

## QUESTION 1

**\*\*For purposes of this essay, do not discuss statute of limitations, principles of agency law, the Delaware Uniform Electronic Transactions Act, or the Delaware Uniform Commercial Code in this or any section of this question.\*\***

CAKE LLC (“CAKE”) operates a bakery. Ali is CAKE’s owner. On June 1, 2019, Ali receives an email from Buyer that states: “I am ordering 600 cakes at CAKE’s regular price of \$1,000 per cake, for a total price of \$600,000, which I will pay upon delivery on June 10, 2019. If this is not an agreeable order, please let me know. But please start working if it is agreeable.” Ali responds to Buyer on June 2, 2019 by email stating: “Thanks for your email! We will get started on your order.” By 10:00 a.m. on June 5, CAKE’s bakers have completed 375 of Buyer’s cakes and have the materials for Buyer’s remaining cakes. At 10:30 a.m. on June 5, Ali receives an email from Buyer stating: “I have decided to go with another bakery as they can do all 600 cakes for \$500,000. Please cancel my order.”

**1. Did Buyer make a valid offer? If your answer is “yes,” explain why. If your answer is “no,” explain what is needed for there to be a valid offer.**

**2. Assume Buyer’s offer was valid. Did CAKE accept the offer? If your answer is “yes,” explain why. If your answer is “no,” explain what is needed for there to be a valid acceptance.**

**3. Assume that Buyer’s offer was valid and CAKE accepted it. Was Buyer’s June 5, 2019 email an effective revocation? Explain your answer.**

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CAKE's business is booming. As a result, CAKE begins looking into acquiring equipment from other bakeries. CAKE and PIE LLC ("PIE") enter into negotiations for CAKE to purchase PIE's equipment. During the negotiations, PIE's owner tells Ali that PIE's equipment will only be sold if CAKE assumes the employment contracts of PIE's twenty (20) employees. Throughout the negotiations, PIE's owner repeatedly reiterates that "the only way this deal is getting done is if CAKE assumes the employment contracts of all of PIE's employees. If CAKE doesn't do that, then we don't have a deal." Ali assures PIE's owner that "CAKE will take over every single one of PIE's employment contracts." Immediately after Ali assures PIE's owner, Ali privately tells the manager of CAKE that "under no circumstances am I hiring all of PIE's employees. We have to make sure the purchase agreement reflects this limitation."

In July 2019, CAKE and PIE enter into an Asset Purchase Agreement, which contains the following provisions:

A. **Assets.** Pursuant to the terms and subject to the conditions of this Agreement, PIE agrees to sell, assign, convey and deliver to CAKE, and CAKE agrees to purchase and accept from PIE, the following assets:

i. Equipment. All of PIE's baking equipment; and

ii. Assigned Employment Contracts. The employment contracts for three (3) PIE employees. No other employment contracts.

B. **Purchase Price.** The purchase price payable for the Assets agreed to be bought and sold is \$0.50 (fifty cents), half a peppercorn, and CAKE’s eternal gratitude.

C. **Entire Agreement; Non-Reliance.** This Agreement constitutes the entire agreement among the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, of the parties. Each party acknowledges that in entering into this Agreement, it does not rely on any statement, representation, or warranty other than those expressly set forth in this Agreement.

CAKE and PIE each execute the Asset Purchase Agreement under seal.

**4. Is Ali’s assurance to PIE’s owner that “CAKE will take over every single one of PIE’s employment contracts” enforceable? Explain your answer.**

**5. If PIE challenges the enforceability of the Asset Purchase Agreement for lack of consideration, will PIE succeed? If your answer is “yes,” explain why. If your answer is “no,” explain why. Identify all possible forms of consideration.**

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The Asset Purchase Agreement includes the following additional provisions:

D. PIE represents and warrants that the baking equipment is in good working condition and will continue to operate, given normal wear and tear, until December 31, 2025.

