

ABC, Inc. is a Delaware corporation (the “Company”). The Company’s certificate of incorporation fixes the number of directors on the Company’s board of directors (the “Board”) at three. The Company’s directors are Alex, Brian, and Colette. None of them are employed by the Company or owns shares of stock in the Company.

Brian has determined that he wants to resign from the Board.

1. (a) What are the ways Brian can give effective notice to the Company of his resignation under the Delaware General Corporation Law (the “DGCL”)?

Assume the notice of Brian’s resignation is effective.

(b) When will Brian’s resignation become effective under the DGCL?

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The vacancy due to Brian’s resignation is validly filled by Diane. Diane is not employed by the Company and does not own shares of stock in the Company.

After Diane joins the Board, certain of the Company's stockholders start expressing dissatisfaction with the Board's plans for the Company's direction. Specifically, a stockholder holding 30% of the Company's outstanding shares entitled to vote (the "30% Stockholder") and another stockholder holding 40% of the Company's outstanding shares entitled to vote (the "40% Stockholder," and together with the "30% Stockholder," the "70% Stockholders") believe that Colette's vision for the Company is not in the best interest of the Company and its stockholders. The 70% Stockholders would like to remove Colette from the Board. Diane agrees that Colette should be removed from the Board.

2. (a) Can Diane validly remove Colette from the Board under the DGCL? Explain why or why not.

(b) What are the two ways in which the 70% Stockholders can take action to attempt to remove Colette from the Board under the DGCL?

(c) Can the 70% Stockholders validly remove Colette from the Board under the DGCL? Explain why or why not.

* * *

While the 70% Stockholders are contemplating whether to take action to remove Colette from the Board, the Company starts withholding information from Colette that the Company is providing to Alex and Diane. Colette serves a demand on the Company under 8 *Del. C.* § 220(d), seeking books and records in her capacity as a director. The demand says Colette is seeking the books and records that the Company withheld from Colette but provided to Alex and Diane. The demand also says that Colette is seeking such books and records so she will have sufficient information to fulfil her fiduciary duties.

The Company's General Counsel mentions Colette's demand to the Company's outside counsel, who tells the General Counsel that the Company has five business days to respond to a books and records demand served by a stockholder on the Company.

3. Under the DGCL, does the Company have five business days to respond to the demand served by Colette on the Company? Explain why or why not.

* * *

The Company does not respond to the demand. Colette wants to file a lawsuit in a Delaware court to compel the Company to produce the books and records. The Company does not have offices in Delaware, and it does not have directors, officers, or employees located in Delaware.

4. (a) In what court must Colette file the books and records lawsuit and why?

Assume Colette files the books and records lawsuit against the Company in the proper court.

(b) How can Colette serve process on the Company within the State of Delaware?

(c) Which party in the books and records lawsuit has the burden of proof?

(d) Is Colette likely to succeed in her books and records lawsuit? Explain why or why not.

* * *

The 70% Stockholders decide to act to remove Colette from the Board.

Assume Colette is removed from the Board but she asserts her removal is not valid. The 70% Stockholders want to bring a lawsuit to confirm the validity of their removal of Colette. They are considering bringing a lawsuit in the Delaware Court of Chancery under 8 *Del. C.* § 225.

5. Who may bring a lawsuit under 8 *Del. C.* § 225?

* * *

The 70% Stockholders file a lawsuit against Colette under 8 *Del. C.* § 225 (the “225 Lawsuit”), and their standing to do so is not challenged. After the 225 Lawsuit is filed and while it is still pending, Colette sends a letter to the Company demanding that the Company advance her attorneys’ fees and expenses incurred in defending the 225 Lawsuit, and her demand includes an undertaking. The Company’s certificate of incorporation includes a provision that copies the text of 8 *Del. C.* §§ 145(a) and (b). No different terms concerning indemnification or

advancement are in the Company's certificate of incorporation, bylaws, or any contract between the Company and Colette.

The Company refuses to advance Colette's attorneys' fees and expenses. Colette wants to file an action against the Company in Delaware seeking advancement.

6. (a) In what court must Colette file the advancement action and why?

Assume Colette files the advancement action against the Company in the proper court.

(b) Is Colette likely to succeed in the advancement action? Explain why or why not.

* * *

The Company and Colette settle their disputes and Colette agrees to resign from the Board.

