

QUESTION 1

Allison is the owner of Make My Day Wedding Services, a sole proprietorship that provides wedding planning services to couples in Delaware. Formerly the catering manager at a major local hotel, Allison struck out on her own a year ago to fulfill her lifelong dream of creating fairytale weddings for well-heeled clients, but business has been slow to develop.

One morning, while getting coffee with a friend at a local coffee shop, Allison overhears someone in line mention that Becky and Carl, last year's winners of Delaware Monthly magazine's "Most Fabulous Couple" award, have just gotten engaged and are planning a New Year's Day wedding. Becky is the reigning Miss Delaware, and Carl is the scion of one of Delaware's oldest and wealthiest families. Because Becky and Carl's wedding is sure to be the must-attend social event of the year, Allison knows that the wedding would be just the thing she needs to launch Make My Day into the upper echelon of wedding planners in Delaware.

Allison calls Becky to introduce herself, and Becky agrees that she will come hear some of Allison's ideas. She is very impressed by Allison's ideas and professionalism. Before she leaves, Becky says, "I really like what we've talked about, but I will need some time to think things over before making any commitments. I will get back to you in a few days."

A day later, Becky's friends convince her to accompany them on a spur-of-the-moment hiking adventure. Before leaving, Becky calls and leaves a telephone message for Allison stating that Becky would like to hire Allison to plan the wedding and to represent Becky and Carl in dealing with wedding vendors. Becky also tells Allison that Becky really wants a well-known photographer, Denise, to do the engagement and wedding photos, and asks her to call Denise and see if she would be available on the wedding date.

Allison, knowing that Denise is one of the most sought-after wedding photographers in the area, immediately calls Denise after receiving Becky's message. Denise confirms that she is

currently available on New Year's Day, but warns Allison that several other people have expressed interest in her services for that day. Denise explains that her engagement and wedding photo package requires a \$5,000 non-refundable deposit that must be paid before Denise will schedule her services, and warns Allison that Becky will incur an additional \$10,000 cancellation charge if the contract is cancelled less than a week before the wedding. Allison agrees to these terms and promises to immediately send a check to reserve New Year's Day.

Allison calls Becky to report the good news, but is immediately sent to Becky's voice mail. She says, "Becky, this is Allison. Great news! Denise is available for the wedding, but it sounds like several other people also want to book her for New Year's Day. We can ensure her availability by sending her a non-refundable deposit of \$5,000, so I am going to cut a check right now. There would also be a \$10,000 fee if we cancel less than a week before the wedding, but I'm sure there is no need to worry about that. Talk to you soon." Allison then writes a check from her personal account and mails it to Denise. Becky listens to the voice mail a few days later.

The next month, Allison attends the engagement photo shoot for Becky and Carl. While Denise sets up her camera equipment, Becky and Allison discuss catering for the wedding. Becky explains that she has hired her aunt, Eleanor, who owns and operates a large catering company. "She would be hurt if I went with someone else," Becky explains. "In fact, Eleanor has a pastry chef who has made some of the most beautiful cakes I have ever seen."

1. Assuming that the wedding is cancelled on December 26, discuss what arguments, if any, Denise might have to demand that Becky pay the \$10,000 cancellation fee.

2. Can Allison recover from Becky the \$5,000 deposit that she sent to Denise? Explain.

* * * * *

While they talk at the photo shoot, Becky tells Allison about her dream of a career in television, and how she hopes to pursue that dream by getting her wedding to Carl turned into a reality show on TV. Allison, recognizing the obvious publicity implications for Make My Day, volunteers to help Becky find a network willing to cover the wedding. Becky tells Allison, “Fantastic! Don’t agree to anything, but get me offers for the most coverage and the biggest payment you possibly can.”

Allison promptly begins talks with several cable networks with substantial reality TV programming, telling each that she is soliciting offers on Becky’s behalf. Executives from TMI TV, The Reality Network, and The Wedding Channel all express great interest. TMI offers Becky twice the standard rate for reality show leads. The Reality Network, having lost out to TMI and The Wedding Channel on the last two big celebrity weddings, offers Becky four times the standard rate, promises to do a second show about Becky’s and Carl’s honeymoon, and offers to make Becky a co-host on the channel’s upcoming reality show. The Wedding Channel matches TMI’s offer of twice the standard rate, and also promises Allison it will give her Executive Producer credit on the show and 5% of the revenue generated from advertising during the show.

