

(1) Alice's bank will not be required to pay John the \$2,000. The issue is whether Alice had rights to enforce payment.

Under the UCC, a check is a draft. It is an unconditional promise or order to pay a fixed amount of money on demand drawn on an institution. A draft requires a drawer, drawee bank and payee. Here, the payee was John and Mary. In order to determine whether the bank is required to pay John the \$2,000, the issue is whether Alice was entitled to payment on the check made out to John and Mary. In order to enforce payment, a person must be a holder. A holder is someone who has possession and good title. Good title on bearer paper means mere possession. Good title on order paper means possession plus the proper indorsements. This was order paper that required the indorsements of John and Mary. It required both indorsements because it was made out to both of them as payees. Here, John indorsed the check with a blank indorsement, meaning just his signature. Mary also indorsed the check with just her signature. Because both payees made blank check indorsements, the order paper was made into bearer paper. This means that in order to be entitled to payment as a holder, the person would only need to have possession of the paper. Here, Alice had possession of the bearer paper and therefore could enforce payment to herself as a holder, even though she was supposed to deposit the check into John's account. It should be noted that Alice signed her name to the back of the check which was not necessary. This could arguably be viewed as Alex acting as an agent for John and therefore not having authority to deposit the bank into her account, but given that it was already bearer paper and the signature is meaningless since a holder only needs possession Alex should be able to deposit the funds into her account and the bank is not liable to repay John.

(2) John has a right not to pay Ace Landscape and not be liable for the \$200 unless the debt was not in dispute or Landscape already had told John where it received payments in full and it was not sent to the proper place. The issue here is whether the check sent to Ace operates as an accord and satisfaction.

Here, Landscape sent John a bill for \$500. John wrote a check and in the memo line wrote "payment in full." When a debt is in dispute, this language on a negotiable instrument operates as an accord. It is an offer to pay the amount stated in satisfaction of the entire disputed debt in order for the creditor to release the claim to the entire disputed amount. Right to the disputed total amount is suspended until a satisfaction takes place. A satisfaction takes place when the obligation of the accord is completed, meaning the "payment in full" negotiable instrument is cashed by Ace. Here, there appears to be a disputed debt. Ace claims that it is owed \$500 and John does not believe that is accurate. As an accord, John offers to pay \$300 payment in full, meaning to satisfy the debt and have Ace release its claims to the remaining amount. Ace cashed this check. Therefore, there has been an accord and satisfaction that releases John from liability from the payment of the remaining \$200 from the disputed debt.

There is an exception to this rule. If the creditor has notified the debtor of the proper place to receive such payments in full, then the accord and satisfaction will not be allowed unless the debtor sent the accord to the proper place. Here there is no information that Ace told John a specific place to send the check if it was payment in full. If there was and John did not send the check there, then there has only been an accord and no satisfaction so Ace can sue on the original disputed debt, meaning seek the remaining \$200.

(3) John's bank will argue it has a right to refuse repayment of the \$3000 based on John's failure to review his bank statement but John may seek payment from the bank. The bank can seek reimbursement for \$3000 against Alice's bank for breach of presentment warranties should the defense against John fail. The issue here is the right to payment of Alice and Alice's bank when the check has been altered.

Alice had a right to payment on the check given that she was a payee. Her right to payment was only for \$500 not for \$3500. When Alice presented her check for payment to the bank, Alice's bank became a holder. It had a right to payment from the drawee bank, John's bank. Whether it took free of personal defenses is dependent upon whether Alice's bank is a holder in due course. That requires that the check be negotiable, the bank is a holder in good faith and has no notice of alterations. Here, Alice's bank had no notice of the alteration and meets the other requirements of a holder in due course. Therefore, Alice's bank was a holder in due course. But as a holder in due course, the bank could only obtain the original amount, the \$500. It did not have a right to the full \$3500 because it is subject to the real defense of alteration still.

John's right to have the bank recredit his account is subject to his bank's defense that he did not check his bank statement. A drawer is required to review his bank statements for discrepancies and notify his bank should there be an issue. Here, John delayed reading his statement for 9 months. Although the bank will claim that this contributed to its loss, given it had already paid out the amount to Alice's bank and could not have obtained the funds bank even if reviewed within the first month, this defense will likely fail.

