Question No. 1
(Answer this Question in Book No. 1)

Paul, an Anystate resident, had been having trouble with his hearing. He resisted going to the doctor because he did not want a hearing aid, which he saw as a sign of aging. His wife mentioned that a woman she knew, Jane, recently started selling homeopathic remedies and told her that one was supposed to help with hearing loss. Paul decided to contact Jane.

Jane told Paul that she had become an independent distributor for Wellness, Inc., a corporation whose offices are in Boise, Idaho. She purchased various products from Wellness and sold them out of her home. She told Paul that he could look up Wellness on the internet, where he would find a web page with various interesting links. Paul looked up Wellness and read about the founder of the corporation and the various remedies. He was interested to see that Wellness' founder had lived in Anystate and still owned property outside Capital City in Anystate. He tried to find a link to e-mail a customer service representative with his questions, but could only find links to web pages of various "independent distributors" across the country. These web pages included testimonials from satisfied users of Wellness' products.

Impressed by testimonials of people whose hearing had improved after using natural ear drops, Paul told Jane he would like to try them. Jane ordered a supply of the ear drops and delivered them to Paul.

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Accompanying the bottle and the dropper was a sheet of instructions for users. Paul used them that night, but instantly felt a burning and ringing in his ears. He went to the doctor the next morning, who told him he had damaged his inner ear with the drops.

Paul comes to your law firm for advice. The senior partner is interested in the case, but is concerned about the issue of personal jurisdiction over Wellness, Inc. The senior partner asks you to draft a memorandum analyzing in detail whether Anystate courts have personal jurisdiction over Wellness, Inc. In preparing your memorandum, discuss fully traditional notions of personal jurisdiction and assume that Anystate has a typical Long-Arm Statute.

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Question No. 2
(Answer this Question in Book No. 2)

H and W have been married for 10 years, a second marriage for both. H has two children from his previous marriage: One is 17 years of age and lives with his mother and the other is an adult who was adopted by H and now lives in Switzerland. W has two adult children from her previous marriage. H and W have no children together. H and W did not enter into a Premarital Agreement prior to their marriage.

Each spouse brought separate property to the marriage, most of which has remained separate property. However, their residence is community property and titled in joint tenancy, and their two vehicles are considered community property. H has named W as the beneficiary of his 401K retirement plan, and W has named H as the beneficiary of her IRA. He has separate funds in various investment accounts, and W also has separate funds in a bank account. Each has designated his or her children as the beneficiaries on their respective investment and bank accounts and on their separate life insurance policies.

Their community debts consist of a mortgage on their residence and a loan on one of the vehicles. W has no separate debt. H still pays child support for his 17 year old.

H is killed in an accident. H has no will. W comes to you and asks how H's estate should be distributed and allocated between her and the children. How would you advise W and what procedures will be necessary? Discuss fully.

Question No. 3
(Answer this Question in Book No.3)

Barry owned the ABC Restaurant. In order to finance an expansion, he borrowed $10,000 from First Bank ("Bank"), giving it a security interest in all of his equipment, "including that to be hereafter acquired." Bank filed a financing statement on July 30, 2001 in the proper office describing the collateral as "all equipment located at the ABC Restaurant, 1743 Bridge Street, Main City." In fact, the restaurant is located at 1753 Bridge Street.

Subsequently, on January 5, 2002, Barry purchased a cash register from Sandra for $2,000. He paid Sandra $500 cash and gave her a security interest in the cash register to cover the balance which was due on February 25, 2002. The cash register was delivered on January 10, 2002. Sandra filed a financing statement sufficiently describing the cash register in the proper office on January 17, 2002.

On January 15, 2002, Barry sold the restaurant to Pat. Barry did not pay either Bank or Sandra and has left the jurisdiction.

Under the Uniform Commercial Code, what are the rights of Bank, Sandra and Pat in the cash register? Analyze and explain fully.

Question No. 4
(Answer this Question in Book No. 4)

The State legislature enacted a statute creating the Restaurant Safety Commission and vesting it with the power "to promulgate all regulations necessary and proper to assure that public restaurants are operated in a safe, healthy, and sanitary manner." The enabling statute also provided that the Commission must comply with the Administrative Procedure Act ("APA") and hold "public hearings" before passing any regulations.

On November 30, 2003, the Commission published the following notice in the State Register:

> Pursuant to its authority under the Restaurant Safety Act, the Commission shall hold public hearings on December 14 -16, 2003 to determine whether smoking shall be prohibited in all public restaurants within the State. All interested persons are invited to attend the hearings and to submit written views on whether the proposed regulation should be adopted.

At a press conference the next morning, the Director of the Commission announced: "The Commission is committed to the health and safety of the people of this State. We believe in the right of non-smokers to eat in a smoke-free environment." Following the press conference, the Director was flooded with calls from lobbyists. She, however, met only with members of the Clean Air Society, a public interest group, and spent hours listening to their arguments in favor of the proposed regulation.

Public hearings were held on December 14-16, 2003. The Commission permitted members of the Clean Air Society to testify about the

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hazards of secondhand smoke and the necessity of eliminating smoking in public restaurants to promote public health. Opponents of the regulation asked to cross-examine the witnesses, but were not permitted to do so. They also were denied their request to present testimony of their own. However, they did submit written briefs in support of their position.