After the disputes with Colette are resolved, the Company continues to experience difficulties. The Board now consists of Alex, Diane, and a

new director, Eve. The Board and its stockholders are contemplating dissolving the Company in accordance with 8 *Del. C.* § 275.

7. Can the Company's stockholders dissolve the Company without action from the Board? Explain why or why not.

* * *

Alex, Diane, and Eve run into each other at an event and discuss that the Board should initiate the process of dissolving the Company and adopt a resolution under 8 *Del. C.* § 275.

8. (a) What determination must the Board make to dissolve the Company?

(b) What portion of the Board must adopt the resolution to dissolve the Company?

(c) Explain how the Board must adopt the resolution to dissolve the Company.

(d) To whom must the Board give notice of its adoption of the resolution to dissolve the Company?

(e) Explain what involvement the Company's stockholders must have in the process initiated by the Board to dissolve the Company.

* * *

The Company's dissolution is authorized, and the Company is preparing to file a certificate of dissolution. In its certificate of incorporation, the Company does not have a provision limiting the duration of its existence to a specified date.

9. (a) With which division of the Delaware Department of State must the certificate of dissolution be filed?

(b) What information must be included in the certificate of dissolution?

(c) For how long does the Company continue after its dissolution?

(d) Explain for what purpose(s) the Company continues after its dissolution and give examples.

Dan goes to his cousin's house in Wilmington, Delaware for a family dinner. Dan's cousin is a Wilmington Police Department police officer. After dinner, while family members are cleaning up, Dan sneaks into his cousin's bedroom and takes his police jacket, police hat, and police badge. Dan leaves his cousin's house with these items unnoticed.

The following week Dan puts on his cousin's police jacket, hat, and badge and rushes into a jewelry store in Delaware. As he rushes in, he shouts: "This is the police and there is a bomb in the building!" Everyone rushes out of the store. Once Dan is alone in the store, he grabs several diamond rings each worth \$1,500. Dan then exits through the rear of the store where his car is parked.

Dan jumps into his car and races out of the alley; however, a van is blocking his exit. Though Dan can see the van driver loading something into the van, Dan purposely accelerates and strikes the back of the van causing the van driver to be thrown to the ground. The van driver suffers injuries including a concussion, lacerations on his body, and a broken leg.

Police officers responding to the scene of the jewelry store incident witness Dan striking the van and pursue him in their police car. Dan hears

the sirens and sees the police car quickly closing in on him. Dan drives down another alley, stops his car, grabs the diamond rings, and abandons the car. Police officers see Dan exit the car, and run into an apartment complex and they pursue on foot.

1. Identify all possible crimes that Dan may be charged with. For each crime identified, list its elements, and if applicable, the degree. *Do not discuss lesser included offenses.*

* * *

Dan had previously told his friend Sue about his plans to rob the jewelry store using a bomb threat. At Dan's request, Sue checked the store and let Dan know there was no security present before Dan entered the store. Sue also agreed he could hide in her apartment after leaving the jewelry store.

After Dan robs the jewelry store, he rushes to Sue's apartment and knocks on Sue's door. Sue allows Dan inside. Once inside Sue's apartment Dan tosses all the diamond rings onto her table. Only minutes later the police officers bang on her door, announce themselves, and ask if a man has just entered her apartment. Sue informs the police officers that no one

else is in the apartment. As the police officers leave the apartment and are out of earshot, Dan runs to the back of the apartment looking for another way out while Sue collects the diamond rings and tells Dan that she will hide the diamond rings for him.

2. (a) Identify all possible crimes that Sue may be charged with independent of Dan. For each crime identified, list its elements, and if applicable, the degree. *Do not discuss lesser included offenses.*

(b) Identify all possible crime(s) Sue may also be charged with even though committed by Dan. Identify and apply the legal theory that could be used to support the charge(s).

* * *

Dan escapes Sue's apartment through a window. The police immediately issue a bulletin with a description of Dan's appearance, the location and time of the crime, and a brief statement about the jewelry store incident during which diamond rings were taken.

Later the same day the bulletin was issued, a police officer sees a man walking down the street in the general area of the crime scene who fits Dan's description from the bulletin. The police officer asks the man to

stop but he refuses. The police officer rushes up to Dan and makes him stop. The police officer tells the man he is conducting a criminal investigation and asks him for his identification. While the man is getting his identification, the officer asks the man where he was coming from.

Assume for the questions 3 and 4 that Dan was the man stopped on the street by the police officer.

