

EXAMINERS' ANALYSIS OF QUESTION NO. 7

Article 3 of the Uniform Commercial Code applies because the question deals with a check, a negotiable instrument. MCL 440.3102(1).

With respect to the first question (whether Sally still owes XYZ \$1,900 for the computer), the answer is yes. Sally still owes the money. Article 3 has specific rules regarding "payment in full" instruments. MCL 440.3311. A negotiable instrument, including a check, can satisfy an obligation in full if it meets certain criteria, namely: 1) the instrument must conspicuously state the tender is in full payment; 2) the recipient of the check must obtain payment on the instrument; 3) the debt must be disputed or unliquidated; and, 4) the person who tendered the instrument must have acted in good faith. MCL 440.3311.

The first two requirements are satisfied, but the last two are not. While the full payment language was conspicuous and XYZ received payment on the check, the amount owed was not in question. Sally did not dispute the debt. Finally, Sally did not act in good faith. She tried to avoid a legitimate financial obligation and still keep the computer. Therefore, there was no accord and satisfaction by her use of the "payment in full" check. She still owes XYZ the money.

With respect to the second question (whether Dr. Jones has a valid cause of action against the bank), the answer is likely yes. Dr. Jones has a valid claim of conversion because First State Bank was a depository bank that took and obtained payment on his instruments bearing forged endorsements. MCL 440.3420(1); MCLA 440.3420(1) Code Comment 1. Dr. Jones' ability to bring an action against First State Bank would require him to prove (i) that he was in possession of the instruments before they were stolen, (ii) the terms of the instruments, and (iii) that he was the named payee of the instruments. MCLA 440.3301, 440.3309, and 440.3420(1)(ii) (and Official Comment 1, third, fourth, and fifth paragraphs). See also MCLA 440.320(3) (and Official Comment 3).

Dr. Jones could likely satisfy these requirements. Moreover, the question does not suggest that Dr. Jones entrusted Sally with the responsibility of making endorsements on the checks. She was a receptionist, had only worked for Dr. Jones for a week, "stole"

the checks from the drawer in his desk, and "forged" his name. See, MCL 440.3405.

The bank was obliged to use "ordinary care in paying or taking the instrument." MCL 440.3405(2); see also, MCL 440.3404(4); MCL 440.3103(1)(h). The bank likely failed to do so by allowing three checks payable to Dr. Jones for sizeable sums to be deposited into Sally's individual account, a suspicious transaction. And, the bank's failure "substantially contribute(d) to loss resulting from payment of the instrument." MCL 440.3405(2). The person bearing the loss (here Dr. Jones) may recover from the negligent depository bank "to the extent the failure to exercise ordinary care contributed to the loss." MCL 440.3405(2) (emphasis supplied).

(In addition, the UCC addresses the general problem of persons whose negligence contributes to a forged signature on an instrument in MCL 440.3406, which includes an explicit rule of comparative negligence. Because MCL 440.3405 appears directly applicable on these facts, the more general rule of MCL 440.3406 is not discussed.)

For these reasons, and on the facts presented, Dr. Jones likely has a valid cause of action under Article 3. If, however, an applicant makes a reasoned argument that (a) Dr. Jones failed to exercise ordinary care and that failure substantially contributed to the making of the forged signatures (see MCL 440.3406) and/or (b) First State Bank acted in good faith and exercised ordinary care in taking the checks, to support a conclusion that a full or partial recovery by Dr. Jones is precluded, such answer will be considered.