1. Hank is entitled to $50,000, which includes his $40,000 capital and $10,000 in profits. Irving is entitled to $30,000, which includes his $20,000 in capital and $10,000 in profits. Mark is entitled to $20,000, which includes his $10,000 in capital and $10,000 in profits.

   The partnership agreed that any profits made by the partnership would be distributed first to repay the capital each invested. After accounting to each partner for their capital contributions, there is $30,000 left in profits. Under the Texas Business Organizations Code (TBOC), when an agreement is silent on the distribution of profits, the profits are split equally. Therefore, each partner would be entitled to $10,000. It does not matter that the agreement was oral. A Texas partnership does not have to be in writing and has no formalities.

2. Yes, Irving and Mark may continue to operate if they both agree to continue, after Hank's withdrawal. The partnership agreement was to expire December 31, 2010. Even with Mark's withdrawal, the partnership may still continue until then.

3. Mark is liable to the partnership for any damages caused by his wrongful withdrawal.

   Under the TBOC, if a partner withdraws before the mission of the partnership is complete, that partner is liable for damages. Here, the agreement evidences that the partnership was not to be over until December 31, 2005 when Hank retired.

   Hank did not notify any of the partnerships creditors of his withdrawal. Without notifying any creditors, Hank can be bound to the creditors for a year after withdrawing. The reason behind it is that the creditors believe that Hank has apparent authority to do business with them, until he notifies them of his withdrawal. Also, without notification and wrongful withdrawal, Hank can be bound on contracts for 2 years after the wrongful withdrawal.

4. Hank is jointly and severally liable along with Irving and Mark for the $5,000 in back rent. Hank was still a partner at the time the rent was owed, and is therefore liable. The landlord will have to exhaust the partnership's assets, and then serve them with process before reaching them personally.

END OF EXAM

Question 6 **Selected Answer #2** **February 2011**

1) Hank should receive $50,000, Irving should receive $30,000 and Mark should receive $20,000 from the $100,000 profit earned in 2009.

Han, Irving and Mark has formed a general partnership under the fact. Under the Texas Business Organization Code (TBOC), a partnership is an particular undertaking if the parties undertake a particular duty for a specified time. The fact that the partners did not sign any documents but orally agreed does not affect the formation of the general partnership as long as the parties intent to associate to conduct a business as co-owners for profit. The partners can conduct an agreement of how profits are distributed. Absent an otherwise agreement, profits are shared equally among partners.

Here, the oral agreement that, among other things, (5) any profits made by HIM would bi distributed first to repay the money each originally invested is enforceable. The $100,000 profit first should be distributed as agreed by the parties that $40,000 should be distributed to Hank as his money originally invested, $20,000 to Irving and $10,000 to Mark. Because the partners had no agreement with respect to the distributed to other profits, the remaining $30,000 should be distributed among partners. Thus, each should be entitled to $10,000/each. Therefore, Hank should receive $50,000, Irving should receive $30,000 and Mark should receive $20,000 from the $100,000 profit earned in 2009.

2) Yes, Irving and Mark may continue to operate as HIM after Hank informed them that he was withdrawing from the partnership.

As a general rule under the TBOC, an event of withdrawal of a partner does not require a partnership business wind-up as long as other partners agree to continue. An announcement of withdrawal is an event of withdrawal of a partner.

In this case, Hank's informing that he was withdrawing from the partnership on January 10, 2010 triggers the event of withdrawal of a partner. However, such event does not require HIM to wind up as long as Irving and Mark agree to continue. Because Hank's withdrawal should not have affected the operation of HIM's business, Irving and Mark may continue to operate as HIM after Hank informed them that he was withdrawing from the partnership.

3) Hank is liable to the partnership for wrongful withdrawal and the obligation with Supplier.

Under the TBOC, where there is a particular undertaking under a partnership, a partner can withdraw but he will be liable for wrongful withdrawal. Here, Hank entered an agreement with Irving and Mark that 1) Hank would run the day-to-day operation of the business until December 31, 2010; (2) Hank would train mark to run the business, (3) on December 31, 2010, Han would retire and the partnership would end, (4) Irving and mark could for a new business if they wanted to do so; and (5) any profits made by HIM would be distributed first to repay the money each originally invested. As with (1) and (2), Hank's duty to the partnerships are not fulfilled because Hank withdrew on January 10, 2010 is ealier than the agreed termination date (December 31, 2010). Where there is no fact to indicate if Hank actually trained mark to run the business. Assuming Hank has not done so and the partnership has to hire another trainer for Mark, Hank will be liable to the amount of such expense, assuming it is reasonably and necessary. The facts that Hank was not paid a salary does not justify him to withdraw earlier than agreed. In Texas, absent an otherwise agreement, partners are not entitled to compensation for their service. The fact that Hank had worked at the store almost every day it was open in 2009 does not entitle him to a salary. There is no fact the partners agree otherwise that Hank is entitled to compensation.