3. (a) Was it legally permissible for the police officer to stop Dan? Why or why not?

(b) Was it legally permissible for the police officer to ask Dan for his identification and where he was coming from? Why or why not?

* * *

As soon as the police officer asked Dan where he was coming from, Dan blurts out: “Those diamond rings just weren’t worth it!” Immediately after, the police officer places Dan under arrest.

4. (a) Was it legally permissible for the police officer to arrest Dan without a warrant? Why or why not?

(b) Assuming the arrest was permissible, should the statement Dan made to the police officer be suppressed and not admitted into evidence at trial? Explain your answer, including identifying the applicable legal doctrine that should be applied.

* * *

After Dan is processed at the police station, he is taken to the nearest Justice of the Peace Court for his initial court appearance. The presiding Justice of the Peace judge informs Dan of the charges lodged against him. The judge then considers bail.

5. (a) What is the purpose of bail?

(b) Provide five factors the Justice of the Peace judge may consider to determine the amount of Dan's bail?

* * *

Dan's defense attorney reviews the evidence the State has provided in discovery. The defense attorney advises Dan on what to expect in his upcoming criminal trial.

6. (a) What is the burden of proof the prosecution is required to meet to establish Dan's guilt of each criminal offense charged?

(b) Assuming Dan is not relying on an affirmative defense, what must the defense prove in his trial?

* * *

On the morning of his trial Dan accepts a negotiated *nolo contendere* (no contest) plea offer from the prosecutor to multiple felony offenses in lieu of a trial. Dan's attorney asks the judge to accept the *nolo contendere* plea.

7. (a) Explain what a *nolo contendere* (no contest) plea is and the legal consequence of a *nolo contendere* plea in a criminal case.

(b) What must the judge determine before accepting a *nolo contendere* (no contest) plea from a defendant for a criminal offense?

Dr. Violet is a veterinarian who owns 100% of the membership interests in her own practice in Delaware, Violet's Healing Services, LLC ("VHS"). Over the last decade, she has built her practice into a profitable business with a full roster of recurring clients.

BSG Capital ("BSG") is a private equity firm, which has been acquiring veterinarian practices across the United States. BSG approaches Dr. Violet about acquiring her practice.

During negotiations, BSG convinces Dr. Violet to sell her practice by promising her that she will maintain her ability to run her practice the exact same way she always has, maintaining full autonomy over day-to-day matters. BSG claims VHS will benefit from being a part of the platform BSG is building. BSG tells Dr. Violet that her clients' bills will be reduced, as the costs of VHS's supplies will drop through BSG's bulk ordering and that she can share equipment from other BSG-affiliated practices. Believing that this arrangement is in the best interests of her clients, Dr. Violet agrees to sell her practice to BSG.

After extensive negotiations, with both sides represented by counsel, BSG and Dr. Violet sign a Membership Interest Purchase Agreement

(“MIPA”). Under the MIPA, BSG acquires all the membership interests in VHS in exchange for \$6 million. The agreement follows.

MEMBERSHIP INTEREST PURCHASE AGREEMENT

- 1.1 **Sale of Membership Interests.** Upon closing and subject to this agreement, on the Closing Date, Dr. Violet (“Seller”) shall sell and convey to BSG Capital (“Purchaser”) all membership interests owned by Seller.
- 1.2 **Purchase Price.** Purchaser shall pay Seller \$6 million.
- 1.3 **Purchaser Covenants.** After the Closing Date, Purchaser shall operate VHS in a commercially reasonable manner.
- 1.4 **Representations.** Seller represents that all of VHS’s financial statements are materially accurate and present a true and correct representation of the financial condition of VHS.
- 1.5 **Entire Agreement.** This Agreement is the complete and entire understanding and final agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter hereof or thereof. No party is relying on any representation of fact not contained within this agreement, and Section 1.4 contains the only representations on which Seller may rely.
- 1.6 **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. Any action arising under this Agreement shall be brought solely in the Courts of Delaware.

Seller:

Violet H. Smith, DVM

Purchaser:

BSG Capital

Arthur Cash, President

Within days of BSG's acquisition of VHS, BSG implements strict protocols on the use of supplies and machines, which Dr. Violet believes negatively impacts services provided to her clients. Additionally, the charges to VHS's clients increase significantly due to fees BSG adds on to the bills for its managerial services. Dr. Violet is upset and feels that she has lost control over her practice and its pricing. She had clearly communicated to BSG that maintaining autonomy was important to her in deciding whether to enter into the transaction.