When Allison meets with Becky, she tells Becky about TMI’s and The Wedding Channel’s offers for Becky, but does not tell Becky about The Wedding Channel’s additional terms for Allison and does not tell Becky about The Reality Network’s offer. “What do you think?” asks Becky. “I think you should go with The Wedding Channel,” says Allison. “They have a favorable age demographic that will be great for you if you try to get a career on TV.” Becky replies, “OK, go ahead and accept The Wedding Channel’s offer.” Allison signs a contract with The Wedding

Channel on Becky's behalf, and The Wedding Channel immediately begins promoting the show and lining up advertisers.

One week before the wedding, shortly before the production crew arrives from The Wedding Channel to start taping, Becky runs into a family friend who works as a production assistant for The Reality Network. The family friend expresses surprise that Becky did not accept The Reality Network's proposal, because the terms were far better than they had ever offered any other potential wedding reality show, and she is sure those terms were more generous than The Wedding Channel's proposal. Under questioning from Becky, the family friend reveals the terms of The Reality Network's offer, and tells Becky that the offer is probably still open if she can get out of her contract with The Wedding Channel.

Furious, Becky calls an executive at The Wedding Channel and tells the executive that the deal is off, that Allison was never authorized to agree to the deal, and that they had better not send a TV crew out to tape her. Becky then calls The Reality Network and makes a deal with them. Becky considers firing Allison immediately, but decides that it is too close to the wedding to do that.

3. What arguments can The Wedding Channel make to hold Becky liable for The Wedding Channel contract signed by Allison? Explain.

4. What claims does Becky have against Allison with respect to The Wedding Channel contract? Explain.

* * * * *

The constant presence of the film crew from The Reality Network takes its toll on Carl and Becky. They both look forward to a party they have planned at a local dance club, Club Portal.

Several weeks earlier, Carl and Becky decided that instead of having traditional bachelor and bachelorette parties, they wanted to meet at Club Portal with a small group of friends the night before the wedding. Carl and Becky met with the owner of Club Portal, a friend of Carl's, and Carl told him, "Becky will be planning the details for a party with some friends that we will be holding at your club, and I want you to make sure that she is taken care of. Just put any costs on my tab."

Meanwhile, three days before the wedding, Eleanor's pastry chef quits, leaving Becky's wedding cake unbaked. Eleanor calls her friend, Finn, a well-regarded baker in the area and says "I need a wedding cake prepared for this Saturday. Can you help out?" Finn agrees, and Eleanor quickly describes what she needs. Finn spends two days working on the cake and has to turn away business because of the emergency. When Eleanor shows the cake to Becky the day before the wedding, Becky declares the cake "a disaster" and says, "No way am I paying for that."

5. Assuming that Finn is not an agent or subagent of Becky, can he recover payment for his services from Becky? If Finn is not an agent of Eleanor, can he recover payment for his services from Eleanor? Explain. For both answers, ignore any equitable or quasi-contractual theories of recovery Finn might have.

* * * * *

To make matters worse, Becky learns after seeing the cake that Carl has sprained his ankle and can barely walk. He insists that Becky and their guests go to Club Portal without him. While Becky is at the party, Carl sees footage on TMI TV, purportedly shot a week earlier, showing Becky having an intimate dinner with an old boyfriend (also a rival of Carl) and then leaving the restaurant in the back of his limousine. Furious, Carl calls Becky and yells, "You said things were over

between you two. I trusted you; how could you do this to me? The wedding is off!” He hangs up and refuses to answer Becky’s calls. Becky, overwhelmed by everything that has gone wrong, decides to strike back at Carl. She tells the owner of Club Portal, “I just heard from Carl. He is so excited about our wedding he said drinks for everyone at the Club are on him for the rest of the night.” The owner stops the music and makes the announcement, which is greeted with riotous applause. At the end of the night, the tab kept in Carl’s name is over \$50,000.

6. Did Becky have authority to offer all the patrons at Club Portal free drinks at Carl’s expense? Explain.

7. Is Carl liable for the tab at Club Portal? Explain.

* * * * *

QUESTION 2

Part 1

In 2007, Paula and her husband Harry lived on the outskirts of Blue Hen City, Delaware, with their ten-year-old son Billy. In January of that year, Paula was in a serious automobile accident. She was driving home early on a Monday morning with Billy in the car, after spending the weekend visiting her father, Fred, a widower who lived in Maryland. After some time driving, Paula felt extremely tired. She had been up late the night before talking with her father and had gotten only two hours of sleep. Paula caught herself swerving over the center line of the road as she crossed the state line into Delaware, but she knew that she had only a few miles to go until she arrived home.

