

QUESTION #1

Woof Inc. (“Woof”) is a Delaware corporation that manufactures premium dog toys. Andy Andrews (“Andy”) founded Woof five years ago, and since then has served continuously as Woof’s Chief Executive Officer (“CEO”) and Chairman of its board of directors (“Woof Board”).

Andy has also served on the board of directors of an animal rights charity (“Charity”) for the past three years. Through his service on the Charity’s board, Andy met another member of the Charity’s board, Pippa Phillips (“Pippa”). Andy and Pippa did not know each other before joining the Charity’s board, but quickly bonded over their mutual love for animals. They meet regularly for lunch and often vacation together.

Pippa owns Preppy Paws, LLC (“Preppy Paws”), a small company that manufactures high-end clothing for dogs. After meeting Pippa, Andy invested \$1 million in Preppy Paws in exchange for a 20% membership interest.

Demand for Preppy Paws’ products has soared after being promoted by social media influencers. While Pippa is pleased with the success, she informed Andy that she wants to sell Preppy Paws and retire. Andy

believes that acquiring Preppy Paws could be very beneficial to Woof's business and tells Pippa he will discuss the potential acquisition with the Woof Board.

The Woof Board consists of seven directors, as set forth in Woof's charter ("Charter"):

- Andy, CEO and founder of Woof
- Brady Andrews ("Brady"), a professional athlete and Andy's son
- CiCi Caesar ("CiCi"), an investment banker
- Daisy Doodle ("Daisy"), Chief Financial Officer of Woof
- Eddie Edwards ("Eddie"), a former U.S. senator
- Gina Golden ("Gina"), a professor of economics at a prestigious university and Pippa's aunt
- Harvey Hound ("Harvey"), a former partner at Law Firm ("Law Firm") who retired five years earlier.

The Charter also contains a provision exculpating directors and officers to the fullest extent permitted under 8 *Del. C.* § 102(b)(7).

At a meeting of the Woof Board, Andy raises a potential acquisition of Preppy Paws. The Woof Board decides to form a special committee of disinterested and independent directors (“Committee”) to formally consider or reject an acquisition of Preppy Paws, negotiate any terms, and present a recommendation to the full Woof Board.

1. Which director(s) should not be appointed to the Committee? Explain your answer.

* * *

The Committee is established and decides to retain a legal advisor. Harvey recommends Law Firm, which Harvey explains advised a board of directors one time over five years ago in connection with a large transaction when Harvey was a partner at Law Firm. The Committee had not previously worked with Law Firm and did not consider any other potential legal advisors, but trusted Harvey’s opinion and therefore retained Law Firm.

Law Firm recommends that the Committee retain a financial advisor and suggests that the Committee interview several financial advisors

before selecting one. The Committee schedules interviews with several financial advisors over the next month.

The Committee first meets with Financial Advisor (“Financial Advisor”). Financial Advisor makes a presentation to the Committee describing its previous work in the pet supply industry and its longstanding business relationship with members of the Andrews family, including Andy and Brady, a relationship from which Financial Advisor generates significant revenue. The head of Financial Advisor also went to college with Andy. Law Firm advises that there are no conflicts that prevent the Committee from hiring Financial Advisor. The Committee is impressed with Financial Advisor’s presentation, including the substantial work Financial Advisor has performed for the Andrews family, and engages Financial Advisor without interviewing any of the other financial advisors.

Financial Advisor immediately begins due diligence of Preppy Paw’s financial status and value, as well as negotiations with Preppy Paws. Financial Advisor provides the Committee with weekly email updates. In one such email, Financial Advisor notes that the diligence

process is taking longer than expected because of the informal nature with which Preppy Paws' financial records have been maintained. Financial Advisor explains that this informality is typical of relatively new companies and not cause for concern.

A few weeks later, Financial Advisor meets with the Committee to present its final analysis of the acquisition of Preppy Paws, including a fairness opinion that discusses the value of Preppy Paws. Financial Advisor opines that, based on the financial records reviewed in due diligence, a fair purchase price of Preppy Paws is approximately \$50 million. The Committee updates the full Woof Board on Financial Advisor's fairness opinion.

