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StrongPoints

Mentorship:
Our Modern World Needs Mentors More Than Ever Before

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By: Bret Strong

Mentorship is woven into the very fabric of this great nation. In the form of apprenticeships, many of the original settlers of America were craft workers and other professions (including lawyers) who came to the New World bringing with them the practice of indenture and the system of master-apprentice relationships. For example, Benjamin Franklin was indentured in 1718 at the age of twelve to his elder brother, James. Their father paid James ten pounds to teach the printing art to Benjamin and to pay for Benjamin's food, lodging, and other "necessaries." These sorts of apprenticeships not only taught a skilled profession with which to earn a living, it also provided a mechanism for the teaching by an elder statesman, often outside of the family unit, basic professional courtesies and related social skills. In my personal research of family history, many indentures (both voluntary and not-so-voluntary) brought my ancestors to America.

In today's world, we often hear about the breakdown of the traditional family unit and its effect on society as a whole. Not only do many of our younger generation lack traditional role models at home to help mold their character, quite often, the role models chosen in the external world are not of the type that can help teach a young person the basic skills required to succeed in today's business world. To bridge this gap, many companies, colleges and universities are creating formal mentorship programs to help mold the younger generation with more practical skills for functioning in the world. There is a great need (and desire) for those who have and are successful in life to impart their professional and social wisdom to others. Good people need to help teach our society how to be "good" on all levels. There are enough negative influences available to our youth.

To this end, not only does our firm have an active law clerk and recruitment program with local law schools to provide professional mentorship for future lawyers, I have become personally involved in the Professional Mentorship Program at the University of Colorado – Boulder – Leeds School of Business (my alma mater). I serve on the Advisory Board for the program and, along with hundreds of other quality mentors from all over the globe. I mentor junior and senior business school students in order to help them prepare for the realities of entering the business world. It is an incredibly rewarding experience for both mentor and mentee. I encourage all professionals to consider, either formally or informally, getting involved in passing on your positive skills to someone who needs those skills in the future to succeed. I promise that you and the world will be much better for having done it.

Bret Strong

__Bret Strong__ is the founder and managing shareholder of The Strong Firm P.C. His areas of practice include oil, gas, and energy; commercial real estate; mergers, acquisitions, and sales; and business law and contracts. He earned a Juris Doctorate, cum laude, from South Texas College of Law, and a B.S. in Business Finance from the University of Colorado at Boulder. He is admitted to practice law before The United States Supreme Court. Bret has achieved the AV® Martindale-Hubbell® Peer Review Ratings™ award and has served as a founding board member of The Woodlands Bar Association.

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Considering a Franchise?
The Pros and Cons of Purchasing a Franchise

Eric R. Thiergood, Sr.

By: Eric R. Thiergood, Sr.

The number of people opting to go into business for themselves typically correlates with the health and stability of our economy. When the economy is up, so are the number of new businesses. The difficult process of developing a business type and "brand" is the first step in starting a new business venture; so for many new business owners, purchasing a franchise rather than building a new brand is an attractive option.

For most, the word "franchise" brings to mind the wide variety of fast food, including hamburgers, sandwiches, fried chicken and even Mexican food restaurants. While these types of franchises make up a significant percentage of available franchises, some prospective owners would be surprised to know there are franchises available in almost every segment of business. This includes hardware, convenience and specialty stores, as well as service chains ranging from Realtors and tax preparers to lawn care and pool service companies. As with any potential business, there are potential advantages and disadvantages to purchasing a franchise. Some of the pros and cons to think through when considering if a franchise model will work best for your business include:

Potential Pros to Purchasing a Franchise

- **Brand Recognition/Loyalty:** Brand recognition and established customer loyalty are key benefits that come along with the more popular and established franchises. Having a customer base that is already familiar with and possibly even loyal to the franchise brand will result in much lower customer acquisition and retention costs.
- **Operational Support:** Franchisors are able to provide support and operational assistance to its franchisees, a benefit that most independent businesses do not have. This support can prove to be invaluable as the franchisor may have helped hundreds or even thousands of franchisees work through some of the same issues faced by new business owners.
- **Turnkey Business:** Most established and successful franchises have developed a proven system for operating the business, developing market share and maximizing profits for the franchisee. Franchisors have a vested interest in the success and profitability of each franchisee.
- **Lower Operational Costs:** The collective purchasing power of a larger franchisor typically results in lower goods, equipment and inventory costs for the franchisee, helping to make a healthier bottom line.

