

Applicant Number

**BOARD OF BAR EXAMINERS**

**OF THE DELAWARE SUPREME COURT**

**2022 BAR EXAMINATION**

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## QUESTION #1

Isaac plays in an adult ice hockey league and has played organized hockey, an inherently physical sport, for over ten years. While driving to a morning ice hockey game, Isaac prepared to make a right turn onto another road. Isaac applied his brakes in anticipation of the turn, but his rear brake lights and turn signal were not working at the time.

Tabitha was driving her car directly behind Isaac. While driving, Tabitha was texting and did not see Isaac slowing down at the intersection. Tabitha's car collided with the back of Isaac's car causing \$25,000.00 worth of damage to Isaac's car, which was declared totaled. During the collision, Isaac hit his head on the steering wheel of his car. Tabitha's car also suffered \$30,000.00 in damages.

Emergency medical personnel arrived on the scene and recommended Isaac be treated for his concussion-like symptoms. Isaac declined further treatment.

Assume all events occur in Delaware, that Delaware law applies, and that the applicable Delaware statute provides as follows:

*“No person shall drive a motor vehicle on any highway while using an electronic communication device while such motor vehicle is in motion.”*

**For purposes of Parts 1(a) and 1(b), do not discuss any penalties or would-be violations of any laws or statutes by Isaac.**

**1(a). What cause(s) of action, if any, can Isaac assert against Tabitha? Identify each cause of action, the elements for each cause of action, and the burden of proof for each cause of action.**

**1(b). What defenses and/or counterclaims, if any, can Tabitha assert against Isaac? Identify each defense and/or counterclaim, the elements for each defense and/or counterclaim, and the burden of proof for each defense and/or counterclaim.**

**2. For purposes of damages, what impact, if any, will it have on Isaac’s ability to recover damages if he is found to be 50% at fault? Explain your answer.**

\* \* \*

After declining further medical treatment for his concussion-like symptoms from the car accident with Tabitha, Isaac went to his hockey

game. While playing in the game, Isaac had a physical altercation with Charlie, a player on the opposing team. Upset about a bad referee call, Isaac pushed Charlie and then skated to the opposite end of the rink. On his way to the other end of the rink, Isaac looked over his shoulder and saw Charlie barreling down the rink at him with his hockey stick raised above his head. Isaac immediately put his own hockey stick up in a defensive position out of fear that Charlie would hit him with his hockey stick. Charlie struck Isaac on the head with his hockey stick, knocking Isaac to the ice. Isaac was knocked unconscious and taken by ambulance to the nearest hospital where he was diagnosed with a concussion, brain bleed, and loss of vision in one eye.

**3(a). What cause(s) of action, if any, can Isaac assert against Charlie? Identify each cause of action, the elements for each cause of action, and the burden of proof for each cause of action.**

**3(b). Charlie wants to argue self-defense and assumption of the risk in response to Isaac's claims. What would Charlie have to show in order to prevail? Explain your answer.**

\* \* \*

Isaac's girlfriend, Gabby, was in the stands during the game. Gabby watched in horror as Charlie attacked Isaac with the hockey stick. Gabby suffered a panic attack, passed out, and chipped her tooth on the cement floor.

**4. What cause(s) of action, if any, can Gabby assert against Charlie? Identify each cause of action, the elements for each cause of action, and the burden of proof for each cause of action.**

\* \* \*

## QUESTION #2

Alex and Bill want to buy an undeveloped parcel of real property in Delaware from Sam. Alex and Bill draft a written contract which identifies the property, states the purchase price, and sets a closing date of thirty days from the date the last party signs the contract. Alex, Bill, and Sam all sign the contract on the same day. Ten days later, Sam signs a written contract to sell the property for a higher price to Fiona. Thereafter, Alex and Bill learn about Sam's contract with Fiona.

**If Alex and Bill file a lawsuit in the Court of Chancery to enforce their real estate contract to purchase the property:**

**1(a). What remedy should Alex and Bill seek? What will they have to prove? What burden of proof will apply?**

**1(b). What steps should Alex and Bill take to ensure the property's title is bound by the outcome of their lawsuit?**

\* \* \*

Assume that Sam signed a written contract only with Alex and Bill (and not with Fiona). In connection with their purchase of the property from Sam, Alex and Bill want to take title to the property in such a way

that ensures, if one of them dies, the other will inherit the other's ownership interest without going through the probate process with the Register of Wills.

