Question 6 – February 2015 – Selected Answer 1

1. Mark (M) and Retailer (R) are both liable on the $500 check.

Drawers of negotiable instruments are liable as issuers. Indorsers of negotiable instruments make transfer warranties. Retailer as drawer made a promise to pay. Mark as an indorser breached a transfer warranty.

Even if Mark claims to have only been acting as an agent, he did not make this clear, nor did he state, "without recourse" on the instrument.

Therefore, M & R are both liable on this check.

2. Both M and R are liable on the $4,000 note.

Under Texas law, an instrument is a negotiable instrument if is for a
1) sum certain $
2) written
3) states order "pay to the order of…"
4) unconditional – no other tasks
5) is a promise
6) payable on demand or certain time
7) payable in a currency
8) signed.

Here, the $4,000 note meets all of these qualifications. There were no known defaults, insolvency, unauthorized changes, forgeries, value was given.

Due to past business, Truckstop thought M had at least apparent authority. Therefore, Retailer is liable on the note. If acting as an agent, M is not liable on the note.

3. Mark is not liable to Truckstop. By law, an agent is not liable if they make it clear they are working as an agent. Due to their past business, Truckstop knew M worked for R.

4. No Bank did not wrongfully dishonor check.

A bank has no duty to clear a check that insufficient funds even if it makes other checks bounce although they can pay it, is their option.

Here, there were insufficient funds to cover the draft.

Therefore, bank was w/I rights not to honor draft.

Question 6 – February 2015 – Selected Answer 2

Mark is liable for the $4,000 note, and Retailer is liable for the $500 check.

An agent of a disclosed principle is not liable to the seller for a transaction. A disclosed principle is one that the seller is aware of the agency and the identity of the principle. The agent need not expressly disclose the existence and identity of the agency.

Here, Mark, an agent of Retailers, purchased the widgets with a check that clearly stated the principle's name and address. Even though the Supplier did not have knowledge of the agency, they has constructive knowledge due to the check being in Retailer's name and containing its address. Thus Retailer is liable for the $500 and Mark is not.

When Mark did not disclose or take any other action that would lead truckstop to believe he was acting in his agency capacity, he became liable for the truck note. Although the truckstop knew he was an agent of Retailers due to past purchases, Mark did not indicate that he was acting in his agency capacity.

Mark is liable for the $16,000 note

An agent must disclose the agency and identity of the principle not to be held liable on a note.

Here, Mark did not disclose the existence of the agency and nothing referenced it in the transaction. Because Truckstop did not know of the agency, Mark is liable.

First Bank did not wrongfully dishonor Retailer's check.

A bank does not have to honor a check when the drawer's account is insufficient to cover the amount. The bank will pay out on checks in the order that they are received.

Here, First bank dishonored the $500 check because Retailer's account was insufficient. All of the checks were received at the same time, so the first two checks were paid. At the time of the last check, the account had insufficient funds. Supplier has a cause of action against Retailer, but First Bank did not act improperly.