

MORNING SESSION

Tuesday, February 23, 2010

QUESTION NUMBER 1

(Use bright blue booklet for essay answer)

The parties divorced, after a six-year marriage and 3 children, when Wife admitted having an affair. The final judgment incorporated the parties' settlement agreement and ordered Husband to pay Wife \$2400 per month for fifteen years, at which time Wife shall move and quitclaim her interest in the big house that the parties owned outright. Husband was also ordered to pay child support in an amount based on his salary as an engineer. The time-sharing schedule in the parenting plan called for the children to live with Wife, but they would spend two weekends a month with Husband. In any future disputes, attorney fees would be paid to the prevailing party's attorney.

Soon the parents began an equal time-sharing arrangement where the children stayed with each parent for half of each month. Husband made timely payments to Wife until he lost his job as an engineer due to a construction slow-down. He accepted a job as a math teacher, earning less, and he began to pay Wife only half. Wife maintained a steady relationship with her boyfriend, who stayed with her when the children were away. The oldest child turned 18 and graduated from high school.

A year later, Husband filed a petition to retroactively modify and terminate alimony and child support and to recover all child support paid for the third child. He alleged that he was not the biological father of the third child, and he sought genetic testing of all three children. In her answer, Wife alleged that the second child would not graduate from high school until he was nineteen; that Husband was named on the children's birth certificates; and that she told Husband, at the time of their divorce, that her boyfriend fathered the third child. She also answers that the monthly payments for her were equitable distribution and not alimony. Wife also filed a counterpetition for contempt and to collect arrearages. She requested attorney fees based on her need and Husband's ability to pay. Husband asked for attorney fees if he was the prevailing party. Husband gave his attorney a lien on his house and waived homestead protection in any action to collect fees not awarded by the court.

Assume that the evidence will be consistent with the parties' allegations, and draft a memo discussing potential claims and defenses raised by the pleadings, including the issue of attorney fees.

END OF QUESTION NUMBER 1

QUESTION NUMBER 2

(Use bright green booklet for essay answer)

Husband and Wife owned Blackacre, acquired during their marriage and consisting of 160 acres of farmland in Florida County, with eighty acres located on each side of Division Road, running north and south through their property. Both Husband and Wife were previously married and each had a grown child from a prior marriage. They had no children together and lived in a modest condominium in Smalltown that Husband owned when they married. Over time, they became mutually disenchanted with one another and, acting *pro se*, jointly filed a petition for dissolution of marriage. It was a friendly divorce, and they entered into a marital settlement agreement, of which Blackacre was the only significant asset. They agreed, and the marital settlement (that they both signed) stated that Wife would have ownership of the eighty acres located east of Division Road, and Husband would own the eighty acres west of that road. In a quick hearing before a judge with a crowded docket, they were divorced and their settlement agreement was approved by the court and made a part of the Final Judgment of Dissolution of Marriage. No deeds were prepared and exchanged with regard to their property, and neither the Marital Settlement Agreement nor the Final Judgment contained a precise legal description of Blackacre.

A few years later Wife, anticipating her retirement, sold the south forty acres of her land to her son (Son), who paid her \$10,000 as a down payment, and they both signed an agreement-for-deed to "the Southwest quarter of the Southwest quarter of Section 26, Township 5 South, Range 17 East, consisting of 40 acres." Son, to preserve his own and his mother's privacy, did not record the agreement-for-deed, but nonetheless began making regular payments to his mother pursuant to the terms set forth in the agreement-for-deed. At that same time, he also filled out appropriate documents with the county property appraiser and, in the years that followed, paid all required property taxes as they became due. Within a year, Son had built a new home on the property and moved in with his family. At the same time, in anticipation of a part-time farming operation, he built a fence around the forty acres.