E. PIE shall repair or replace any baking equipment that CAKE determines in good faith to be malfunctioning or broken.

Six months after the Asset Purchase Agreement is executed, CAKE has paid PIE all of the purchase consideration except \$0.50. Before CAKE pays PIE the \$0.50, all of the baking equipment purchased from PIE breaks down and CAKE never pays the \$0.50. CAKE informs PIE that it must repair or replace the baking equipment pursuant to the terms of the Asset Purchase Agreement. PIE claims CAKE purposely broke the baking equipment and refuses to repair or replace any of the baking equipment.

**6. CAKE sues PIE in the appropriate court alleging breach of the Asset Purchase Agreement. Assume the Asset Purchase Agreement is an enforceable contract and PIE has no valid defenses. Has PIE breached the Asset Purchase Agreement? Explain your answer.**

**7. If PIE breached the Asset Purchase Agreement, must CAKE continue to perform? Explain your answer.**

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**8. Assume for purposes of this question only that CAKE did not commit any breach of the Asset Purchase Agreement. If CAKE is successful in proving its claim of breach, what damages should the court award? Explain your answer.**

## QUESTION 2

Decedent prepares a Will himself using a fill-in-the-blank form. Decedent's Will was validly executed and self-proved. The Will names Decedent's brother (Brother) to serve as executor. In the section of the form for making bequests, Decedent handwrote that \$10,000 should be distributed to his sister (Sister). The form includes a section allowing Decedent to leave articles of tangible personal property to the persons identified in a separate memorandum. Decedent prepares such a memorandum directing that: (i) his gold watch be distributed to Brother; (ii) his car be distributed to his cousin (Cousin); and (iii) his stock certificates for shares of Company stock be distributed to Sister. The Will contains no other bequests.

After executing the Will, Decedent sells his gold watch. Decedent dies. Decedent never married. He is survived by his parent (Parent), Sister, Brother and Cousin. Decedent's estate consists of: (i) his car, (ii) a bank account containing \$50,000 cash, and (iii) the stock certificates for Company stock, with a date of death value of \$50,000.

Brother opens Decedent's estate with the Register of Wills of the appropriate county shortly after Decedent's death. Seven months after Decedent's death, Noteholder sends notice to Decedent's residence at the time of his death and addressed to Decedent that Decedent owed him \$10,000 under a valid promissory

note. Ten months after Brother opened the estate, Unsecured Creditor files a claim with the Register of Wills for \$5,000 Decedent validly owed to it for services provided. Assume that there are no other debts and that there are no estate-related expenses incurred.

More than thirteen months after Brother was appointed Executor, the Register of Wills approves Brother's accounting. Brother thereafter sets out to distribute Decedent's net estate.

**1. For each asset listed above (the watch, the car, the \$50,000 cash and the stock certificates for Company stock worth \$50,000), state whether or not it will be a part of Decedent's estate, and if not, why. Explain what, if any, distribution should be made of each asset determined to be in Decedent's estate to each of: (a) Parent, (b) Sister, (c) Brother, (d) Cousin, (e) Noteholder, and (f) Unsecured Creditor. Explain each of your answers.**

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For purposes of this question only, assume Parent pled guilty to the homicide of Decedent.

**2. What, if any, distribution would Parent be entitled to receive from Decedent's estate? Explain.**

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For purposes of this question only, assume Decedent married Spouse after executing the Will, but before Decedent died. At the time of Decedent's death, Spouse was pregnant with Decedent's child, Infant, who was born 7 months after Decedent's death.

**3. Describe what portion, if any, of Decedent's estate would go to Spouse and Infant, and explain why.**

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For purposes of this question only, assume that at the time of his death, Decedent (a) solely owned \$5,000 of cash and real property worth \$100,000 in fee simple and unencumbered; and (b) owed to Creditor \$50,000, and Creditor timely and properly presented a claim for payment from the estate.

**4. Who will receive the assets owned by Decedent at the time of his death, and what will each recipient receive? Explain, including a description of any additional proceedings that Brother would have to pursue to reach that result, and why.**



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For purposes of this question only, assume at the time of his death, Decedent (a) solely owned \$5,000 of cash and real property worth \$100,000 in fee simple and unencumbered, (b) owed to Creditor \$50,000, and Creditor timely and properly presented a claim for payment from the estate, and (c) owned an individual retirement account (“IRA”) with a value of \$50,000 naming Cousin as sole beneficiary on the IRA beneficiary designation form.