**2(a). What is that form of ownership called?**

**2(b). What specific language must be included in the deed to take title in that form of ownership?**

**2(c). What unities must be present to take title in that form of ownership? Explain each unity.**

**2(d). If the specific language is not included in the deed or the unities are not present, in what form of ownership will Alex and Bill own the property? Explain your answer.**

\* \* \*

Assume that Sam signed a written contract only with Alex and Bill (and not with Fiona). In connection with their purchase of the property from Sam, Alex and Bill need to finance the purchase price. Sam agrees to provide a loan to Alex and Bill in order for them to purchase the property. Sam wants to secure his loan with a purchase money mortgage



on the property. Alex and Bill buy the property from Sam using the funds of the loan from Sam.

The deed conveying the property is properly recorded, but the purchase money mortgage is not recorded that day.

Twelve years before the date the deed was recorded, Lender obtains a valid judgment against Alex and Bill. Lender has taken no action regarding its judgment since the day the judgment was entered in the court records. In addition, after the deed conveying the property was recorded and before the purchase money mortgage is recorded, Creditor obtains a valid judgment against Alex and Bill. Both judgments were entered in in the Superior Court records in the county where the property is located and have not been paid.

**Explain the rules for priority of the liens on the property and the priority of the liens, if:**

**3(a). The purchase money mortgage is recorded three days after the deed is recorded.**

**3(b). The purchase money mortgage is recorded fifteen days after the deed is recorded.**

\* \* \*

Alex and Bill purchase the property from Sam. After several years of owning the property, Alex and Bill have developed the property to include a house. Bill wants to sell the property, but Alex wants to keep the property. They cannot agree on what to do with the property, and Bill no longer wants to own the property with Alex.

**4(a). What action can Bill file in court to force the sale of property? Include in your answer, the Delaware state court in which Bill should file his lawsuit, the cause(s) of action he should pursue, and the legal basis for any cause(s) of action.**

**4(b). Assuming Bill prevails, what relief could the court grant related to the property? Explain your answer.**

\* \* \*

### **QUESTION #3**

Corporation 1 is a publicly traded Delaware corporation listed on the New York Stock Exchange. Corporation 1 has directors that serve one-year terms and does not have a classified board. Corporation 1 held its last annual meeting of stockholders on January 1, 2021. It is now April 1, 2022 and Corporation 1 has not held another annual stockholders meeting, and has not designated a date for an annual stockholders meeting. Sam is the beneficial owner of two shares of Corporation 1, and wants to nominate directors for election to Corporation 1's board.

**1. Does Sam have a basis to seek a court order compelling Corporation 1 to hold an annual stockholders' meeting? Explain your answer.**

\* \* \*

Corporation 1's shares are currently trading for \$100 per share. Corporation 2 is a private corporation with 100,000 stockholders. Corporation 2 and Corporation 1 enter into a merger agreement wherein Corporation 2 will acquire all outstanding shares of Corporation 1 in

exchange for two shares of Corporation 2 for each share of Corporation 1 (the “Merger”).

In the proxy statement mailed to Corporation 1’s stockholders in connection with the vote on the Merger, Corporation 1 discloses that its financial advisor (“Bank”) valued Corporation 2’s shares at \$52 per share. Corporation 1 also discloses that Bank will be paid \$1 million for issuing an opinion to Corporation 1’s board of directors that the Merger is fair, from a financial point of view, to Corporation 1’s stockholders, and that, in the past two years, Bank has earned fees of approximately \$25 million doing work for Corporation 2. Corporation 1 also disclosed in the proxy statement that, during the time Corporation 1 and Corporation 2 were negotiating the Merger, Corporation 1’s chief executive officer (“CEO”) engaged in negotiations with Corporation 2 to remain CEO of the company after the Merger for an annual salary of \$5 million per year, and did not disclose those negotiations to Corporation 1’s board of directors until after the merger agreement was signed.

Corporation 1’s stockholder vote to approve the Merger is set for June 1, 2022.

Prior to Corporation 1's stockholder vote on the Merger, Sam decides to inspect the books and records of Corporation 1 relating to the proposed Merger. The stated purpose for her inspection is to investigate potential mismanagement by Corporation 1's board of directors and officers in connection with the Merger, and also to value her shares to determine whether to seek appraisal in connection with the Merger. Sam has her lawyer send a letter to Corporation 1's board of directors seeking to inspect Corporation 1's books and records.