Paula turned east onto Clayton Road, a two-lane road, with one lane of traffic going in each direction, and approached the driveway to her home on the left. The posted speed limit on that section of Clayton Road was 25 miles per hour. As she approached her driveway, Paula slowed in order to cross over the lane of oncoming traffic. It was still early in the morning, and the bright winter sun was shining directly into Paula's eyes. In her haste to leave her father's house, Paula had forgotten her prescription sunglasses. She had a hard time seeing if any cars were coming.

At the same time, 17-year old Tina was driving her father's car 40 miles per hour down Clayton Road, heading west. She had just received her unrestricted driver's license. During the application process, Tina's mother had signed the license application on Tina's behalf, but Tina's father had not. This was the first day that her parents had allowed her to drive the car to school.

Believing that no cars were approaching, Paula hastily turned left to enter her driveway just as Tina was approaching from the opposite direction. At that moment, Tina was rooting through her purse, looking for her lipstick. When Tina realized that a car was turning in front of

her, she swerved to avoid contact, but the front right side of Tina's car clipped the back right side of Paula's car. Paula's car barreled into an old oak tree that stood at the foot of Paula's driveway. At the time, a Delaware statute required Delaware drivers to give their full time and attention to operation of their vehicles.

As a result of the crash, Paula suffered a concussion, cuts to her face, whiplash, and a broken leg. Paula's car was totaled. Billy suffered no injuries at the time of the accident, but had recurring nightmares and anxiety attacks for months afterward due to the trauma of seeing his mother's injuries. Tina was not injured.

In March 2007, Paula went to her attorney for counsel. Paula continued to suffer from the injuries she had sustained in the accident. She had severe back pain and had been confined to bed rest for several weeks. She had been unable to resume her job as a schoolteacher in the local public school district, as a result of which she had lost income.

Do not address any insurance coverage issues (e.g., personal injury protection claims) in this Part 1 or in any of the subsequent Parts to this question.

1. Discuss in detail:

(A) any negligence claim(s) that Paula could assert against Tina, Tina's mother, or Tina's father; the elements of any such claim(s), including the applicable standard of care; and whether Paula would be able to satisfy each element;

(B) any damages, including punitive damages, that Paula would or would not be entitled to recover if she is successful on any claim, and

(C) any defense(s) or mitigating factor(s) that a defendant might assert, its/their likelihood of success, and the potential effect, if any, on Paula's recovery.

* * * * *

Part 2

2. Based on the facts set forth in Part 1 above, discuss in detail:

(A) any claim(s) that Billy or Harry could bring separately against any defendant(s); the elements of any such claim(s), including the applicable standard of care; and whether either Billy or Harry would be able to satisfy each element;

(B) any damages, including punitive damages, that Billy or Harry would or would not be entitled to recover if successful on any claim(s); and

(C) any defense(s) or mitigating factor(s) that any defendant(s) might assert, its/their likelihood of success, and the potential effect, if any, on Billy or Harry's recovery.

* * * * *

Part 3

In May 2007, Paula returned to work in the school district and continued to see her doctor for routine check-ups after her accident. In July 2007, she complained to her doctor of a nagging cough. An x-ray revealed an unusual spot on her left lung, and further tests on August 1, 2007 confirmed that Paula was suffering from mesothelioma, a form of cancer usually linked to exposure to asbestos fibers. On December 31, 2007, Paula died, leaving her husband Harry, her son Billy, and her father Fred as her only surviving relatives.

In February 2008, Harry, who was the executor of her estate, met with his attorney for legal advice. Harry told the lawyer that Paula's death might have been caused by her exposure to asbestos in the school where she worked, due to careless removal of asbestos in the school.

3. Based on the facts set forth in Part 3 above, discuss in detail:

(A) any claim(s) that Paula's estate could bring against the school district; and the elements of any such claim(s), including the applicable standard of care, and

(B) any damages, including punitive damages, that Paula's estate would or would not be entitled to recover if successful on any claim(s), and

(C) any defense(s) or mitigating factor(s) that the school district might assert, and the potential effect, if any, on any recovery by Paula's estate.

