

AB Company (“ABC”) is a widely held, publicly traded business entity organized under Delaware law. Five of ABC’s equity holders sit on ABC’s five-person board of directors (the “Board”).

**1. *Assuming ABC is a Delaware corporation, who is responsible for managing ABC’s business? Explain your answer.***

**2. *Assuming ABC is a Delaware limited liability company, who is responsible for managing ABC’s business if ABC’s limited liability company agreement (the “ABC LLC Agreement”) is silent on the subject? Explain your answer.***

\* \* \*

UVW, Inc. (“UVW”) and XYZ, Inc. (“XYZ”) are Delaware corporations. Neither UVW nor XYZ is affiliated with ABC in any way. No ABC Board member or equity holder has any interest in or role with UVW or XYZ, and no UVW or XYZ director or stockholder has any interest in or role with ABC.

UVW and XYZ both submit bids to acquire ABC. UVW offers to pay \$50 per share, and XYZ offers to pay \$51 per share. After thoroughly considering all relevant factors, ABC’s Board accepts UVW’s bid and

negotiates and executes an arm's-length merger agreement (the "Merger Agreement") under which UVW will acquire ABC in a merger transaction (the "Merger").

**3. *Assuming ABC is a Delaware corporation, who must approve the Merger for ABC?***

**4. *Assuming ABC is a Delaware limited liability company, who must approve the Merger for ABC if the ABC LLC Agreement is silent on the subject?***

\* \* \*

Under the Merger Agreement, ABC's equity holders will receive cash in exchange for their ABC equity and nothing else. ABC's Board members: (1) will receive Merger consideration for their equity on the same terms as ABC's other equity holders; and (2) will not receive anything of value in connection with the Merger other than Merger consideration.

The Board accepted UVW's bid, rather than XYZ's higher bid, because of terms that, when compared with XYZ's bid, provide more certainty and create less risk for ABC and its equity holders. After the

Merger Agreement is executed, all relevant information pertaining to the Merger is disclosed to ABC's equity holders (the "Disclosure"). ABC's equity holders then vote to approve the Merger Agreement (the "Vote"). Before the Vote, ABC's equity holders have a full and fair opportunity to consider the Disclosure.

After the Merger closes, an ABC equity holder ("Plaintiff") files a lawsuit in the Delaware Court of Chancery against the members of ABC's Board for accepting UVW's offer even though XYZ's bid was higher (the "Lawsuit"). In the Lawsuit, Plaintiff alleges that the members of the Board breached each type of fiduciary duty owed under Delaware law and seeks damages.

*Solely for Questions 5, 6, 7, and 8, assume that ABC is a Delaware corporation.*

**5. Identify and describe: (a) the fiduciary duties that are owed by directors of a Delaware corporation to the corporation's stockholders; and (b) the corresponding standard of conduct for each duty.**

**6. Identify and describe: (a) the three standards of review that Delaware courts use in reviewing breach of fiduciary duty claims; (b) the circumstances in which each standard of review applies; and (c) who has the burden of proof under each standard of review.**

**7. *Without taking into consideration the Disclosure or the Vote, are Plaintiff's breach of fiduciary duty claims against the members of the Board likely to succeed? Explain your answer, including what standards of review do and do not apply and why. Do not discuss waste, whether Plaintiff's claims are derivative or direct, or whether the Court of Chancery has subject matter jurisdiction over Plaintiff's claims.***

**8. *Taking the Disclosure and Vote into consideration: (a) will the business judgment rule apply; and (b) are Plaintiff's fiduciary duty claims against the members of the Board likely to succeed? Explain your answer. Do not discuss waste, whether Plaintiff's claims are derivative or direct, or whether the Court of Chancery has subject matter jurisdiction over Plaintiff's claims.***

\* \* \*

*Solely for Question 9*, assume that ABC is a Delaware limited liability company and that the ABC LLC Agreement states: (a) “ABC shall be managed by the Board”; and (b) “Under no circumstances shall any member of the Board owe any fiduciary duty to ABC or any member of ABC.”

**9. Are Plaintiff’s breach of fiduciary duty claims against the members of the Board likely to succeed? Explain your answer. Do not discuss waste, whether Plaintiff’s claims are derivative or direct, whether the Court of Chancery has subject matter jurisdiction over Plaintiff’s claims, or whether the members of the Board are liable for breaching the implied covenant of good faith and fair dealing.**

\* \* \*

The members of the Board seek advancement and indemnification from ABC in connection with being named as defendants in the Lawsuit. None of ABC’s governing documents address advancement or indemnification. The members of the Board have no separate contracts entitling them to advancement or indemnification.