**2. Without discussing proper purpose or the scope of inspection, what must the letter from Sam's lawyers demanding to inspect the books and records contain and attach to satisfy the requirements of Delaware law?**

**3. Has Sam stated a proper purpose for inspecting the books and records of Corporation 1? Explain your answer.**

\* \* \*

Corporation 1 produces books and records to Sam's lawyers for inspection. After inspecting the books and records, Sam decides she will vote against the Merger and she wants to seek an appraisal of the fair value

of her shares in Corporation 1 if the Merger is approved at Corporation 1's stockholder meeting to vote to approve the Merger on June 1, 2022.

**4. Is Sam entitled to seek appraisal of her shares in Corporation 1? Explain your answer.**

**5. What must Corporation 1 do to notify its stockholders if they are entitled to appraisal?**

\* \* \*

Assume Sam is entitled to seek appraisal of her shares in Corporation 1.

**6(a). What must she do to perfect her appraisal rights?**

**6(b). After perfecting her appraisal rights, what must she do to obtain appraisal and when must she do it?**

**6(c). Who bears the burden of demonstrating that Sam has complied with the procedures for seeking appraisal?**

**6(d). What is the burden of proof in an appraisal proceeding?**

\* \* \*

Before the Merger with Corporation 2, Corporation 1's board of directors determines that Corporation 1's Certificate of Incorporation

should be amended to include a provision requiring that any stockholder class or derivative action relating to the internal affairs of Corporation 1 must be brought in the Delaware Court of Chancery.

**7(a). What steps are required to amend Corporation 1's Certificate of Incorporation?**

**7(b). Would a Certificate of Incorporation provision such as the one Corporation 1's board of directors is proposing be valid under Delaware law?**

**7(c). Is there any other corporate governing document other than the Certificate of Incorporation in which the board of directors could validly include such a provision, and if so, would a vote of Corporation 1's stockholders be required to adopt such a provision?**

\* \* \*

In addition, Corporation 1's board of directors also adopted a bylaw, which Corporation 1's stockholders voted to approve, providing that Corporation 1's stockholder(s) would be liable for all of Corporation 1's attorneys' fees and expenses in the event such stockholder(s) brought and lost an internal affairs claim against Corporation 1.

**8. Is the above bylaw provision valid under Delaware law?**

\* \* \*

Assume for purposes of Parts 9 and 10 below that Corporation 2 owned 55% of the outstanding stock eligible to vote in Corporation 1 and is entitled to nominate three directors out of Corporation 1's five-member board of directors.

**9. Is Corporation 2 the controlling stockholder of Corporation 1? Why, or why not?**

\* \* \*

Assume for purposes of this Part that Corporation 2 is the controlling stockholder of Corporation 1 and that Sam has standing.

**10(a). What is the default standard of review that the court would apply in a stockholder lawsuit challenging the decision of the board of directors of Corporation 1 to enter into the Merger with Corporation 2?**

**10(b). What are the elements of that standard of review, and who has the burden of proof to establish the elements of that default standard of review?**



#### QUESTION #4

Dave and Wendy have been married for ten years and live together in Dover, Delaware. Dave has been seeing a therapist for some time to assist him with his relationship woes. Dave's best friend, Vinny, also lives in Dover.

Dave and Vinny frequently watch football together on Sunday nights at the bar. They plan to get together on Halloween night, which is a Sunday, to watch football. A week before Halloween, Dave finds out that Wendy and Vinny are having an affair. Dave tells his friend Fred, "I'm so upset that Vinny and Wendy are having an affair. I told my therapist that I am going to confront Vinny on Halloween after the football game and finally have it out with him. Don't tell anyone else, only you and my therapist know."

As planned, Dave and Vinny get together on Halloween night to watch the game together at the bar. While watching the game, they chat with Bartender. Once the game is over, Dave and Vinny exit the bar. As part of Bartender's nightly responsibilities, he organizes the day's credit card receipts. While doing so, he hears gunshots outside. Bartender runs

outside and sees Vinny on the ground bleeding from the chest. Other patrons are standing around Vinny, but Dave is not present.

Bartender leans down next to Vinny. Vinny says, “I can’t believe Dave shot me, he’s my best friend.” Bartender calls 911. Five minutes later, Officer and paramedics arrive. Sadly, Vinny does not make it. As Officer is investigating the scene, he locates a vintage revolver on the ground near Vinny’s body.

