

## QUESTION 1

Avery and Bailey are good friends. On Bailey's day off from work, Avery and Bailey are playing with Avery's volleyball in Avery's yard. Bailey hits the ball, which lands in Casey's yard. Bailey goes to get the ball and destroys flowers on Casey's property.

Casey appears and yells, "What are you doing on my property? You have no right to be here! I've told you that before!" Bailey apologizes. Casey picks up the ball and walks into Casey's house. Casey throws the ball in the trash.

Then Casey goes back outside and approaches Bailey while yelling. When Casey is a foot away from

Bailey, Casey lowers her voice and says, “I’m sorry I lost my temper. I was upset, but we’re good now.”

Bailey raises a fist, pulls back an arm, and says, “Your words mean nothing, I’m going to make you pay.”

Casey raises both hands defensively and says, “No, please don’t!” Without touching Casey, Bailey drops the fist, laughs, and walks away.

Bailey finds Avery sitting on the ground. Avery looks up and says, “My chest hurts. I can’t breathe.”

Without Avery’s permission, Bailey grabs Avery’s hand and pulls Avery to a standing position. Bailey says, “Let’s go to the hospital. I will drive you.”

Avery thanks Bailey for help standing up.

Bailey and Avery get in Bailey's work truck, which has "Dana's Decks" written on the side. Dana's Decks is Bailey's employer. Then Avery says, "I'm feeling better. I don't want to go to the hospital." Avery moves to leave, but Bailey locks the doors and starts driving. Avery unlocks the passenger door but is afraid to exit because the truck is moving. Avery yells, "Stop the truck! I want to get out!" Bailey keeps driving. Avery sits back and stares out the window.

Bailey continues driving. At the hospital, Bailey unlocks the truck's doors. Avery gets out, and Bailey says, "I know you don't want to be here and I won't

force you to do anything. You're free to go if you want.”

Avery goes into the hospital. Avery is diagnosed with bronchitis and has to pay thousands of dollars for medical tests.

As time goes on, Casey continues to think about almost being hit by Bailey. The incident dominates Casey's thoughts, causing constant worry.

**1. What intentional tort claim(s) can Avery assert against Bailey? For each claim, (a) discuss the elements of each claim, (b) whether the claim is likely to succeed or not, and (c) what types of**

**damages or other remedies (if any) will likely be awarded. Explain your answers.**

**2. What intentional tort claim(s) can Avery assert against Casey? For each claim, discuss (a) the elements of each claim, (b) whether the claim is likely to succeed or not, and (c) what types of damages or other remedies (if any) will likely be awarded. Explain your answers.**

**3. What intentional tort claim(s) can Casey assert against Bailey? For each claim, discuss (a) the elements of each claim, (b) whether the claim is likely to succeed or not, and (c) what damages or**

**remedies (if any) will likely be awarded. Explain your answers.**

\* \* \*

On the way home from the hospital, Bailey drives 75 miles per hour even though the speed limit is 25 miles per hour. Eddie is walking along the road reading a book. Not paying attention, Eddie walks in front of Bailey's truck. Eddie looks up just in time and dives to the ground on the side of the road. Bailey's truck does not touch Eddie. But Eddie—who has a pre-existing condition that can increase the likelihood

and intensity of injuries caused by falls—is hurt in the fall.

Bailey did not see Eddie until the last minute. Bailey had been looking down for several seconds at the truck’s cup holder. If Bailey had been watching the road and not been speeding, Bailey could have stopped the truck in time for Eddie to escape without injury.

As a result of the injuries sustained in diving away from Bailey’s truck, Eddie undergoes several surgeries. Eddie does not pay anything for medical treatment. But Eddie does not heal fully and has

constant pain. The pain is so severe that Eddie cannot work.