John's bank can sue Alex's bank based on presentment warranties because the warranty is that it was entitled to payment and had no knowledge of the drawer's forgery. Here the drawer's signature was not forged so that is not an issue. But it was not entitled to payment for the full amount so the bank can seek reimbursement from Alex's bank for the \$3000 in excess of its right to payment.

Q5 – July 2016 – Selected Answer 2

1. Alice's bank is not liable to John on the 2,000 dollar check. The issue is whether the check was properly payable or not and what the rights of a HDC are. A check is properly payable when it is presented by a holder with the right to enforce.
A holder is an individual that is a holder with the right to enforce. A holder will have the right to enforce if they are the holder of a check ordered to them, indorsed to them, or the holder of bearer paper. Here, the check was order paper to John and Mary, however, once John indorsed it and gave it back to Alice, it became bearer paper with all valid indorsements. Therefore, Alice was the holder of bearer paper when she presented it to the bank. Further, when the bank recieved the check it became a HDC. An HDC is exists when an intrument is negotiable, they/its a holder, for value, in good faith, and without notice. Here, the bank was a holder of the negotiable instrument, which it gave value for by crediting her acocunt 2,000; and it took and good faith and without any notice of the past deception or theft. Therefore, it will only be subject to real defenses and not personal defenses. Real defenses are fraud in the factum, forgery, incapacity, duress, insolvency, SOL, etc. Here, the closest thing to a real defense that can be claimed is forgery, however, Alice's signature was not froger, but her own. Therefore, because John created order paper by completing the necessary indorsement, and because the bank was an HDC, John likely has no recourse against Bank and will have to look elsewhere for reimbursement. The most obvious person is Alice for theft and breaching the presentment warranty.
2. John has no liabilities as to the \$200 dollar bill. At issue is whether the check acted as an accord and satisfaction of the disbuted debt. When there is a legitimate dispute as to the amount owed, a check sent with the notification that it is paid in full, which is subsequently deposited, will act as an accord and satisfaction and the depositer will be estopped from seeking the rest of the disputed amount. To preserve your claim against another on a disputed debt, the check must be returned when it contains language that it is for complete satisfaction of the disputed debt. Here, John disputed the \$500 dollar charges, so it was not merely a pre-existing duty and he sent \$300 dollars as a compromise to end the dispute with the notation of "payment in full". The requirements of a valid accord and satisfaction are met when their is a disputed debt and payment is made and accepted with the express intent that it will satisfy the claim and resolve the dispute. Once this has been established, the acceptor cannot continue to seek the disputed amount. Here, Ace accepted the check and deposited it, satisfying the requirements for an accord and satisfaction, which will estop them from furthing to seek any other recourse for the \$200 against John
3. John's bank must recredit his account 3k. When a bank debits an account for a not properly payable NPP check, it will be liable for conversion unless a defense to it paying the NPP exists. Here, the check was altered, which makes it NPP. Therefore the bank will have to recredit his account. However, the bank can raises the defenses of 1) bank statement rule; 2) employee imposter rule; and 3) negligence. The bank statement rule defense states that a bank will not be liable for paying a NPP check when it makes it statements available to the customer and the customer does not raise issue with the check within 1 year of the statement becoming available. Here, john did raise an issue within the one year, so therefore, the defense of the bank statement rule will not apply. The employee imposter rule states that a bank that pays an employee who alters are forges a check in the course of their duties can use this as a defense. Here, Alice was an employee of Johns, and further, the check was given to her as weekly salary. Therefore, because she was an employee and was given the check in that scope and then subsequently altered it, the court can potentially use this as a defense. Lastly, the bank can argue that John was negligent in 1) having alice prepare her own check and 2) not noticing the space for alterations. However, it is not unreasonable to have someone whos job is to write checks for you prepare her own check for her weekly salary, and further, it is not unreasonable to not notice enough space for alterations as it could be a simple judgment call. Therefore, unless a court finds that one of the defenses to paying a NPP check are present, the Bank will be required to recredit John's account for the altered, NPP amount due to its conversion of his property.