Potential Cons to Purchasing a Franchise

- **Higher Initial Costs:** The initial costs of purchasing a franchise is often higher than the cost of starting a similar independent business. New franchisees are required to purchase specific furnishings, signage, point of sale equipment, inventory, employee uniforms, and even complete a build-out of the location all pursuant to the franchisor's requirements.
- **More Restrictions:** Franchisees are required to conform to uniform operating procedures and provide financial and sales information to the franchisor. The larger and more established the franchise, the less freedom of operation a franchisee will have.
- **Royalty Payments:** Franchisees are required to make royalty payments to their franchisor in consideration for the support and marketing service they receive. This is the very essence of a franchise. As with the restrictions discussed above, the larger and more established the franchise, the higher the franchise fees often are.

When considering a franchise as a new business venture, it is critical that you use an experienced law firm to ensure your business is protected to the fullest extent permitted under the law. The Strong Firm has helped hundreds of clients decide whether or not a franchise is the right option for their new business venture. We would be happy to assist you in such an endeavor.

***Eric R. Thiergood, Sr.**, Senior Associate Attorney, joined The Strong Firm P.C. in 2005 after graduating from South Texas College of Law. He is licensed to practice law in the State of Texas and in the United States Federal District and Bankruptcy Court for the Southern District of Texas. Having lived in Asturias, Oropesa Del Mar and Madrid, Spain, Eric is fluent in Spanish and uses these skills in his work with some of the firm's international Spanish-speaking clients.*
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Non-Compete Agreements: Sometimes Less is More

Royce Lanning

By: Royce Lanning

For any business owner, their company usually represents the largest and most significant investment of their time and money, so it is natural for an owner to want to protect their investment. One of the common tools used to protect that investment is a non-compete agreement, which prohibits prior owners and/or current employees from competing with your business when they leave. However, obtaining maximum value from your non-compete agreement often requires business owners to resist the temptation to seek overreaching restrictions on competition.

Although restrictions on competition are generally considered a violation of public policy in Texas, the Legislature enacted the Covenant Not to Compete Act (the "Act") in 1989, specifically authorizing the enforcement of non-compete agreements that contained reasonable restrictions on competition. In fact, the Act goes a step

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Getting with the Times:
The Texas Revival of the General Demurrer

Adam Looney

By: Adam Looney

In 1941, when Texas abolished the general demurrer, defendants in Texas were deprived of an important and efficient procedure for disposing of frivolous lawsuits. In plain English, a general demurrer is the equivalent of the defendant saying "so what?" to a plaintiff's lawsuit. Even if everything the plaintiff alleges in his lawsuit is true, the plaintiff still has no right to recover damages and therefore the lawsuit must be dismissed. Without the general demurrer, defendants in Texas are often forced to spend months, or even years, defending themselves against lawsuits that have no reasonable basis in law or fact.

As litigation costs continue to rise, the abolition the general demurrer has proved a greater and greater hardship for Texas defendants. In fact, as other state and federal court decisions increased the burden on the plaintiff to demonstrate they had a legitimate lawsuit before allowing them to move forward, Texas remained stuck in the 20th century, giving the Plaintiff wide latitude to maintain a lawsuit, even when the lawsuit is premised on the most flimsy allegations. Because of this, defendants in Texas state courts have often been presented with an uncomfortable choice when facing a lawsuit: Do I want to spend potentially tens of thousands of dollars defending a frivolous lawsuit, or offer to settle it to avoid the increasingly high costs of an effective legal defense?

Fortunately, effective as of March 1, 2013, Texas courts have not only revived the general demurrer but also developed some entirely new procedures for controlling litigation costs in all lawsuits of $100,000 or less. Under the newly created Rule 91a of the Texas Rules of Civil Procedure, a lawsuit can be immediately dismissed when a lawsuit "has no basis in law or fact." Under the new rules, "a lawsuit has no basis in law if the allegations, taken as true . . . do not entitle the claimant to the relief sought."[1] Similarly, a lawsuit "has no basis in fact if no reasonable person could believe the facts pleaded."[2] However, a motion to dismiss under Rule 91a must be brought within 60 days after the lawsuit is served on the Defendant.[3] The new rules also provide for expedited discovery and other procedures for lawsuits seeking $100,000 or less.[4] While it remains to be seen precisely how Texas courts will apply these new rules, there is little doubt they will become an instrumental tool for all Texas defendants faced with nuisance suits.

However, it is imperative that businesses faced with a lawsuit seek competent legal counsel as soon as possible. While the new rules can be an incredible tool in the right hands, failure to understand the rules and comply with the applicable deadlines can deprive defendants of any potential benefit. If you are currently facing a pending or threatened lawsuit, give us a call and we can help you use these new rules to your greatest advantage.

[1] TEX. R. CIV. PROC. 91a(1).
[2] Id.
[3] Id.
[4] See TEX. R. CIV. PROC. 169.

