearly authorized fuel purchases made in connection with non-charter flights from the purchases for chartered flights. It was the industry custom to entrust credit cards used to make airplane-related purchases to the pilot of the plane.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What is Towers's liability for the purchase of fuel in connection with chartered flights?
- B. If Towers had informed PHH prior to cancellation that Schley did not have permission to use the card to purchase fuel for chartered flights, would that make a difference?
- C. What measures could Towers have taken to protect itself?
- D. An additional fact, not mentioned above, is that the card was "inscribed with the registration number" of the leased jet. Would Towers be liable for purchases of fuel by Schley for other jets?

PROBLEM VII.

(25 Points)

The following statement of facts comes from Western International Forest Products, Inc. v. Shinhan Bank, 860 F.Supp. 151 (S.D.N.Y. 1994):

In 1993, Western International Forest Products, Inc. contracted to sell lumber to Nam Moon Co., a Korean company. The logs were shipped from Alaska to Korea. To pay for the timber, Nam Moon arranged for a Korean bank, Shinhan Bank, to issue an irrevocable letter of credit in favor of Western. The drawee on the letter of credit was Shinhan Bank's branch office in the City of New York.

The letter of credit described one of the documents required for payment as follows: "Inspection certificate must be issued by Mr. Sam Tae Shin (passport No. DG0101712) of Nam Moon Lumber Co., in Korea." Shin is the president of Nam Moon. On July 9, 1993 Shin inspected the logs in Alaska. He then visited Western's offices in Portland, Oregon, and returned to Korea. Back in Korea, Shin executed the inspection certificate required by the letter of credit and faxed it to Western.

After receiving the facsimile inspection certificate, Western shipped the logs to Nam Moon in Korea. Someone at Western stamped the facsimile inspection certificate "original" and sent it to A.C. Wilson Co., Western's [agent in New York]. On August 19, 1993, A.C. Wilson's senior partner, Arlene Wilson, presented documents and a payment draft to Shinhan Bank and requested payment under the letter of credit for Western.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Why would Western request Nam Moon to pay for the lumber with a letter of credit?
- B. What rights would Shihan Bank have if it properly honors a presentation and makes payment under the letter of credit?
- C. Must Shihan bank honor the faxed certificate of inspection?
- D. What other document, besides a certification of inspection, is the letter of credit likely to have required Western to present?

END OF EXAMINATION

For your reference, please note that some words were omitted from the preceding quotations without indication by ellipses. For example, designations such as "plaintiff" and "defendant" were deleted. Text appearing in brackets was added to the quotations for purposes of clarification.

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COMMERCIAL PAPER--PAYMENT SYSTEMS
(Course No. 282-20; 3 credits)
Associate Professor Gregory E. Maggs

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Good luck!

PROBLEM I.

(25 Points)

The following statement of facts comes from Bailey, Vaught, Robertson & Co. v. Remington Investments, 888 S.W.2d 860 (Tex. Ct. App. 1994):

On January 11, 1989, William Bailey and William Vaught, members of the executive committee of BVR, signed a variable interest rate note in the amount of \$34,000 (the note) in favor of Forestwood National Bank (Forestwood). On September 31, 1989, Forestwood was declared insolvent and the Federal Deposit Insurance Corporation (FDIC) took possession of the note. On November 15, 1989, BVR wrote to the FDIC asking about the location of a certificate of deposit purchased by BVR. It also notified the FDIC that BVR would no longer make payments on the note until it obtained the information. The note matured on April 11, 1990. On October 12, 1991, Remington purchased the matured note from the FDIC by bill of sale. On November 25, 1991, Remington filed suit on the note.

BVR defended against Remington's suit on the note by pleading [lack of any] endorsement, ambiguity, usury, and setoff. BVR [argued that the note was ambiguous] . . . because after the lender, Forestwood, failed, there was no published "lender's prime" rate to use to calculate interest. The interest rate stated on the note was "lender's prime" plus one percent.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What indorsements would Remington need in order to have the rights of a holder in due course?
- B. How are Remington's rights affected by the maturity date of the note and the ambiguity about the interest rate?
- C. How would the rights of a holder in due course help (or not help) Remington in its action against BVR?
- D. What rights, if any, does BVR have against the FDIC?

PROBLEM II.

