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1. Andy would bear the \$25000 dollar loss.

The \$25000 check was drawn by Andy as drawer made payable to Vincent as payee, and drawn on Midway Bank. Vincent was the intended payee, but Andy gave the check to Jackson, an imposter. A drawer of a check should know who they are making a check out to before they sign it. Here, Andy met Vincent over the internet concerning an online transaction and had only spoken to him once over the telephone. He had never physically seen him, and only had knowledge of his voice on this once call. Jackson was a temporary employee of Vincent and appeared at Andy's office to accept the check. Andy did not know that Jackson was not Vincent. Vincent said he would travel to Andy's office but did not specify when. Jackson discussed the beauty of the painting with Andy, but did not discuss the topic of inspection results concerning authenticity that Andy had with Vincent over the phone. Thus, Andy could not have known that Jackson was not Vincent on these facts and did not act negligent in issuing the check to Jackson.

Jackson took the check made payable to Vincent and forged his name. The impostor rule provides that when a check is issued to a party who is not the payee, and the impostor who subsequently indorses the payee's name to his name, the forged indorsement operates as the payee's name and the chain of title is not broken. Thus, the impostor may cash the check in his name and collect the money. Jackson acted as an impostor and made a forged indorsement of Vincent's name made payable to himself. Thus, the check was properly payable and Busy Bank was allowed to debit Andy's account and pay Jackson. Midway is not liable because it was entitled to enforce the instrument.

Andy might assert a properly payable action against Busy Bank to recover the \$25000 check amount. Busy Bank is entitled to use the defenses of the Impostor rule and any negligence of Andy's. Since Andy was not negligent above, the Busy Bank may still prevail against Andy based on the Impostor Rule. Thus, Andy would bear the \$25000 dollar loss.

2. Busy Bank would bear the loss on the \$5000 check.

Under Texas law, a person who forges a drawer's signature is not entitled to enforce an instrument. The signature operates as the forger's name and the instrument is not properly payable. Since a bank should be aware of its customer's signatures, it bears the loss for a forged drawer's signature, absent negligence of the drawer.

Here, Jackson took this blank check out of Andy's desk credenza. The facts reveal that

Jackson was in Andy's office on business. Jackson took the check and made it payable to himself from Andy and forged Andy's name. Andy's signature acts as Jackson's actual signature and is not properly payable. Since Busy Bank paid the check it bears the loss. Midway Bank is not liable because there was not breach in the chain of title. However, it may assert that Andy was negligent. Considering that the transaction was a business transaction and the sophistication of the parties concerning the sale of a Picasso painting, Andy may not have been negligent in expecting that a potential seller of this painting would actually steal checks out of his office.

Thus, Busy Bank will bear the loss on the check.

### 3. Midway Bank will bear the loss.

Under Texas law, a stolen check that is made out to a named payee is properly payable if that check is forged by a parties entrusted employee. However, if check is purely stolen and the payee's name is forged by a person who is not the payee's employee, then a party asserting the fictitious payee defense may not prevail absent some negligence of the person entitled to enforce the check. The party who steals the check is pure forger and its name does not operate as the name payee and thus there is a break in the chain of title.

Here, the stolen check was drawn by Carla and made payable to Andy. Jackson, who was not an employee of Andy, stole the check and forged Andy's name. This forgery acts as the forgers name and causes a break in the chain of title. Busy Bank paid the check and will be liable to either Andy for conversion, or Carla for a not being properly payable. Busy Bank will not be able to avail itself of a negligence defense because Andy was not negligent in dealing with Jackson because it appeared that Andy was engaging in a sophisticated business transaction. Thus, Busy Bank may resort to enforce its presentment warranty against Midway Bank. Presentment warranties are those made by the presenter of a check for payment. One warranty made in a presentment warrant is that the holder is entitled to enforce the instrument. Since the check broke the chain of title, Midway was not entitled to force the check and will bear the loss of the check against Busy Bank. Jackson would be liable on a subsequent transfer warranty to Midway, but it may not enforce this warranty if he cannot be found.

**END OF EXAM**

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(1) **\$25,000 check** - Andy will bear the loss for the \$25,000 forged check. Under Texas law, if a payee's signature is forged on a check, the check is "not properly payable" and the drawee must recredit the drawer for any loss. Here, the signature of Vincent (payee) was forged and thus the check was not properly payable. Since Busy Bank paid, then they would have to recredit Andy as the drawer. However, Busy Bank can claim the defense of the "Impostor's Rule," which says that if a drawer is careless in making the check, he will bear the loss. Here, Jackson was an Impostor who pretended to be Vincent. Even though Andy had never meet Vincent before, he had talked to him before and had heard his voice. When Jackson showed up at his office, he could have either recognized his voice or if he was suspicious, requested an identification from Jackson. Since Andy was negligent and acted carelessly in making the check to Jackson believing it was Vicent, he will bear the loss.

(2) **\$5,000 check** - Busy Bank will bear the loss for the \$5,000 check. Here, Jackson (the forger) forged Andy's signature (the drawer's). Under the law, when a drawer or maker's signature is forged, they do not bear the loss because the check was "not properly payable." Busy Bank (drawee) will have to recredit Andy's account because the check was not properly payable. Jackson, the forger, is the person liable for the check since he "forged" the signature. However, Busy Bank can claim a defense. They can claim that Andy was "negligent" when he left the check in a "partially opened credenza drawer." However, the facts show that Jackson indorsed the check by "signing his own name" and not Andy's. As a result, Busy Bank should had checked the signature and realized that it was not Andy's. Busy Bank will not sustain a claim against Midway Bank under a breach of Presentment Warranty because Midway Bank had no knowledge of the forgery.

