Part 1
Questions 1-10
Payment Systems
2 hours
(20 minutes per question)

Question 1

Debra recently employed Carl's Construction to complete a renovation to the kitchen of her home. In the written contract covering the work, Carl's warranted that the renovations would be completed in "a workmanlike manner." Carl's completed the work on April 1, 1999. At the time of completion, Debra signed a document entitled "Promissory Note." The note stated "I promise to pay to the order of Carl's Construction $20,000 plus interest of 10% per annum." The note also contained several provisions setting out the time of payment, providing that the failure to pay would be a default, and providing that, after default, interest would accrue at the rate of 15%.

On April 15, 1999, Debra discovered that the wiring and the plumbing in her kitchen did not pass local building codes. The city has threatened to take legal action against Debra unless the work is re-done. This will cost Debra $10,000. Debra tried to call Carl's but the phone has been disconnected. The rumor is that Carl has retired to Cancun, Mexico.

Last night, Fred, a representative of Friendly Finance, showed up at Debra's door. Fred showed Debra the original promissory note and told her that all payments would have to be made to Friendly Finance. On the back of the note was written, "pay to the order of Friendly Finance" and was signed by Carl as president of Carl's Construction. When Debra showed Fred the faulty work, he did not appear particularly interested. You have several clients that have had the same type of problems with Carl's Construction and in each case Friendly Finance purchased the notes.

Debra told you that she had asked Carl at the time she signed the note whether he had obtained all required permits and inspections from the city. He lied, telling her that the city had signed off on the work. If he had obtained the required permits and inspections, the city would have discovered the inadequate work. You represent Debra who wants to avoid making any payments on the note until the work is repaired. What will you tell her?

Question 2 (refer to the facts for question 1 and assume the following)

Debra also wrote Carl's Construction a check for $2,000 at the same time she signed the promissory note. On Thursday, April 15, 1999, Debra went to First State Bank (the payor) and filled out a "Stop Payment Order" on a form provided by the bank. Debra correctly identified the check by amount, date, and payee, but she incorrectly identified the check number. The bank charged Debra's account with their customary fee for such an order ($12.00).

Carl's deposited the check in its account at Second State Bank on Monday, April 19, 1999 and the check was presented to First State on Tuesday, April 20, 1999. First State failed to observe the countermand order and on Wednesday, April 21, 1999, they charged $2,000 to Debra's account.

The $2,000 charge reduced Debra's balance to $20.00. On April 22, 1999 First State dishonored 5 of Debra's checks totaling $1,000.00. First State charged Debra's account with total NSF fees of $200.00 ($40.00 per check) and Debra incurred charges from payees of the bounced checks totaling $100.00. What are Debra's rights against First State Bank?

Question 3
Would your answer to Question 2 change if Carl had properly indorsed and cashed the check at the Lexington Check Cashing Company and Lexington Check Cashing deposited the check at Second State Bank?

**Question 4**

In payment for cleaning services, the law firm of Smith and Smith sent a check to Bob's cleaning service on April 1, 1999. On April 15, 1999, Samantha Smith, the managing partner of the firm received a call from Bob, President of Bob's cleaning service. Bob asked when he could expect the payment that was due in early April. Samantha checked with First State Bank, the bank on which the check was written. First State told Samantha that the check to Bob's had been paid on April 7, 1999. As Samantha investigated further, it appeared that Bob's account receivable clerk stole the check, forged Bob's Cleaning Service's indorsement and cashed the check at the Lexington Check Cashing Company. Lexington Check Cashing deposited the check into its account at Second State Bank and Second State presented the check to First State for payment. Who will bear the loss from the theft and why?

**Question 5**

You represent First National Bank of Kentucky. First National issued a Titanium Visa Card to Hal Hardrock, a wealthy guitar collector who lives in Lexington. Hal used the card to purchase, over the internet, what was represented to be a vintage guitar worth at least the purchase price of $50,000. The guitar was sold by a somewhat shady dealer located in Cancun, Mexico. When the guitar arrived, Hal discovered that it was a worthless piece of junk that was worth $150, at best. Hal called the bank and spoke to the president who assured him that he would not have to pay the card bill. The president is now having second thoughts about the wisdom of his decision and he would like for you to file an action to collect the $50,000. Will you be successful?

**Question 6**

You represent Sam Sucker who has recently discovered that Bob, Sam's brother in law, used Sam's ATM card to withdraw a total $5,000 from Sam's bank account. All of the transactions took place the first two week of February, 1999. Sam remembers that early the first week of February, Bob offered to run some errands for Sam. Sam gave his Bob his ATM card and told him the PIN number so that Bob could stop by the bank and get some cash. It appears from the Sam's bank statement that, at that time, Bob only withdrew the $300.00 that Sam told him to get. Bob also returned the card to Sam after this transaction.

Sam never missed his card during these weeks. Sam's guess is that Bob took his card at night while Sam was sleeping and returned it to Sam's wallet after each use. Sam wants to know if he is entitled to a recredit of his bank account.