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I - 15 points

Rudolph and Reuben Rumple, brothers, have finally agreed, as sole heirs of their recently deceased parents, on an equitable division of the property, real and personal, left by the parents. Among other things, Rudolph is to get the $20,000 farm, but is to pay Reuben $10,000 over a period of years. A mortgage note is prepared reading as follows:

January 10, 1971

I owe Reuben Rumple $10,000 payable within 10 years, with interest at ___% payable annually on January 10, but the principal of this note is payable on the same dates only out of net earning of the Rumple farm, computed annually.

This note is secured by a mortgage of this date covering the Rumple farm, and arises out of a contract of settlement of the same date between Rudolph and Reuben Rumple.

(Signed) Rudolph Rumple

The interest rate was left blank because Reuben wanted to sell the note to the bank and Rudolph, as the debtor, wanted to keep the rate as low as the bank would stand for; he was hoping for 4% but orally authorized Reuben to fill in the blank with anything up to 5%; the banker said 7% was the lowest he would consider so, contrary to his authority, Reuben put in 7%, then endorsed the note, and it was purchased by the bank.

Two years go by and Rudolph has paid nothing, though the banker is sure the farm has produced substantial earnings. He sues Rudolph for two years interest at 7%, plus such principal as is determined to be due by an accounting. Rudolph makes the defenses that (1) Reuben defrauded him in the division of the family property to the extent of $6,000 which sum is an offset to the note, and (2) he is not liable for interest beyond his authorization of 5%.

Discuss the relevant factors and state your decision.

II - 30 points

Sam Sly, a professional thief, burglarized the unoccupied home of Horace Hardnose, a wealthy and well-known member of the community, who is a hog and cattle buyer. The family had left the day before for a month in Madagascar.

One of the things that Sam stole was a pad of unsigned checks, in the usual form of Farmers State Bank, showing near the top the name "Horace Hardnose" with the address, and down below the usual blank for the drawer's signature. Sam also picked up some specimen signatures of Mr. Hardnose from a sheaf of cancelled checks found in his locked desk. With practice he was able to make a virtually perfect forged signature on three blank checks. Having in mind that, though he expected to cash these checks himself, he could have a more attractive and believable story if he brought in another good name, he inserted as payee of each check the name "John Sturdy" (a farmer living a few miles distant), with the idea that he (Sam) would indorse Sturdy's name. He knew that the Sturdys were also away so there could be no immediate check-up and he knew enough about the Sturdys to give himself a plausible identification as John Sturdy who had just received a check from Hardnose in payment for some hogs.

Sam inserted $857 as the amount of each check; he passed one to the jeweler for a $700 diamond ring, getting $157 in change; one to a car dealer for a used car, and one to the TV man for a $500 set, getting his check for $257 back. Sam left town. The three recipients of checks all banked at Merchants National, and deposited them in their respective accounts; Merchants National in the usual course of business presented them to the drawee, Farmers State Bank, who paid them and charged the account of Hardnose, causing a $1,200 overdraft, which the bank did not notice until after payment.

Time passed. Two days after his return, Hardnose received his bank statement in the mail; he examined it immediately, spotted the forged checks, notified Farmers State, demanded recredit to his account and refused to pay the overdraft.

As attorney for Farmers State you are consulted; the bank, if it really owes Hardnose, wants to pay him now, rather than have him become indignant and take out his account; part of the bank's thinking, of course, is involved with the question "Can we recover back from Merchants National as to the three checks, or at least the amount of the overdraft?"

You have talked with Merchants National's attorney; he says you have no case against them and they won't pay anything.