The Committee authorizes Financial Advisor and Law Firm to negotiate the terms of a purchase of Preppy Paws between \$45 million and \$49 million. Financial Advisor and Law Firm negotiate a purchase of Preppy Paws for \$49 million and present the terms to the Committee. After a 5-minute meeting with Financial Advisor and Law Firm, the Committee resolves to recommend approval of the acquisition of Preppy

Paws to the full Woof Board. The next day, the full Woof Board approves Woof's acquisition of Preppy Paws.

A few months after the acquisition closes, Woof discovers that Preppy Paws is not as successful as it had appeared to be. A closer review of Preppy Paws' financial records reveals multiple errors and omissions that improperly inflated Preppy Paws' current financial records and valuation. As a result, Woof has to restate its financials and the value of its stock drops dramatically.

Scout, a stockholder of Woof, plans to file a derivative complaint against members of the Woof Board in the Delaware Court of Chancery relating to Woof's acquisition of Preppy Paws.

2. Does Scout have any meritorious claims against Law Firm and Financial Advisor? Please list the elements of any such claims.

* * *

Scout decides to move forward with filing a derivative complaint for breach of fiduciary duty against the directors who approved the transaction: Andy, Brady, CiCi, Daisy, Eddie, Gina, and Harvey (collectively, the "Defendants"). Scout does not make a demand on the

Woof Board before filing the derivative complaint. At the time Scout files the derivative complaint, the Woof Board consists of the following directors (“Demand Board”):

- Andy
- Brady
- CiCi
- Harvey
- Izzy Irwin (“Izzy”), a philanthropist
- Koda King (“Koda”), a famous actor and Andy’s brother
- Rocky Roo (“Rocky”), an accountant.

Scout’s derivative complaint alleges, among other things, that each of the Defendants breached their fiduciary duty of loyalty to Woof and its stockholders in connection with their approval of the Preppy Paws acquisition. The complaint also alleges that making a demand on the Demand Board would have been futile.

First, the Defendants are considering moving to dismiss under Court of Chancery Rule 23.1, asserting that making a demand on the Demand Board would not have been futile.

3(a). What test will the Court apply to determine whether making a demand on the Demand Board would have been futile? In your answer, identify each part of the test.

3(b). Under this test, will the Court conclude that demand on the Demand Board would have been futile?

3(c). For each of the 7 directors on the Demand Board, explain whether the Court would or would not conclude that making a demand on the director would have been futile and discuss the factors the Court would have considered in reaching that conclusion.

Second, the Defendants are considering moving to dismiss on the basis that the Company's Charter contains an exculpation provision.

4. Can the Defendants rely on the exculpation provision in the Charter to dismiss Scout's claims against them? Explain your answer.

Third, the Defendants are considering moving to dismiss based on Section 141(e) of the Delaware General Corporation Law, 8 *Del. C.* § 141(e).

5(a). What protection does Section 141(e) provide, and what are the requirements for the Defendants to avail themselves of that protection?

5(b). If any of the Defendants assert a defense under 8 *Del. C.* § 141(e), is that defense likely to succeed? Explain why or why not.

* * *

The Court denies the motion to dismiss, and the case moves forward. Woof decides to form a special litigation committee of the Woof Board (“SLC”) to investigate Scout’s claims.

6. Which directors should Woof appoint to serve on the SLC and why?

* * *

After completing its investigation, the SLC determines that litigation is not in Woof’s best interest and files a motion to dismiss Scout’s claims.

7. What test will the Court use to review the SLC's motion to dismiss? In your answer, identify the parts of the test.

* * *

Rather than briefing the SLC's motion to dismiss, Scout and the SLC agree to try mediation to resolve the matter. The mediation is successful, and Scout and the SLC reach a settlement. In connection with the settlement, Scout will dismiss the lawsuit with prejudice.

Questions 8(a)-(c) require only yes or no answers.