**5. Would Brother, Sister, or Creditor be entitled to receive any portion of the proceeds of the IRA? Explain why or why not.**

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For purposes of this question only, assume that instead of using a fill-in-the-blank form, Decedent handwrote his entire Will and signed it in the presence of Sister and Brother, who then signed it after his signature.

**6. Is Decedent’s Will valid? Explain your answer.**

### **QUESTION 3**

Owner operates his solely-owned business, ABC, from a shopping center located in Sussex County, Delaware. Owner lives in Kent County, Delaware. Adjacent business owners claim that people come and go from ABC at all hours of the day and night, cause a disturbance, and loiter in the parking lot and on the street.

Landlord owns the shopping center in which ABC is located. There are five businesses in the shopping center, including ABC, and all have signed leases with Landlord. After Landlord is unable to control the noise from ABC, three other businesses terminate their leases with Landlord. Landlord files a one-count complaint (the “Complaint”) in the Delaware Superior Court against Owner seeking damages in the form of lost rent from the three business that terminated their leases. Landlord personally serves Owner with the Complaint by having Landlord’s accountant, who also happens to be Owner’s neighbor, serve Owner on his way home from work.

- 1. Was service of process on Owner proper? Explain your answer.**
- 2. Owner believes that the Complaint does not allege a factual basis to hold him liable for other businesses terminating their leases. Owner would like to move to dismiss the Complaint. Under what rule**

**can Owner file a motion to dismiss? What legal standard will the Court apply to its consideration of the motion?**

**3. Owner wishes to contest personal jurisdiction of the Delaware Superior Court over him. Must he raise that defense in his motion to dismiss? Why or why not?**

**4. The Court denies Owner's motion to dismiss and Owner will need to answer the Complaint and proceed with discovery. Before doing that, Owner would like to pursue an appeal of the Court's decision denying his motion to dismiss. Identify and explain (1) the procedural steps and (2) the legal standard applicable to an interlocutory appeal of the Court's denial of the motion to dismiss.**

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Assume Owner does not pursue an interlocutory appeal and the case proceeds to discovery. Owner learns that Landlord owns a total of 10 shopping centers and that 15 of Landlord's tenants have terminated their leases within the past year. Owner serves a document request seeking copies of all of Landlord's leases and all correspondence concerning termination of leases in the past 5 years. Landlord objects and refuses to provide the documents. Landlord states that he has separate leasing agents for each shopping center and would have to search e-mail from each of those leasing agents. Landlord offers to produce an affidavit stating that

collecting the requested e-mail correspondence would cost in excess of \$25,000 and that he only seeks \$100,000 in damages from Owner.

**5. Owner believes that Landlord’s objection lacks merit and wants to pursue the documents Landlord has refused to provide. What type of motion should Owner file? Explain the legal standard that will apply to Owner’s motion and discuss how the Court should rule on the motion.**

**6. Landlord wants to be as aggressive as possible in discovery. Are there any limits on Landlord’s ability to take discovery by way of document requests, interrogatories and depositions? Explain any limits that apply.**

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In discovery, Owner would like copies of emails in which one of the neighboring businesses (“Former Tenant”) discussed its reasons for breaking its lease with Landlord and leaving the shopping center. Former Tenant is now a tenant at another shopping center located closer to the beach in Sussex County, and its business is booming. Former Tenant dislikes Owner and does not want to help him win his case against Landlord.

**7. How can Owner obtain copies of those communications from Former Tenant? What can Former Tenant file in response? How should the Court rule, and why?**

## QUESTION 4

Chef aspires to produce and host an internet cooking show featuring experimental and, in some cases, risky cooking methods called “Cooking in the Danger Zone.” Chef and Chef’s friends gather at Chef’s apartment to practice techniques for the show.

