1972

Commercial Law: Final Examination (Fall 1972)

William & Mary Law School

FINAL EXAMINATION - FOUR HOURS

Commercial Law   Fall Semester, 1972

T. H. Hutchinson

INSTRUCTIONS:

1. Analyze the problem <u>before</u> you begin to write.
2. If you feel there is a <u>factual</u> ambiguity or omission in any problem, set forth your assumption and proceed with your answer based on that assumption.
3. Citation of applicable U.C.C. material (Code and/or Comment) will appreciably enhance the value of your answers.
4. Please write legibly . . . good luck!

I

Pfat Pfellow is the payee of a negotiable promissory note, apparently signed by Marvelous Marv, for $2000, due on January 16, 1973. Home National Bank acquires the note. What are the rights of HNB vs. Marv and Pfellow under each of the following endorsements <u>and</u> in each of the following cases:

<u>NB</u>: Assume all requirements of presentment, dishonor and notice of dishonor are satisfied.

Eighteen answers are required; be concise.

Endorsement 1: "Pfat Pfellow"

2: "without recourse pay to the order of HNB
Pfat Pfellow"

3: "guarantee payment
Pfat Pfellow"

Case A: Marv has been insolvent since prior to his signing; Pfellow knew of Marv's financial difficulties, but NOT his insolvency; HNB, in good faith, paid Pfellow $1850 for the note on Jan. 20, 1973.

Case B: Marv refused to pay because his signature was, in fact, forged; Pfellow had no knowledge of the forgery; HNB, on good faith, took the note on Jan. 10, 1973, promising to credit payment, when made, on an earlier note of Pfellow's due HNB on Feb. 1, 1973.

Case C: Marv refused to pay because the goods he bought from Pfellow, using the note in payment, were not the goods he ordered; Pfellow knew he had sent the wrong goods and had taken steps to ship the right goods; HNB (on Jan. 10, 1973) discounted the note and paid $1000 to Pfellow because it knew Pfellow was in financial trouble and in no position to bargain.

II

Sam Spade tenders goods to your client, Ben Burnt, at the time and place specified in their signed written contract. Ben inspects the goods and discovers they are below the quality of goods contracted for. Ben calls you to ask what he should do.

Before you can advise Ben, what additional facts must you have from Ben? In listing each fact, explain "why".

III

D draws his $500 check on the First National Bank (FNB) payable to P for goods purchased. P endorses "in blank" and locks it in his safe FOR the [illegible]
[illegible]

night. T. Blows the safe, steals the check (along with the rest of the contents) and "fences" the loot to X for 10 ¢ on the Dollar. X artfully and skillfully raises D's check to $1500; X then deposits it in the United Virginia Bank (UVB). The same day, X returns to UVB, withdraws $900 and disappears. D discovers the goods bought from P are totally defective and gives FNB a stop payment order. FNB, looking for a $500 check, misses THE CHECK and remits $1500 to UVB in final payment.

What are FNB's rights (with reasons):

1: as to D?

2: as to P?

3: as to UVB?

IV

Sally owned a necklace which she knew was valueless paste. Bessie, innocently thinking it was made of genuine diamonds, entered into a written agreement (signed by both parties) to buy it for $2000 . . . but with 5 days to make her final decision. On the 5th day, Bessie notified Sally that she would NOT buy; that same evening she wore the necklace to a dinner party.

At the party, her niece's husband, Andrew, (who was a "buyer" for the local jeweler, Peerless Paul) induced her to sell the necklace for $2500. Andrew produced a note form used by Paul in his business, with "Peerless Paul - Jeweler" printed at the lower right portion; Andrew filled out the form for $1500 due in 10 days and signed his name below the printed name of his employer. Andrew handed the note, together with $1000 in cash, to Bessie, and took the necklace for delivery to his boss the next morning.

Bessie, intending to tell Sally the next day that she had changed her mind, died of a heart attack that night. Paul examined the necklace in the morning, reimbursed Andrew for the $1000 paid out, then discovered it was worthless. He fired Andy.

Poor old Peerless appears (tearfully) at your office with two letters in hand: one is from Sally demanding return of the necklace; the other is from the Executor of Bessie's Estate demanding payment of the note.

What is your advice to Paul as to the demand in each letter?

V

S tenders goods to B at the time and place specified in their signed, written contract. Upon inspection, B determines there are two defects -- "X" and "Y" -- and promptly notifies S that he is returning the goods because of defect "X". Shortly after notice is given to S, the goods still in B's possession are destroyed by fire through no fault of either party. The fire investigator's report (given to both parties) shows that: 1) B was wrong as to the existence of defect "X", and 2) defect "Y" (unstated by B) would have been readily curable by S.

As attorney for S:

1) what is your advice as to his right v. B . . . including the measure of damages, if any?

2) what arguments would you expect from B's attorney?