

(1) Eagle Bank (EB) does not have to credit check 4009 (\$1000) back into Bjorn (B) account.

B will argue that the check is not properly payable because Scrub forged his signature. He is right in the usual case. However, when a bank pays on a check that is not properly payable but does not receive any notification of forgery within 1 year sending the drawer Bank Statements, the bank has a defense due to drawer's negligence in not checking the statements. Here, Bank sent monthly statements on the 5th day of the month. This means that B had notice of the forgery on February 5, 2009. Despite this notice, B did nothing for a whole year and one month on March 3, 2010. This is beyond the 1 year period. Therefore, B's not properly payable action will fail.

(2) If E.B. is nice and accredits B's account, E.B. does not have the right to recover against Roach Bank (R.B.) The rule is that when the drawer's (not the payee) signature is forged, the forger's writing is treated as his signature. Therefore, transferees of the check are entitled to enforce and they breach no presentment warranty as against a bank that failed to notice the forgery. Here, Scrub forged B's signature. It is treated as Scrub's signature. When R. B. presented the check to E.B. it was entitled to enforce. Therefore, E.B. has no claim.

(3) Yes, B has a "not properly payable action against E. B. this time. The Bank statement rule is mentioned above. Here, only 3 months (from 12/5/08 to 3/3/10) went by before B notified E. B. of the forgery and different thieves are involved. B will succeed.

It is worth mentioning with regard to question (a) and (c) that E.B. did not give B copies of the checks. Any forgery could not be detected if B is not able to actually see the check. This fact helps B's not properly payable action in both question (a) and (c). This would be a question of fact to resolve (i.e., whether properly notice in the statements were given).

(4) This time around, E. B. can sue Credulous for a breach of the presentment warranty of no alteration. Because it is the payee's signature being forged, the necessary indorsements for holder status are not present. Also, Reavis forged Clark's signature which was ineffective. When Reavis presented to Credulous bank and when Credulous bank presented to E.B., Credulous was not entitled to enforce. Therefore, E.B. has a claim.

END OF EXAM

3)

1. Eagle Bank does not have to credit Bjorn's account for \$1000 (check no. 4009). Under TX law, a forged draft is not properly payable by the drawer and the drawee can bring a claim against the drawer. The bank has a number of possible defenses. The bank statement rule requires generally that the drawee review bank statements within 1 year and inform the bank of any inaccuracies. Another possible defense is that the drawee was negligent. Here, the draft was forged and therefore wasn't properly payable. The check was paid on January 7, 2009. It would have shown up on the bank statement on February 5, 2009. Bjorn would have received the bank statement by February 8, 2009. He had until February 8, 2010 to bring the problem to the bank's attention. He did not do so until March 3, 2010. It was too late. Another possible defense is that Bjorn was negligent in leaving his checkbook accessible to Scrub. That is a factual question to be determined by the jury. We don't know if the checkbook was easily accessible or Scrub took it out of somewhere. However the bank statement rule is enough to free the bank of any liability to Bjorn.

2. Eagle Bank cannot sue Roach bank for a breach of presentment nor for a breach of transfer warranties. Under TX law, a drawer may only sue for a breach of presentment warranty not for a breach of transfer warranty. A forged draft does not breach any presentment warranties because the forged signature is treated as the actual signature of the forger so the forged draft is enforceable against the forger and no presentment warranty has been breached unless the presenter knew that it was forged. Here Eagle Bank as a drawer may not sue for a breach of transfer warranties. The draft had a forged signature and is enforceable against the forger and there is nothing to show that Roach Bank knew that the draft was forged, so no presentment warranties were breached by Roach Bank. Therefore Eagle Bank cannot sue Roach Bank.

3. Eagle Bank must credit Bjorn's account for \$1250. Under TX law, an altered check is not properly payable to the wrong payee. The bank has a number of defenses including the bank statement rule and negligence mentioned above. Here, the draft was paid on December 13, 2009 and Bjorn brought it to the bank's attention on March 7, well within the 1 year rule. There are no facts to show that Bjorn was negligent in handling the check or mailing it to the law firm. The check was in a desk and was taken by a client of the law firm's. It wasn't the law firm's negligence in leaving the check out or making it the responsibility of an employee that was negligent in handling or who altered it. Therefore, Eagle Bank must credit Bjorn's account for \$1250.