One night, Chef and two friends, Dylan and Evan, are at Chef’s apartment trying out a new cooking method whereby a dessert is heated from below on the stove burner and simultaneously heated from above with a separate heat source. To increase the dramatic effect for eventual use of the technique on the show, Chef heats the dessert from above using an industrial-grade blowtorch.

A fire breaks out in the apartment. As the blaze starts, Evan texts a friend, stating in the text: “I don’t know what came over Chef! At first, Chef was using a blowtorch to make a cooking video, but now Chef is waving the blowtorch around wildly, pointing it at me and Dylan, and the apartment is catching fire!” (the “Text Message”). Dylan is badly burned in the fire.

Dylan sues Chef in the Delaware Superior Court. Dylan’s complaint alleges that Chef intentionally or recklessly caused the fire that injured Dylan. Dylan properly requests a jury trial. Chef denies Dylan’s allegations and maintains that faulty wiring in the stove caused the fire.

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Dylan contends that the fact that Chef was rehearsing for a show called “Cooking in the Danger Zone” is evidence that Chef was acting at least recklessly on the night of the fire. Before trial, Chef moves to exclude any mention of the name of the show at trial on the grounds that the name is irrelevant and unduly prejudicial.

**1. What Rules of Evidence should Chef rely on, and which arguments should Chef make in support of the motion?**

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While the trial is ongoing, Dylan is unable to speak or leave the hospital. Dylan’s attorney seeks to introduce into evidence Dylan’s testimony against Chef given under oath during Dylan’s deposition, in which attorneys for both Dylan and Chef participated and had the opportunity to question the witness. Chef’s attorney objects to the admission of Dylan’s deposition testimony for the truth of the matters asserted therein on the grounds of hearsay.

**2. Is the deposition testimony inadmissible hearsay? Why or why not?**

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During the trial, Dylan calls Evan to testify. Dylan’s attorney attempts to examine Evan about the contents of the Text Message. Evan asks to see the Text Message before answering any questions about it. Chef’s attorney also asks to see the Text Message.

**3(a). Must Dylan’s attorney show Evan the Text Message? Why or why not? (Your answer should not discuss refreshing recollection.)**

**3(b). Must Dylan’s attorney show the Text Message to Chef’s attorney? Why or why not?**

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Dylan subsequently seeks to introduce the Text Message into evidence at trial. Chef’s attorney objects on the grounds that its contents are hearsay. Assume that Evan’s testimony was consistent with Evan’s statements in the Text Message.

**4. What should Dylan’s attorney argue in opposition to the objection?**

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On cross-examination by Chef’s attorney, Evan, who is a professional chef, testifies to having extensive firsthand knowledge about the type of stove in Chef’s apartment as a result of using that type of stove professionally over many years. Evan goes on to testify that the type of stove that Chef has is unsafe because of faulty wiring. Dylan’s attorney objects to that testimony. Assume that if any prior notice of Evan’s testimony was required, the notice was properly given.

**5(a). What should Dylan argue in support of the objection?**

**5(b). What should Chef argue in opposition to the objection?**

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Dylan’s attorney asks the Court to take judicial notice of the fact that the wiring in the stove is made of a certain metal, based on a statement that the wiring is made from that metal found in an unsourced tutorial about the stove found on YouTube. The Court gives both parties ample opportunity to be heard before deciding the request for judicial notice.

**6. Must the Court take judicial notice? Why or why not?**

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In the months following the fire, Chef had begun receiving counseling from Specialist, who is a licensed mental health counselor and holds only a master’s degree. During one of their private counseling sessions, Chef tells Specialist, “I feel guilty about Dylan’s injuries. I wish I hadn’t pointed that blowtorch at my friends.” Dylan attempts to introduce testimony from Specialist regarding Chef’s statement. Chef’s attorney objects on the grounds that what Chef told Specialist is privileged and hearsay.

**7. What would be the ruling on each of the objections and why?**

## QUESTION 5

Owner owns three separate parcels of land: Parcel A, Parcel B and Parcel C. All three parcels are located in Delaware.