8(a). Is the Court required to approve the settlement and the dismissal of the derivative lawsuit?

8(b). Is Scout required to notify the other stockholders of Woof about the settlement and the dismissal of the derivative lawsuit?

8(c). Are the other stockholders of Woof required to vote to approve the settlement and the dismissal of the derivative lawsuit?

QUESTION #2

Blake and Chris plan to marry in August 2025. Blake and Chris plan to buy the Stewarts' house (the "House"). The Stewarts want to sell the House as soon as possible.

The Stewarts propose to lend Blake and Chris 20% of the sale price, secured with a mortgage on the House, with the Stewarts as mortgagees, so long as (1) Blake and Chris obtain another source of funding for the remaining balance of the sale price and (2) settlement occurs no later than October 31, 2024.

Blake's parents offer to lend Blake and Chris 75% of the sale price, secured by another mortgage on the House, with Blake's parents as the mortgagees. Blake and Chris will pay the remaining 5% of the sale price in cash.

Blake and Chris sign a contract with the Stewarts to buy the House (the "Contract"). The Contract states that "time is of the essence and settlement must occur no later than October 31, 2024."

The settlement on the sale of the House occurs on October 31, 2024, at which time Blake and Chris sign the deed as grantees (the “Executed Deed”). The Executed Deed recites, in part, that “the Grantors grant and convey to the Grantees good, marketable, fee simple title, free of all liens and encumbrances.”

Blake and Chris also sign both (1) a mortgage on the House to secure the 20% loan from the Stewarts (the “Stewarts’ Mortgage”) and (2) a mortgage on the House to secure the 75% loan advanced from Blake’s parents (the “Parents’ Mortgage”).

On November 3, 2024, the settlement attorney’s office records the Executed Deed and the Parents’ Mortgage with the Recorder of Deeds.

On November 4, 2024, the settlement attorney’s office records the Stewarts’ Mortgage with the Recorder of Deeds.

Six months after the settlement, Blake and Chris stop paying the Stewarts’ Mortgage.

1. In the event of a foreclosure on the House resulting in insufficient proceeds to pay off both the Stewarts’ Mortgage and the Parents’ Mortgage in full, which of the two mortgages will have

priority for payment? Explain your answer and specifically identify whether one or both mortgages qualify as a purchase money mortgage.

* * *

Assume that after the recording of the two mortgages, but before any foreclosure, Blake's parents and the Stewarts enter into a subordination agreement in favor of Stewarts' Mortgage, and the subordination agreement is never recorded with the Recorder of Deeds.

2(a). What is a subordination agreement?

2(b). What requirements must be met for a subordination agreement to be enforceable?

2(c). In the event of a foreclosure on the House resulting in insufficient proceeds to pay off both the Stewarts' Mortgage and the Parents' Mortgage which of the two mortgages will have priority for payment?

* * *

Before Blake and Chris' wedding, Blake falls behind on his car loan payments to Lender. After several months of non-payment, Lender sues Blake and obtains a judgment against Blake for the unpaid car loan

balance, and that judgment is reflected in the Superior Court records in the county where the House is located (the “Judgment”).

3. If Blake and Chris decide to sell the House before their wedding, will the Judgment be enforceable *in rem* on the House (a) against Blake’s interest only or (b) against Blake’s and Chris’ combined joint interests? Explain your answer.

4. If Blake and Chris had been married on the date of the Executed Deed, will the Judgment be enforceable *in rem* against the House? Explain your answer.

* * *

Five years before the Stewarts sold the House to Blake and Chris, Contractor obtained a mechanics’ lien against the House for renovations he had performed for the Stewarts while they owned the House. The lien was converted to a judgment and filed in the Mechanics’ Lien docket of the Superior Court, but Contractor never sought payment from the Stewarts or attempted to enforce the lien against the Stewarts.

The lien was listed on the title search at the settlement on the House on October 31, 2024, but Blake and Chris did not question the current

status of the lien. Nine months after the settlement, Contractor decides to enforce the mechanics' lien.