**4. What claim(s) can Eddie assert against Bailey? For each claim, discuss (a) the elements of each claim, (b) whether the claim is likely to succeed or not, and (c) what damages or remedies (if any) will likely be awarded. Explain your answers. *Do not discuss any intentional tort claims.***

**5. Assume that Eddie succeeds in his claim(s) against Bailey. Discuss (a) what legal doctrine Eddie could rely on for a claim against Eddie's employer, Dana's Decks, (b) the elements of such**

**legal doctrine, and (c) whether Eddie is likely to prevail on such a claim. Explain your answers.**

## QUESTION 2

ABC Corporation (“ABC”) is a Delaware corporation. XYZ Corporation (“XYZ”) is ABC’s majority stockholder. ABC has a five-member Board of Directors (the “Board”), composed of the following directors:

- Dave – an officer of XYZ;
- Elaine – a long-time XYZ employee;
- Fran – ABC’s Chief Executive Officer;
- Gina – no relationship with XYZ or ABC aside from being an ABC director; and
- Henry – no business relationship with XYZ or ABC aside from being an ABC director, but his family has gone skiing with Fran’s family twice during the past five years.

The Board meets several times to consider options to raise capital needed to pursue a new line of business. At a properly noticed meeting of the Board attended by all five directors, the Board unanimously resolves to sell 1,000,000 shares of ABC common stock (“Common Stock”), to a private investor (“Investor”) for \$5.00 per share (“Sale”). Prior to the Sale, ABC has more than 1,000,000 shares of Common Stock authorized but unissued. Also, prior to the Sale, Investor owns no shares of ABC stock, and has no preexisting relationship with ABC or any of its directors, officers or stockholders.

After the close of the Sale, an ABC stockholder (“Stockholder”) files a derivative action in the Delaware Court of Chancery against all five members of the Board. Stockholder alleges that the directors breached their fiduciary duties of loyalty by approving the Sale.

*Assume the action is timely and filed in the proper court. Do not discuss demand futility.*

**1. What standard of review will the Court apply to the claims the Board members breached their fiduciary duties of loyalty by approving the Sale, and why?**

**2. If the Board members move to dismiss the claims against them, is the motion likely to be granted? Why or why not?**

\* \* \*

Several months later, XYZ requests that ABC repurchase 1,000,000 of its shares of Common Stock for \$10.00 per share. At the time, XYZ owns a majority of ABC's outstanding shares, and it would continue to own a majority of ABC's outstanding shares even if 1,000,000 of its shares were repurchased.

The Board considers the possibility of forming a committee of the Board to consider whether ABC should agree to XYZ's repurchase request.

**3. Which Board members should be named to the committee, and which should not be named to the committee? Explain your reasoning for each Board member.**

\* \* \*

The Board decides not to form a committee. At a properly noticed meeting of the Board, all five directors resolve unanimously to proceed with the repurchase of Common Stock from XYZ on the terms XYZ proposed ("Repurchase").

After the close of the Repurchase, Stockholder files a second derivative action in the Delaware Court of Chancery against all five members of the Board. In the second action, Stockholder alleges that the directors breached their fiduciary duties of loyalty by approving the Repurchase.

*Assume the action is timely and filed in the proper court. Do not discuss demand futility.*

**4. (a) What standard of review will the Court apply to Stockholder's claims the directors breached their fiduciary duty of loyalty by approving the Repurchase, and (b) who will bear**

**the burden of proof on the claims regarding the Repurchase? Explain your answers.**

**5. Assume for this Question 5 only, an independent fully empowered and properly functioning committee had been formed to consider and approve the Repurchase, (a) would that affect the standard of review the Court would apply to Stockholder's claims, and (b) who would bear the burden of proof on the claims regarding the Repurchase? Explain your answers.**

**\* \* \***

Following the Repurchase, the Board determines, for several reasons, it would be in ABC's best interest

to convert ABC into a Delaware limited liability company named ABC, LLC. The Board determines that post-conversion ABC's limited liability company agreement will state that ABC, LLC will be managed by a board of managers. The agreement is silent as to the fiduciary duties owed by members of the board of managers. The conversion is carried out validly in accordance with Delaware law.