Owner's family has owned Parcel A for many generations. It was originally settled by Ancestor, and Owner is Ancestor's direct lineal heir. The oldest document in the chain of title is the original deed signed by Ancestor conveying Parcel A "to Child and the heirs of Child's body." Child was Ancestor's only child.

- 1. What type of estate in Parcel A did the original deed convey to Child? Why? Explain the general characteristics of that type of estate under Delaware law today.**

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Owner owns Parcel B in fee simple absolute. Parcel B is located next to Shopping Complex, a piece of commercial property that is currently under construction and owned by Developer. During construction of Shopping Complex, a large, underground boulder that makes it impossible to build a parking garage is discovered. After investigation, Developer determines that the best alternative location for the garage is Parcel B.

Owner agrees to convey Parcel B to Developer, but only if there is a height restriction on all structures built on the site. A deed is drafted, which includes the

following language: “Owner hereby grants and conveys Parcel B to Developer so long as no building constructed on Parcel B exceeds four stories in height.”

**2. What type of estate in Parcel B does the draft deed purport to convey? Why? Explain the general characteristics of that type of estate under Delaware law today.**

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Owner owns Parcel C in fee simple absolute. Parcel C is bounded on one side by a highway. There is an old barn located on Parcel C with one side facing the highway. That side of the old barn has no doors or windows and is perfect for painted advertisements, similar to a billboard.

Farmer operates a farm stand just up the highway from Parcel C. On June 1, 2021, Farmer asks Owner to purchase the right to paint advertisements on the side of the old barn indefinitely into the future. On June 5, Owner informs Farmer that Owner is willing to grant that right in exchange for a one-time payment of \$15,000, due one month later. That same day, Farmer accepts that offer, and Owner says, “I hereby irrevocably grant you permission to paint advertisements on the old barn and to enter Parcel C as reasonably necessary from time to time to maintain your advertisements.”

**3 (a). Did the interaction between Owner and Farmer create an easement in favor of Farmer? Why or why not?**

**3 (b). Explain the general characteristics of the type of servitude that was created by the above interaction between Owner and Farmer, including whether that servitude is revocable by Owner in the future.**

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Farmer timely pays \$15,000 to Owner and immediately thereafter hires Painter, who enters Parcel C and paints an advertisement on the side of the old barn facing the highway. Owner accepts the payment from Farmer and deposits the money in Owner's personal bank account. Owner also is aware of Painter's actions and does not object.

Six months later, Owner seeks to terminate the servitude granted to Farmer.

**4. Based on these subsequent facts, does Owner now have the power to terminate the servitude granted to Farmer? Please explain your answer.**

## QUESTION 6

Two friends, Alex and Blake, plan to spend their day throwing darts at Pub, the local bar that hosts dart-throwing tournaments. Darts is a game in which two or more players throw small arrow-like missiles, called darts, at a circular target called a dartboard. Each dart has a sharp metal point at one end and stabilizing feathers at the other. Once at Pub, Alex and Blake are assigned a specific dartboard and given three darts to share. They each must stand in a semi-enclosed box area a set distance from the dartboard when throwing.

Alex is new to the sport, but is determined to improve. Alex's first two throws hit the floor and the third hits the wall instead of the dartboard. Blake tells Alex not to move from the throwing box as Blake walks toward the dartboard to retrieve their darts. While Blake's back is to Alex, Alex goes into an adjacent empty throwing box and picks up spare darts. Thinking it would be funny, Alex decides to try to get a dart to stick into the sole of Blake's shoe while Blake is walking away.

Alex hurls a spare dart, does not hit Blake's shoe, and instead narrowly misses the back of Blake's head. Blake is first aware of the extra dart when Blake sees and hears it sink into the wall that was half a foot away. This makes Blake angry. Blake grabs the dart, runs back toward Alex, and while two feet away from the throwing box Blake brandishes the dart —pointed side towards Alex's head— and pretends

to make a hard throwing motion. Blake yells “Do you think that is funny? The next time I tell you not to move, don’t move!”