(25 Points)

The following statement of facts comes from Steenbergen v. First Federal Savings & Loan of Chickasha, 753 P.2d 1330 (Okla. 1987):

On October 27, 1980 Bobbie went to First Federal and announced that she wished to close out [two] accounts. She was given a check for \$8844.27 representing the balance of both accounts, which she presumed to be a cashier's check. That check was made payable to the order of Renee Steenbergen or Bobbie Steenbergen. [Renee is Bobbie's daughter.] Bobbie put the check in her lock box. In reality the instrument was not a cashier's check, but rather a check drawn on an account First Federal had at a Topeka, Kansas lending institution.

In November 1981 First Federal issued a stop payment order on the 13 month old check. The following month it issued a second check in the same amount, again payable to Renee or Bobbie, and called Renee to come in and pick it up. The daughter obliged and cashed it for her own benefit. None of the events described in this paragraph were known to Bobbie until January 1982, when she deposited the check to purchase a new CD. Only then did she learn that payment on her check had been stopped, that a second check had been issued, and that it had been delivered to Renee, who at the time was taking her father's side in a bitter divorce battle.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Did First Federal have a right to stop payment on the check that it issued to Bobbie?
- B. May Bobbie enforce her check against First Federal?
- C. May Bobbie recover from anyone under a theory of conversion?
- D. What rights, if any, do Renee and First Federal have with respect to each other?

PROBLEM III.

(30 Points)

The following statement of facts comes from Chew-Bittle Assocs. v. Crusader Savings Bank, 635 A.2d 653 (Pa. Super. 1993):

In October, 1991, W. Kirk Wycoff and Debra Jean Wycoff, husband and wife, hired Chew-Bittle Associates, Inc. (Chew-Bittle) to perform alterations to their real estate. The construction contract, including several oral modifications, obligated the Wycoffs to pay Chew-Bittle \$37,238.64. After Chew-Bittle had completed the construction, a balance of \$14,582.64 remained unpaid. In January, 1992, the Wycoffs tendered a check for \$9,000.00, made payable to "Chew Bittle," in full satisfaction of the unpaid balance. Chew-Bittle promptly endorsed the check as "Chew-Bittle Associates" and, on January 14, 1992, deposited it into its account at the Richboro, Pennsylvania, Branch of Corestates Bank. The check was presented to the drawee bank, Crusader Savings Bank, which accepted the check and paid it.

Several weeks later, when the Wycoffs received the canceled check, they observed that Chew-Bittle had crossed out a notation that the check was in full satisfaction of the balance due and had noted its reservation of rights under the original contract. Wycoff was a member of the board of Crusader Bank, and he demanded that the bank return the check. On March 2, 1992, Crusader Bank returned the check to Chew-Bittle [via Corestates Bank] with a notation "Endorsement not as Drawn" and reclaimed the funds it had previously paid to Corestates Bank. Chew-Bittle thereafter filed suit against the Wycoffs under the construction contract and against Crusader Bank for improperly reclaiming the proceeds of the check.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. How should the check have been indorsed?
- B. Did Crusader Bank have a right to return the check to Corestates Bank on March 2, 1992?
- C. When Corestates Bank received the returned check, did it have a right to debit Chew-Bittle's account?
- D. What rights does Chew-Bittle have against the Wycoffs?

PROBLEM IV.

(25 Points)

The following statement of facts comes from Vectra Bank v. Bank Western, 890 P.2d 259 (Colo. Ct. App. 1995):

On two separate occasions, Robert Griswold presented to Vectra tellers a notarized power of attorney together with several United States savings bonds. The power of attorney identified Griswold as the attorney-in-fact for Walter Noack, the owner of the savings bonds. The power of attorney authorized Griswold to redeem the savings bonds, which were specifically identified in the power of attorney by their serial numbers. At Griswold's request, the tellers issued cashier's checks payable to Noack for the value of the savings bonds. Neither Noack nor Griswold maintained an account with Vectra.

Several days after each cashier's check was issued, Griswold presented the checks to Bank Western tellers. The checks had been endorsed "Walter E. Noack: paid [sic] to the order of Robert E. Griswold; Robert E. Griswold." The tellers accepted the checks for deposit, and Bank Western collected from Vectra the full amount of each of the checks.