**10. What are advancement and indemnification? Explain your answer.**

**11. *Assuming that ABC is a Delaware corporation*, are the members of the Board entitled to advancement or indemnification? Explain your answer, including the relevant statutory standards pertaining to advancement and indemnification, if any, and anything that must be provided by a director to obtain advancement or indemnification.**

**12. *Assuming that ABC is a Delaware limited liability company*, are the members of the Board entitled to advancement or indemnification? Explain your answer, including the relevant statutory standards pertaining to advancement or indemnification, if any.**

Jack and Ben were playing golf on the Green Acre members-only outdoor course located in Delaware. The course has no roads, and neither motor vehicles nor golf carts are allowed on it. Jack was so focused on his next shot that he did not hear the out-of-place revving of a motor vehicle's engine as it sped across the course. Ben turned around and saw a sports utility vehicle (SUV) accelerating across the grass. Ben heard a voice from the SUV shouting, "Only the trees and I should get to enjoy this course! Time to get rid of the other people!"

Driver, the only person in the vehicle, then steered the SUV at Ben and Jack and sped directly at them. At the last moment, Ben was able to get himself and Jack out of the way of the front of the vehicle. However, the SUV's side mirror hit Ben in the arm, breaking it. Ben was never able to play golf again due to his arm injury. The SUV did not hit Jack, and he was unharmed.

Driver then inadvertently ran into a large rock, disabling the vehicle. Driver, an adult, used his shirt sleeve to wipe off the vehicle's steering wheel before climbing out of the vehicle. Driver then lit a cigarette and tossed both it and a lighter into the vehicle. Jack saw all of this. The

vehicle's interior caught fire and sustained severe damage. The police later determined that Driver was not a member of Green Acre and that he had purchased the SUV from a friend for \$50. Driver's friend told Driver that the SUV was stolen when he sold it to Driver.

The State intends to charge Driver with two counts of Attempted Murder in the First Degree and other offenses.

1. (a) **In which court should the State bring the charges?**
  - (b) **What process must the State follow to bring formal charges in that court?**
  - (c) **What must the charging document contain to sufficiently allege a charge under the Rules of Criminal Procedure?**
2. (a) **List the elements of Attempted Murder in the First Degree, as applicable to this fact pattern.**
  - (b) **What evidence substantiates this crime?**
3. **What additional charges could the State bring? Identify the elements of these crimes. *Do not discuss lesser included offenses.***

\* \* \*

Jack went to help Ben and called the police. During the call, Jack described Driver and said he saw Driver throw something into the bushes while Driver ran away from the SUV. During Jack's on-scene interview, police asked whether the person sitting in the back of a nearby patrol car was Driver (i.e., the "show up"), and Jack said, "It looks like him." Police then located Driver's diary in the bushes and immediately read it without first obtaining a search warrant.

Driver's handwritten diary describes Driver's dream of having golf courses to himself so that he and the trees could enjoy them in silence. Driver believed the best way to achieve this was to kill anyone else who played golf. Following Driver's arrest, Driver's roommate, disgusted by Driver's actions and without police solicitation, brought a list to the police station. Driver's roommate told police she found the list on Driver's desk in their living room. The list was titled "Golf Courses to Target," and Green Acre was the first golf course on it.

Driver's attorney sought to suppress three pieces of evidence and filed a separate motion as to each. Those three pieces of evidence were:

(i) Jack's on-scene identification of Driver based on the police car "show

up,” (ii) the contents of the diary, and (iii) the list of “Golf Courses to Target.”

**4. For each of the three motions, identify any applicable constitutional or legal standards and apply those standards to explain why you believe each motion will either succeed or fail.**

\* \* \*

Driver is competent to stand trial and Driver’s case will proceed to a jury trial. As part of their trial strategy, Driver’s attorney anticipates pursuing a mental illness defense. Driver believes he has been communicating with trees for some time and that they encourage him to proceed with his plan so they can live in quiet and finally avoid being hit by errant golf balls.

**5. What, if any, are the procedural requirements to pursue a mental illness defense at trial?**

**6. (a) List the mental illness or other mental health defense or defenses to criminal liability, if any, provided within the Delaware Code. *Do not discuss competency to stand trial.***

**(b) What is the legal standard for each defense(s)?**

**(c) What, if any, mental illness or other mental health defense(s) can Driver pursue here?**

**(d) What, if any, is the burden of proof for the defense(s)?**

**(e) For Driver's trial, who determines whether mental illness or other mental health defenses have been established?**

\* \* \*

At the end of the trial, during the conference regarding the parties' proposed jury instructions, the judge asks the parties whether the jury should be instructed on lesser-included offenses.