Dave is located at home hours later and arrested for the murder of Vinny. Months later, Dave and his attorney are preparing for trial. Dave offers to plead guilty in exchange for a twenty-year sentence, but the State declines the offer. Trial proceeds in the Delaware Superior Court. Dave’s attorney, in his opening statement, states that that Dave has an alibi and was not with Vinny on the night of the murder.

When trial begins, the State calls Bartender to the stand.

**1(a). While preparing for trial, the State properly subpoenas the bar’s credit card records for the night Vinny was shot. In response to the subpoena, the State receives a receipt showing that Dave’s credit card was used to purchase drinks that evening. The State**

wishes to introduce Dave's credit card receipt from the night of the shooting as proof that he was present at the bar on that night. Dave's attorney objects on the grounds that the receipt is hearsay. What foundation must the State present to overcome this objection?

1(b). Bartender testifies that Vinny said, "I can't believe Dave shot me, he's my best friend." The defense objects on the grounds that Bartender's testimony is hearsay. How should the court rule on the defense's objection and why? If any of the hearsay exceptions apply, describe how each exception applies.

1(c). Bartender also testifies that Dave and Vinny came into the bar every Sunday night to watch football together, as evidence that Dave was present at the bar on that night. The defense objects to the relevance of Bartender's testimony. How should the court rule on the objection, and why?

1(d). The State asks Bartender to describe Dave's demeanor and appearance before he and Vinny left the bar on the night of the shooting. Bartender testifies that Dave smelled of alcohol and

**appeared to be very angry. Is Bartender's testimony admissible regarding Dave's demeanor and odor of alcohol? Why, or why not?**

**\* \* \***

The defense calls Dave's friend, Fred, to testify as a witness for the defense.

**2. During Fred's direct examination, the defense asks the following question, "Isn't it true that you and Dave were trick-or-treating with your kids on Halloween night?" The State objects to this question. How should the court rule, and why?**

**3. The State also knows that five years ago, Fred was convicted of the crime of "Perjury." Discuss how the State can seek to enter this prior conviction into evidence and why the State will or will not be successful.**

**4. The State calls Fred in rebuttal to testify about his conversation with Dave regarding Wendy's affair with Vinny. Is this statement hearsay? Why, or why not?**

**5. Assume that Fred's testimony regarding Dave's knowledge of Wendy's affair is admitted. The State calls Dave's**

therapist as a witness and asks the therapist questions to corroborate Dave's statement to Fred. The defense objects on the grounds of privilege. What should the defense argue in support of their objection? What should the State argue in response to the objection?

6. Dave takes the stand and denies murdering Vinny. The State, during cross-examination, asks Dave, "Didn't you offer to plead guilty before trial?" The defense objects to this question as improper. How should the court rule, and why?

7. The State learns that Wendy had another affair before her affair with Vinny. When Dave learned of the affair, he approached the other man, displayed a vintage revolver of the same kind found near Vinny's body, and stated, "If you touch my wife again, I'll kill you." The State wants to admit this evidence on cross-examination. How should the court rule, and why?

\* \* \*

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## QUESTION #5

The State of Delaware (“Delaware”) enacts a statute restricting comic book sales (“Statute”). Delaware claims it needs the Statute to improve literacy and combat violence.

State Senator (“Senator”) sponsored the Statute. Besides serving in Delaware’s state legislature (the “General Assembly”), Senator works as a high school math teacher. Senator believes that reading comic books diminishes literacy among Delaware’s youth and that the rising popularity of comic books is linked to higher rates of illiteracy and violence. Senator admits that these beliefs are based on his “gut” and experience as an educator.

In connection with passing the Statute, the General Assembly considered Senator’s beliefs and certain statistics. Those statistics included: (1) a 50% increase over the past five years in comic book purchases by individuals under the age of twenty-one; (2) a 10% decrease over the past five years in the number of high school seniors who are considered literate; and (3) a 25% increase over the past five years in the

number of violent acts committed by individuals under the age of twenty-one wearing capes who claim to be “cleaning up the streets.”

The General Assembly also considered the testimony of a professor from an accredited university. That professor confirmed that, while not conclusive, it is reasonable to believe that some relationship exists between an increase in comic book purchases, on the one hand, and a rise in illiteracy and violence, on the other hand. The General Assembly considered no evidence other than what is discussed above.

