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COMMERCIAL LAW

January 1973

T. H. Jolls

QUESTION NO. 1: (25 Points)

In each of the following, Y bank presents to X bank for payment a check which appears to have been drawn on X bank by A for \$1000 payable to the order of B, then endorsed by B to C, and then endorsed in blank by C and deposited in his account in Y bank.

Look at the following situations, one by one and in the given order.

Assume that the forger cannot be held responsible and that none of the other persons is at fault. In each situation, decide, by referring to applicable code principles, who bears the ultimate loss.

To X bank pay to the order of B \$1000	A
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Pay to the order of C B C Y bank
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- (A) A's signature was forged by F, who gave the instrument for value to B, who cashed it at C's Tavern; X bank discovers the forgery and dishonors the check.
- (B) Same as in (a) but X bank does not discover the forgery and pays the check by mistake.
- (C) Disregard (a) and (b). S., A's secretary, who had been told to mail the check to B, stole it from A, forged B's endorsement and cashed it with C; A discovers the theft and notifies X bank, which dishonors the check.
- (D) Same as in (c) but A does not discover the theft and X bank pays the check by mistake.
- (E) Disregard (a), (b), (c) and (d). B, to whom A had made out the check for \$100, raised the amount to \$1000 and cashed it with C; X bank pays the \$1000 by mistake.

NOTE: The above deals with ultimate liability and is not intended as a bank collection problem. If it helps your analysis you may make the assumption that in each instance Y bank gave its depositor C immediate credit which was immediately withdrawn by C.

QUESTION NO. 2: (30 Points)

Sally, a computer programmer for General Electric, and Bessie, an exotic dancer at Lorenzo's Lounge, were old friends back from high school days. 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, Andrew, husband of ^{Bessie's} ~~Sally's~~ niece, (he was a "buyer" for the local jeweler, Peerless Paul) induced ~~Sally~~ ^{Bessie} 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, who took the first plane to Brazil.

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.

First, recount to Paul all the issues involved (so that he will appreciate the depth of your legal knowledge and the magnitude of the fee that will be required); then give him your advice as to the demand in each letter.

QUESTION NO. 3: (15 Points)

Henry Heedless, a local handyman, undertook to install a directional TV antenna on the roof of George Goodfellow's house; he said he was not a merchant but would pick up the materials at Radio Shack and expect to be reimbursed by Goodfellow for their cost which would be \$65; the installation charge would be \$50.

The job was done and Goodfellow wrote and delivered his check for \$115 payable to the order of Henry Heedless.

Two evenings later, in a 25 mile wind (not unusual for this locality) the antenna blew off the roof and into the yard, though it was not itself damaged. Heedless said he was too busy to fix it for another week; considering that the contract had failed, Goodfellow notified Friendly Bank to stop payment.

Next day, Heedless, who had no bank account, endorsed the \$115 check over to Milton Miser, along with \$25 cash, which paid the \$140 past due interest installment on a mortgage Heedless owed to Miser.

Miser, in poor health, did not get to his bank, Gibraltar Trust, to deposit the check for another two weeks. On the way to the bank he stopped at Tillie's Tavern for refreshment and was astonished to learn the gossip about Goodfellow's refusal to pay anything. This news sped him on his way to put the check in collection; to his delight the check was paid to Gibraltar as Friendly Bank overlooked the stop.

Three weeks later Friendly Bank wakes up; it files suit against Heedless on his indorsement contract and against Goodfellow on subrogation theory. Explain why each of these approaches will or will not succeed, and how much any recovery will be.

QUESTION NO. 4: (10 Points)

Peter Ploughman agrees to deliver a truckload of peanuts from his farm near Surry to William Wholesaler in Norfolk for \$742 cash. He will not get there until late afternoon when the banks are closed, but he and Wholesaler have agreed that a cashiers check of Peoples Trustworthy National Bank will do. Delivery and payment are completed as arranged. Peter deposits this check in his bank next day--on the succeeding day it gets to Norfolk and by this time Peoples Trustworthy National has been declared insolvent and closed.

It now appears that Wholesaler furnished a false financial statement to the bank in obtaining its loan of \$742 for which the cashiers check was issued payable to Peter.

Advise Peter as to his rights. Can he sue Wholesaler for the value or contract price of the potatoes? He owns a claim against a closed bank (assume FDIC insurance is only for depositors which Peter is not)--is his claim subject to the fraud defense? Discuss both questions.

QUESTION NO. 5: (10 Points)

In the conventional commercial setting where a wholesaler orders goods from a manufacturer which must be transported to the buyer in one way or another, discuss the problem of "risk of loss" arising under the Code from the time that the goods are identified to the contract and continuing to the buyer's taking over the goods. Include the effect of loss itself on the contract obligations of the respective parties.

QUESTION NO. 6: (10 Points)

While visiting in Maine John Does, of Pitchfork, South Dakota, enters one of the quaint old fish restaurants along the coast and asks for the specialty of the house--he is told it is fish chowder, which immediately appeals to his desire to savor the flavor of the country. He eats avidly and finds too late that he has half-swallowed a fish bone. In excruciating pain he is taken 50 miles to the nearest hospital, where a serious operation by a highly skilled surgeon (who has seen many fish bones before and expects to be well paid for his experience) saves John's life and restores his ability to eat anything offered. All this costs him \$5000 and he sues to collect from the quaint old fish restaurant.

At the trial, Byron Blubber, gastronomy editor of the New York Times, and Elsie Frump, head of the home economics department of the State of Maine, both testified that a true chowder should be a collection of identifiable miscellaneous ingredients, including hunks of fish with attached or detached bones which give flavor and character; and that a thoughtful eater is required. They pointed out as an example that one who orders broiled brook trout or chowder had better look out for bones but one who orders filet of sole or beef broth should not be expected to do so.

Discuss and decide in the light of the relevant U.C.C. provisions.

What difference would it make if John had gone to the restaurant not as a customer but only as a guest of his Maine cousin, Carl Crayfish?