**7. What is the standard for inclusion of lesser included offenses as alternate verdicts?**

**8. List the felony-level lesser-included offense or offenses available for the two counts of Attempted Murder in the First Degree. *Do not discuss the elements of the lesser-included offense or offenses.***

\* \* \*

Seller and Buyer enter into an Asset Purchase Agreement (the “APA”) pursuant to which Seller sells the assets of Grape Company to Buyer for \$1 million. Grape Company’s assets are grape-growing operations in California. The APA provides that Buyer will maintain the grape-growing operations in California for four consecutive years following the parties’ execution of the APA. Seller will earn additional compensation—an “earn-out”—as part of the sale if Grape Company’s revenue reaches a certain threshold each year for those four consecutive years following the execution of the APA, i.e., “the earn-out period.” The amount of the earn-out is calculated based on the total revenue earned each year.

The APA provides that, in any lawsuit arising out of the APA, service of process may be effected by U.S. certified mail, with return receipt required (i.e., confirmation of delivery), or by electronic mail.

Seller is a Delaware limited liability company. Buyer is a California limited liability company that does not transact business in Delaware. During the third year of the earn-out period, Seller sues Buyer in the Delaware Court of Chancery for breach of the APA because, in the second

year following execution of the APA, Buyer moved the grape-growing operations from California to Spain. Seller alleges this move to Spain has resulted in significantly decreased grape cultivation and lost revenue to the Grape Company in the second and third years of the earn-out period. Seller seeks a mandatory injunction ordering Buyer to move the grape-growing operations back to California for the remainder of the earn-out period. Alternatively, Seller seeks monetary damages to compensate it for the loss in earn-out payments for the second and third years of the earn-out period caused by the move of the operations.

**1. Identify the section of the Delaware Code Seller may use to serve a non-Delaware entity.**

**2. Identify the methods of service Seller could use to serve Buyer.**

\* \* \*

Buyer has assessed the complaint and determined that it will file a motion to dismiss under Court of Chancery Rule 12(b)(2) for lack of personal jurisdiction. Buyer will argue that it does not meet the requirements of Delaware's long arm statute and that conferring personal

jurisdiction over the Buyer would violate the due process clause of the Fourteenth Amendment.

**3. (a) Identify the acts enumerated in the long arm statute and whether Seller or its agent engaged in each act.**

**(b) Explain why conferring jurisdiction over Buyer would violate the due process clause of the Fourteenth Amendment.**

\* \* \*

For purposes of Question 4, assume the APA includes a provision requiring that any lawsuit arising out of a dispute over the terms of the APA must be brought exclusively in the courts of the State of Delaware (i.e., a forum selection clause).

**4. Does the provision requiring that a lawsuit arising out of a dispute over the terms of the APA confer personal jurisdiction over Buyer? Why or why not?**

**5. After Buyer files its motion to dismiss for lack of personal jurisdiction and opening brief, what are all of Seller's procedural options?**

\* \* \*

Along with the motion to dismiss, Seller files a motion to impanel a jury.

**6. Will the Court of Chancery grant a motion to impanel a jury? Explain your answer.**

\* \* \*

The Court of Chancery dismisses the damages aspect of the breach of contract claim for lack of subject matter jurisdiction, leaving only the request for mandatory injunctive relief. Seller intends to seek reargument.

- 7. (a) How long does Seller have to seek reargument?**
- (b) Are weekends counted in the calculation of a deadline to seek reargument? Why or why not?**
- (c) What is the standard for granting reargument?**
- (d) In its motion for reargument, can Seller raise the same arguments that it made in opposing the motion to dismiss?  
(yes/no)**
- (e) In its motion for reargument, can Seller raise new arguments that it did not make in opposing the motion to dismiss?  
(yes/no)**

\* \* \*

The Seller moves for reargument and the Court enters an Order denying Seller's motion for reargument. Seller is now contemplating seeking certification of an interlocutory appeal of the motion to dismiss decision.

**8. (a) How long does Seller have to seek certification of an interlocutory appeal following the denial of its reargument and why?**

**(b) In which court does Seller apply for certification of an interlocutory appeal?**

**(c) Which court determines if an interlocutory appeal is accepted?**

\* \* \*

Seller decides not to seek an interlocutory appeal and the parties proceed with discovery. Following discovery, the parties seek to resolve the claim for mandatory injunctive relief and have filed dispositive cross-motions for summary judgment.

