

Morris
Commercial Paper
Spring 1982
Question I (40 points)

Boris needed some money for a business venture, and he was unable to convince his sister, Natasha, to loan her \$10,000 life savings to him. Therefore, he suggested to her that she assist him in obtaining the funds from another source.

Boris and Natasha visited Mr. S. Whip Lash, a local financier. Lash agreed to make the loan in the amount of \$8,500. He required Boris and Natasha to sign the following promissory note:

PROMISSORY NOTE

\$8,500.00 April 1, 1981

On or before October 1, 1981, and for value received, we jointly and severally promise to Pay to S. Whip Lash or order the sum of \$8,500.00 with interest from this date until paid at the rate of 10% per annum. If this note is not paid when due, the principals, indorsers and sureties hereof expressly waive notice of extension of time or renewal hereof.

/S/ Boris

/S/ Natasha

The entire proceeds of the note went to Boris. Lash simply drew a check Payable to Boris. Nevertheless, Natasha pledged her life savings as collateral for the loan by giving her passbook to Lash. Furthermore, during the meeting of Boris, Natasha and Lash, Natasha expressed her concerns about Boris' failing health and his ability to repay the note. As a result, Boris agreed that he would obtain a six month term life insurance policy in the amount of \$8,500.00 payable to Lash. Boris then told Natasha, "See, you have nothing to worry about. The note will be repaid on October 1, and if I die, the insurance will take care of everything. You'll get your \$10,000.00 back."

Boris approached Lash in late September and requested a six month extension of the note. Lash agreed to the extension on the condition that Boris pay all of the accrued interest. Boris paid that amount and the extension was granted.

Boris died two months later from a bite by a rabid squirrel. The insurance policy had lapsed on October 1. Lash has notified Natasha that he intends to pay the debt out of the money pledged by Natasha. Her response was to file suit seeking recovery of the money.

Discuss the issues presented by this fact situation, and render a decision based on your analysis of those issues.

Question II (40 points)

Doug Whaley was a used car dealer. When customers wanted to purchase a car on credit, Whaley followed these procedures: the customer would fill out an application for a loan from Easy Finance Company; Whaley then submitted the loan application to Easy Finance which would then issue a check drawn on the Columbus State Bank in the amount of the loan payable to the order of the customer. This check together with a promissory note and installment sale contract were then sent to Whaley who would have the customer sign the note and installment sale contract and return them to Columbus State Bank. Whaley then put the check through bank collection channels for payment by Columbus State.

Unfortunately, Whaley's used car business began to experience serious financial problems. In desperation, Whaley picked ten names at random from

the phone book and prepared loan applications addressed to Easy Finance using these names as if they were credit customers of Whaley. He signed the loan applications with the names taken from the phone book and forwarded the loan applications to Easy Finance. Easy Finance then drew ten checks on Columbus

State Bank payable to the order of the purported customers of Whaley and sent them, together with the notes and installment sale contracts, to Whaley. Whaley completed the notes and installment sale contracts by signing in the names of the purported customers and returned them to Easy Finance. Whaley then took the ten checks, indorsed them with the names of the ten payees and cashed the checks at Columbus State Bank. In the meantime, however, Easy Finance had become suspicious of the transaction and telephoned Columbus State telling them to stop payment on the ten checks. Columbus State received the notice timely and had a reasonable opportunity to act thereon. Nevertheless, it made a mistake and paid the checks.

Easy Finance consults you for advice. Explain any causes of action it may have as well as any defenses that may be raised against Easy Finance.

Question III (40 points)

Principals, Inc. purchased 10,000 widgets at \$2 per widget from Herb Paulert and paid for the goods with the following check:

May 19, 1981

Pay to the order of Herb Paulert \$20,000
Twenty-thousand and no - - - - - dollars
1st National Bank by /s/ Alan Brady
01-77 3161 by /s/ Rob Petrie

Upon receipt of the check, Paulert immediately indorsed it and placed it in his "out box" intending to deposit the check that afternoon. The check was stolen by a thief, raised to \$25,000, and then deposited as the initial deposit in a new account at Crooks Bank. The increase in the amount of the check was so well done that no teller would be put on notice of anything unusual by the face of the check. Of course, the thief withdrew \$15,000 later that day from the new account. Crooks Bank presented the check to 1st National on the following day, and the item was dishonored because the 1st National had set off all of the funds in the account against the separate debt owed to the bank by Principal's, Inc.

Your client, Herb Paulert, is angry. He says, "I don't care if you have to sue Principles, Inc, Brady, Petrie, Crooks Bank, and 1st National. I want my money back!" Advise Paulert as to his rights against each of these parties and inform him of any defenses these parties may raise in response to his claims.