**6. What fiduciary duties, if any, do the members of the board of managers owe to ABC, LLC and its members? Explain your answer and each duty identified.**

### QUESTION 3

Beekeeper, who harvests the finest honey in the area from his unique farm, reaches out to a local shop owned by Owner to sell Beekeeper's honey. The pair orally agree on January 1 that Owner will sell Beekeeper's honey in jars, which cost Beekeeper \$3 to produce and fill with honey. Beekeeper and Owner orally agree that (i) Owner will sell each jar of honey for \$9; (ii) Owner will pay Beekeeper the \$3 production cost for each jar sold; and (iii) the \$6 profit will be divided, with Owner receiving \$2 per jar and Beekeeper receiving \$4 per jar. Owner agrees

to engage in this arrangement for 13 months, with January being the first month. No terms are reduced to writing.

During the first three months of the agreement (January, February and March), Owner sells exactly 50 jars each month. Beekeeper receives \$200 in profits per month. In April, the fourth month, Owner decides to permanently discount the price to \$5 per jar without Beekeeper's knowledge. Owner continues to keep \$2 per jar sold. At the end of the agreement, Beekeeper notices that, despite 50 jars being sold each month from April to December, he received no profit for any of those months.

*None of your answers for this question should discuss the Uniform Commercial Code or principles of consignment.*

**1. Is there a valid contract between Beekeeper and Owner? Explain your answer, including the elements of a valid contract.**

**2. Assume that there is a valid contract between Beekeeper and Owner. Identify and describe (a) any possible claims that Beekeeper might have against Owner, including the elements of the claim(s); (b) any damages and/or remedies that Beekeeper can reasonably seek; and (c) the**

**likelihood of the damages and remedy being awarded by the court.**

\* \* \*

Beekeeper, who owns and operates his bee farm in Delaware, begins to look for a new business that would buy his honey. He contacts Proprietor, who is the sole owner of a business (“General Store”) in Maryland. Beekeeper and Proprietor are physically located in Delaware when they negotiate and sign a written agreement for selling jars of honey at General Store. The terms of the agreement are as follows:

- General Store will sell honey for \$9 per jar.

- For each jar sold, the \$3 production cost will be paid to Beekeeper, and the \$6 profit will be split with General Store receiving \$2 per jar and Beekeeper receiving the remaining \$4 per jar.
- The parties must agree in writing to any amendment to the agreement.

Both Beekeeper and Proprietor (as an authorized signatory on behalf of General Store) sign the agreement. At the time of signing, a copy of the agreement is sent to Proprietor's Son who manages General Store with him.

The following day Proprietor falls into a coma. Unaware of this, Beekeeper sends Proprietor an email stating, “I want a guarantee that you will sell at least 100 jars per month. If I do not hear from you by the end of the day, I will assume you are in agreement and the terms will be incorporated into the agreement.” Not hearing back from Proprietor, Beekeeper delivers 100 jars to the General Store and while there asks Proprietor’s Son, “Any issues with the agreement?” Proprietor’s Son, unaware of the subsequent email, verbally responds, “No, I received a copy and agree with the terms.”

**3. Is there a valid contract between Beekeeper and General Store? Explain your answer.**

**4. Is General Store required to sell at least 100 jars per month? Explain your answer.**

\* \* \*

Beekeeper decides to start selling his honey jars on his own and opens a website to take customer orders. Wedding Planner has a contract with an engaged couple (“Couple”) that obligates Wedding Planner to coordinate the Couple’s purchase of gifts for attendees at their August 6, 2022 wedding. On June 1, Wedding Planner places a contractually binding online order to Beekeeper for 200 jars, priced

at \$10 per jar (\$2,000 total), with a guaranteed delivery date of June 30, to be given as gifts at a wedding scheduled for July 1.