(3) **\$10,000 check** - Here, Jackson forged Andy's signature (the payee). Under the law, when a payee's signature is forged this "breaks the chain" of title and the check is "not properly payable." As a result, either Carla, as the drawer/maker of the check, can have her account recredited for the amount or Andy (as the payee) has a claim for conversion. Busy Bank will have a claim against Midway Bank and Jackson for a breach of presentment warranty because the check was not properly executed. Midway Bank will then have a claim against Jackson for a breach of

Transfer Warranty since the signature was not properly endorsed and was forged. Since Jackson has disappeared, Midway Bank will bear the loss.

**END OF EXAM**

**10)**

1. Andy will bear the loss on the \$25,000 check.

A negotiable instrument must contain an unconditional promise to pay a particular amount of money on demand or at a specific date. It must be payable on demand (i.e., a bearer instrument) or to order (i.e., an order instrument). It must also not specify any additional undertaking by the maker or drawer of the instrument. Liability for forged instruments depends on who signed the instrument and in what capacity. A person is not liable on a negotiable instrument unless he signs it, and the manner of signing determines the type of liability.

In the case of the \$25,000 check (i.e., draft), Andy was the drawer and he signed in that capacity. The check contained an unconditional promise to pay \$25,000 to Vincent on the date of the draft. The drawee for the draft was Busy Bank. It was a negotiable instrument. A person entitled to enforce a negotiable instrument is the holder. A person can become a holder by negotiation of the document only--although the negotiation does not necessarily need to be voluntary. If the instrument is in order form, it is only negotiable with a valid indorsement by the payee. If it is in bearer form, it may be negotiated simply by transfer. The issue with this particular draft is that it was issued by Andy to an imposter. Jackson was impersonating Vincent when requesting the check, and Andy was fooled into making the check out in Vincent's name. Normally, when a draft is made out to a specific person, it may only be negotiated by a valid indorsement from that person (as noted above)--any forgery of that person's signature as an indorsement will prevent any further transferees from taking the instrument as a holder. If the person is not a holder, he is not entitled to enforce and the instrument will not be properly payable when presented to the drawee.

However, in the case of instruments issued to imposters, the rule is different. If the drawer issues a draft to an imposter, then anyone in possession of that document who signs in the name of the payee will qualify as a holder and person entitled to enforce. This puts the risk of loss on the drawer, as he is the person with the greatest ability to detect the deception and avoid the loss. Thus, in this case, since Andy made the check out to an imposter (Jackson) and Jackson then signed Vincent's name to the check, Andy will bear the loss.

2. Busy Bank will bear the loss on the \$5,000 check.

Unlike the \$25,000 check, the \$5,000 check was completely blank (with no signatures or writing) when Jackson stole it from Andy's open desk drawer. Jackson then forged Andy's name to the check as drawer and made it payable to himself. He then deposited the check at Midway Bank and Midway subsequently presented the check for payment to Busy Bank. Midway did not breach any presentment warranty when it presented the check for payment because it was a person entitled to enforce, the instrument had not been altered, and Midway had no knowledge that the drawer's signature was invalid. The check was not properly payable, however, because of the forged drawer's signature. Thus, Busy will be obliged to recredit Andy's account for payment of a not properly payable draft. Busy has no recourse against Midway because no presentment warranty was breached. Busy is in the best position to detect the fraudulent signature because it has an opportunity to confirm Andy's signature before acceptance. It may have a claim against Andy for negligence if he breached a duty by allowing easy access to his blank checks, however.

3. Midway Bank will bear the loss on the \$10,000 check.

The \$10,000 check was drawn by Carla on Busy Bank and made payable to Andy. Jackson stole the check from Andy's open desk drawer and forged Andy's name to the check. Jackson did not thus become a person entitled to enforce the check by virtue of the forged indorsement, and the forged indorsement will prevent any future transferees from becoming holders. Jackson then deposited the check into his account at Midway Bank. Midway then presented the check for payment to Busy Bank, which paid the check. The check was not properly payable because Andy's name was forged on the document--Andy cannot be held liable for an instrument that he didn't sign. For this reason, Busy Bee will be obliged to recredit Andy's account because it paid an instrument that was not properly payable. However, Busy Bee will not ultimately bear the loss. When Midway Bank presented the check for payment to Busy Bee, it made the following presentment warranties: (i) Midway was a person entitled to enforce the instrument, (ii) the instrument had not been altered, and (iii) Midway had no knowledge that the drawer's signature was not genuine. Midway breached these warranties because it was not a person entitled to enforce the instrument. Because it breached the presentment warranty, Midway will be obliged to recredit Busy Bank with the funds.

Incidentally, when transferring the check to Midway Bank, Jackson violated a transfer warranty. Such a transferor warrants that he is a person entitled to enforce the instrument, that the instrument has not been altered, that all signatures are valid, that he has no knowledge of any

defenses available, and is not aware of insolvency proceedings against the drawer. As a violator of a transfer warranty, Jackson will be ultimately responsible to reimburse Midway, but he has absconded and Midway is unlikely to collect.

**END OF EXAM**