**Alternate Case Problems**

*Chapter 14*

**Negotiable Instruments**

**14-1. Unauthorized Indorsements.** While Wanda Snow was married to Cary Byron, Byron established an account with Shearson Lehman Hutton, Inc.—a securities broker­age firm—for Wanda’s son by a previous marriage. Wanda was designated as the ac­count custodian. After Wanda and Cary had separated but before their divorce became final, Byron wrote a letter to Shearson instructing Shearson to close the account and send the proceeds (about $44,000) to a Florida bank account. Byron forged Wanda’s sig­nature on the letter. Later, Byron called Shearson, identified himself, and asked that the pro­ceeds be sent instead to Wanda Snow in care of Byron’s cousin in Connecticut. Byron ob­tained the check, forged Wanda’s indorsement on it, and deposited the check into his bank account, later applying the proceeds to his personal use. Wanda sued Byron, Shearson, and the bank to recover the funds. In her claim against the bank, Wanda al­leged that the bank was liable for paying the check over a forged indorsement. The bank raised the “imposter rule” as a defense. Is the imposter rule applicable to these circum­stances? Why or why not? [*Snow v. Byron,* 580 So.2d 238 (Fla.App.1st 1991)]

**14-2. Indorsements.** Universal Premium Acceptance Corp. issued more than $1 million in drafts, intending the payee to be Great American Insurance Co. When the drafts were issued, they were nonnegotiable instruments. Walter Talbot, an insurance agent, intercepted the drafts, forged Great American's indorsements in blank, and deposited the drafts in a phony account at York Bank & Trust Co. After Talbot was caught and convicted, Universal filed a suit in a federal district court against York to recover some of its losses. One of the issues was whether Talbot's indorsements converted the nonnegotiable drafts into negotiable bearer instruments. Did they? Why or why not? [*Universal Premium Acceptance Corp. v. York Bank & Trust Co.,* 69 F.3d 695 (3d Cir. 1995)]

**14-3. Requirements for HDC Status.** Stacey Dillabough presented two money orders for payment to Chuckie Enterprises, Inc., a check-cashing service in Philadelphia. Dillabough was known as a previous customer, the orders were presented within thirty days of the date on them, and there was nothing to indicate that they were not valid. Chuckie obtained photo identification from Dillabough, cashed the orders, and submit­ted them to the issuer, American Express, for payment. American Express recognized the orders as stolen and refused to pay. Chuckie assigned its right to payment to Robert Triffin, who filed a suit against American Express to collect. One of the issues was whether Chuckie was a holder in due course. One of the requirements of HDC status is good faith. Did Chuckie take the money orders in good faith? Discuss. [*Triffin v. Dillabough,* 552 Pa. 550, 716 A.2d 605 (1998)]

**14-4. Negotiability.** Regent Corp., U.S.A., an import company in New York, contracted with Azmat Bangladesh, Ltd., a textile company in Bangladesh, for the purchase of bed sheets and pillowcases for import and resale in the United States. An essential condi­tion of the sale was that the goods be manufactured in Bangladesh. The contract re­quired payment by Regent within ninety days of the date on the bill of lading, and Regent issued promissory notes that indicated this term. After the goods were shipped, Azmat’s bank presented drafts drawn against Regent to Regent’s banks. Like the notes, each draft indicated that payment was to be made “at 90 days deferred from bill of lading date.” The drafts were accompanied by dated bills of lading. On delivery of the goods, U.S. Customs refused to allow their entry because they were partially manufactured in Pakistan. Regent filed a suit in a New York state court against its banks, and Azmat, to stop payment on the drafts. One of the issues was whether the notes and drafts were “payable at a definite time.” How should the court rule on this issue? Explain fully. [*Regent Corp., U.S.A. v. Azmat Bangladesh, Ltd.,* 253 A.D.2d 134, 686 N.Y.S.2d 24 (1 Dept. 1999)]

**14-5. Requirements for HDC Status.** In February 2001, New York Linen Co., a party rental company, agreed to buy 550 chairs from Elite Products. On delivery of the chairs, New York Linen issued a check (dated February 27) for $13,300 to Elite. Elite’s owner, Meir Shmeltzer, transferred the check to General Credit Corp., a company in the business of buying instruments from payees for cash. Meanwhile, after recounting the chairs, New York Linen discovered that delivery was not complete and stopped payment of the check. The next day, New York Linen drafted a second check, reflecting an adjusted payment of $11,275, and delivered it to Elite. A notation on the second check indicated that it was a replacement for the first check. When the first check was dishonored, General Credit filed a suit in a New York state court against New York Linen to recover the amount. New York Linen argued in part that General Credit was not a holder in due course because of the notation on the second check. In whose favor should the court rule? Why? [*General Credit Corp. v. New York Linen Co.,* \_\_ Misc.2d \_\_ (N.Y.City Civ.Ct. 2002)]