On December 18, 2003, the Commission adopted Regulation P-218 which prohibited smoking in all public restaurants in the State. The regulation became effective on January 1, 2004.

Bob, the owner of a local restaurant, wants to challenge the validity of the new regulation in court. He comes to you for legal advice. Please inform him of the applicable standard of judicial review, the legal arguments he could raise against the regulation, the competing legal arguments of the Commission, and how you think a court would rule and why.

Question No. 5
(Answer this Question in Book No. 5)

Harry and Wilma are from small towns in New Mexico. They met, fell in love and decided to move to Albuquerque, NM in 1984 where they lived together. In 1987, they were married in Albuquerque. Recently, they have had marital difficulties. A month ago, Harry moved and took a job in San Francisco, CA. He intends to remain there.

The parties have two children: Son is 14 tears old and Daughter is 12 years old. Both children live with Wilma. Prior to Harry's move to CA, the parties agreed that Son would live with Harry and Daughter would live with Wilma. Now that Harry has moved, Wilma says that she will not allow Son to live with Harry because she does not want him to miss time with his family in NM. Son has a strong desire to live with Harry, but Wilma does not want him to make that decision.

Harry's annual income is $40,000. He makes the same amount as he did in Albuquerque, but his living expenses are greater. Wilma works for the state Motor Vehicle Division ("MVD") and earns $30,000 annually. Daughter suffers from Cystic Fibrosis and often there are significant medical bills for her care and treatment. Wilma has medical insurance through her employer and it covers both children. Harry will have medical coverage after he is with his new job for 90 days but at a greater cost than what is available to Wilma. Daughter's medical bills are often more than what the insurance will cover.

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Wilma worked for the MVD for three years prior to the marriage and has continued to work there. She has a retirement plan in which she is vested and contributions have been made to this plan since day one of her employment. Harry worked for the City of Albuquerque for 13 years where he has a vested retirement as well. He retains these benefits even though he has moved to CA but he can not withdraw them until he reaches the age of 65.

The parties own a home, two vehicles, a camper trailer and household furnishings. The outstanding mortgage principal is $20,000 and the house next door recently sold for $80,000. Both vehicles are subject to outstanding loans. The camper trailer and household furnishings are paid for. There is $10,000 in credit card debt and $4,500 in hospital bills for Daughter's care. Wilma is angry with Harry because $2,000 of the credit card debt is for the camper trailer and she never wanted him to purchase it in the first place.

While he is in Albuquerque visiting the children, Harry comes to your office and asks you to represent him in the divorce. Advise him about the procedural, financial, property and child custody issues involved with this divorce and the likely outcome of each.

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Question No. 6
(Answer this Question in Book No. 6)

Prime Financial Company ("Bank"), an investment banking firm, is a dealer in government securities. It purchases securities at treasury auctions on its own account and for its customers' account. Market Ltd. ("Market") is a small brokerage firm that trades in government securities. Market filed a lawsuit in federal court against Bank on December 7, 2001. In its suit Market alleges that Bank has systematically and deliberately violated treasury regulations governing purchases at treasury auctions, and, in so doing, has been able to control the secondary market in government securities and realize enormous profits reselling the illegally purchased securities at inflated prices.

Market is represented in its lawsuit by the law firm of Rod & Ball, P.A. ("Firm"). Rod is a named shareholder in the Firm, and is a well-known expert in commodities law. Beginning in May 1998, he assisted Bank for over nine months in preparing a compliance manual for Bank's trading operations. This work was completed in January 1999. At that time, Rod sent Bank the final draft of the compliance manual and an itemized bill for legal services. During the course of this project, Rod personally met with Bank's officers and personnel to learn about the organization and management of Bank's trading practices.

In July 2001, Rod telephoned the general counsel of Bank and requested that Bank consent to Firm's representation of a trading

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commodities advisor, Market, in that advisor's negotiations with Bank. Rod assured Bank that the transaction was unrelated to the work Firm did for Bank in the past. Bank consented to the representation.

In November 2001, several days prior to the filing of Market's lawsuit, an officer of Bank independently contacted Rod for the purpose of retaining his services on a matter unrelated to both Market's suit and to the subject of Rod's prior work for Bank. During that call, Bank was advised for the first time that there could be a potential conflict of interest problem in light of Firm's representation of Market's litigation against Bank.

Bank was shocked that Firm would represent a client whose interests were adverse to Bank's. Bank refused to execute a waiver of conflict. Bank contends that it is a current client of Firm, that the compliance manual was never completed, that Firm had, subsequent to January 1999, undertaken other research projects for Bank and had provided advice on commodities law questions. To support this claim, Bank has copies of bills from 1999 and 2000 that were submitted by Firm, but none of these projects are ongoing. The most recent project appears to have been concluded in May 2000. Since that time, no one at Firm has performed any legal work for Bank, although personnel from Bank and Firm have continued to maintain personal and social contacts, and have corresponded on a number of matters related to legislative and commodities matters.

Bank wants Firm disqualified from representing Market and retains the services of your law firm. Your senior partner asks you to prepare a memorandum outlining and analyzing Firm's possible ethical violations in its representation of Market against Bank and whether there are grounds to file a motion to disqualify Firm from representing Market. Write the memorandum.