5. Is Contractor's mechanics' lien enforceable against Blake and Chris as current owners of the House? Why or why not?

6. In the event that Contractor's mechanics' lien is enforced against Blake and Chris, what recourse would Blake and Chris have against the Stewarts to recover the amount of the lien that Blake and Chris are forced to pay to Contractor?

* * *

The House's property includes a shed with large bay windows that had been in the backyard since before the Stewarts bought the House, but the Stewarts never used it. For 19 consecutive years before the Stewarts sold the House, a man named John spent his summers doing seasonal labor in Delaware. While in Delaware for those summers, John slept every night in the shed. The Stewarts caught John sleeping in the shed a few times over the years and, each time, promptly chased John away, but

John always came back. At the end of John's 20th consecutive summer sleeping in the shed, Blake and Chris discover John and chase him away.

7. What legal doctrine can John rely on to claim that he owns the shed? Specifically identify and discuss each element of that legal doctrine and explain whether John will prevail on his claim of ownership.

QUESTION #3

In the middle of the night, Suspect, wearing a ski mask, uses a crowbar to pry open the door to Victim's home. Victim is upstairs sleeping. Suspect enters the home, takes Victim's laptop and red wallet, and leaves. Neighbor sees Suspect getting into their car and attempts to confront Suspect. Suspect pulls a gun out of the glove box and points it at Neighbor. Neighbor sees the gun, is afraid, and ducks. Suspect flees in the car.

1. Identify all possible crimes with which Suspect may be charged based upon the above fact pattern. Identify the crime(s), the elements of the crime(s), and any applicable degree of crime. Do not identify lesser-included offenses.

* * *

After an anonymous tip, Officer goes to Landlord's house where Suspect rents one of two bedrooms. In addition to the bedrooms, the house consists of a common room, a kitchen, and a bathroom. Suspect is not present. Officer asks Landlord's permission to search the house.

Landlord does not mind Officer searching the house and gives permission. Officer locates Victim's laptop on the table in the common room. The door to Suspect's bedroom is open, and from the common room, Officer can see into Suspect's bedroom and sees Victim's red wallet on Suspect's bed.

2(a). What motion(s) should Suspect file to exclude the wallet from being admissible?

2(b). Discuss the applicable legal doctrines the Court may consider in deciding the motion(s).

2(c). Explain how the Court will rule on the motion(s).

* * *

Officer pulls away from the house in his police cruiser. One block away, Officer sees Suspect sitting on a swing at a nearby park. Officer, who is wearing a police uniform, walks up to Suspect and says, "Don't move. Tell me about the laptop and the wallet that I found in a boarding house." Suspect immediately responds with a confession.

3(a). What motion(s) should Suspect file to exclude the confession from being admissible?

3(b). Discuss the applicable legal doctrines the Court may consider in deciding the motion(s).

3(c). Explain how the Court will rule on the motion(s).

* * *

Suspect is indicted and is proceeding to trial. During a pre-trial interview with Neighbor, Prosecutor learns that Neighbor was convicted of misdemeanor theft, which is a crime of dishonesty, two years ago. Prosecutor tells Attorney about Neighbor's conviction. Attorney plans to question Neighbor about the misdemeanor theft conviction during trial.

4. Identify the applicable Rule of Evidence and its elements, and discuss the factors the Court will consider in determining whether to permit Suspect's Attorney to ask Neighbor about the misdemeanor theft conviction.

QUESTION #4

Manufacturer Corp. (“Manufacturer”), a Pennsylvania corporation, and Purchaser Corp. (“Purchaser”), a Delaware corporation, do business together.

In 2021, Manufacturer and Purchaser signed two contracts. One contract is an Equipment Sales Contract that governs the sale of equipment by Manufacturer to Purchaser, which requires Manufacturer to provide sufficient equipment to meet Purchaser’s demands for five years. The other contract is a Master Services Agreement that requires Manufacturer to provide certain services relating to the purchased equipment to Purchaser for ten years.

