WEIGHT OF AUTHORITY EXERCISE

Please complete this exercise, along with Edwards’ exercises 2-3, 2-4, and 2-5, prior to class on Tuesday, August 25. You will not be required to hand in any of your first day assignments, but you must be prepared to discuss your answers in class.

In 2010, you have a case in which your client, the buyer of a car, has sued the car’s seller based on a Texas statute (“the Statute”). The case is pending in a Galveston County state trial court. In preparation for a summary-judgment motion in which you are asking for judgment on your plaintiff-client’s claim, you find the following authorities. Which of them is binding? Which is persuasive? For either answer, indicate why the authority is binding or persuasive.

a. A 2005 decision of a panel of the Fifth Circuit Court of Appeals holding that, under Texas law, the plaintiff was entitled to relief under the Statute.

b. A 2006 decision of the Texas Court of Criminal Appeals, in which the court held that a defendant was guilty of theft for having promised to sell a car without intent to do so.

c. A similar Texas statute concerning the sale of real estate.

d. A 2010 decision by the United States Supreme Court holding that the Statute violates the Due Process Clause of the U.S. Constitution.

e. A 2009 decision of the Texas Supreme Court, affirming a 2008 judgment from the Amarillo Court of Appeals, holding that this type of motion for summary judgment may not be used by a plaintiff to obtain a judgment.
f. A 2008 decision of the First Court of Appeals—predating the Texas Supreme Court holding mentioned in question e (immediately above), but not expressly overruled by the Texas Supreme Court in that opinion—holding that this type of motion for summary judgment may be used by a plaintiff to obtain a judgment.

g. The federal rule of civil procedure concerning motions for summary judgment.

h. A 2008 decision by the United States Supreme Court interpreting the federal rule for motions for summary judgment.

i. The Texas rule of civil procedure controlling motions for summary judgment.

j. A 2000 decision of the Austin Court of Appeals concerning the merits of the Statute.