Vectra subsequently learned that Noack had died six years earlier and that the purported signatures of Noack on the power of attorney and both checks were forgeries. Vectra was required to reimburse the United States Department of Treasury for its payment upon redemption of the bonds.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Whose indorsement or indorsements were necessary to negotiate the checks?
- B. Under what theory, if any, is Bank Western liable to Vectra Bank?
- C. Could Vectra Bank have refused to pay the checks on grounds of failure of consideration?
- D. What advice would you give Vectra for the future?

PROBLEM V.

(30 Points)

The following statement of facts comes from Sheerbonnet v. American Express Bank, 1995 WL 625713 (S.D.N.Y. Oct. 25, 1995):

[Sheerbonnet, Ltd. contracted to sell troop carriers to the Hady Establishment in Saudi Arabia for use in the Gulf War.] For payment, Hady obtained an irrevocable \$14,080,000 letter of credit from Banque Scandinave, in Geneva, Switzerland. Ten percent of this price was downpayment, the remainder due after delivery. After receiving the downpayment and fulfilling its obligations under the contract, Sheerbonnet awaited the balance, approximately \$12.4 million, due on July 5, 1991.

Sheerbonnet requested that the payment be made through a funds transfer to its account at BCCI [the Bank of Credit and Commerce] in London. Because Sheerbonnet was to be paid in U.S. dollars, Banque Scandinave initiated payment on July 3rd by instructing its correspondent bank in New York, Northern Trust International ("Northern Trust"), to transfer \$12.4 million to American Express Bank ("AEB") for credit to BCCI's account at AEB in New York on July 5th.

[On the morning of July 5th, regulators in England and the United States suspended the operations of BCCI and ordered all of its assets frozen.]

Shortly thereafter, AEB received by wire from Northern Trust the payment order for the transfer of \$12.4 million to the BCCI account at AEB in New York. Knowing the account was frozen, AEB nevertheless credited to it the \$12.4 million. Because of the freeze, these assets remained in New York.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Does Sheerbonnet have any rights against Hady?
- B. Does Sheerbonnet have any rights against any bank under article 4A?
- C. Would article 4A preclude Sheerbonnet from recovering from AEB on a theory of common law negligence?
- D. Does Banque Scandinave have any rights against anyone?

PROBLEM VI.

(25 Points)

The following statement of facts comes from Stieger v. Chevy Chase Savings Bank, 1995 WL 611720 (D.C. App. Oct. 19, 1995):

On November 10, 1992, appellant [Paul R. Stieger] brought suit against Chevy Chase Bank, F.S.B. ("Chevy Chase") claiming he should not be held liable for certain charges credited to his Chevy Chase Visa card. Appellant voluntarily gave his credit card to a Ms. Garrett for the limited purpose of renting a car and for hotel lodging during a business trip. Appellant contacted both the car rental agency and the hotel to determine what type of authorization would be needed for Ms. Garrett to use his Visa card. Both companies informed him that he must write a letter authorizing the charges. Appellant asserts that he wrote both companies, but was unable to produce a copy of the letter to the hotel, which he contends limited his liability to \$350.00.

Shortly after the conclusion of Ms. Garrett's business trip, appellant learned that she had made several other charges he had not specifically authorized. His signature apparently had worn off the back of his credit card, and Ms. Garrett signed it as "P. Stieger" rather than Paul Stieger. On thirteen of the fifteen charges in dispute, Ms. Garrett had signed the charge slip "P. Stieger," and on the other two she signed her own name. Appellant has obtained a judgment against Ms. Garrett for \$3200.00, but only \$750.00 has been collected, and Ms. Garrett can no longer be located. Therefore, this action was brought to contest Chevy Chase's refusal to dismiss the charges as unauthorized.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Which charges were authorized and which were unauthorized?
- B. To what extent is Stieger liable to Chevy Chase for the authorized charges?
- C. To what extent is Stieger liable to Chevy Chase for the unauthorized charges?
- D. Would it make a difference if Stieger never had signed the back of his card?

PROBLEM VII.