* * * * *

Part 4

Assume all facts previously set forth in Parts 1, 2 and 3. In November 2009, Harry returned to his attorney's office with Paula's father, Fred, whom Paula had helped support financially. Fred said that he had just recalled some facts that he thought might be important. In the late 1960s and early 1970s, while Paula was still a young girl, Fred had handled asbestos-containing products on at least two job sites. For a while he cut and installed asbestos-containing pipe supplied by PipeCo. He also installed asbestos-containing insulation supplied by WarmCo. In looking at some photographs of Paula as a young girl, he remembered that, when he would come home from work in his overalls covered with asbestos fibers, Paula would always run up to him and give him a hug. The attorney filed suit against PipeCo and WarmCo (together, the "Suppliers") in December 2009.

4. Based on the facts set forth in Parts 3 and 4, discuss in detail:

(A) any claim(s) that the attorney could have brought on behalf of Paula's estate, Harry, Billy, and/or Fred against PipeCo or WarmCo; the elements of any such

claim(s), including the applicable standard of care; and whether each element would be met;

(B) any damages, including punitive damages, that any of these plaintiffs would or would not be entitled to recover if successful on any claim(s), and

(C) any defense(s) or mitigating factor(s) that the Suppliers might assert, its/their likelihood of success, and the potential effect on any recovery.

*** * * * ***

Part 5

Assume that the attorney files suit on behalf of Paula's estate and her surviving relatives. After discovery, the plaintiffs enter into a settlement agreement with PipeCo for \$100,000 in exchange for a release of all the plaintiffs' claims against PipeCo. The \$100,000 payment represents ten percent of the plaintiffs' total projected damages of \$1 million. The plaintiffs elect to proceed to a jury trial against WarmCo.

At trial, the jury finds that the damages caused by PipeCo and WarmCo together total \$1 million.

5. Discuss in detail:

(A) How, if at all, WarmCo could avoid being held liable for the entire amount of the projected \$1 million in damages at trial.

(B) How, if at all, the terms of PipeCo's settlement agreement with the plaintiffs could best protect PipeCo against a claim by WarmCo.

(C) How, if at all, the plaintiffs could be prevented from collecting the additional \$900,000 from WarmCo.

* * * * *

QUESTION 3

Angie and Bob own Market Street Pizza, Inc. (“Market”), a pizzeria and sandwich shop located in Wilmington, Delaware. In order to finance the start-up of the business, in March 2005, Market took out a \$150,000 installment loan with Friendly Finance (“Finance”) secured by an interest in Market’s existing and after-acquired inventory and equipment. In April 2005, Finance timely perfected its security interest by filing a duly-authorized financing statement with the Delaware Secretary of State. No additional filings were made by Finance.

Following creative differences over the direction of Market’s business, Bob sells his interest to Angie, who moves Market’s business operations to an upscale suburban shopping center and changes its corporate name to Pizza Works, Inc. (“Works”). As part of that upgrade, in February 2009, Works borrows an additional \$200,000 from Big Bank of Wilmington (“Bank”) pursuant to a written agreement granting Bank a security interest in Works’ existing and after-acquired inventory and equipment. On March 15, 2009, Bank timely perfects its security interest by filing a duly-authorized financing statement with the Delaware Secretary of State.

In early April 2009, Works contracts with Pizza Equipment Sales, Inc. (“Sales”), for the purchase of ten rectangular-domed wood-fired pizza ovens in “Mojave Desert” brick at a cost of \$15,000 each. The terms of the parties’ agreement, which are memorialized in a signed purchase order and acknowledgement, require Sales to deliver the ovens on or before June 1, 2009 in exchange for payment on the delivery date. Anticipating that it will need to have the rectangular-domed ovens specially

manufactured, Sales includes a provision in the acknowledgement requiring any modifications to the agreement be signed by both parties.

On May 28, 2009, Works receives delivery of the ovens, for which it tenders a business check made payable to Sales in the amount of \$150,000. A little over a week later, as the ovens are unpacked in preparation for installation, Works discovers that the ovens were manufactured in "Sahara Desert" brick, which is substantially darker in color than the "Mojave Desert" brick specified in Works' purchase order. By email dated June 5, 2009, Angie notifies Sales of the error and of her intention to stop payment on the check issued to Sales. Later that same day, Sales' Manager of Commercial Accounts ("Manager") calls Angie to advise that Sales will replace the ovens, and requests that Works agree to extend the delivery date to July 1 to enable Sales to procure the manufacture of the replacement ovens. Angie agrees, subject to Sales' agreement to defer payment of the purchase price to thirty days following the date of delivery of the replacement ovens. Based on his discussion with Angie, Manager orders the replacement ovens, for which Sales is forced to absorb the cost of expedited processing and shipping.