**9. (a) What is the standard for summary judgment?**

**(b) Will the existence of disputed facts in the summary judgment record preclude the Court from holding that a permanent mandatory injunction should be entered? Explain why or why not.**

**10. What are the elements that Seller must satisfy to obtain a permanent mandatory injunction?**

Martin lived in Delaware with his second wife, Gina. Gina has two children from a previous marriage, Gordon and Greg. Gordon lived with Martin and Gina. Martin also had two children from a prior marriage, Michael and Morgan. Martin and their mother divorced over 30 years ago and, due to the circumstances of the divorce, Martin lost contact with Michael and Morgan.

Martin was a successful business owner. On the eve of retirement, Martin sold his company for over \$25 million and used \$10 million of the proceeds to fund an irrevocable trust for the benefit of Gordon and Greg with Trust Co., a Delaware corporate trustee, as trustee. Not long after establishing the trust, Martin was first diagnosed with dementia.

Approximately one year after Martin established the irrevocable trust, Martin's dementia was progressing rapidly, so Gina encouraged him to draft a will providing for the distribution of the remainder of his substantial estate (outside of the irrevocable trust) to Gina, Gordon, and Greg. Martin asked Gina to both draft the will and sign his name to it while they were sitting at their dining room table with two of their adult neighbors. Gina complied with Martin's request and both neighbors were

present when Gina signed Martin's name to the will, then each neighbor signed as a witness.

**1. (a) What are the statutory requirements for the valid execution of a will?**

**(b) Does the execution of Martin's will meet the statutory requirements? Explain why or why not.**

**2. (a) What are the elements of testamentary capacity to execute a valid will? List all elements.**

**(b) Does Martin's diagnosis of dementia demonstrate he lacked testamentary capacity at the time his will was executed? Apply the applicable standard to the facts above and state why or why not.**

\* \* \*

Shortly after the signing of Martin's will, Michael and Morgan learned of Martin's dementia and visited him at home one day while Gina and Gordon were not present. Martin had only fond memories of Michael and Morgan and had a lengthy conversation with them. After their conversation, Martin decided to modify the irrevocable trust he had

established for Gordon and Greg by adding a new provision that added Michael and Morgan as beneficiaries. The trust instrument did not authorize anyone to amend the trust's terms. Only Martin signed the modification and, before doing so, he confirmed that the new provision could have been included in the original trust instrument.

**3. (a) What are the requirements for the modification of an irrevocable trust by consent (sometimes referred to as a nonjudicial modification) under 12 *Del. C.* § 3342?**

**(b) Was Martin's modification of the irrevocable trust valid? Why or why not?**

**(c) In what Delaware Court(s) should Gordon and Greg file an action to challenge the trust modification?**

\* \* \*

Gordon and Greg did not learn of the trust modification until after Martin's death. Gordon and Greg suspected that, in connection with the trust modification, Michael and Morgan exerted undue influence over Martin, from whom they had been estranged for many years. As Gordon resided with Martin and Gina, he observed that Martin did not always

recognize Gina, exhibited drastic mood swings, could not remember the name of his long-time financial advisor, and appeared to forget that he had sold his business.

*For purposes of Question 4 only, assume the trust modification meets all statutory requirements.*

**4. (a) What is the standard for proving undue influence? List all the elements.**

**(b) If Gordon and Greg file a petition alleging the trust modification was the result of Michael and Morgan's undue influence, who would have the burden of proof and why? Under what circumstances would the burden shift to the other party? Would the burden shift in this case?**

**(c) Are Gordon and Greg likely to be successful in arguing the trust modification was the result of Michael and Morgan's undue influence? Identify the facts to be considered and state why or why not.**

\* \* \*

Martin's will named Gina as the executor of Martin's estate. Upon Martin's death, Gina sought to have Martin's will admitted to probate.

*For purposes of Questions 5 and 6 only, assume Martin's will was validly executed.*

**5. (a) What are the statutory requirements for a self-proving will?**

**(b) Was Martin's will self-proving?**

**(c) In the absence of a self-proving will, what are the witness requirements for having a will admitted to probate?**

*For purposes of Question 6 only, assume Martin's will has been admitted to probate and an estate has been opened.*

**6. (a) What are the deadlines for filing the Inventory and Account (without extension)?**

**(b) If a person receiving notice of the filing of the Account wants to object to the Account, what must they file and when would it have to be filed?**

\* \* \*

At Martin's funeral, Michael and Morgan approached Gina and asked how Martin's estate assets would be distributed. Gina advised Michael and Morgan that they were not named as beneficiaries in Martin's will. Michael and Morgan advised Gina that they plan to challenge Martin's will.

**7. If Michael and Morgan decide to challenge Martin's will, what is the deadline by which they must do so?**