Adam Looney *joined The Strong Firm P.C. as Of Counsel in 2012. He graduated Summa Cum Laude from Pepperdine University School of Law in 2009 and was elected into the Order of the Coif. Adam started his career as a litigation associate at the law firm of Baker Botts L.L.P. During his career, Adam has zealously advocated in the courtroom, through alternative dispute resolution, and before administrative agencies to achieve creative and advantageous solutions to his clients' most complicated legal issues.*
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Dying Intestate:
Where There's No Will, There's a Way

Wendy Lambie

By: Wendy Lambie

I have heard, and said, the following: "You have a Will even if you didn't know it. The State of Texas wrote it for you." Texas law provides individuals the freedom to choose how their estate is distributed at death by executing a valid Last Will and Testament, but when a person dies in Texas without a Will, the Texas Probate Code establishes the formula for asset distribution.

Texas is a community property state, meaning that an individual can have two types of property – separate or community. Examples of separate property include property owned prior to marriage; a gift or inheritance received after marriage; and some types of personal injury damages awarded during marriage. Community property is all other property acquired during a marriage. An estate is broken down into real property and personal property, creating separate real property, separate personal property, community real property and community personal property. Without a Will, Texas law then determines who your heirs are for each type of property.

Not surprisingly, the Texas Probate Code does not have a favorite niece or nephew. Distribution is determined by how closely an heir was related to the decedent with no consideration for the nature or quality of the relationship between the parties. In addition, dying intestate can trigger unwelcome results and unexpected complications.

Dying without a Will means the decedent's property may not pass to those people the decedent would have liked. Just a few examples are: (1) a married couple with children from previous relationships will not inherit all the

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Non-Compete Agreements: Sometimes Less is More

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further and expressly requires Texas courts to reform any unreasonable restrictions in the non-compete agreement to make them reasonable and then enforce the non-compete agreement as reformed by the court.

There is some temptation to view the Act's reformation requirement as a safety net that provides a business owner with license to enter into an overreaching non-competition agreement because even if the non-compete agreement contains overly broad restrictions, the Act requires the court to reform the restrictions to make them reasonable. The argument in favor of overreaching non-compete language often gains momentum based upon the perception that an aggressively drafted non-compete provision may operate to deter competitive behavior and make actual enforcement the provision unnecessary.

While each of these points may have merit and warrant consideration in light of the specific circumstances surrounding a given transaction, it is important to understand they come at a price. First, the Act expressly prohibits the court from granting monetary damages against a defendant for past violations of a non-compete agreement that must be reformed by the court. Accordingly, the business owner's remedies are limited in seeking an injunction prohibiting the defendant's competitive behavior. Therefore, the owner's second chance at obtaining an enforceable non-compete agreement by reformation comes at the significant price of forfeiting the owner's contractual damages associated with the defendant's current breach of the non-compete agreement.

Second, if the non-compete agreement arises out of a contract for personal services (e.g., an employment contract), a court that reforms the non-compete agreement is authorized to award the defendant (e.g., former employee) his reasonable and necessary costs in defending the suit, including attorney's fees. The practical result of such an award is that the business owner is now paying his attorney to enforce the non-compete agreement and the defendant's attorney to contest the enforceability of the non-compete agreement as originally drafted, all while forfeiting the opportunity to obtain past contractual damages that arise from the defendant's current breach of the non-compete agreement.

Accordingly, in most cases, fashioning non-compete agreements using more restrained language that is focused on protecting only the known and enforceable rights of the company will provide business owners with greater certainty and more legal remedies when faced with improper competition.

***Royce Lanning**, Associate Attorney, joined The Strong Firm, P.C. in 2013 as an experienced associate. He received his Juris Doctorate from the University of Hawaii, William S. Richardson School of Law and obtained immediate trial experience as a Deputy Prosecuting Attorney with the Department of the Prosecuting Attorney, Maui. He has parleyed his courtroom skills into private practice, focusing in the areas of corporate formation and administration, general and complex business transactions, real estate development and financing, estate planning, probate, guardianship and commercial litigation, with special emphasis on suits against international entities. He is licensed to practice law in the State of Texas, the State of Hawaii and all Federal District Courts in Texas.*
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Dying Intestate: Where There's No Will, There's a Way

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assets of their spouse at death; (2) gifts given to children during life are not considered an advancement on inheritance as a parent might wish; (3) a single person whose close friends are more like family than blood relatives would not be able to inherit; (4) adopted children can inherit from the adopted parent and vice versa and an adopted child can inherit from their natural parent, however, a natural parent cannot inherit from their child unless the child has a Will; (5) an illegitimate child cannot inherit from their father unless specific criteria are met; and (6) stepchildren do not inherit from stepparents, unless adopted.

