Thursday Morning
February 27, 2014
Essay Questions 1 - 6

TEXAS BAR EXAMINATION

If WRITING, answer Question 1 in the GOLD answer book.
If using LAPTOP, be certain you answer in the correct screen.

QUESTION 1

Janice and Richie married in 2005 and lived in Texas. Richie was laid off from his job in 2009, was unable to find work, and became increasingly angry and abusive. The couple separated in June 2012. Janice filed for divorce in January 2013 and petitioned to be appointed sole managing conservator of the couple's two children: Tony, age 7, and Olivia, age 4.

At the September 2013 trial before the Court, the following occurred:

- The Court denied Janice's motion requesting that the Court interview Tony and Olivia in chambers to determine which parent they wished to live with.
- Janice presented the Court with evidence that, in August 2012, Richie had punched her in the face during an argument, and that Janice subsequently filed for, and obtained, a protective order against Richie.
- Janice's lawyer introduced medical records from May 2013 showing that, hours after the children had returned home from a weekend visit with Richie, Janice had taken Olivia to the emergency room with complaints of lower abdominal pain. The emergency room physician documented in the medical record that he suspected Olivia had been sexually abused and that he had notified the authorities.
- Richie's lawyer presented evidence to the Court that Richie was never charged with a crime and that, in the several months prior to trial, Richie had attended counseling and anger management classes.

At the conclusion of the evidence, the Court stated on the record that, in its opinion, it was always better, in awarding conservatorship, for boys to live with their fathers and girls to live with their mothers. The Court further stated it was going to disregard the evidence of the August 2012 protective order, because Richie had undergone counseling and treatment. The Court appointed Janice sole managing conservator of Olivia, and Richie sole managing conservator of Tony. The Court did not make findings of fact or enter any other orders on the conservatorship issue.

1. Did the Court err in:

a. Denying Janice's motion requesting that the Court interview the children in chambers? Explain fully.

b. Disregarding the evidence of the August 2012 protective order? Explain fully.

2. Did the court err in its ruling regarding conservatorship of the children? Explain fully.

If WRITING, answer Question 2 in the GRAY answer book.
If using LAPTOP, be certain you answer in the correct screen.

QUESTION 2

Frank and Judy were married and lived in Texas. They had 3 children. During their marriage, Judy was employed as a partner in a large law firm and Frank was a stay-at-home dad. Judy often worked late hours and had a number of extramarital affairs. Frank filed for divorce in May 2011.

In the divorce decree, Frank was appointed sole managing conservator of the children and Judy was appointed possessory conservator. The evidence at trial established that Judy's net disposable income was $20,000 per month; that all three children were enrolled in private school; and that the youngest child, who was born with a heart defect, required daily medication and frequent physician visits. Without making any specific findings stating its reasoning, the Court ordered Judy to pay $10,000 per month in child support.

For several months after the divorce decree was entered, Judy made timely child support payments. However, as time went on, her payments became delinquent. She and Frank entered into an agreed repayment schedule, but Judy has failed to adhere to it, and she has now missed four months of payments altogether.

1. **Under the Texas Family Code, did the Court err in ordering Judy to pay $10,000 a month in child support? Explain fully.**

2. **What options are available to Frank under Texas law to collect Judy's delinquent child support payments? Explain fully.**

If WRITING, answer Question 3 in the BLUE answer book.
If using LAPTOP, be certain you answer in the correct screen.

QUESTION 3

Electronics, Inc. ("Electronics") has a retail store in Houston, Texas, where it sells computers and computer-related equipment to the public. On July 2, 2013, Electronics borrowed $50,000 from First Bank to finance its inventory. Electronics' president signed a promissory note and a security agreement giving First Bank a security interest in Electronics' current and after-acquired inventory. On July 3, 2013, First Bank filed a financing statement with the Texas Secretary of State.

On February 3, 2014, Electronics ordered ten notebook computers on credit from Bell Computers ("Bell"). Electronics signed a security agreement giving Bell a security interest in the ten notebook computers. Bell filed a financing statement with the Texas Secretary of State on February 8, 2014, and delivered the computers to Electronics the next day.

Electronics sold one of the Bell notebook computers to Patrick on February 18, 2014, to use in his business as an accountant. Patrick paid for the computer by giving Electronics a $1,000 check. Electronics has not deposited Patrick's $1,000 check.

Electronics has defaulted on its obligations to First Bank and Bell.

Who among Electronics, First Bank, Bell, and Patrick has the superior interest in the following property:

1. **The nine notebook computers still in Electronics' inventory?**

2. **The notebook computer sold to Patrick?**

3. **The $1,000 check given by Patrick to pay for the computer?**
   Explain your answers fully.