Hank is also liable to the obligation of $10,000 owed to Supplier. Under the TBOC, a partner owns a duty of care, loyalty and good faith to the partnership. He must act in the reasonable belief what he does is for the partnership's best interest and cannot personally benefit to himself. The fact that the obligation occured with Supplier on February 1, 2010 after the event of Hank's withdrawal does not justify him to usurp the partnership's opportunity.

Under the TBOC, a partnership is liable to contract obligation for the acts of its agent if he has the actual and apparent authority. Here, there is no actual authority because Hank had withdrawn from the HIM in January, 2010. Hank however, has apparent authority becuase hank is the partner who run the day to day operation and Supplier is HIM's usual vendor. As to Supplier, it can reasonably believed that Hank still has apparent authority to conduct the business, HIM is liable to the obligation. However, HIM can seek indemnity from Hank due to his breach of duty of loalty and because Hank acted without authority and for his own benefit.

4) Hank can be held liable to Landlord.

Under the TBOC, a withdrawn partner is still liable to preexisting creditor unless he is released. A withdrawn partner can be also held liable to future creditor within 1 year after the withdrawal because of his apparent authority. A partner can avoid future obligation by notifying the future creditor of his withdrawal.

Here, Landlord is a preexisting creditor if the $5000 back rent is for the rent before January 2010 when Hank withdrew from the partnership. There is no facts indicate the Landlord released Hank. Even if part of the $5000 back rent occured for the February and March rent, Hank can still be held liable to Landlord (as future creditor) because the obligation is still within one year after Hank's withdrawal. There is no fact showing that Hank notified Landlord of his withdrawal. Thus, Hank can be held liable to Landlord of the $5000 back rent, regardless it is before or after January 10, 2010, the date of his withdrawal.

END OF EXAM

(1)

From the $100,000 profit earned in 2009, Hank should receive $50,000, Irving should received $30,000, and Mark should receive $20,000. A general partnership agreement does not have to be in writing and does not have to filed with the Texas Secretary of State. As such, the oral stipulationed agreements that the three partners made are valid. In the oral agreement, the partners agreed that out of the profits, each partner should received what he invested. Plus, as a default rule, when not otherwise specified, Texas statute says that profits should be split equally among the partners. This is not according to amount invested. So Hank, Irving, and Mark would each be entitled to 1/3 of the profits. Therefore, Hank would receive his $40,000 investment, Irvlining would receive his 20,000 investment and Mark would receive his 10,000 investment. That would leave $30,000 in profits which would be split equally so each would get $10,000. Although Hank claimed $30,000 as "salary" for running the partnership and Irving and Mark agreed it was fair compensation, Irving and Mark still declined to pay it. A partner is not entitled to be indemnified for any additional work related to running the partnership, unless it is otherwise agreed upon. In this situation it was not agreed upon.

(2)

Yes, Irving and Mark may continue to operate HIM after Hank inform that he was withdrawing. Normally a withdrawn partner is not a big issue. In most cases, the other partners simply buy out the withdrawing partner and continue with business. However that did not happen here. Partnerships can also end, when agreed to by all partners, by obtaining a specific purpose, by the passing of some event, or by specifing a date for the end of the partnership. Here the partners had agreed that the partnaership would end on December 31, 2010. When Hank withdrew it had not reached that date. As, such Hanks withdrawal, was a wrongful withdrawal, and he could be liable for damages.

(3)

When a partner withdrawals from a partnership, the withdrawing partner can be held liable for partnership creditor liabilities for up to a year after the withdrawal. Unless the withdrawing partner notifies all the of the partnership creditors that he has withdrawn. In this case, Hank would be liable for partnership creditor liabilities for year after his withdrawal (January 10, 2011). Hank would also be liable to the partnership for damages caused by his wrongful withdrawal. As stated without Hanks involvement, HIms vendors stopped doing business and customer base dwindled. The lost profits would be damages that were caused by the wrongful withdrawal of Hank and he would be laible to the partnership for those damages. Hank also made $15,000 in profits when he used partnership customers, which he would owe to the partnership due to his wrongful withdrawal. Hank still had apparent authority. Since he had express authority and the supplier was not notified that Hank no longer had express authority. Because he had implied authority the partnership would be liable for the $10,000 bill from the supplier. But the partnership would ahve a right to be indemnified by Hank for those charges.

(4)

The landlord is a type of creditor. All partners in a general partnership are held jointly and severally liable. Hank would be jointly and severally liable to the landlord for the back rent. The landlord could go after the partnership assets or each of the partners personal assets. Additionlly, when leasing to the partnership, the landlord relied on the fact that Hank was part of the partnership.

END OF EXAM