MORNING SESSION

Tuesday, February 26, 2019

QUESTION NUMBER 1
(Use bright blue booklet for essay answer)

In 2015, Sally executed a trust agreement for the benefit of her only child Ben, who is 35 years old and unable to manage money. Sally transferred $500,000 and deeded a commercial building in trust to Ted, naming Ted as trustee. The trust provides that the income be distributed to Ben during his lifetime and the remainder to Ben's children living at the time of Ben's death. The trust provides that Sally can revoke the trust in a writing signed by her and delivered to the trustee. The trust states:

> The trustee shall distribute to my son, Ben, such amounts of income as the trustee, in the trustee's sole and complete discretion, deems appropriate for Ben's health, support or maintenance. Such income shall be paid to the beneficiary personally and to no other, whether claiming by the beneficiary's authority or otherwise.

The commercial building produced a 3 percent return. Ted sold the building to himself and invested the proceeds in a low-risk venture that yielded 5 percent. Ted paid less than fair market value, but reasoned that the increased investment return would benefit the trust in the long run. Ted hired his wife, a certified public accountant, to perform accounting services for the trust and paid her at her normal rate.

In 2016, Ben married Wilma. Six months ago, they were divorced and Wilma was awarded alimony. Sally was outraged when she learned of the alimony award. Sally called Ted and instructed: "I hereby revoke the trust. I will confirm my revocation in a letter." Sally died the following week without writing the letter.

Ben has demanded that Ted transfer the entire trust assets, free of trust, to the administrator of Sally's estate. Ben claims the trust was revoked. In the alternative, he argues the trust should be terminated. Ted refuses to terminate the trust. Wilma has demanded Ted pay her alimony due out of the trust income or principal. Ben has no children, living or deceased.

Ben seeks your advice as to the merits of his and Wilma's claims. Prepare a memo evaluating the validity of the trust, claims, and likely outcomes from this situation.

END OF QUESTION NUMBER 1

QUESTION NUMBER 2
(Use bright green booklet for essay answer)

Bonnie decided to start her own food truck business. Bonnie created Bonnie Bons LLC, purchased an old food truck, and decided to take out a loan to repair the food truck.

Bonnie went to LoanCo to seek a $50,000 loan. She brought the title of her food truck, a detailed list of the equipment that she wanted to purchase, a mechanic's estimate for the cost of repairing the food truck, and samples of her Bonnie Bons desserts. The Manager agreed to give Bonnie Bons LLC the $50,000 loan in exchange for executing a Promissory Note and Security Agreement.

The security provision of the Security Agreement provided as follows:

> The Promissory Note, which is incorporated by reference, is secured by all of Bonnie Bons LLC's assets, including but not limited to Bonnie Bons LLC's food truck, the title for which is attached to this agreement as Schedule A. Should Bonnie Bons LLC default, LoanCo has all rights and remedies under the UCC.

After the Manager attached the title and list of the equipment Bonnie wanted to purchase to the Security Agreement, Bonnie—on behalf of Bonnie Bons LLC—executed the Security Agreement and the Promissory Note. One week later, LoanCo filed a financing statement that included the same description of the collateral that was in the Security Agreement.

Bonnie made the repairs to the food truck and installed the equipment described on the list she gave LoanCo. Unfortunately, not all of the equipment fit as Bonnie hoped, so the food truck had to undergo modifications that made it impossible to remove the equipment without damaging the food truck.

Bonnie Bons was an overnight success. Rather than repaying the loan, Bonnie bought a second food truck to expand her business.

However, Bonnie failed to maintain the second food truck and was cited for several health code violations. After an extremely poor on-site inspection, the local health inspector shut down the second food truck. Bonnie Bons' reputation was ruined.

Bonnie was so distraught from her failing business that she missed a curve in the road and ran her original food truck into a tree. Bonnie and all of the equipment in the food truck were fine, but the food truck could no longer be driven. Bonnie had the truck towed back to her house, and locked it in her garage.

Question 2 continued on next page

Unable to operate either food truck, Bonnie defaulted on her monthly loan payments with $40,000 still owed. LoanCo tried unsuccessfully to contact Bonnie about the default. Finally, LoanCo's Manager received this letter from Bonnie's Attorney:

> Leave Bonnie alone! She's been through a lot recently and isn't ready to deal with you yet. If you don't stop harassing her you'll never get your money or the food truck. And if you even think about suing her I'll bury you so deep in motions and draw this case out so long neither us will be around to see the end of it. The amount of money it'll cost you to collect a dime from Bonnie will pale in comparison to how much this litigation will cost you.
>
> Attorney

LoanCo wants to know its options moving forward to enforce the terms of the Security Agreement and Promissory Note. Please prepare a memorandum that addresses the following:

1. Discuss whether LoanCo has a valid security interest in any of Bonnie Bons LLC's assets. If LoanCo does have a valid security interest, discuss whether LoanCo has perfected its interest.
2. Discuss the methods, if any, by which LoanCo may legally gain possession of those assets.
3. What rights would LoanCo have in collateral for which LoanCo takes possession?
4. Discuss the causes of action, other than to foreclose its security interest, that LoanCo may have against Bonnie Bons LLC.
5. What professionalism issues does Attorney's letter to Manager raise?

END OF QUESTION NUMBER 2

QUESTION NUMBER 3
(Use bright orange booklet for essay answer)

As part of its new marketing program, Supermarket offered a service that would deliver digital coupons to its customers' cell phones upon entering any of Supermarket's stores. Paula registered for the service and used it often.

Paula was shopping at Supermarket and received a message from Supermarket containing new coupons. As she walked down the frozen food aisle, she scrolled through the coupons on her phone. In looking at the coupons, Paula did not see a large puddle of melted ice cream in the aisle. Paula slipped on the puddle and her head hit the floor.

A Supermarket employee arrived right after the fall and helped Paula to her feet. Paula said she felt dazed and asked the employee to call her husband, Harold, to drive her home. Harold arrived shortly thereafter and picked up Paula. While driving back to Paula's and his house, Harold began typing a text message. While Harold was texting, the car swerved to the right and hit the curb, causing Paula to bang her head against the window.

After suffering headaches, Paula consulted a doctor and was diagnosed with a severe concussion. Paula has been unable to work because of her persistent headaches. Paula has lost income and incurred medical expenses, and now seeks to recover damages from Supermarket.

Paula was referred to you by Lawyer, who does not practice personal injury law. Lawyer proposes that your firm would solely litigate Paula's case, and pay Lawyer a referral fee equal to 10 percent of any fee you earn on the case.

Prepare a memo that discusses the claims and defenses involved in Paula's proposed lawsuit against Supermarket. In the memo, include a discussion of the ethical issues involved in Lawyer's fee proposal.

END OF QUESTION NUMBER 3

END OF MORNING SESSION