Many people can read down this far and feel reassured that none of these situations apply and decide they do not need a Will. However, one final consideration is that even if the Texas Probate Code divides your assets the way you would have wanted, dying without a Will can tie up the assets in an estate for longer periods of time. A proceeding is frequently required to determine the deceased person's heirs. Yet another proceeding could be necessary to appoint an administrator to settle the estate and transfer title, and it is possible the court could require the administrator to post bond to insure their duties are performed responsibly. In addition to time and complexity, legal fees and court costs for intestate proceedings almost invariably cost more than those proceedings where the decedent had a Will.

The bottom line is dying without a Will in Texas can frequently be costly, time consuming and cause unnecessary frustration for the loved ones left behind. Taking time to create a simple Last Will and Testament, if properly drafted, can be an enormous benefit to those left behind.

***Wendy Lambie**, Associate Attorney, joined The Strong Firm, P.C. in 2013 as an experienced associate. Ms. Lambie received her Juris Doctorate from South Texas College of Law and is licensed to practice law in the State of Texas and in the United States Federal District Court for the Southern District of Texas. During her career, she has gained valuable experience with Houston area firms, focusing her practice on estate planning and probate. In addition, she has in depth experience in oil and gas matters; with special emphasis on title issues.*
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The Strong Attorneys in the Community

Montgomery County Women's Center WineFest

The Strong Firm sponsored the annual WineFest benefiting the **Montgomery County Women's Center** (MCWC). The Montgomery County Women's Center provides assistance to women in Montgomery County who are victims of abuse.

Wendy Lambie and her husband, John, visit with MCWC board member,Adora Kutchin (center) at WineFest.

Adam Looney and his wife, Kristina, enjoy WineFest.

CB&I Triathlon

On May 4, The Strong Firm P.C. served as sponsor and participant in the annual CB&I Tri. With over 800 athletes eager to swim, bike and run, Bret Strong was among the successful finishers in the sold out race.

Muddy Trails Bash

The Strong Firm P.C. sponsored Muddy Trails Bash 5k & 10k runs on April 9. Among the 1525 registered participants to compete were Beth Kovacs, Brian Albert and Managing Shareholder, Bret Strong (pictured with his wife Angela, son Luke and one on the way).

Dancing for Partners

Dressed as "The Village People," Bret Strong (second from left), along with several elected officials and civic leaders, leads the crowd in a memorable rendition of "YMCA" to close the 1st Annual "Dancing for Partners" fundraiser benefiting the **South Montgomery County YMCA**.

Supporting Community Organizations

The Strong Firm P.C. served as sponsor and attended the **Montgomery County Hispanic Chamber** monthly luncheon held at The Woodlands Area Chamber of Commerce.

The Strong Firm P.C. was proud to support and attend the 26th Annual National Day of Prayer Breakfast sponsored by **The Woodlands Kiwanis.**

The Strong Attorneys in Action

May 2013 - **The Strong Firm** defended a local company opposing a request for temporary injunction for an alleged violation of a non-compete agreement associated with an executive employment contract and a company purchase agreement.

May 2013 - **The Strong Firm** represented a developer in the multi-million dollar acquisition of undeveloped property in the Spring area.

May 2013 - **The Strong Firm** prepared multiple estate planning packages for individuals and couples within the community.

May 2013 - **The Strong Firm** negotiated the purchase of undeveloped property in Tarrant County valued over $1.3 million.

April 2013 - **The Strong Firm** negotiated the asset and stock purchase of a local manufacturing company valued over $3 million.

April 2013 - **The Strong Firm** represented a local family in recording mineral deeds in several states.

March 2013 - **The Strong Firm** successfully represented the closing of a ground lease for a casual dining restaurant located in The Woodlands.

March 2013 - **The Strong Firm** represented a local church in the multi-million dollar acquisition of undeveloped property.

We provide legal services in the all of the following areas:

- Business Law and Contracts
- Financing, Trademarks, and General Corporate
- Corporations, Partnerships, and LLCs
- Real Estate
- Business Disputes
- Wills, Probate, Trusts, and Estates
- Mergers, Sales, and Acquisitions of Businesses
- Oil, Gas, and Energy
- International Business Investment

From left: **Melanie Edleston**, office manager; **Bradley Shaughnessy**, law clerk; **Royce Lanning**, associate attorney; **Laura Junek**, paralegal; **Wendy Lambie**, associate attorney; **Bret L. Strong**, attorney, founder, and managing shareholder; **Brian Albert**, law clerk; **Bethany Kovacs**, legal assistant; **Eric R. Thiergood, Sr.**, senior associate attorney; **Renee Glazer**, paralegal; **Adam Looney**, associate attorney; **Lisa Prado**, paralegal.