(20 Points)

The following statement of facts comes from Schluter v. United Farmers Elevator, 479 N.W.2d 82 (Minn. Ct. App. 1991):

Robert, David, and Hazel Schluter are grain farmers in Starbuck, Minnesota. The [United Farmers Elevator] is a public grain elevator in Murdock, Minnesota. For several years prior to the events of this case, [an] independent trucker had engaged in the practice of buying grain from various farmers, hauling it to the elevator, and selling it

In May, June and July of 1988, the trucker delivered 114,877 bushels of corn and 3,454 bushels of soybeans to the elevator. This included 29,056 bushels of the farmers' corn [that the trucker had bought from the farmers on credit] The elevator checked for liens against the grain, and found none.

Between May 20 and July 13, the elevator issued checks to the trucker totalling \$288,000. At his subsequent bankruptcy hearing, both the trucker and the elevator stated the transaction was a "price later" agreement.² No warehouse receipts were issued either to the trucker or to anyone else by the elevator. On June 5, 1989, the elevator sold the grain in question for \$302,638.33. . . . The farmers never received payment for their grain from the trucker. Nor did they receive any receipts from the trucker or the elevator.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What rights, if any, do the farmers have?
- B. Why did the grain elevator not issue a warehouse receipt to the trucker?
- C. How might the parties have structured this transaction to reduce the risk of nonpayment?
- D. When the grain elevator sold the grain, could it pass title simply by issuing a warehouse receipt to the buyer?

² In such a transaction, the grain elevator takes delivery of the grain, pays the delivering party a percentage of its current "board" value, and agrees to pay the delivering party the full price upon resale at a later date. . . .

Final Examination In
COMMERCIAL PAPER--PAYMENT SYSTEMS
(Course No. 372-20; 3 credits)
Associate Professor Gregory E. Maggs

Instructions:

You have 3 hours to complete this examination.

The examination consists of 8 problems worth a total of 180 points. You should budget your time according to the points assigned to each problem (3 hours = 180 minutes).

As you will see, some of the problems include several specific questions. Points will be allocated among the questions within a problem according to their difficulty.

Please write your answers in test booklets or type them on separate paper. Most of your answers can be brief.

In completing the examination, you may use your textbook, statute book, and syllabus, and any notes that you have prepared substantially yourself. You may not use commercial outlines.

You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.

You should assume that the most recent official version of each article of the Uniform Commercial Code is in force in all of the problems, regardless of the dates or jurisdictions indicated.

You may keep this copy of the examination at the end of the examination period.

Good luck!

PROBLEM I.

(25 Points)

The following statement of facts comes from St. James v. Diversified Commercial Finance Corp., 714 P.2d 179, 180 (Nev. 1986):

[Appellants, two chiropractors,] purchased a debt collection service from National Revenue Corporation (NRC). John Walker, an NRC employee, sold the service to appellants and had them sign two promissory notes payable to respondent Diversified Commercial Finance Corporation (Diversified) to finance the purchase. . . .

Appellants stopped making payments on the notes after several months because NRC allegedly was not providing the services promised. Diversified filed a complaint seeking the balance due on the notes (\$3,940.00) plus interest, costs and attorney's fees. Appellants answered, setting forth as an affirmative defense failure of consideration, i.e., NRC's failure to provide the services promised in the service agreement. The district court . . . concluded that Diversified was a holder in due course of the notes and therefore immune from the defenses available against the seller, NRC.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. If the notes had provided that appellants' "duty to pay shall be conditioned on NRC's compliance with the contract," under what circumstances, if any, could Diversified have become a holder in due course?
- B. In a part of the opinion not quoted, the court observed that Diversified "provides financing for NRC and facilitates that financing by supplying NRC with preprinted promissory notes for NRC's customers to sign." Is that relevant?
- C. The court also noted that the FTC Holder in Due Course Rule did not apply because the case did not involve a consumer transaction. It quoted a commentator, however, who said that "the omission of nonconsumer transactions from the Rule is unfortunate since the reasons for the rule appear equally applicable." What is a counterargument to the commentator?
- D. Would it make a difference to any of the parties whether NRC had indorsed the notes before delivering them to Diversified?

PROBLEM II.

(25 Points)

The following statement of facts comes from United American Bank v. First Citizens National Bank, 764 S.W.2d 555, 556 (Tenn. Ct. App. 1988):

This action was precipitated when the First Citizens National Bank of Dyersburg, Tennessee refused to honor a cashier's check, which it had issued and subsequently was cashed and presented for payment by United American Bank of Memphis.