Discuss the principles involved and advise Farmers State what to do.
Henry Jones is payee of a check for $2,000 drawn by Fred Smith on the X Bank of Lynchburg, Virginia. Henry goes into his own bank in Newport News, endorses the check for deposit and asks that he be allowed immediate withdrawal of the funds to meet an urgent need. With Henry listening in, a bank officer calls the Lynchburg Bank, who reports "Fred Smith is perfectly good—you can honor his $2000 check and if its genuine, we'll pay it." The Newport News bank officer tells Henry "It looks like you're OK to draw a check." Henry immediately writes and delivers his own check for $1,700 drawn on the Newport News Bank to W Wholesale Company who is the sole supplier of Henry's stock of goods as a merchant, and has been pressing hard for payment. Unfortunately, in the meantime, Fred Smith draws down his balance; when the $2,000 check reaches Lynchburg it is dishonored and returned "Insufficient funds"; the Newport News Bank now dishonors Henry Jones $1,700 check, which ruins his credit with W and puts him out of business.

(1) Could the Newport News Bank have forced the Lynchburg Bank to pay the check? Discuss. .
(2) Can Henry recover damages from the Newport News Bank? Discuss. .

FRONT

Jan. 2, 1971 $1,000 !

Pay to the order of John Smith !
One thousand dollars !
To Friendly Bank !
Hopeful, Virginia (signed) Henry Clay!

BACK

William Scott !
without recourse !

Pay to the order of !
Fred Jones !
John Smith !
Fred Jones !
George Gordon !

Merchants Bank !

BASIC FACTS. Merchants Bank obtained the above check from George Gordon; upon its presentation to Friendly Bank it was dishonored marked "No funds."

Answer each of the following as separate and unrelated questions, starting with the BASIC FACTS. In answering any particular question you should assume that the check is valid as it stands except for the specific problems raised in that question.

A. Henry Clay's signature is a forgery. Merchants Bank sues Clay, Scott and Gordon. Liable or not, and on what theories?
B. Merchants Bank sues Henry Clay only--Clay raises the defense that (1) the signature of Scott is a forgery and (2) the signature of Smith is a forgery. Is either (1) or (2) a valid defense to Clay on the instrument? Explain.
C. A week after dishonor, Merchants Bank sues Clay, Smith and Jones. They join in an answer which asserts:

(1) Merchants Bank did not take for value, is not a holder in due course and thus cannot recover from any of them.
(2) Merchants Bank did not give notice of dishonor to anyone so no one can have any liability.

The plaintiff files a demurrer to both these statements. Discuss and decide.

D. Merchants Bank sues Smith, who defends on the ground that he has been served with an affidavit by George Gordon, stating that the Bank obtained Gordon's transfer and indorsement by a fraudulent sale of worthless stock and that Gordon has rescinded the transfer.

Discuss whether this is a good defense.
John, a discharged combat veteran of Viet Nam, upon his return was greeted by his wealthy Uncle Ned, who said "I am so happy at your return. I'm granting you a gift of $2,000 you can spend as you please--I'm short of cash but here is my 6 months note for $2,000 payable to your order--do what you like with it."

John immediately went to Daniel Dealer and bought a used sports car for the $2,000; Dealer verified that it was Uncle Ned's note and was satisfied to take it in payment as Ned's credit was excellent; John duly indorsed in blank and handed over the note. Dealer did not question John's age, as he looked to be in his mid-twenties. Actually he was 19. The state law provided that all contracts of persons under 21 were void.

Dealer sold the note at 90 cents on the dollar to Frigid Finance Co., who took in good faith and without notice. A month later Frigid Finance was asked by Rockribbed Bank to furnish $40,000 additional collateral for its pre-existing loan to Frigid which did not mature for another year; Frigid sent over to the bank for this purpose, along with other additional collateral, the $2,000 note in question. An officer of the bank, looking over the collateral, noticed John's name and Uncle Ned's; he thought to himself "I used to see John as a kid--he was about the same age as my son Charles--could be a minor?--oh, well Ned is good for it." So the bank accepted all the collateral.

When the $2,000 note came due it was not paid; Uncle Ned is now in doubtful circumstances; the bank takes all necessary steps and sues John and Uncle Ned on the note. John pleads his infancy as a defense, and also counterclaims for return of the note as his property.

(1) What result as to John, and why?