Plaintiff sues the Delaware official responsible for enforcing the Statute (“Defendant”) in federal court in Delaware challenging the lawfulness of the Statute under the Fourteenth Amendment to the United States Constitution (the “Fourteenth Amendment”). Plaintiff claims the Statute violates: (1) the Equal Protection Clause of the Fourteenth Amendment (the “Equal Protection Clause”); and (2) his substantive due process rights under the Due Process Clause of the Fourteenth Amendment (“Substantive Due Process”).

Your responses should not discuss free speech or any issue relating to the First Amendment to the United States Constitution. Your responses



also should not discuss any of the decisions of the United States Supreme Court issued during the 2021-2022 Term.

Assume Plaintiff has standing.

**1. Identify each standard of review that a court might apply when evaluating whether the Statute violates the Equal Protection Clause or Substantive Due Process.**

**2. Identify the circumstances under which each standard of review applies.**

**3. Identify the party with the burden of satisfying each standard of review.**

**4. Explain what is required for a challenged government act to be constitutional under each standard of review.**

\* \* \*

For the purposes of Parts 5 and 6, assume the Statute prohibits all comic book sellers (including individual persons, regardless of race, gender, or any other classification) from selling comic books to anyone under the age of twenty-one (regardless of the buyer's race, gender, or any

other classification). Also assume that the court has determined that the Statute does not infringe on a fundamental right.

**5. What standard of review should the court apply in evaluating whether the Statute violates the Equal Protection Clause?**

**Explain your answer.**

**6. Does the Statute violate the Equal Protection Clause?**

**Explain your answer.**

\* \* \*

For the purposes of Parts 7 and 8, assume that the Statute prohibits all comic book sales to all individuals in Delaware, that the Statute has prevented Plaintiff from buying a comic book, and that the court has determined that the Statute infringes on Plaintiff's "right to privacy."

**7. What standard of review should the court apply in evaluating whether the Statute violates Substantive Due Process?**

**Explain your answer.**

**8. Does the Statute violate Substantive Due Process? Explain your answer.**

\* \* \*

After Defendant answers Plaintiff's complaint, Plaintiff does nothing in the lawsuit for over one year. Defendant moves to dismiss for failure to prosecute and the court schedules a hearing (the "Hearing"). At the court's direction, Defendant serves Plaintiff with a letter (the "Letter") identifying the date and time of the Hearing. The Letter also states that Plaintiff will be provided with sufficient time during the Hearing to present his arguments and warns that the lawsuit will be dismissed if Plaintiff does not appear.

The Letter is hand-delivered to Plaintiff fourteen days before the Hearing, but Plaintiff does not appear for the Hearing, and the court dismisses the lawsuit. Plaintiff files a motion ("Plaintiff's Motion") claiming the court violated his right to Procedural Due Process by dismissing the lawsuit.

**9. How should the court rule on Plaintiff's Motion? Explain your answer. For purposes of Part 9, assume that all actions taken by Defendant were through counsel and directed to Plaintiff's counsel so that there are no ethical issues that need to be addressed.**

\* \* \*

## QUESTION #6

Defendant is speeding on the highway. Officer is traveling next to Defendant and recognizes him from a prior felony conviction. Officer follows Defendant and observes him failing to signal before exiting the highway.

Officer observes Defendant drive 30 miles per hour in a 25 mile an hour zone. Defendant enters his garage, shutting the door behind him. Officer follows, parks his car, and races to the front door of Defendant's house. The front door is closed but unlocked. Officer runs inside, searching for Defendant. On the kitchen table, Officer sees a white powdery substance in a plastic bag that he suspects is cocaine next to smaller bags and a digital scale. Also, on the table is \$1,000 in cash. The white powdery substance later tests positive for cocaine. Next to the cocaine and cash, Officer sees an unloaded shotgun. Officer knows that Defendant is a convicted felon from his last arrest. Officer finds Defendant hiding in a closet and Defendant is taken into custody immediately. Officer calls for backup to collect the cocaine, cash and the unloaded shotgun.

At the police station, Defendant is placed in a locked room. Officer enters and immediately says, “Why don’t you help yourself out and tell me what’s going on?” Defendant provides a full confession and tells Officer he is selling cocaine and uses the gun for protection for his drugs. Additionally, Defendant begins to cry and says he is terrified of Officer, and he wants to tell him the truth—he ran into a local convenience store on New Year’s Day with a fake gun, demanded the cash from the register, and the clerk handed over \$100. Defendant also confessed to shouting obscenities at people in the parking lot of the convenience store as he left. Officer cannot find any record of 911 calls from the convenience store or any other reports of such a crime on New Year’s Day.

