

Question 11 Selected Answer

1. CanDo Bank properly refused to honor the check. An instrument made out in favor of two parties ("A and B") must be indorsed by both parties in order to be properly negotiated. Here, Bill alone signed the check (and thus breached the transfer warranty of entitled to enforce); thus the instrument was not properly negotiated to Dan. Dan was not a proper "holder" of the instrument. When Middle Bank presented the check with the obviously flawed indorsement to CanDo Bank, Middle Bank breached its presentment warranties (i.e. entitled to enforce). Breach of presentment warranties negates a drawer's requirement to honor the instrument; thus, CanDo properly dishonored the check. It should be noted that the check was negotiable (it was signed, in writing, for a fixed sum of money, unconditional, and contained language of negotiation) – it was just not properly negotiated by Bill.
2. Middle Bank properly debited Dan's account. Dan transferred the instrument to Middle Bank, and in doing so breached the transfer warranties; Dan was not a proper "holder" of the instrument because of Bill's invalid indorsement. A holder is one who has possession of & title to a negotiable instrument. Middle bank's credit to Dan's account was not final payment of the instrument with respect to Dan (although it would have been if the check were a cashier's check or a certified check). Rather, the credit was a "suspension" for a commercially reasonable time, while Middle Bank presented the instrument to CanDo bank. When CanDo dishonored the instrument, Middle Bank was entitled to debit the \$500 from Dan's account.
3. Dan has no rights against Nan under the Texas UCC. In Texas, the drawer of a draft is primarily liable for payment. An indorser of a negotiable instrument can be secondarily liable (after presentment, dishonor, & notice of dishonor). Here, although Bill & Nan were both payees of the check, only Bill indorsed the check; only an indorser makes the transfer warranties (not a naked payee). Nan has taken no action and made no warranties that would be actionable under the UCC; Dan's proper claim is against Bill and Dan has no rights against Nan.

END OF EXAM

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1. Yes. This check was not properly payable, and thus could rightfully be dishonored for payment by CanDo Bank. Our facts state that the check was made payable to both Bill and Nan, jointly. For the check to be properly payable it would require that both Bill and Nan would have to indorse the check. This did not happen. Absent an indorsement from both of them, this check is not properly payable. If Cando Bank had paid it (and Nan had been a holder, our facts do not state if ever had possession) the bank could have been held liable for conversion of Nan's property.

2. Yes. Dan breach the transfer warranty when he deposited the check. He was in fact, due to lacking indorsements, not a holder entitled to indorse the check for payment/ deposit. When Dan deposited the check he warranted that he was a person entitled to indorse the check and that it was properly authorized and indorsed by previous parties. By doing this, he breached the transfer warranty to Middle Bank. Middle Bank, in turn, then presented the check for payment to CanDo bank and in turn violated the presentment warranties. When CanDo bank noticed this and decided to properly not pay the check, it properly returned the check to Middle Bank. Since Dan breached his original transfer warranty, Middle Bank had the right to debit the original account credit it had given to him as setoff. Of course, on the chain goes and Dan could now make a claim against Bill, the original party who transferred the check to him.

3. None. To be liable on the instrument Nan would have had to have signed it. Nan never signed the check, and thus has no liability under the Texas UCC. Absent a signature as an indorser Nan cannot be held liable here. A party must have signed the instrument to be liable on it. Dan would however have a claim against Bill.