About the time Son completed his home, Wife and Husband remarried one another and lived in their condominium in Smalltown. This second marriage lasted eight years and ended when Wife died intestate. Husband, who never got along with Son, discovered the unrecorded agreement-for-deed in Wife's personal papers and wrote Son a letter demanding that he vacate the property. Husband's letter asserts that there is no public record that the property has ever been conveyed to anyone else, and that he is the rightful owner, as Wife's survivor in a tenancy by the entirety, of the 160 acres and that he intends to take legal action to remove Son and take possession of the property.

Question 2 continued on next page

Son has come to your firm seeking advice as to where he stands with regard to Husband's demand for the property. Your senior partner has asked you to prepare a memorandum in this regard for a scheduled meeting with Son. He asks you to anticipate the following issues.

- a. Effect of divorce on tenancy by the entirety property, including various alternative dispositions of such property pursuant to that litigation.
- b. Validity of "conveyance" of 80 acres to Wife in the settlement agreement on the above-stated facts.
- c. Effect on possible litigation of the vague legal description in the settlement agreement, the lack of any legal description at all in the Final Judgment of Dissolution, and the legal description in the agreement-for-deed signed by Wife and Son.
- d. Effect on possible litigation of the fact that the agreement-for-deed was never recorded.
- e. Whether remarriage of Wife and Husband reinstated their tenancy by the entirety on the 160 acres of farmland?
- f. Given Wife's death, what interest can Husband assert with regard to the 160 acres? With regard to Wife's estate?
- g. Does Son have defenses beyond those relating to the legality of the documents discussed above?
- h. What is your conclusion as to whether Son will prevail and why?

END OF QUESTION NUMBER 2

QUESTION NUMBER 3

(Use bright orange booklet for essay answer)

Acme Products, Inc. (Acme), a Florida corporation, manufactures small power tools. One of its products is an electric-powered nail gun. Acme's regional sales manager calls on Basic Rentals (Rentals), another Florida corporation which operates several outlets in Florida. Acme's sales manager tells Rental's president that Acme's nail gun is safe, dependable, affordable, durable, and can be used for nailing all types of wood and wood products. Rentals buys 50 of Acme's nail guns at \$200 each and sends them to its outlets for rental.

Penny wants to make a piece of furniture from Brazilian walnut, a very hard wood. She goes to the nearby Tampa, Florida, store of Rentals and she rents a nail gun manufactured by Acme. The nail gun sat on top of Acme's original shipping carton. The following statement was printed on the outside of the carton: "Suitable for nailing all types of wood and wood products." When Penny attempts to nail two pieces of wood together, the ejected nail from the nail gun fails to penetrate the wood, bounces backward, and strikes Penny in the left eye, resulting in a total, permanent loss of vision in that eye and partial, permanent brain damage.

Penny retains an attorney and the attorney hires an expert. The expert expresses his opinion that the nail gun has a design defect that caused the nail to bounce off the hard wood. During discovery, it is revealed that the nail gun, when delivered to Rentals by Acme, had a warning label that stated, "DANGER: DO NOT OPERATE UNLESS WEARING PROTECTIVE EYEWEAR." However, the nail gun used by Penny had been cleaned with a heavy-duty solvent designed for removing grease from restaurant equipment by an employee of Rentals after a prior rental. As a result of this cleaning, the adhesive which attached the label to the nail gun dissolved, the warning label fell off, and was not replaced or reattached.

During discovery it is further revealed that several months before Penny's rental of the nail gun, Acme discovered that its nail gun would misfire when working with very hard wood resulting in the nail bouncing off the wood. Acme concluded that the risk to the public was small if the user of the nail gun wore protective eyewear. Acme further concluded that the cost of recalling all of its nail guns or notifying purchasers about the misfiring or warning the public about the misfiring would have a major financial impact on Acme's profitability. Acme, therefore, took no action.

Question 3 continued on next page

You are the law clerk for the trial judge assigned to Penny's complaint. Prepare a memo for your judge that discusses the claims that Penny may bring against Acme and Rentals, defenses which may be advanced by Acme and Rentals, and the likely outcome under Florida law. Include in your discussion the types of damages that Penny could seek.

END OF QUESTION NUMBER 3

END OF MORNING SESSION