**1. Identify all possible crimes that may be charged based upon the 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.**

**2. Defendant’s attorney files a motion to suppress the items found during Officer’s search of Defendant’s home. Discuss the**

**applicable legal doctrines the court may consider in deciding the motion to suppress.**

**3. Defendant's attorney also files a motion to suppress Defendant's statement. Discuss the applicable legal doctrines the court may consider in deciding the motion to suppress.**

**4. Defendant's attorney moves to dismiss any charges related to Defendant's conduct on New Year's Day. Discuss the applicable legal doctrine.**

\* \* \*

While the case against Defendant is pending, the police audit the evidence locker. The evidence envelope for Defendant's case, which contained the \$1,000 in cash, now has only \$500 in it. Everyone who came in contact with the evidence envelope is interviewed. Officer admits to taking \$500 from the evidence envelope to pay for a vacation and offers to pay it back immediately. The Prosecutor assigned to Defendant's case heard a rumor Officer was placed on administrative leave because of this incident. Defendant's trial is rapidly approaching.

**5. With these new facts, what additional crimes, if any, could the Prosecutor consider charging and against whom? 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.***

**6. With these new facts, what, if any, motions related to Due Process could Defendant file?**

\* \* \*

## QUESTION #7

Penny falls off a ladder while cleaning the windows on her house in Kent County, Delaware, injuring her knee. Following the accident, Penny seeks medical assistance from Defendant, a medical doctor who lives and works in New Castle County, Delaware. Following X-rays and other testing, Defendant informs Penny that her knee does not require surgery or further treatment. He tells Penny to rest and take over-the-counter, non-prescription pain medication.

Penny continues to have chronic pain in her knee and must use a cane to walk. Several months later, Penny seeks an opinion from another doctor, Betty, who tells her that if Defendant had operated on her knee at the time of the injury, Penny would have minimal pain in her knee and would be able to walk without assistance. Because her knee has healed incorrectly, operating on her knee now will be much more difficult and require a longer recovery.

Penny wants to bring a claim of medical malpractice against Defendant seeking damages of \$250,000.



**1. In what court(s) and in which county, should Penny file an action against Defendant? Why?**

**2. What must Penny file to commence the action? Assume that for purposes of each of the remaining questions, the action is filed in Delaware Superior Court.**

**3. After the action is filed, how should service of process on Defendant be effected and when must service be effected?**

\* \* \*

The front page of the original pleading filed at the outset of the action states, "TRIAL BY JURY DEMANDED." Fifteen days after the original pleading is filed, and before any responsive pleading has been filed, Penny decides that she wants to have a twelve-person jury at trial.

**4. Is demanding a twelve-person jury at trial permissible? Why, or why not? Assuming that it is possible for Penny to demand a twelve-person jury at trial, what, if anything, must Penny do to obtain a twelve-person jury at trial?**

**5. Penny properly notices Defendant's deposition under Rule 30. At the designated time for the deposition, Defendant does not**

**show up and provides no advance warning. What relief can Penny seek? Does Penny need to meet and confer first?**

\* \* \*

In response to an interrogatory from Defendant to identify each person whom Penny expects to call as an expert witness and to provide all other information that Penny is required to disclose in connection with calling such expert, Penny discloses to Defendant that she plans to call Betty as an expert witness on knee injuries. The response to the interrogatory provided to Defendant states Betty's full name, occupation, and that Betty is an expert who will testify on knee injuries and the appropriate treatment of knee injuries.

**6. Is this a sufficient disclosure to call Betty as an expert witness? If not, what other information must be provided to Defendant to call Betty as an expert witness?**

\* \* \*

Penny proceeds to trial. After presentation of the testimony and closing arguments, the case is submitted to the jury. After deliberating, the jury returns a verdict for Defendant. Two days after trial, an article

appears in the local newspaper about Defendant, which states that Defendant's license to practice medicine in Delaware was revoked four years before he treated Penny, but he continues to practice medicine in the State of Delaware. The information regarding the status of Defendant's medical license was publicly available through Delaware's Division of Professional Regulation.