Even though Blake is two feet away, Alex is scared. Alex tries to back up, but bumps into the wall. Alex apologizes to Blake, the moment passes, and the two return to dart throwing.

A half hour later, Blake wants to get a drink. As Blake walks toward the bar, Blake sees that one of Pub’s tiled walkways is blocked by a chair that has a handwritten sign that reads “Keep out – wet floor.” Though there are other routes to the bar, Blake nevertheless decides to take the walkway because it is the fastest route and it leads to the shortest drink line. Blake easily walks around the side of the chair and proceeds down the walkway, which has been freshly mopped and is still wet. Blake slips on the floor, falls, and suffers a back injury.

Alex and Blake then leave Pub after the eventful day. That night, and every night of the next week, Alex cannot sleep because Alex keeps seeing Blake’s angry face and the sharp point of the dart in Blake’s hand aimed at his head.

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**For each claim discussed in Q1, Q2, and Q3, identify: (a) the claim, (b) its elements, (c) any facts in support of the claim, (d) any facts that undermine the claim, and (e) any defenses that might exist.**

**1. Discuss the intentional tort claim(s), if any, Alex has against Blake.**

- 2. Discuss the intentional tort claim(s), if any, Blake has against Alex.**
- 3. Discuss the tort claim(s), if any, Blake has against Pub for the fall.**

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Over the next few months, Blake’s back injury continues to get worse, Blake has back surgery, and medical bills mount as a result of the surgery. Blake sued Pub in the Delaware Superior Court. *Blake v. Pub* went to a jury trial.

**For questions 4, 5, and 6, assume the jury rendered a verdict that apportioned a percentage of negligence to each party. Blake sought \$100 in compensatory damages. For each potential split negligence verdict below, identify: a) if Blake is able to recover damages as a result, and, if so, why recovery is allowed, and b) how much Blake will recover. Do not discuss any facts of the case.**

- 4. Blake 60% negligent and Pub 40% negligent.**
- 5. Blake 50% negligent and Pub 50% negligent.**
- 6. Blake 40% negligent and Pub 60% negligent.**

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While Blake was playing darts with Alex, Blake’s friend Erica was at Blake’s house watching Blake’s dog, Chewy, as an unpaid favor. Chewy has a propensity for biting and had bitten strangers in the past, but Blake never told Erica.

To pass the time, Erica throws a ball for Chewy to fetch. Chewy drops the ball at Erica's feet and she bends down to pick it up. As Erica is reaching down, Chewy growls and bites Erica's hand, seriously hurting her and drawing blood. Erica's hand suffers permanent damage. Erica, upset at being bitten, runs through Blake's house looking for towels. Although Blake's home appears to be in excellent condition, Erica steps on a loose floorboard, trips on it, and breaks a kneecap in the process. While on the floor, Erica notices the corner of the floorboard had some clear tape that had held it in place. Erica hobbles out the front door to seek medical attention. In the front yard, Erica sees, for the first time, a small sign that says "Beware! Guard dog on duty."

As a result of the bite and floorboard incident, Erica had to permanently give up playing tennis at the local university and never walks without pain for the rest of her life. Even if Erica had not been injured, Erica was not talented enough to have ever made money playing professional tennis.

**For each claim discussed in questions 7 and 8 identify: (a) the claim, (b) its elements, (c) any facts in support of the claim, (d) any facts that undermine the claim, (e) any defenses that might exist, and (f) damages.**

**7. Discuss the tort claim(s), if any, Erica has against Blake for Chewy's conduct.**



- 8. Discuss the tort claim(s), if any, Erica has against Blake for the loose floorboard.**
- 9. Assume Erica suffers the same injuries, but was a stranger burglarizing the house, rather than Blake's dog-watcher. Explain how that affects the analysis, if at all, as to any of Erica's claim(s) against Blake involving: (a) Chewy or (b) the floorboard. For Q9, do not discuss specific types of damages.**

## QUESTION 7

Corporation, Inc. (“Corporation”) is a Delaware corporation. It has 100,000 shares of common stock properly authorized and outstanding. It does not have any authorized preferred stock. Its certificate of incorporation only provides for common stock. The certificate of incorporation also provides that Corporation’s board of directors (the “Board”) will be composed of four directors.

