Question 3 Selected Answer #1

Regarding questions 1 and 2, a negotiable instrument is a writing signed by the maker (or drawer) that is an unconditional promise or order to pay a sum of money on demand or at a definite time to order or to bearer. It must also satisfy the courier without luggage rules. These requirements are explored below as applicable.

1. The note from Homer to Eddie is negotiable because it meets the forgoing requirements. The fact that the dates conflict allowed for an extension, and specifies a source of funds do not change this.

SIGNED WRITING: The facts stipulate that the instrument was signed by the maker. A typing satisfies as a writing.

UNCONDITIONAL: Nothing in the facts suggests that Homer's payment is conditional on someone performing some other act.

PROMISE TO PAY: The facts stipulate that he "promis[ed] to pay $20,000"

SUM OF MONEY: This requirement is met because of the $20,000 payment. A promise to pay can include interest at a specified rate, including based on a magazine's listing of prime rates. That the magazine was defunct does not change this. (See #3 for more)

ON DEMAND OR DEFINITE DATE: The note meets this because it is due one year from the date of issuance. In addition the maker can reserve the option to extend the time it is due as long as the extension is to another definite day. Extending for two years would point to a definite date, so the requirement is satisfied.

TO ORDER: "Payable to the order of Eddie" is sufficient language to meet this requirement.

COURIER WITHOUT LUGGAGE: The facts do not indicate anything that violates this requirement, which is usually a problem if other documents are referred to in the note. There is no such reference here.

Finally, a maker can specify that the money be paid from a specific account without ruining negotiability. Thus, Homer's decision to make the not payable from his credit union account is permissible. Also, the conflicting dates do not affect negotiability. Written words prevail over typed words, so the date of issuance will be 5/30/09.

2. The main issues here are whether Eddie permissibly endorsed the note (he did) and whether the condition ruins negotiability (it does not).

A payer can endorse the note as payable to a specific person. This is a restrictive endorsement. Thus, Eddie could make the note payable to Stella without ruining negotiability.

Unlike a maker, an indorsers placement of conditional language on a negotiable instrument does not affect negotiability. This is because indorser's can limit their liability by noting the limit. Thus, Eddie could condition payment on Stella's completion of work without ruining negotiability.

3. Homer is obligated to pay interest based on the default judgment rate. The issue here is what happens because the magazine is defunct.

When a note fails to specify an interest rate (but notes that interest is to be paid), the default rate is the judgment interest rate. Because the note effectively has no stated rate because the magazine was not in existence, the judgment interest rate applies.

4. The note is due on May 30, 2010 because Homer has not exercised the option and that is one year after "its date."

The two year extension only applies if Homer has exercised it. He has not. Thus it is due "one year from its date" as the note says.

The applicable date is 5/30/09. In negotiable instruments, handwritten words are given effect over type written words, so the effective date is "5/30/09," which was handwritten, not "May 26, 2009," which was typed.

END OF EXAM

Question 3   Selected Answer #2

1. The issue here is whether the Note satisfied the requirements for negotiability. A Negotiable Instrument is a (1) signed (2) written (3) unconditional (4) promise or order (5) to pay: (a) a fixed amount of money (b) on demand or at a definite time (c) to bearer or order and that (d) states no undertaking other than payment of money.

The Note was typed and signed by Homer, thus satisfying the "signed" and "written" requirements. The note was an unconditional promise as it promised to pay Eddie, thus the "unconditional" and "promise or order" requirements are met. The Note promised to pay Eddie $20,000 plus interest, thus meeting the "fixed amount of money" requirement. That the interest rate is not fixed in the Note does not defeat negotiability, as the principle - $20,000 – is fixed. The reference to Reliable Financial Quotes for the interest rate does not make the note governed by or subject to another document, as it merely refers to Reliable as the source of the interest. That Reliable had ceased publishing before Homer executed the note does not defect negotiability – the court may set the interest rate. The note is payable one year from its date, which is a "definite time." Homer's right to extend the due date for two years is also a definite time, as it is clearly measurable. The note recited that it is payable to the Order of Eddie, thus it is payable to order. That the note further states "in Dallas, Texas" does not defeat negotiability, as it appears to merely specify Eddie's location or the location of payment.

The note meets all the requirements for negotiability and Eddie had already loaned Homer the $20,000, thus the note was a negotiable instrument when Eddie took the note.

That the note specified Homer's Credit Union savings account as the source of payment also did not defeat negotiability.

2. As set forth above, the Note was made payable to the order of Eddie. The Note was therefore order paper, and could only be negotiated via endorsement by Eddie. The issue is thus whether Eddie endorsed the Note to Stella. Eddie signed the note and transferred possession of the note to Stella. Eddie's writing "pay only to Stella when she finishes painting my house was an attempt to place a condition on payment of the instrument and was without effect.