4. Eagle Bank may sue Credulous Bank for a breach of presentment warranty. Under TX law, the drawer may sue a party that presents a draft for payment under a breach of presentment. When a draft is presented for payment, the presenter is making an implied warranty that presenter has a right to enforce the draft and the draft is payable. A draft where the payee has been altered is not properly payable. Here the draft had been altered to change the payee so it wasn't enforceable or payable. When Credulous Bank presented the check for payment, it was in breach of presentment warranties. Therefore Eagle Bank may recover from Credulous Bank for a breach of presentment warranty.

Credulous Bank after paying Eagle Bank may in turn bring a claim against Clark S. Reavis for a breach of transfer warranties because he knew the draft had been altered and he didn't have the right to enforce it.

END OF EXAM

3)

1. No, Eagle Bank does not need to credit Bjorn's account for the \$1,000.

Under the UCC, the negligence of a Bjorn could be a defense to a not properly payable action if Bjorn's negligence led to a forgery. However, the facts do not support such a defense. Bjorn should not be at his apartment while it is being fumigated, and there is no evidence that Bjorn left his checkbook out in the open. Thus, it does not appear that Bjorn's negligence contributed to the forgery of check 4009.

Another defense is the duty of drawers to check their bank statements regularly. Such a duty requires the drawer to notify the drawee of forgeries or unauthorized withdrawals, and must occur within a year to allow for the drawer to recover on a not properly payable action, or sooner if the bank can show that the delay in notifying caused the forger to go un-caught. An additional defense requires for a notice within 30 days for repeat offenders. However, Scrub is not a repeat offender, so that defense does not apply to check 4009.

A forgery is the signature of the forger, and not of the purported drawer. Thus, considering Bjorn had no negligence, he has no liability for the initial forgery. Scrub's forgery of Bjorn's name as Maker qualifies as Scrub's own signature, as does Scrub's actual signature as an indorsement on the back of the check, qualifying the check as order paper.

A transferor makes transfer warranties to the immediate transferee and subsequent transferees if the transferor indorsed. Transfer warranties include the entitled to enforce warranty and the no unauthorized signature warranty. Presentment warranties are made by previous transferors to the ultimate good faith payor. Presentment warranties include the entitled to enforce warranty, as well as a "no knowledge of" unauthorized signature warranty. Scrub transferred the check to Roach Bank, and Roach Bank presented the check to Eagle Bank. Thus, Scrub made a transfer warranty of entitled to enforce to Roach Bank, and ultimately a presentment warranty to Eagle Bank. Roach Bank presented the check to Eagle Bank, and thus made a presentment warranty to Eagle Bank.

Eagle Bank has no defense to Bjorn's not properly payable action, as a drawee bank such as Eagle can only sue on presentment warranties, which require knowledge of forgeries. Thus, Eagle Bank would normally be liable and must credit Bjorn's account for the \$1,000. However, the aforementioned breach of Bjorn's duty to properly check his bank statement precludes Eagle Bank from being liable. Thus,

Eagle Bank is not required to credit Bjorn's account for the \$1,000.

2. Eagle Bank cannot recover from Roach Bank. They can only recover from Scrub. As mentioned above, Eagle Bank can only sue on presentment warranties for check 4009. Roach Bank had no knowledge of the forgery, so Eagle Bank cannot recover from Roach.

3. Woodford secretly pilfered the check from the bookkeeper's desk. While it can be argued that it was negligent to leave it out, it was the bookkeeper's duty to deal with checks, and it does not appear that his actions rise to meet a defense of negligence for Eagle Bank. Bjorn did not receive notice from Clark Scott that Scott had not received the payment until March 3, so Bjorn was timely in his notification to Eagle Bank, especially considering he did not receive a copy of check 5061 (showing the alteration) until the the same day he reported. Thus, Eagle Bank has no proper defense to crediting Bjorn's account for a not properly payable check.

4. Eagle Bank can recover from Credulous for the entitled to enforce presentment warranty due to the alteration, and Creduloua bank can recover from the previous transferors for the no alteration transfer warranties.

END OF EXAM