Alex offered to invest \$500,000 as preferred stock. Alex proposes the following terms for the preferred stock: (i) the holders of the preferred stock would have the power to elect three of the four members of Corporation’s Board, (ii) the preferred shares each cast 10 votes (compared to one vote per share of common stock), (iii) Corporation shall pay a dividend of \$1 per share of preferred stock each year unless legally prohibited from doing so, and (iv) the preferred shares shall be redeemed at 10 times their face value upon dissolution of Corporation or distribution of its assets. At a duly noticed meeting, the Board deliberates and determines that Alex’s proposed terms are acceptable in exchange for the proposed investment of \$500,000.

- 1(a). Are Alex’s proposed terms for the preferred stock permitted under the Delaware General Corporation Law? Explain why or why not.**
- 1(b). Assume for purposes of this question that each of Alex’s proposed terms is valid. Identify each action that would need to be taken to**

**create the preferred stock and give it the terms that Alex proposed, including who would take such actions.**

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Assume Alex and Corporation do not reach an agreement on Alex's proposed investment and the investment does not occur. Alex launches a hostile tender offer to buy 60% of the outstanding common stock of Corporation (60,000 shares) for \$18 per share. The directors are worried about Alex's hostile tender offer for three reasons: (1) the price of Alex's tender offer is at least \$2 per share lower than they believe Corporation's shares to be worth; (2) the directors will lose their directorships if Alex succeeds in acquiring a majority of Corporation's shares; and (3) Alex will destroy Corporation, harming the remaining stockholders. After an intensive meeting with expert advisors and attorneys, and considering how other similarly situated companies handled hostile tender offers, the Board adopts a poison pill to prevent Alex from acquiring a controlling stake in Corporation (the "Pill").

Alex believes the Pill was designed solely to entrench the Board and that its adoption was a breach of the directors' duty of loyalty. Alex asserts a proper derivative claim in the Court of Chancery against Corporation's directors seeking injunctive relief invalidating the Pill (the "Litigation"). Assume that demand is futile.

**2(a). What standard of review will the Court apply to the Board's adoption of the Pill, and why? Explain your answer.**

**2(b). What will the directors need to prove for the Court to uphold the adoption of the Pill?**

**2(c). How will the Court rule, and why? Explain your answer.**

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Diane was a director of Corporation when the Board approved the Pill. She resigned as a director shortly after the Pill was adopted, and she is a defendant in the Litigation. Corporation's certificate of incorporation includes an indemnification provision that copies the text of 8 *Del. C.* §§ 145(a) and (b). Neither Corporation's certificate of incorporation, Corporation's bylaws, nor any contract between Corporation and Diane includes any other terms different from 8 *Del. C.* §§ 145(a) and (b). After the Litigation was filed and while it was still pending, Diane sent a letter to Corporation stating in its entirety, "I demand Corporation advance my attorneys' fees and expenses incurred in connection with the Litigation." Corporation refused to advance Diane's attorneys' fees and expenses. Diane filed an action in Delaware Superior Court to enforce her right to advancement.

**3(a). Was the advancement action filed in the correct court? Explain your answer.**

**3(b). Assume the advancement action was filed in the correct court. Explain why Corporation is likely to succeed in the advancement action.**

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Ed and Fran are Corporation stockholders. Ed gives Fran a voting proxy to vote his Corporation shares for the next five years. The voting proxy is written on a cocktail napkin, and states, “Fran can vote Ed’s shares of Corporation stock for the next five years,” followed by Ed’s signature and the date he signed it. Ed calls Fran one month later and tells her he is revoking the voting proxy.

**4(a). Is the voting proxy effective? Explain your answer.**

**4(b). Is Ed’s revocation of the voting proxy effective? Explain your answer.**

## QUESTION 8

Defendant and Friend, two 21-year old students, are drinking alcohol one night. Defendant asks Friend if she wants to break into their old high school to steal some electronics. Friend declines. Undeterred, Defendant grabs a crowbar and hammer to help get into the school. She gets into her car and drives toward the high school.