The Note was negotiable when Stella took possession of the note after Eddie specially endorsed the note to Stella. Eddie's anomalous inclusion of the house-painting language is without effect and did not defeat negotiability.

3. The Note specified that interest was payable at the prime rate as published in Reliable. Accordingly, Homer is obligated to pay interest under the note. As set forth under Question 1, <u>supra</u>, the non existence of Reliance at the time of the note's making does not destroy the interest obligation. Rather, the court will set the interest rate.

4. The Note is presently due on May 30, 2010, as Homer dated the note "date: 5/30/09" in his own writing – the handwritten date trumps the typed date of May 26, 2009 – and Homer noted that the note was due one year after its May 30, 2009 due date, or May 30, 2010. Homer has not exercised his right to extend the due date – though he may do so on or before May 30, 2010 – thus the Note is presently due on May 30, 2010.

END OF EXAM

3)

(1) When Eddie took the note, it was a negotiable instrument.

In order for an instrument to be a negotiable instrument, there are several requirements. A negotiable instrument is:

(1) a writing signed by the drawer or maker;

(2) an unconditional promise or order to pay;

(3) a fixed amount in money;

(4) on demand or on a defintite date;

(5) contains words of negotiability;

(6) contains no additional undertakings or instruction.

Homer is the maker of a promissory note to Eddie for $20,000. A promisory note is an unconditional promise to pay. The promissory note is typed and signed by Homer so the first requirement of a writing signed by the maker is satisfied. In the note, Homer promises to pay $20,000 plus interest to Eddie. The note also contains the words "payable to the order of Edie." These words are words of negotiability and indicate that Homer promises to pay Eddie the $20,000. The note also contains no conditions that would make the promise to pay conditional. This satisfied the requirements of words of negotiability and an unconditional promise to pay. $20,000 plus interest is a fixed amount of money. The fact that interest is included does not destroy negotiability. Also, the fact that reference must be made to a document that is not the negotiable instrument does not destroy the negotiability of the instrument. When the UCC was revised, the language of the provision was changed from "sum certain" to "fixed amount" to allow for interest in negotiable instruments and reference to an outside document to determine the interest. While generally a negotiable instrument cannot reference another document, it is permissible to reference another document in determining interest, especially where the document is a source commonly used to determine interest. Next, the instrument must be payable on demand or on a definite date. The instrument states that it is due one year from its date. The written date on the instrument is May 30, 2009 so it will be due one year from this date. However, the note provides that it is subject to Homer's right before the due date to extend the due date for an additional two years. It is not clear whether this destroys the negotiability of the note. Holders of the note are allowed to include clauses such as acceleration clauses and prepayment clauses in the note and these types of provisions do not destroy negotiability. However, this provision is not intended to benefit the holder of the note, but the maker of the note. Despite this though, even if Homer did exercise his right to extend the due date, there is still a definite date upon which the note would be due- two years from the original due date. Therefore, it is likely the negotiability of the note would not be destroyed. Lastly, the fact that the note indicates that payment was to be made from Homer's Savings Account at Credit Union does not destory negotiability. It is permissible in the instrument to designate where the funds to pay the note are to come from. Therefore, because all of the requirements for negotiability are met, this is a negotiable instrument.

(2) When Stella took the note it was a negotiable instrument. Whether an instrument is a negotiable instrument is determined at the instrument's creation. An instrument that is created and is a negotiable instrument cannot later become non-negotiable. When Eddie indorsed the note to Stella, he added an instruction to the note that Stella only be paid when she finished painting the house. If this instruction had originally been in the note, it could not have been negotiable. However, when he added the instruction, the note was already a negotiable instrument so he did not destroy it's negotiability. Therefore, when Stella took the instrument from Eddie it was a negotiable instrument.

(3) Homer is obligated to pay the interest under the Note. Originally the interest was to be paid by reference to Reliable Financial Quotations but the publication has since ceased. Therefore the interest rate should be determined as if the instrument was silent as to the rate. When a negotiable instrument is silent as to the interest rate, the rate is determined by looking to the judgement rate of interest in the jurisdiction at the time the note is due.

(4) The note is presently due on May 30, 2010. Since Homer did not exercise his option, the note is due one year from its date. There are two conflicting dates on the note. The type written date that reads May 26, 2009 and a handwritten date that reads May 30, 2009. When there is conflict in a negotiable instrument between what is handwritten and what is type written, the handwriting should be given precedence and be what is enforced. In this case, the handwriting read May 30, 2009 so this will be considered to be the date of the instrument. The instrument will be due one year from this date- May 30, 2010.

END OF EXAM