Believing that BSG's promises regarding her autonomy and client billing were broken, Dr. Violet wants to sue BSG to rescind the MIPA.

1. (a) Define rescission.

(b) What arguments can Dr. Violet make in favor of rescinding the MIPA? Will Dr. Violet be successful in having the MIPA rescinded?

(c) How does Section 1.5 of the MIPA impact your response to Question 1(b)?

* * *

Rather than litigating, Dr. Violet and BSG resolve their differences through negotiating an amendment to the MIPA. The parties, after discussing Dr. Violet's reservations regarding practice autonomy at length, agree to amend and modify the MIPA by adding a new covenant to Section 1.3, which is intended to ensure that Dr. Violet has greater ability to control her practice going forward.

During negotiations, Dr. Violet indicated that her practice is likely to need additional support soon because she is working long hours to meet client demands. The parties review VHS's previous annual revenues and determine that VHS has generated approximately \$2.3 million in annual revenue each year for the last three years, inclusive of veterinarian services, prescription drug sales, and product revenue. The parties agree that if Dr. Violet generates more than \$2.5 million in annual revenue in 2025, BSG will expand the practice and hire a second veterinarian at VHS. The parties, through their counsel, agree to a written modification that provides as follows:

Section 1.3 is hereby amended to state as follows:

Covenants. After the Closing Date, Purchaser shall operate VHS in a commercially reasonable manner. Further, to ensure that Seller can adequately maintain sufficient autonomy over her practice, Seller shall have the right to make all managerial decisions and autonomy over all clinical matters, while Purchaser retains the right to make any decisions respecting billing, personnel and purchasing machinery. Purchaser further agrees that if VHS's annual revenue exceeds \$2.5 million per year, Purchaser will hire a second veterinarian within 30 days to provide services at VHS.

BSG and Dr. Violet exchange adequate consideration for the written amendment and sign it. In 2025, the annual revenue of VHS was \$2.57 million. Thereafter, Dr. Violet demands that BSG hire a second veterinarian. BSG refuses to hire another veterinarian, claiming that VHS does not need one. Thirty-five days pass and BSG still refuses to hire another veterinarian. Dr. Violet plans to sue BSG for breach of contract.

2. (a) Identify the elements of a breach of contract claim and define the term “breach”.

(b) Has BSG breached the MIPA? Explain your answer, including defining the term “condition”.

(c) What remedy should Dr. Violet pursue and why?

* * *

As a defense, BSG argues that VHS's 2025 annual revenue of \$2.57 million does not meet the threshold set forth in the amended Section 1.3 because a significant portion of VHS's 2025 annual revenue was attributable to recurring prescription medicine revenue and not the provision of veterinarian services. BSG argues that Section 1.3 is ambiguous and the parties intended Section 1.3 to address revenue from veterinarian services only, claiming revenue from prescription sales does not justify more veterinarians. Alternatively, BSG argues that, because the parties' agreement intended to address only veterinarian services revenue, amended Section 1.3 is the result of a mistake. Dr. Violet disagrees and claims the composition of revenue was never discussed.

3. (a) When is a contract ambiguous under Delaware law?

(b) How would a Delaware Court determine whether Section 1.3 is ambiguous regarding annual revenue? Explain your answer.

(c) Will BSG prevail on its argument that Section 1.3 (as amended) is ambiguous regarding annual revenue? Explain your answer.

4. (a) Define mutual mistake and unilateral mistake.

(b) Will BSG prevail in arguing that Section 1.3 was the result of a mistake? Explain your answer.

Avery and Blair find their dream home, which is being sold by Construction Corp. Avery, Blair, and Construction Corp. enter into a written contract for the sale of the home and the real property on which it is located (together, the “Real Estate”). The contract states that the sale will be completed 60 days after all parties sign the contract.

30 days after all parties sign the contract, Construction Corp. enters into a separate contract to sell the Real Estate at a higher price to Drew and informs Avery and Blair that Construction Corp. will not close on the contract with them. Avery and Blair remain committed to buying the Real Estate.

Assume for Question #1 the contract between Avery, Blair, and Construction Corp. is valid and includes all required elements for a contract for the sale of the Real Estate.

1. (a) Avery and Blair decide to sue Construction Corp. for breach of contract. What remedy should Avery and Blair seek in their suit, why is that the appropriate remedy, and what will they need to show to obtain that remedy? Your answer should include an

explanation of the applicable standard of proof and the factors they must establish.