In 2022, Manufacturer intends to sue Purchaser for breach of contract due to nonpayment of fees owed under the Master Services Agreement. Manufacturer contends that it has suffered approximately \$800,000 in damages and will suffer further harm if Purchaser is not enjoined from further breaches. Manufacturer plans to assert claims for

breach of contract, declaratory judgment establishing its rights under the contract at issue, damages, and an injunction to prohibit further breaches.

1(a). Manufacturer wants to file an action in Delaware Superior Court or Delaware Court of Chancery. In which of these two courts could Manufacturer file its action to obtain all the relief it seeks? Explain the differences between Superior Court jurisdiction and Court of Chancery jurisdiction, and explain which court has jurisdiction and why.

1(b). Manufacturer decides it will not seek an injunction in its action and will instead pursue only damages and a declaratory judgment. In which of the two courts (Delaware Superior Court or Delaware Court of Chancery) could Manufacturer file its action? Explain which court has jurisdiction, which court does not have jurisdiction, and why.

* * *

Manufacturer files its action against Purchaser in the Delaware Superior Court. After being properly served with the summons and

complaint, Purchaser decides it would prefer the action be litigated in United States District Court for the District of Delaware (“District Court”).

2(a). What type of filing can Purchaser file to attempt to have the action litigated in the District Court rather than Superior Court?

2(b). When must that filing be made?

2(c). What would Purchaser be required to show for the action to be litigated in District Court?

2(d). What, if any, recourse would Manufacturer have to seek to have the action litigated in Superior Court?

Explain your answers.

* * *

The action proceeds in District Court and Purchaser files an answer to Manufacturer’s complaint without moving to dismiss the complaint. Purchaser’s lawyers believe the complaint and answer present a legal question that can be resolved solely on those pleadings, without any

factual discovery, and would dispose of the entire action if resolved by the District Court in Purchaser's favor.

3(a). What two alternative motions could Purchaser file to obtain resolution of the legal question and a judgment in its favor?

3(b). What legal standard applies to each motion?

3(c). Based on the applicable standards, which motion would be the better choice for Purchaser to pursue at this early stage of the action?

Explain your answers.

* * *

Purchaser files one of the motions discussed in Question 3 above. The District Court denies Purchaser's motion and orders the action to proceed to discovery. Purchaser wants to bring a claim that Manufacturer breached the Equipment Sales Contract because Manufacturer was unable to keep up with Purchaser's demands for Manufacturer's equipment.

4. Explain whether Purchaser's claim for breach of the Equipment Sales Contract can or must be filed as a counterclaim in

Manufacturer's action, or whether it can or must be filed as a separate action by Purchaser. Explain your answer.

5. If Purchaser does not file its claim for breach of the Equipment Sales Contract as a counterclaim in Manufacturer's action, will Purchaser be able to pursue its claim for breach of the Equipment Sales Contract in a later proceeding? Explain your answer.

After Manufacturer filed its action, Purchaser stopped making payments required under the Equipment Sales Contract. Purchaser had not been delinquent on payments until that time. Manufacturer wants to assert a new claim against Purchaser for breach of the Equipment Sales Contract in Manufacturer's pending action.

6. In order for the District Court to allow Manufacturer's new claim under the Equipment Sales Contract to be heard in Manufacturer's pending action, what standard must Manufacturer meet? Explain your answer.

7. Would Manufacturer assert its new claim in the pending action in an amended complaint or a supplemental complaint?

Explain your answer.

* * *

One year after Manufacturer and Purchaser entered into the Equipment Sales Contract and the Master Services Agreement, Purchaser and Landlord executed a Real Estate Lease Agreement requiring Landlord to rent a warehouse to store Purchaser's equipment. Manufacturer is not a party to the Real Estate Lease Agreement.

Purchaser wants to assert a claim that Landlord breached the Real Estate Lease Agreement because the warehouse had fallen into disrepair and Landlord refused to repair it.

8. Should Purchaser file its claim that Landlord breached the Real Estate Lease Agreement in Manufacturer's action? Why or why not?