Question 10 Selected Answer #1 February 2010

1. Whether Aggressive Bank is entitled to enforce the note will depend on whether Aggressive Bank is a "holder" of the note under UCC, Articles 2 and 3. Whether a person is a holder depends on whether the instrument (in this case, the note) is order paper or bearer paper. Bearer paper is paper indorsed in blank (i.e., by the original payee or the last holder without designating who should be paid). Anyone in possession of bearer paper is entitled to enforce it as a holder. If paper is specially indorsed (i.e., indorsed by the last holder and specifies who should be paid) then one cannot be a holder unless they have possession and the instrument has been properly indorsed to them.

   In this case, the note was not signed by Donald, so Aggressive Bank is not a holder. The signature on the letter accompanying the notes is insufficient to negotiate the note to Aggressive Bank, because the signature must be on the note itself. However, a transferee who gives value for an instrument has a specifically enforceable right to obtain the transferor's indorsement of the instrument. Aggressive Bank paid Bronco Bank for the note and may therefore force Bronco Bank to indorse the note, creating holder status for Aggressive Bank. Thus Aggressive will be entitled to enforce.

   In order to determine whether Jeff is liable to Aggressive Bank on the note more facts are necessary. Jeff signed the note in his capacity as agent for Rapid Repro, but failed to indicate on the note that he was signing in a representative capacity. Generally, an agent of the maker of a note is not liable on the note if the maker's (the principal's) name is identified on the note and it is clear the agent is signing in a representative capacity. In this case, Donald failed to include the name of Rapid Repro as borrower, and Jeff signed only his own name. Whether Jeff has any defense to paying the note will depend on whether Aggressive Bank is a holder in due course. If Aggressive Bank is a holder in due course, Jeff is liable unless Aggressive had notice that Jeff was signing in a representative capacity. If Aggressive Bank is not a holder in due course Jeff is only liable on the note if the original parties to the note (Rapid Repro and Bronco Bank) intended that Jeff be liable.

   To be a holder in due course, the note must be negotiable, Aggressive must be a holder, the note must not be facially suspicious, Aggressive must give value, Aggressive must not have notice of any defenses to enforcement, and Aggressive must act in good faith (meaning honesty in fact and observance of reasonable commercial standards in fair dealing). For the note to be negotiable, it must be a signed writing containing an unconditional promise to pay a fixed amount of money at a specified date (or on demand) and contain language of negotiability (this is met to "to the order of"). All the requirements for negotiability appear to be met and Aggressive Bank appears to be a holder in due course (once it obtains Bronco's signature). As a result, Jeff is liable to Aggressive Bank on the note unless Aggressive had notice that Jeff was acting as an agent for Rapid Repro. Because there are no facts that suggest notice to Aggressive Bank, Jeff is liable to Aggressive Bank on the note.

2. As a holder in due course, Aggressive Bank may collect on the promissory note without being subject to any personal defenses of Jeff, but rather only subject to "real" defenses.

   More facts are needed to determine whether any real defenses apply here. The most likely to apply are Jeff's insolvency, the statute of limitations, and payment to a former holder.

   The statute of limitations on a note is 6 years from the due date. The note was due on June 1, 2005, so the statute of limitations will not have run as of February 2010.

   If Jeff has already paid the balance to Bronco Bank he would have a valid defense, unless Bronco gave Jeff notice of the transfer to Aggressive Bank. More facts are needed to determine the validity of this defense.

Finally, more facts are needed to determine if Jeff has a defense that the note has been discharged by his insolvency.

Based on facts available, it appears Aggressive Bank has full rights to collect on the note.

END OF EXAM

Question 10 **Selected Answer #2** **February 2010**

1. If Aggressive Bank is a Holder in Due Course then yes, Jeff will be liable to it. A holder in due course is a holder of negotiable instrument who takes it for value, in good faith, and without notice of any claims to the note. A negotiable instrument is a note paid to the order of or bearer a fixed amount of money at a fixed time with no other undertakings attached to the promise. Here the note is a negotiable instrument and paid to the order of Bronco Bank. Also meets the other requirements. However, Bronco Bank never indorsed and as such Aggressive Bank is not a holder 'per se' since it is holding a note made out to the order of Bronco Bank and it is not Bronco Bank. However, it does have the rights of a holder since it did pay Bronco Bank for the note. It could easily ask Bronco Bank to indorse, so it is ok there. Usually notes sold in batches do not give the purchaser HDC status unless they bought in the regular course of business. Here it seems that Aggressive Bank is in the business of buying notes so the batch sale does not hurt its holder status.