(b) In what Delaware state court should Avery and Blair file suit, and why should they choose that court?

* * *

Avery and Blair's lawsuit scares off Drew, who terminates his contract with Construction Corp. Construction Corp. then performs under the original contract with Avery and Blair by closing on the Real Estate as originally agreed.

Assume for Question 2 that Avery and Blair want to co-own the Real Estate.

2. (a) Assume Avery and Blair are not married. What are the various forms of co-ownership in which Avery and Blair could take co-ownership of the Real Estate?

(b) Assume Avery and Blair are a married couple who intend to pass ownership to each other in the event either of them

dies. What forms of co-ownership could they use? Explain your answer.

(c) What is a key difference between the forms of ownership identified in response to Question 2(b)?

3. Regardless of the form of ownership, what are the requirements for a valid conveyance of the Real Estate from Construction Corp. to Avery and Blair?

* * *

Avery and Blair own the Real Estate for the next 20 years. Five years into their ownership, their next-door neighbor, Nico, constructs a fence approximately five feet over the property line he shares with Avery and Blair, onto Avery and Blair's property. When they discover the fence, they ask Nico to move the fence off of their property but Nico refuses, claiming he owns the property enclosed by the fence.

4. (a) Nico decides to take legal action against Avery and Blair to confirm he can keep his fence and be declared the owner of the five-foot zone. What cause of action is Nico likely to assert, and

who should prevail? Explain your answer. In so explaining, describe the applicable standard of proof and the elements of the cause of action.

* * *

Assume Avery and Blair have successfully resolved the fence issue. Further assume that Avery and Blair move, but they continue to own the Real Estate, and they decide to rent it to others to live there. Avery and Blair begin renting the Real Estate to their tenant, Taylor. One day Taylor discovers that harmful mold is growing in the basement of the house Taylor rents from Avery and Blair. Avery and Blair were aware of the mold before renting to Taylor but did not address it. The mold covers an entire section of the basement and prevents Taylor from using that part of the basement.

5. What legal claims can Taylor reasonably assert against Avery and Blair as landlords with respect to the mold? Your answer should not include discussion of any torts.

* * *

Also during Taylor's rental, the roof on the house begins to leak. Avery and Blair call Handy Co., a repair company, to replace the roof. Handy Co. completes the roof and Avery and Blair sign off on the work, but Avery and Blair refuse to pay for the roof replacement and do not give a reason.

6. (a) Handy Co. wants to obtain a mechanic's lien on the Real Estate due to Avery and Blair's failure to pay. Who is permitted to obtain a mechanic's lien and in what circumstances?

(b) By when must Handy Co. file for the mechanic's lien, counting from after the Handy Co. completes work on the roof replacement?

(c) When will the lien become effective?

* * *

Avery and Blair decide that they want to terminate Taylor's lease because they plan to sell the Real Estate. The rental agreement with Taylor does not state the length of the lease's term.

Your answers to Question 7(a) through 7(d) should not include any discussion of Delaware's anti-retaliation statute.

7. (a) Can Avery and Blair terminate the lease without a reason to terminate for cause? Why?

(b) By when must Avery and Blair send the notice so that it is effective by December 1, 2026? Explain your answer.

(c) What steps do Avery and Blair need to take to terminate the lease?

(d) If Avery and Blair validly terminate the lease but Taylor refuses to leave, can Avery and Blair seek to evict Taylor? Why is that remedy available or not available? In what court may Avery and Blair seek that remedy?

* * *

Taylor moves out of the Real Estate. Avery and Blair decide to sell the Real Estate. Ellis views the property, then offers to buy the Real Estate and enters into a real estate sales contract with Avery and Blair. After closing on the sale, Ellis notices that Avery and Blair removed several items from the house between the date of the contract and the date of closing.

Assume for Question 8 that the contract requires fixtures to be included in the sale and contained no “exclusions” or other terms addressing the removed items.

8. Does Ellis have a claim against Avery and Blair for breach of the contract based on their removal of any of the following items that were in the house when Ellis viewed the Real Estate? Explain the applicable legal standard. For each item, answer “Yes” or “No” and explain why.

(a) A kitchen table.

(b) A painting hanging on the wall by a small hook.

(c) A chandelier that was hanging over the kitchen table.

(d) A gas oven from the kitchen.