If **WRITING,** answer Question 4 in the **PINK** answer book.
If using **LAPTOP,** be certain you answer in the **correct** screen.

QUESTION 4

On March 10, 2013, Cathy borrowed $20,000 from Gary. Gary typed a promissory note, which Cathy signed and delivered to Gary. The note was dated March 15, 2013, and was in the amount of $20,000, payable to the order of Gary in Austin, Texas, one year from its date. The note provided that, at Cathy's option, exercised on or before the original due date, Cathy could extend the due date of the note for an additional year. The note further provided that Cathy promised to pay the note from her checking account at First Bank, and the interest rate was stated as the prime rate published in The Interest Rate Reporter. The Interest Rate Reporter had actually stopped publication six months before the date of the note.

On May 1, 2013, Cathy signed and delivered to Kay a check for $200 payable to Bill and Kay, drawn on Cathy's account at First Bank. The next day Kay purchased a table from Steve. Kay indorsed the $200 check and gave it to Steve in payment for the table. Steve indorsed and deposited the check into his account at Secure Bank. Secure Bank credited Steve's account and forwarded the check to First Bank for collection. First Bank refused to honor the check and returned it to Secure Bank. Secure Bank immediately debited Steve's account for $200 and returned the check to Steve.

1. **When Cathy delivered the note to Gary, was it a negotiable instrument? Explain fully.**

2. **Under the Texas Uniform Commercial Code, what interest rate is applicable to the promissory note Cathy gave Gary? Explain fully.**

3. **Was First Bank justified in dishonoring Cathy's $200 check? Explain fully.**

4. **Was Secure Bank justified in debiting Steve's account for $200? Explain fully.**

If WRITING, answer Question 5 in the DARK GREEN answer book. If using LAPTOP, be certain you answer in the correct screen.

QUESTION 5

In January 2013, Amy, Bart and Connor validly formed a Texas Limited Liability Company called ABC Products LLC ("ABC"). ABC engaged in the for-profit business of selling children's toys directly to consumers via the internet. ABC's products were 100% manufactured and marketed by ABC employees. Amy, Bart and Connor were each members of ABC. Their written Limited Liability Company agreement included the following terms:

1. Amy would serve as ABC's Managing Member and be paid a salary for doing so.
2. Bart and Connor would not be employed by ABC or participate in the day-to-day management of ABC.
3. None of the members would be liable to third parties for any debt, obligation or liability of ABC, whether arising in contract, tort or otherwise.
4. Amy would not be liable to ABC for negligence, gross negligence or intentional misconduct in the performance of her duties as Managing Member.

In February 2013, First Bank agreed to loan ABC $100,000 (the "First Bank Loan"). The loan application was signed on ABC's behalf by Amy as "Managing Member, ABC Products LLC." ABC was the sole borrower under the loan agreement.

In June 2013, Youngster was seriously injured by a defective toy purchased by his parents ("Parents") from ABC's website. Several months prior to the sale of the toy to Parents, the ABC product manager who was responsible for product safety issues had been informed of the defect in the toy but did not: (i) inform Amy, Bart or Connor about the defect; (ii) take any action to remedy the defect; or (iii) pull the defective toy from the market. Neither Amy, Bart nor Connor knew or had reason to know of the defect. Parents filed suit to recover for Youngster's personal injuries, naming ABC, Amy, Bart and Connor as defendants.

In August 2013, ABC defaulted on the First Bank Loan. First Bank filed suit to recover the balance due on the First Bank Loan, naming ABC, Amy, Bart and Connor as defendants.

1. **Which of the named defendants, if any, can be held liable in Parents' lawsuit and which cannot be held liable? Explain fully.**

2. **Which of the named defendants, if any, can be held liable in First Bank's lawsuit and which cannot be held liable? Explain fully.**

If WRITING, answer Question 6 in the TAN answer book.
If using LAPTOP, be certain you answer in the correct screen.

QUESTION 6

Fred and Barney are licensed Texas accountants. They want to practice accounting together and want to form an entity that would: (i) avoid federal income taxation at the entity level; and (ii) not expose one to personal liability for mistakes or malpractice committed by the other.

They also believe it would be advantageous if they could bring into the firm Christina, who is a practicing tax lawyer. Christina has suggested that, in order for her to join the firm and continue practicing as a tax lawyer, they might have to consider forming a professional limited liability company.

1. **Considering only Fred and Barney's stated objectives of avoiding federal taxation and reciprocal liability, which, if any, of the following forms of entity would satisfy both objectives? Explain fully as to each.**
   a. **Corporation**
   b. **General Partnership**
   c. **Limited Partnership**
   d. **Limited Liability Partnership**

2. **Can Fred, Barney and Christina lawfully practice together as members of a professional limited liability company? Explain fully.**

This concludes the morning portion of the Texas Essay exam.