

ANSWER TO QUESTION NO. 9

Cashrich Company will likely recover the \$50,000 from Battery Corporation if it is a holder in due course and exercised ordinary care in taking the instrument.

To acquire holder in due course status, the instrument must satisfy the requirements of a negotiable instrument under the Uniform Commercial Code. Pursuant to MCL 440.3104(1), a negotiable instrument is an unconditional promise or order to pay a fixed amount of money, if the following apply:

(a) Must be payable to bearer or to order at the time it is issued or first comes in to possession of a holder.

(b) Must be payable on demand or at a definite time.

(c) Must not state any other undertaking by the person promising payment to do any act in addition to the payment of money.

Based on the facts, the instrument is a negotiable instrument because it is payable on demand on the order of Tom Lion and does not state any other condition to payment. Bill Buck's statement that he would not present the instrument for payment until after he was employed by Battery for six months does not change this result because the condition was not contained on the face of the instrument.

If Cashrich is a holder in due course, it takes the negotiable instrument free of any defenses by the maker, Battery Corporation. MCL 440.3305(2). To establish status as a holder in due course, the holder must have taken the instrument for value, in good faith, and without notice that the instrument contains an unauthorized signature or that any party has a defense to payment on the instrument. MCL 440.3302(1) (b). Also, when the instrument was negotiated to the holder, it does not bear apparent evidence of forgery to call into question its authenticity. MCL 440.3302(1) (a).

Based on the facts, Cashrich likely is a holder in due course because it (a) gave value (\$45,000), (b) took the instrument in good faith and (c) did not have notice of Battery's defenses that Bill Buck (Tom Lion) would not demand payment until he had been employed by Battery for six months or that Bill Buck impersonated

Tom Lion in acquiring the negotiable instrument (Cashrich was presented with Tom Lion's social security number and fake identification).

Cashrich must exercise ordinary care in paying and taking the instrument from an imposter, such as Bill Buck. so that it does not substantially contribute to the loss. MCL 440.3404(4). Cashrich likely exercised ordinary care in accepting the instrument from Bill Buck, since in purchasing the instrument it was presented with Tom Lion's social security number and fake identification and only charged its usual service fee.