The cashier's check in the amount of \$50,000.00 was made payable to the order of "Investment Ventures and Joseph Hart." Joseph Hart, who was authorized to sign and endorse all checks on the behalf of Investment Ventures, Incorporated, which had an account with plaintiff, personally appeared at one of plaintiff's branches and presented the check for payment. Hart endorsed the check in the presence of a teller by signing:

Investment Ventures
Joseph Hart, pres.

Plaintiff honored the check disbursing the funds to both Investment Ventures and Hart personally. The check, upon processing, was returned to plaintiff with the notation "Returned for Proper Endorsement."

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Whose signature or signatures would be necessary to negotiate the cashier's check?
- B. Is the indorsement indicated above proper? What could each side argue or attempt to show in court?
- C. How would you have advised Hart to indorse the check to avoid any controversy?
- D. Assume that the indorsement indicated above was improper. Did anyone breach a transfer or presentment warranty?

PROBLEM III.

(25 Points)

The following statement of facts comes from Michaud v. Community Savings Bank, 1994 WL 146371, *1 (Conn. Super.):

Sam Cocopardi purchased a cashier's check from the Connecticut National Bank (CNB). This check was made payable to Community Savings Bank. This transaction occurred on June 1, 1992. Cocopardi on or about the same day delivered the check to the plaintiff [Claudette Michaud] who then presented it to the Community Savings Bank to pay off a loan she had previously obtained from the Community Savings Bank. When Community Savings Bank presented the check to CNB, CNB refused to pay it pursuant to a stop payment order CNB had placed on the cashier's check. CNB had issued this order because Cocopardi had bought the cashier's check [with another check] drawn on an account at the Guilford Savings Bank having insufficient funds to cover that check. [Community Savings told Michaud that she had not paid off the loan and refused to release her collateral.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What rights does Michaud have against Community Savings Bank?
- B. What rights does Community Savings Bank have against CNB?
- C. How would you describe Cocopardi and Michaud in article 3 terminology?
- D. Did Cocopardi or Michaud breach any transfer warranties to anyone?

PROBLEM IV.

(25 Points)

The following statement of facts comes from First Union National Bank v. First Florida Bank, 616 So. 2d 1168, 1169 (Fla. Dist. Ct. App. 1993):

Victor Elias had a bank account with First Florida. On August 13, 1986, he wrote a \$10,000 check payable to National Computer Consultants, Inc. National Computer endorsed the check and deposited the check in its account with Union Bank. Union Bank posted the check to National Computer's account on Thursday, August 14.

Union Bank presented this check to First Florida on the following day at the local clearinghouse. At the clearinghouse, Union Bank was credited \$10,000 and First Florida was debited \$10,000. The clearinghouse forwarded the check to First Florida.

On August 14, Mr. Elias gave a verbal stop-payment order to First Florida. . . . As a result, First Florida took steps on Monday, August 18, to return the check to Union Bank via the clearinghouse. The check was returned to the clearinghouse on either August 18 or August 19. Unfortunately, First Florida misrouted the check when it returned the item to the clearinghouse by addressing it to the wrong bank. That bank received the misrouted check and returned it to First Florida through the clearinghouse on August 20. First Florida did not return the check to the clearinghouse for Union Bank until August 21.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. When, if at all, did First Florida become accountable for the check?
- B. When, if at all, did Union Bank have a duty to give National Computer credit for the check?
- C. By giving National Computer credit for the check on August 14th, did Union Bank affect First Florida's liability?
- D. What are the rights and liabilities of Elias and National Computer?

PROBLEM V.

(25 points)

The following statement of facts comes from Adamar, Inc. v. Chase Lincoln First Bank, 615 N.Y.S.2d 550, 551 (App. Div. 1994):