Feeling the effects of alcohol (and with a blood alcohol concentration of 0.15), Defendant fails to see Pedestrian who was legally crossing the road, even though the area was well lit, and Pedestrian was carrying a lighted flashlight. Defendant hits Pedestrian and drives away without checking on him. Pedestrian survives the collision, though he spends a week in the hospital recovering from broken bones and internal injuries.

Defendant arrives at the school and exits her car with the crowbar and hammer. As she approaches the back entrance, Janitor appears and asks what she is doing. Startled, Defendant shouts, "Give me your keys to the school now, or I'll beat you with this hammer!" Defendant raises the hammer above her head as if preparing to swing it at Janitor. At the same time, she lunges forward and grabs the keys off Janitor's belt. Too drunk to maintain her grip, Defendant loses control of the hammer and it slips and hits Janitor in the head, killing him instantly.

Defendant picks up the hammer, uses her shirt to wipe any fingerprints from it, and hides it in a bush next to the door. The door to the school is unlocked and Defendant does not need to use the keys to get inside. Once inside the school, Defendant uses the crowbar to pry open a classroom door, enters the classroom, and grabs two laptop computers.

Suddenly, uniformed police officers appear and yell “Stop! Police!” Defendant runs out of the school and into a nearby neighborhood. After a short chase, Defendant is apprehended by the police.

**1. Identify and discuss, by reference to the elements, each Delaware crime that Defendant could be charged with. If a crime is divided into degrees, specify and discuss the appropriate degree. Assume all conduct occurred in Delaware.**

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The police officers put Defendant in handcuffs and take her to a local police station. A police officer reads Defendant her *Miranda* rights. Defendant’s lawyer, though not specifically retained for this case, learns of Defendant’s arrest and rushes to meet her at the police station. Defendant’s lawyer tells the police not to speak to Defendant without counsel present. Although the lawyer arrives at the station prior to Defendant waiving her rights, the police do not tell Defendant that he is there and

they prevent the lawyer from seeing Defendant. At the outset of questioning by the police, Defendant agrees to talk and tells the police officers everything. If Defendant had known that her lawyer was at the station, she would not have talked to the police without first talking with her counsel.

**2. Assume Defendant’s lawyer files a motion to suppress her confession. What factors should the Court consider in ruling on the motion? How should the Court rule? Explain your answer.**

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**For purposes of answering Question 3, assume that Defendant does not have a lawyer, and no lawyer has attempted to reach her at the police station.**

After police officers read Defendant her *Miranda* rights, she responds “This isn’t my first arrest, I know what my rights are,” and she agrees to speak with the police officers without counsel present. During questioning, the officers ask Defendant if she has a phone in her possession. Defendant confirms that she does. The officers ask Defendant for her phone and the code to unlock it. Defendant hands the phone to the officers. She provides the unlock code, but only because she thinks



she is legally required to do so and cannot refuse. The officers immediately unlock Defendant's phone and find proof of separate and unrelated crimes.

**3. Assume Defendant's lawyer moves to suppress the seizure of her phone and the subsequent search of her phone without a warrant. What factors should the Court consider in assessing the seizure of the phone? What factors should the Court consider in assessing the warrantless search of the phone? How should the court rule on the motions? Explain your answer.**

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Assume for question 4 that Janitor was well known and well respected in the county. He was a volunteer firefighter, he once saved a child from getting hit by a car, and he was twice named "Citizen of the Year" by the county. As a result, both Janitor's death and Defendant's alleged involvement were heavily covered by the local county paper and the county news stations. In addition, Janitor's funeral was well attended, including by prominent politicians, and the funeral service was broadcast on a local radio station. Worried that Defendant cannot obtain a fair and impartial trial in this county, Defendant's lawyer files a motion to transfer venue.

**4. What factors should the Court consider in ruling on the motion to transfer venue? How should the Court rule? Explain your answer.**