**14–6. Transfer of Instruments.** In July 1988, Chester Crow executed a promissory note payable “to the order of THE FIRST NATIONAL BANK OF SHREVEPORT or BEARER” in the amount of $21,578.42 at an interest rate of 3 percent per year above the “prime rate in effect at The First National Bank of Shreveport” in Shreveport, Louisiana, until paid. The note was a standard preprinted promissory note. In 1999, Credit Recoveries, Inc., filed a suit in a Louisiana state court against Crow, alleging that he owed $7,222.57 on the note, plus interest. Crow responded that the debt represented by the note had been canceled by the bank in September 1994, contending that, in any event, to collect on the note Credit Recoveries had to prove its legitimate ownership of it. When no evidence of ownership was forthcoming, Crow filed a motion to dismiss the suit. Is the note an order instrument or a bearer instrument? How might it have been transferred to Credit Recoveries? With this in mind, should the court dismiss the suit on the basis of Crow’s contention? [*Credit Recoveries, Inc. v. Crow,* 862 So.2d 1146 (La.App. 2 Cir. 2003)]

**14–7.** **Holder.** Germanie Fequiere signed a note payable to BNC Mortgage. As security for the note, Fequiere signed a mortgage on certain real property. BNC indorsed the note in blank. Later, Chase Home Finance, LLC, became a holder in due course of the note and the holder of the mortgage. When Fequiere failed to make payments on the note, Chase sought to foreclose on the property. Fequiere argued that the mortgage had not been properly transferred to Chase. If that is true, can Chase obtain payment on the note? Why or why not? [*Chase Home Finance, LLC v. Fequiere,* 119 Conn.App. 570, 989 A.2d 606 (2010)]

**14–8. Negotiability.**Michael Scotto borrowed $2,970 from Cindy Vinueza. Both of their signatures appeared at the bottom of a note that stated, “I Michael Scotto owe Cindy Vinueza $2,970 (two thousand and nine-hundred & seventy dollars) & agree to pay her back in full. Signed on this 19th day of September 2009.” More than a year later, Vinueza filed a suit against Scotto to recover on the note. Scotto admitted that he had borrowed the funds, but he contended—without proof—that he had paid Vinueza in full. Is this note negotiable? Which party is likely to prevail? Why? [*Vinueza v. Scotto,* 30 Misc.3d 1229, 924 N.Y.S.2d 312 (1 Dist. 2011)]

**14–9.** **Defenses**. Damion and Kiya Carmichael took out a loan from Ameriquest Mortgage Co. to refinance their mortgage. They signed a note to make monthly payments on the loan. Later, Deutsche Bank National Trust Co. acquired the note. The Carmichaels stopped making payments and filed for bankruptcy. Deutsche asked the court to foreclose on the mortgage. The Carmichaels asserted that they had been fraudulently induced to make the loan and sign the note. Was the bank free of this defense? Explain. [*In re Carmichael,* 443 Bankr. 698 (E.D.Pa. 2011)]

**14-10. A Question of Ethics**

Richard Caliendo, an accountant, prepared tax returns for various clients. To satisfy their tax liabilities, the clients issued checks payable to various state taxing entities and gave them to Caliendo. Between 1977 and 1979, Caliendo forged indorsements on these checks, deposited them in his own bank account, and subsequently withdrew the proceeds. In 1983, after learning of these events and after Caliendo’s death, the state brought an action against Barclays Bank of New York, N.A., the successor to Caliendo’s bank, to recover the amount of the checks. Barclays moved for dismissal on the ground that because the checks had never been delivered to the state, the state never acquired the status of holder and therefore never acquired any rights in the instruments. The trial court held for the state, but the appellate court reversed. The state then appealed the case to the state’s highest court. That court ruled that the state could not recover the amount of the checks from the bank because, although the state was the named payee on the checks, the checks had never been delivered to the payee. [*State v. Barclays Bank of New York, N.A.,* 561 N.Y.2d 533, 563 N.E.2d 11, 76 N.Y.S.2d 697 (1990)]

**1.** If you were deciding this case, would you make an exception to the rule and let the state collect the funds from Barclays Bank? Why or why not? What ethical policies must be balanced in this situation?

**2.**  Under agency law, delivery to the agent of a given individual or entity constitutes delivery to that person or entity. The court deemed that Caliendo was an agent of the taxpayers, not of the state. Does it matter that the taxpayers may not have known this principle of agency law and might have thought that, by delivering their checks to Caliendo, they were delivering them to the state? Discuss fully.