   As stated above the note is a negotiable instrument so if Aggressive Bank bought it in good faith and without notice that the note was defective, meaning that Rapid Repro was the true principal, then it is a holder in due course. Since Jeff did not sign in his agent capacity but just signed his named with no indication of his relation to Rapid Repro, then Jeff can be held personally liable. Also, the note did not state the name of the company, Rapid Repro, so a person holding the note would not be able to tell whether Rapid Repro is part of the note. If in the letter from Donald of Bronco Bank to Aggressive Bank gave Aggressive Bank a description of the 10K note as pertaining to Rapid Repro and not Jeff in his individual capacity, that may have put Aggressive Bank on notice and its HDC status would be destroyed. An agent is not usually liable for the principal but if he signs without any reference to the principal or signals his capacity, he might be found personally liable.

2. Aggressive Bank may have HDC status (see above) and could collect from Jeff, or Rapid Repro. Although the note was due on June 1, 2005, the statute of limitations for promissory notes is 6 years, or 3 years after dishonor. When Aggressive Bank bought the note from Rapid Repro, the note was not yet due so it is not like it bought a stale note. If an HDC, Aggressive Bank does have a right to try and collect on the promissory note and if it is dishonored it could go after Bronco Bank based on transfer warranty liability.

END OF EXAM

Question 10 Selected Answer #3 **February 2010**

10)

1. THe first issue here is whether Agressive Bank (AB) is a holder in due course. This is important because a holder in due course is subject to less defenses that the maker of a note may have. First, to be a holder in due course, we must be dealing with a negotiable intstrument. To be negotiable, seven elements must be met. First, the note must be an unconditional promise to pay. Second, it must be just a promise to pay. Third, it must be payable in money. Fourth, there must appear words of negotiability on the note, either order or bearer language. Fifth, it must be payable on demand or at a definite time. Sixth, it must be for a fixed amount. Seventh, it must be a writing and it must be signed. From the facts, the note is clearly a negotiable instrument and so that element is satisfied. The next requirement to be a holder in due course is that hte holder must pay consideration. Here, AB paid money for the notes and so this element is satisfied. Third, the note must be authentic and at this time there are no facts calling the authenticity of hte note into question. Fourth, the person must actually be a holder of hte note, and here AB is the holder of hte note because it purchased it from BB. Finally, the holder must have made the transaction in good faith and using reasonable commercial standards and must have made the transaction without notice of any problem that the note may have, such as the note being overdue, etc. Here, there is no evidence that AB had any notice and so all the elements are satisfied and AB is a holder in due course.

Next, we must determine what this means for Jeff. Clearly Jeff was acting on behalf of Rapid Repro and was acting as agent for the corporation. However, the note does not represent this agency relationship. Also, since AB is a holder in due course, it is only subject to real defenses nad none other. In order for an agent to win over a holder in due course in this situation, he must show that AB had knowledge of the agency relationship when AB became a holder of the note. Here, AB did not have knowledge and so Jeff will likely be held liable on the not to AB, because of AB's holder in due course statuts. Now, if AB was not a holder in due course, the road would be easier for Jeff. To prevent liability to a non holder in due course, he would only have to prove the original intent of hte parties at the time the note was made. He would clearly be able to show that the banker at BB knew of hte agency relationship, but this is not helpful because AB is a holder in due course.

2. First, we need to discuss the statute of limitations. If AB wants to go after Jeff, it must be done within the statute of limitations. The statute of limitations for suing on a note is that it must be brought within the 6 years of hte due date of hte note. here, the due date of hte note is June 1 of 2005. It is now February of 2010. At this time, AB is still within this 6 year window and so if they hurry, meaning before June, they can still enforce the note.

THe next issue is the fact that BB did not endorse the check. This is not a problem. When the transferee of a note pays consideration for a note, they are entitled to the transferors signature as a matter of right. THerefore, BB must endorse the signature to AB, and once this is done AB can enforce the note.

However, ifJeff does not pay on the note, AB may be able to hold BB liable in this case. An indorser, which BB would be once they sign the note officially, can be held liable on a note that they have transferred. However, in order for AB to hold BB liable on the note, 3 things must happen. First, they must have presented the note to the maker, jeff within 30 days of becoming a holder. THey clearly did not do that here, since its been a couple years since they received the note. Second, Jeff would have to dishonor the note and refuse to pay. Well here, Jeff has not expressly refused to pay and so that element has not been satisfied. Third, after dishonor, the holder must present the note to the indorser within 30 days of hte dishonor. In this case there has not been a dishonor. If these three things occur, then AB could hold the indorser, BB, liable on indorsers contract, but it should be noted that any liability on behalf of BB is only secondary.AB needs to present the note to Jeff and if he dishonors it, he must then present it to BB within 30 days of hte dishonor. If they do this then they can hold BB liable, even though the note was not presented to Jeff within 30 days of the note becoming due. This 30 day rule is not hard and fast and AB could get around this, assuming Jeff has not become insolvent. Finally, it should be noted that AB could only go after BB under hte endorsers contract if Jeff refuses to pay the note. Once the note is paid, the liability under the endorsers contract is extinguished and BB is absolved of liability.

END OF EXAM