**7. Penny plans to file a motion for a new trial based on what she read about Defendant's medical license. What documents must be filed with the court, and what should Penny argue in the motion? What is the legal standard for granting the motion? What is the likely result of Penny's motion, and why?**

**8. Assume the motion for a new trial is granted. After the new trial, the jury returns a verdict for Penny. In which court(s) may Defendant file an appeal from the jury's verdict? What documents must be filed to perfect the appeal, and what is the deadline to file them?**

\* \* \*

## QUESTION #8

Anna and Barry are planning their summer wedding. Anna and Barry have seen many venues and have their hearts set on having their wedding at Cupid's Hall ("Cupid"). Anna and Barry learn that their date is available, and they start to negotiate with Cupid's Hall to host the wedding. The wedding is scheduled for June 30, 2022, and there are seventy guests. Cupid emails Anna and Barry saying it can host the wedding for \$21,000 with a \$10,000 deposit required. Anna and Barry respond to Cupid's email that their budget for the event is \$14,000. Cupid emails a contract to Anna and Barry with the following terms: (i) September 30, 2022 date; (ii) seventy guests; and (iii) price of \$21,000. Anna and Barry do not read the contract and send Cupid a deposit of \$10,000.

**1. Is there a valid contract? Explain your answer, including the elements required for a valid contract and whether or not each element has been met.**

\* \* \*

Cupid starts preparing for the wedding. Anna and Barry choose flowers, a DJ, the cake, and the food. In a phone call about the food, Anna and Barry tell Cupid they received the contract and they are excited to move forward. Cupid orders items for the wedding and hires the DJ. As the wedding approaches, Cupid requests the final payment of \$11,000. Anna and Barry tell Cupid they never agreed to pay \$21,000. Anna and Barry tell Cupid they will only pay an additional \$4,000 because they believed the contract was for a total price of \$14,000. Cupid shows Anna and Barry the unsigned contract that Cupid emailed, which stated that the total price is \$21,000. Anna and Barry insist that the contract is not valid, and they refuse to pay Cupid.

**2. Is there a valid contract? Explain your answer, including the elements required for a valid contract and whether or not each element has been met.**

\* \* \*

The parties realize the costs associated with a lawsuit and they try to settle their dispute. In an in-person meeting, Cupid offers to upgrade the food to premium selections if Anna and Barry will sign a contract for

more than \$14,000. Anna and Barry agree to pay \$17,500 for seventy guests. The parties use Cupid's earlier contract, cross out the \$21,000 price, insert \$17,500, and sign the contract. The upgrade to premium food selections is not included in the contract. Anna and Barry take out a high interest loan to pay the increased price of the contract.

As Cupid continues planning, Cupid realizes that the cost of food has increased significantly since the contract was initiated. Cupid contacts Anna and Barry and tells them that they must make their food selections from the normal menu as stated in the contract.

**3. Is Cupid's promise to provide premium food selections enforceable? Explain your answer.**

\* \* \*

Three days before the wedding Anna and Barry tell Cupid they have thirty additional guests coming to the wedding. Cupid tells Anna and Barry that the price will increase with the addition of thirty guests. Anna and Barry tell Cupid that they will cancel the contract if Cupid does not allow the thirty additional guests at no additional charge.

Cupid cancels the contract because Anna and Barry refuse to pay more money for the additional guests. Anna and Barry are forced to hire Dance Mania to have the wedding. Dance Mania normally charges \$40,000 for a wedding of this size, however they feel bad for Anna and Barry, so Dance Mania agrees to charge \$30,000. Dance Mania has two locations, East and West, which are the same price. Anna and Barry prefer the West location.

**4. What claims and defenses do Anna, Barry, and Cupid have against each other? Explain your answer.**

**5. Assuming success on their claims, what damages and remedies may be available to each of the parties.**

\* \* \*

Dance Mania quickly regrets its decision to lower the price when it realizes how high food costs have risen. On June 22, 2022, Dance Mania tells Anna and Barry it will need to increase the price slightly due to the increased cost of food. On June 29, 2022, a tornado blew through town and destroyed Dance Mania West. Dance Mania East is still standing with minimal damage and is available. Dance Mania tells Anna and Barry that

it cannot have the wedding due to the damages sustained at the Dance Mania West venue.

**6. Is Dance Mania's failure to hold Anna and Barry's wedding excused because of the tornado damage? Explain your answer.**

\* \* \*