Following the call with Sales, Angie contacts Bank to request that it stop payment on the check previously issued to Sales and learns that the check has been dishonored due to insufficient funds. Upon review of Works' previously unopened April bank statement, dated May 5 and received May 11, Angie discovers four checks totaling \$125,000 made payable to Works' bookkeeper ("Bookkeeper") and bearing Angie's unauthorized signature. Angie immediately notifies Bank of the forgeries and requests that Bank credit Works' account. Upon further investigation, Angie discovers that the checks bore her

stamped signature, which Bookkeeper had found in an unlocked drawer in Angie's office. Angie had not previously issued any checks on Works' behalf using a stamped signature.

Upon receiving notice of the dishonor of Works' check on June 15, Sales sends a letter to Angie demanding assurance of Works' ability to satisfy its payment obligations to Sales for the replacement ovens and notifying Angie of Sales' decision to withhold delivery of the replacement ovens pending proof of Works' ability to pay. By email dated July 5, 2009, Works advises Sales that it will not make payment for the replacement ovens as the result of Sales' failure to timely deliver them. By certified letter dated August 2, 2009, Sales notifies Works that the ovens were sold in a private sale on July 28, for \$110,000, and demands that Works remit payment of the \$40,000 deficiency.

Owing in large part to its weak cash position and inability to fund the costs of the upgrade, Works defaults on its debt obligations to Finance and Bank. Following several unsuccessful attempts to secure a consensual turnover of Works' equipment, late in the evening of October 1, 2009, agents of Finance enter Works through an unlocked door and take possession of its inventory and equipment. Following proper notice to Bank and Works, Finance sells the equipment at auction for \$60,000.

Identify and discuss any claims and defenses under the Uniform Commercial Code as adopted in Delaware, including any damages available to the plaintiff, in each of the following scenarios:

- 1. Sales sues Works for breach of contract;**
- 2. Works sues Bank for payment on the unauthorized signatures;**
- 3. Bank sues Finance to recover the proceeds of the auction; and**

4. Works sues Finance over the repossession.

* * * * *

QUESTION 4

Reporter recently was laid-off from her job as an investigative reporter for the local newspaper. Although she was upset at the loss of her employment, Reporter was delighted to direct her energies toward a personal endeavor -- a web-based publication or “blog” featuring interviews with local entrepreneurs and other people of interest. Reporter had established a website at www.DelawareBlogSpot.com nearly a year ago, but had little time to post any entries while working full-time.

Reporter initiates her first telephone interview with Owner, who has a shop known as “Green Home” near a trendy residential area. The shop is dedicated to environmentally-friendly household products. The shelves are stocked with items branded as healthy for the environment, such as rechargeable batteries, energy-saving lights and wallpaper made of hemp. Owner is well known in the community as an energy-savings guru and often doles out advice to his customers on how to decrease electric bills and water usage.

After the interview with Owner, Reporter decides to visit Green Home. In front of the store, Reporter notices a gentleman wearing a green T-shirt, tossing batteries and what appears to be a mass of plastic bottles into a large dumpster located on the side of the store. Reporter observes that the dumpster is devoid of any symbol indicating that the trash is meant to be recycled. Taking note of this inconsistency and excited by the prospect of utilizing her investigative reporting skills in her personal blog, Reporter hurries home to write her first blog post.

In her excitement, Reporter nearly rushes past Husband, who is sitting on the living room sofa. In the course of telling him what she saw, Reporter comments, “I’m not sure if that was a Green Home employee I saw combining recyclables with regular trash, but this story will surely bring attention to my first blog post.” Reporter and Husband have been having marital troubles

ever since Reporter lost her job. In fact, their relationship has deteriorated so much that both have consulted attorneys and Reporter has banished Husband from the bedroom. He is forced to sleep on the same couch from which he now stares without interest at Reporter. Husband shrugs without responding and continues to watch television. Not waiting for a response, Reporter hastens to her home office. After one sleepless night, Reporter's first post goes live with the title, "Green Home – Not So Green After All."

