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1. The bank will prevail on Bill's claim regarding the \$4,500 unless Bill and the bank had agreed via a written account agreement that Bill had valid overdraft protection and privileges.

The UCC allows a customer and a bank to vary many terms in the UCC by contract. However, there is nothing in the fact set that states they had an account agreement that would vary the terms of the UCC. Absent an agreement, although a bank CAN pay an item that would overdraft a customer's account, a bank is not REQUIRED to pay an item that would overdraft a customer's account. Additionally, although the bank gave the customer provisional credit for the initial deposit into his account, the provisional credit can be revoked if the bank acts within its midnight deadline and provides the customer timely and proper notice of dishonor of the deposited item.

In this case, the bank gave Bill a provisional credit of \$4,500 on 1/2/16. On 1/4/16, within its midnight deadline, the bank received notice of dishonor of the deposited item and gave Bill timely and proper notice of dishonor. Thus, the bank can revoke the provisional credit they had initially given Bill. Since we do not have evidence of an account agreement that might show that Bill had valid overdraft protection, the bank is not required to pay an item that would overdraft Bill's account, therefore, the bank will prevail on Bill's claim regarding the \$4,500 check they properly denied.

By giving the \$500 cash to Bill, the bank tendered final settlement of that portion of the \$5,000 check. When a bank cashes a check for a customer in cash, that is not considered provisional credit but is considered final settlement and is not revocable. However, most account agreements for checking accounts would contain provisions that would allow the bank to recover from its customer. Absent that provision in the agreement, the bank would not be able to recover the \$500 from Bill, but it is likely that the standard account agreement would give them the right to recover.

2. Bill will not prevail on the defense that Paul never made any demand for payment, but Bill will prevail on the Statute of Limitations defense he has asserted to Paul's suit on the Note.

The Note complied with all formalities to be a negotiable instrument. The Note contained an acceleration clause that if the first payment was missed on June 1, 2010, the balance due would accelerate and be due immediately. Bill missed the first payment on June 1, 2010, and therefore the acceleration clause would have applied and the entire balance would have become due and payable at that time.

It is not necessary that a holder of a promissory note make demand for payment as the payment terms are on the face of the instrument. The instrument called for payments on June 1, 2010 and on December 1, 2010.

Paul does not have to demand payment from Bill. Bill did not make the payments. Therefore, Bill cannot use the lack of Paul's demand as a defense.

On a negotiable instrument, the holder has a 6 year statute of limitations (SOL) from the date the cause of action accrues to file a claim. Claims not filed by the expiration of the SOL are barred.

Bill missed the first payment on June 1, 2010, and therefore the acceleration clause would have applied and the entire balance would have become due and payable at that time (June 1, 2010).

The payment was not made, therefore the cause of action would have accrued on June 1, 2010. In order to be effective, Paul's claim would have had to have been filed within 6 years (June 1, 2016). The suit was not filed until August 15, 2016 and is therefore barred by the statute of limitations.

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(1) Bill's bank should prevail on Bills claim against it for the \$4500 check, but Bill can keep the \$500 cash.

The check was dishonored, within the midnight deadline. Bill's bank had no obligation to pay Bill on the dishonored check. Furthermore, Bill's bank had no obligation to pay University when Bill's check bounced due to insufficient funds. Banks do not have any obligation to pay on drafts where there are insufficient funds. Bill's bank has breached no warranties--it presented a properly payable check to Kate's bank, which properly refused to pay because Kate had insufficient funds. Bill probably does have a claim against Kate for the \$4500, assuming it was given to Bill for value.

Bill's bank will not prevail on its counterclaim for the \$500 cash. When the bank gave Bill the cash, it was giving him an advance on the money promised by the check. Bill's bank, the drawee, was, from that point, bearing the risk that the check would bounce. Bill did not breach any transfer or presentment warranties--the check was properly drawn by Kate and properly indorsed by Bill--so the bank has no grounds for breach. Bank, does have a claim against Kate for the \$500.

(2) Bill will not prevail on his first defense, but will prevail on the second either defense.