On January 28, 1988, a loan officer in the Rochester Midtown branch of defendant, Chase Lincoln First Bank, N.A. (Chase), left a customer, Joseph Thomas, alone in the loan officer's office. There were two signed cashier's checks on the loan officer's desk. The date, payee and amount of each check were blank. Thomas took both checks and wrote \$200,000 as the amount of one check and \$300,000 as the amount of the other check. Both checks were subsequently completed with the name of Thomas's brother-in-law as payee. Posing as his brother-in-law by using a false temporary New York driver's license, Thomas deposited the \$200,000 on January 28, 1988, at plaintiff's Tropicana Casino (Casino) in New Jersey. Thomas lost the entire \$200,000 at the Casino's gaming tables that same day. On February 1, 1988, Thomas deposited the \$300,000 check at the Casino and received \$300,000 in gaming chips. He then lost an additional \$169,000 before Chase, on February 2, 1988, stopped payment on both checks. Thereafter, on February 8, 1988, Chase refused to honor the checks and plaintiff commenced this action seeking payment.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. If Chase had paid the checks, could it recover for breach of the presentment warranty stated in §3-417(a)(2) from Thomas or the plaintiff? [Hint: Consult the Code.]
- B. Who owns the checks at this point?
- C. What remedy, if any, should the court award the plaintiff in this action to enforce the checks?
- D. Would the plaintiff be in a better position if Thomas's brother-in-law had indorsed the checks?

PROBLEM VI.

(25 points)

The following statement of facts comes from Aleo International v. Citibank, 612 N.Y.S.2d 950, 950-951 (S. Ct. 1994):

On October 13, 1992, one of Aleo's vice-presidents, Vera Eyzerovich ("Ms. Eyzerovich"), entered her local Citibank branch and instructed Citibank to make an electronic transfer of \$284,563 US dollars to the Dresdner Bank in Berlin, Germany, to the account of an individual named Behzad Hermatjou ("Hermatjou"). The documentary evidence submitted shows that at 5:27 p.m. on October 13, 1992, Citibank sent the payment order to the Dresdner Bank by electronic message. Dresdner Bank later sent Citibank . . . [a fax stating]: "Please be advised that on 14.10.92 at 09:59 o'clock Berlin time Dresdner Bank credited the account of Behzad Hermatjou with USD 284.136,16 (USD 284.563,00 less our charges)." It is undisputed that Berlin time is six hours ahead of New York time. . . . At approximately 9 a.m. on October 14, 1992, Ms. Eyzerovich instructed Citibank to stop the transfer. When Citibank did not, this action ensued.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Did either Aleo or Citibank have a right to cancel their payment orders at 9:00 a.m. on October 14, 1992?
- B. Aleo argued in part that the court should hold Citibank liable because Citibank acted negligently. The court rejected the argument on grounds that "Article 4A does not include any provision for a cause of action in negligence."
 1. Would it ever matter whether a bank was negligent in failing to cancel a payment order under article 4A?
 2. Does article 4A preclude common law tort liability for negligence? [Hint: See §4A-102.]
- C. If Aleo did not have a right to cancel, under what circumstances, if any, could it recover the money from Hermatjou?

PROBLEM VII.**(15 Points)**

The following statement of facts comes from Guttman v. National Westminster Bank, 550 N.Y.S.2d 812, 813 (S. Ct. 1990):

[Plaintiffs] maintained an account at the defendant bank up until December 1986. On July 31, 1986, pursuant to the plaintiffs' direction, the defendant bank debited the plaintiffs' account in the amount of \$97,072 and purchased a six-month U.S. Treasury bill in the face amount of \$100,000. The Treasury bill came due on January 29, 1987, by which time the plaintiffs had closed [their] account at the defendant bank. Having no instructions from the plaintiffs regarding how to pay over the funds, the defendant issued a cashier's check in the amount of \$100,000 and mailed it to the plaintiffs' address of record. The plaintiffs assert that [they] never received the check, the defendant says it was not returned by the postal service. In about October 1988, the plaintiffs discovered that [they] had never received the proceeds of the Treasury bill, and they contacted the defendant. The defendant indicated that it would only pay the \$100,000 if the plaintiffs furnished an indemnity bond. [Plaintiffs could obtain such a bond for \$4,000.]

What advice would you give the plaintiffs?

PROBLEM VIII.**(15 points)**

The following item appeared in the Wall Street Journal's "Tax Report" column on May 25, 1994:

WARNING: Don't write checks to the "IRS," tax lawyers say. It is safer to write "Internal Revenue Service." If the check falls into the wrong hands, "IRS" may be changed to "MRS." followed by someone's name, warns Julian Block, a Larchmont, N.Y., lawyer.

Evaluate this advice.