Soon after the interview with Reporter, Owner notices a sharp decline in the number of customers frequenting his shop despite the busy streets and warm summer weather. One day while browsing the Internet, Owner stumbles upon Reporter's blog and reads the feature article. The first sentence gets his attention: ". . . so-called 'green' guru peddles environmentally friendly wares, but makes a hefty environmental footprint by not recycling." Owner reads further and notices that anonymous individuals have posted additional commentary below Reporter's blog post. One individual, identified as Anon, writes: "Not only does he not recycle, but he uses regular light bulbs in his store. When I asked him about it, he said 'regular light bulbs are cheaper than those energy-saving bulbs on the market' and he was 'cutting costs' to ensure that he stays in business."

Owner immediately contacts Reporter, demanding that she remove the post and commentary and that she replace it with an equally prominent retraction. Reporter refuses, explaining that she is confident in her investigative reporting skills. Distraught at his tarnished reputation and the thought of losing his previously successful business, Owner contacts Lawyer, who assists Owner by filing suit against Reporter for libel.

Upon Lawyer's recommendation, Owner prints a copy of Reporter's blog post on his printer. The printed image is identical to the image on the website, but also includes on the

lower right-hand corner of the page the current date, time and the web address www.DelawareBlogSpot.com.

In answering each of the following questions, assume that the Delaware Uniform Rules of Evidence apply. Identify the applicable Delaware Rule(s) of Evidence and discuss how each rule applies to the facts.

1. At trial, Lawyer seeks to admit Owner's printed copy of Reporter's blog to prove that the blog was posted by Reporter. Reporter objects for lack of foundation. Is Reporter's blog self-authenticating? If not, will Owner be able to authenticate the copy of Reporter's blog? Explain.

2. Owner testifies on direct examination that he regularly recycles glass, plastic and paper products and utilizes energy-saving light bulbs. Reporter seeks to introduce Anon's written statement as an exhibit to contradict Owner's direct testimony. Assume that Anon remains anonymous and has not been subpoenaed to testify. Is Anon's written statement admissible by Reporter to prove that Owner does not recycle or use energy-saving light bulbs? Why or why not?

3. Owner calls Husband as a witness in his case-in-chief. Reporter is concerned that Husband will testify regarding her statement that: "I'm not sure if that was a Green Home employee I saw combining recyclables with regular trash, but this story will surely bring attention to my first blog post." Is Husband's testimony as to Reporter's statement admissible? Why or why not?

* * * * *

Reporter's attorney conducts a preliminary investigation of Owner. He finds a trial transcript from a previous lawsuit in which Owner sued Inca, a manufacturer of incandescent light bulbs, for burns he allegedly sustained while changing an Inca light bulb in his home. At the time, although other manufacturers had begun to manufacture energy-saving light bulbs, Inca had not. Amidst the reams of recorded testimony, Reporter's attorney finds a section in which Owner was asked to describe the light bulb that he was changing when he sustained his injuries. Owner stated, "I don't recall seeing the Inca brand name on the bulb that burned me. I do recall that it was identical to the bulbs I use in my store. I order hundreds of Inca bulbs a year to light Green Home."

4. Owner testifies on direct examination that he utilizes energy-saving light bulbs. Is Owner's prior testimony admissible by Reporter during the cross-examination of Owner for the purpose of impeachment? Why or why not?

* * * * *

Reporter's attorney contacts Reporter's former employer, Editor, to testify on Reporter's behalf as to whether Reporter met an appropriate standard of care in drafting her blog post. Editor is a true American success story, having worked his way through the ranks of the local newspaper. Editor began working in the mailroom at the age of 16. During 25 years of service to the newspaper, he held the positions of administrative assistant, weather reporter, obituary and

wedding reporter, editorial columnist and finally editor of the entire enterprise. Editor never received any formal training in journalism; however, Editor can boast 25 years' experience in the business. Editor agrees to testify that, in his opinion, based upon his 25 years of experience working for the newspaper, Reporter has met the journalistic standard of care by utilizing her personal observations to draft her blog post.

5. Reporter seeks to introduce Editor's expert opinion as to the journalistic standard of care. Owner seeks to exclude Editor's opinion by filing a motion *in limine*. Will Owner succeed? Why or why not?

* * * * *

QUESTION 5

Alby and Ben were close while growing up in their New Castle home without a father. Ben was younger and Alby raised him, making sure he got food on his plate and clothing on his back for the first 17 years of his life. Then, when Ben turned 18, he got hooked on methamphetamine, and Alby no longer could help his little brother.

