

Question 9 – February 2019 – Selected Answer 1

A. Rapid will prevail Because they are a Holder in Due Course. In order to become a Holder in Due Course (HDC), you must take an instrument as (1) be a holder (2) in Good faith (3) for value (4) and without notice. An HDC is immune from all personal defenses but can be subject to real defenses, such as Fraud, forgery, incapacity, illegality, insolvency etc. In order to be a holder one must take an instrument that is negotiable. A negotiable instrument is one that is in writing (2) signed (3) unconditional (4) contain order or bearer language (5) payable (6) for money (7) on demand or a definite time (8) with an unauthorized or additional requirements. If these requirements are met then the HDC has rights to enforce the check against the maker free of personal defenses. If the instrument is a check, possession and indorsement makes one a holder.

Here, University sent check 1 to Jane, which made its way to Jane through the mail. Since University issued two checks to Jane it placed an effective stop payment on Check 1, which it has a right to do however Check one was in Janes possession and Jane was a holder at that point. The check was made out to Jane, payable for money on demand, and unconditional. Jane was free to indorse the check which she did so by indorsing the check to Rapids which Rapids took for value in the form of \$4,000. Rapids had no notice and acted in good faith (according to the facts there is no indication otherwise). The check did not have any markings to let Rapids know there was a stop order so to give Rapids notice. The indorsement on a check by Jane and possession makes rapid a holder. Therefore Rapids will be able to enforce the check against University and University has no real defense to hold against Rapids.

B. No Bank is not liable. Under the UCC. the bank must enforce checks that are properly payable. A check is properly payable if the check is (1) made with the authority of the maker (2) within the agreement by the customer and the bank. Here the check was drafted by Jane who is a customer of the Local Bank. The check was signed by Jane making it payable to Wilma and Sally and enforceable by Bank.

Under the UCC a check becomes bearer paper, and enforceable by anyone in possession if the payee of the check (here Wilma and Sally) indorse the check. The check must be indorsed both parties since both are named with "and" seperating the names. Here both Wilma and Sally indorsed the check making the check payable to anyone in possession of the check. The fact that Mary stole the check, is not material to Banks liability, the check is properly payable because Jane signed the check and the payees indorsed it thus bank is not liable for its payment.

C. No Bank is not liable to Jane for failing to stop payment. Under the UCC, In order for a maker/customer to stop payment of a check, the maker must give valid notice in a form that gives enough information to properly identify the check and it must be in writing and with enough time to effective stop the payment. Here, Jane only orally called the bank to tell them to stop payment. She did not give enough detail information to let the bank know the check should be stopped for example the check identification number, amount etc. Thus Bank did not have to stop payment on the check and is not liable.

D. Bank can not recover the money from Mary because Mary was a rightful holder of the check. Mary had the right to enforce the check because she was a holder of the check with enforcement rights as mentioned above. Under the UCC, a check becomes bearer paper, and enforceable by anyone in possession if the payee of the check (here Wilma and Sally) indorse the check. The check must be indorsed both parties since both are named with "and" seperating the names. Here both Wilma and Sally indorsed the check making the check payable to anyone in possession of the check. Because Mary was in possession of a valid indorsed check she could execute the check under the UCC.