Bill's first defense will fail because the note was negotiable. A negotiable instrument is an unconditional promise to pay. It is not subject to other acts or conditions by the holder of the note. The facts indicate that this was a proper negotiable instrument. Acceleration of payment clauses in negotiable instruments--clauses that give the holder the money faster--are proper and do not destroy the note's negotiability, because the holder still knows when the payment is definitely due. Thus, the clause that the entire balance was payable on June 1 if the partial payment was not made did not destroy the note's negotiability, the payments were due on the stated dates, and there could be no other requirements on Paul to demand payment. Thus, Bill's first defense, that Paul made no demand, will fail.

However, Bill's second defense, that the statute of limitations has passed, will succeed. The statute of limitations for a promissory note is 6 years from the date the payment becomes due. Paul will argue that the payment became due on December 1, 2010, and that limitations have not run; but Paul is wrong. Here, because of the acceleration of payment clause, Paul's cause of action arose on *June 1, 2010*, when Bill defaulted on the first payment deadline and the entire amount became due. As discussed above, such acceleration of payment clauses are properly enforceable and do not destroy a note's negotiability. It is now August 15, 2016, more than six years after the payment was due. Therefore, Paul's claim is barred by the statute of limitations.

Paul will argue that the

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(1) (a) The bank should win against Bill on the claim for the \$4,500 check. The issue is whether Bill could compel bank to pay the balance of the check. When a bank accepts and pays a deposit, final payment has been made and the bank cannot recover any amounts that should not have been paid. A bank's only recourse would be for breach of presentment warranties. Because of this risk, banks may put holds on deposits that allow them to present a check to the drawee bank for payment prior to finalizing payment to their own customer. If a bank receives notice that check is dishonored during the period the deposit is on hold, it cannot be compelled to pay the amount. Holds on deposits must be cleared by midnight two days after deposit. Here, bank paid part of the check in cash and posted a credit while the check was presented to Kate's bank. The facts indicate that Kate's bank dishonored the check within the deadline, and Bill's bank gave notice within the midnight deadline. Thus, the Bill cannot compel the bank to pay the remaining amount, despite the fact that he relied on its presence in his account. It is possible Bill could recover against Kate since the suit against the bank is unlikely to prevail. A drawer has no liability on a check once accepted by a bank. However, if the bank has not accepted, and the check is presented within 30 days and dishonored, the drawer is liable. Thus, Bill may have recovery against Kate for the \$4,500. We do not know when Kate gave the check, but if his presentment was within 30 days, Kate could be liable for the amount Bill's bank did not accept.

(b) Bill should win against bank's counterclaim for return of the \$500. As mentioned above, once a bank accepts and pays on a deposit, the bank has no recourse for the amount paid, even if it was improperly paid. When a bank gives cash in return for a check, the bank has accepted the check, at least in the amount of cash given to the customer. Here, bank gave Bill \$500, an act that constitutes final payment. Bank cannot compel Bill to repay that amount, and bank's only recourse would be if there was a breach of a presentment warranty.

(2) (a) Bill will not prevail on the defense that no demand was actually made. The issue is whether Paul as the note holder was required to make payment demand to Bill if the note specified a payment date. A negotiable instrument may be payable on demand or at a definite time. When payable on demand, the holder of the note must make demand on the maker in order to trigger a payment. When a note is due at a definite time, however, no demand is required. The specified payment due date means payment is automatic and the holder need not take any action. Failure to pay at the required date is a default.

(b) Bill will prevail on the defense of statute of limitations. The issue is what statute of limitations is applicable to this note. The statute of limitations for a note is 6 years from the date final payment is due. This note was made May 1, 2010 and due, in part June 1, 2010, but in full December 1, 2010. Because final payment was due December 1, 2010, the statute of limitations would expire December 1, 2016. Thus, it would appear at first blush as if the August 15, 2016 lawsuit was timely, However, the note also contained an acceleration clause. Under the acceleration clause, if the partial payment was not made on June 1, 2010, the entire note became due and payable. No payment was made on June 1, 2010. Thus, the entire note became due and payable on June 1, 2010, and the statute of limitations began to run at that point. The statute of limitations expired June 1, 2016, and the August 15, 2016 lawsuit is untimely.

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