Q5 – July 2016 – Selected Answer 3

(1) No. When a check is made out to two people and uses "and" rather than "or", both individuals must indorse the back of the check. When the check has properly indorsed but there is no other direction on the indorsement it is called a blank indorsement. A blank indorsement turns the check into bearer paper so that whoever has possession of the check is able to cash the check. If someone indorses the check outside of the chain of control (neither a payee or transferee), this does not void the check or necessarily indicate a forgery. An anomalous signature on the check is considered to be a surety agreement. Here, the check was made out to "John and Mary" and therefore both John and Mary needed to indorse the check in order to cash it. Both did so, and both made a blank indorsement. Once John signed his name and made a blank indorsement, the check became bearer paper. Therefore anyone who had possession of the check could lawfully cash the check. Alice's signature on the back of the check does not change this. She was not forging an indorsement, because those had already been made. Rather it was an anomalous signature that the bank would consider to be a guarantor. Therefore by signing the back of the check Alice made herself a guarantor for bearer paper. The bank was therefore entitled to cash the check to Alice, because she had the right to enforce it as bearer paper. She did not breach any transfer warranties (if she cashed it at a bank other than John's bank) and she did not breach any presentment warranties (if she cashed it the same bank as John). Furthermore the check was properly payable as bearer paper, so the bank is not required to refund John \$2000 and John does not have a claim against the bank. He may however have a claim against Alice.

(2) John is not liable for the \$200 bill because the amount was discharged when Ace Landscape cashed the check and then did not return the money when it asserted that the claim was not paid in full within the statutory time period. A check that is labelled payment in full is considered an accord if it is payment for an amount that is subject to a bona fide dispute. If that check is then cashed, such action is considered satisfaction which discharges the original contractual amount and the accord. However, after the check is cashed there is a certain statutory period in which the party can return the money and indicate that it does not agree to the accord. Here, there was a bona fide dispute between John and Ace Landscape for the charges. John signed a check for \$300 and indicated that the amount was payment in full (the fact that Alice prepared the check is irrelevant to the enforceability of the check because John signed it). This action made the check an accord. Then Ace cashed the check, which was a satisfaction. The action of cashing the debt discharged the original contractual amount and satisfied the accord. Therefore Ace cannot bring an action to recover \$200 under the original contract. Ace's actions appear to indicate that it did not accept the accord, but to do so properly it needed to return the \$300 within a certain time frame and indicate that it would not take the amount as payment in full. Ace did not do so, therefore the \$200 under the original contract has been discharged pursuant to an accord and satisfaction.

(3) John may be liable for the \$3000 increase on the check due to Alice's alteration if he is found negligent in how he wrote the check. When the text of the check is altered as it was here, the check can be cashed for the original amount. The check would not be properly payable for the altered amount. Therefore John could bring an action against the bank for paying the altered check. However, the bank may have a number of defenses to such an action. First, the drawer (John) must notify the bank within a reasonable time of the alteration and no later than 1 year after the altered check is cashed. Second, the drawer (John) may be liable for the altered amount if his own negligence allowed another to alter the check. Here, John notified the bank within 9 months which is less than a year and will likely be considered within a reasonable time, however that may be a fact question. However, John likely filled out the check negligently because John left sufficient space for Alice to alter the numbers and apparently the words of the check. Because of this negligence, John would be unable to bring a not properly payable action. However, John could argue that the thirty before the five hundred written, should have indicated to the bank that the thirty was an addition. The amount on checks are not typically written out so colloquially and it would be more common that a check for \$3,500 would say "three thousand five hundred." This would be especially true if the thirty was awkwardly spaced before the text of "five hundred."

If the bank is found liable for cashing the altered check it may have rights against either Alice, if she was the one who presented it to the bank, or Alice's bank, if it is a different bank. Alice or the other bank would be liable for breaching the presentment warranty. Under the presentment warranty, the party who presents an instrument to the drawee bank promises that they can properly enforce the check, the check has not been altered, and they do not know that the signatures are forged. Here Alice would breach the warranty because it was not properly enforceable because she had altered it and it was altered. The bank would breach the warranty because the check had been altered.

If John is unable to get the \$3000 from the bank who would be able to sue Alice to recover the amount.