Beekeeper responds to Wedding Planner on June 2, and says, “No problem, I can get those to you by June 30, but I need a \$50 deposit first.” Wedding Planner forwards the email to Couple, and Couple sends a deposit of \$50 to Beekeeper on June 3, with an order number on their deposit check. Beekeeper deposits Couple’s check.

Beekeeper prepares the 200 jars of honey, but unforeseen issues cause a delay in delivering the honey, and they are not delivered on June 30. The

wedding occurs on July 1. Beekeeper delivers the honey jars to Couple on July 7, after the wedding has ended. Beekeeper has not received the remaining \$1,950 and Couple remains in possession of the honey jars.

**5. Does Couple have any contract-based claims against Beekeeper? Explain your answer, including the elements of any claim(s).**

**6. What would the remedy be for any contract-based claims against Beekeeper identified in response to Question 5 above ?**

**7. Assume Couple refuses to pay the balance due to Beekeeper. Does Beekeeper have a claim**

**against Couple? Explain your answer, including the elements of any claim(s) and defense(s), and the strength of each.**

**8. Assume there is a valid contract between Beekeeper and Wedding Planner, and the contract is not under seal. (a) How long do the parties have to bring a legal claim against one another for breach of contract? (b) Would your answer change if the contract contained a provision limiting the statute of limitations to one year? Explain why or why not.**

## QUESTION 4

Suspect, wearing a ski mask and backpack walks into a bank, gestures toward a visible gun in his waistband, orders the customers to the ground, tells them not to move, and demands money from the bank teller. The bank teller hands over money to Suspect.

**1. Identify all possible crimes that Suspect may be charged with based upon the above fact pattern. Identify the crime(s) and the elements of the crime(s). *Do not identify lesser-included offenses. For any crime for which there is more***

*than one degree, do not specify which degree you would charge.*

\* \* \*

Suspect walks out of the bank with the backpack, as the alarm sounds. Suspect enters the passenger seat of a car owned and being driven by Driver. Driver drives away from the scene and commits no traffic offenses while doing so. At the time, Police Officer is in a patrol car in front of the bank, and observes Suspect's behavior.

Police Officer activates his emergency lights and the car stops. Driver is in the driver's seat. Police Officer asks Driver and Suspect to step out of the car.

Driver and Suspect comply. Police Officer asks Suspect if he can search the car. Suspect says no.

Police Officer then asks Driver if he can search the car. Driver shrugs. Police Officer searches the car, including the backpack located on the floorboard of the passenger seat. Inside the backpack, Police Officer finds a gun, and cash in an envelope with the bank's logo on it. Police Officer arrests Suspect.

**2. Suspect's attorney files a motion to suppress the items found in the backpack. Discuss any applicable legal doctrine(s) (a) Suspect's attorney may argue in support of the motion, and (b) the State may argue in response.**

\* \* \*

Back at the police station, Suspect is not handcuffed and is seated in the lobby. Police Officer approaches and says, “I have a few questions for you.” Suspect responds by saying, “I think it would feel good to clear my conscience.” Police Officer states, “You don’t have to talk to me, but you’re getting locked up, so now is the time to tell me what happened.” Suspect fully confesses.

**3. Suspect’s attorney files a motion to suppress the confession. Discuss any applicable legal doctrine(s) the court will consider in making its decision on the motion.**

\* \* \*

At the time of his arrest, Suspect had a pending driving under the influence charge.

**4. Will the State be able to include the driving under the influence charge in its indictment? Discuss any applicable court rules that may apply as well as factors the court will consider in making its decision.**

\* \* \*

Suspect is indicted on the crimes identified in response to Question 1 above. Trial is in one month. Prosecutor receives a letter from Convict, confessing to having committed the crimes in Suspect's

indictment. Prosecutor places Convict's letter in the back of the file and does not produce it in discovery to Suspect's attorney. Suspect's attorney learns of this information mid-trial and has insufficient time to investigate the claims.

**5. Based on this new information, what motion should Suspect's attorney file? Identify the applicable legal doctrine and its requirements.**