One day Alby is working at his auto garage, when Cam approaches him. Alby knows Cam from the old neighborhood as a person from whom drugs can be purchased. Alby also has heard that Cam likes to play with guns. Alby has heard from an eyewitness to the event that Cam shot and killed someone who crossed him.

“You know,” Cam says to Alby, “Your little brother, he owes me a lot of money, about \$1,500 for some stuff I sold him, and I am done waiting on it. I was just going to put an end to his miserable life, but I had an idea. I know about this guy Dave who lives in Middletown, Delaware. He owns Dave’s Liquors & Check Cashing on Main Street in Newark, Delaware where he keeps the money in the combination safe. I know there will be enough there tonight, and tonight only, to take care of your brother’s debt with cash to spare. I will give you his address and you can figure out how to get the money. Anyway, you either give me the money first thing tomorrow or I kill Ben. You decide. And by the way, if you go to the police, I’ll shoot him just like I shot that other guy. No doubt you heard about that.”

Fearing that Cam will carry out his threats and having no other way to pay Ben’s debt, Alby agrees to get Cam the money. Alby enlists Ben’s help, telling him only that he knows a good way to get some cash, without mentioning anything about Cam’s threats. They hatch the plan together and drive Alby’s red van to Dave’s house in Middletown.

As chance would have it, Dave is just getting home when a masked Alby grabs Dave and throws him into the back of the van. Ben, also wearing a mask, stays in the van and keeps an eye out for trouble. As they drive into Newark, Dave is terrified and, when asked, immediately discloses the secret combination of his safe.

Alby and Ben force Dave to let them into the building where his business is located. When the safe will not open for them, Ben pushes a hard object into Dave's back and tells him that he had better open the safe "or else." Alby does not see Ben do this. When he notices Dave hesitate, Alby tells Dave, "Ben will shoot you if you don't give us the money." The brothers take the entire \$1,500 and some change from the safe. Unbeknownst to Alby, Ben takes an inoperable, but authentic civil war revolver that Dave also keeps in the safe.

Afterward, they lock Dave in the walk-in beer cooler at Dave's store and drive off. Alby and Ben drop off the money at Alby's garage where he has a locker, but Ben secretly keeps the antique gun with him in the van as Alby drives him to New Castle.

Earlier Ben made the mistake of telling his drug addict buddy Ed of his plan. What Ben did not know is that Ed hates Alby. Ed called a tip line, refusing to leave his name, and left the following message: "A red van with the Delaware vanity tag "ALBYS" will have two males and a large amount of stolen money in it, driving into New Castle late tonight. I can't say anything else."

As a result of this call, Trooper Francis of the Delaware State Police pulls over Alby and Ben as the red van approaches the town of New Castle. After the stop, when he runs a check on Alby's name, he learns that Alby is wanted for missing traffic court. Ben also is wanted for missing a probation appointment for his conviction two years ago for

Possession of Methamphetamine. After Trooper Francis tells both brothers to get out of the van, he sees the ivory handle of the civil war gun that Ben has hidden in the space between the passenger side door and the passenger seat.

Trooper Francis handcuffs the brothers and takes them to headquarters. There, each of them is properly and fully advised of his Miranda rights. Alby waives his rights and agrees to speak to Trooper Francis. Then, another trooper enters the room and tells Francis that Dave's Liquors & Check Cashing has been robbed and that during the robbery Dave was locked in his beer cooler, but somehow managed to escape. Alby hears the other trooper tell Trooper Francis that Dave is complaining that his beloved civil war revolver was taken as well. At that moment, Alby says to Trooper Francis, "I don't know, officer; do you think that I should get some legal advice before we talk?" The trooper responds, "Alby, I can only help you if you help me. You need to tell me everything that happened. That's the only way you can help yourself." Without any further questioning, Alby then admits that he and Ben stole the money from the check cashing business and that he did not tell Ben about the threats that Cam had made on Ben's life.

After Ben is advised of his Miranda rights, he agrees to waive them and speak to Trooper Francis. Ben claims that his brother came up with the plan to kidnap Dave and steal the money and Ben himself had "merely gone along for the ride," staying in the car the whole time.

In the meantime, one of Alby's employees learns of the arrest of Alby and Ben, so he notifies Alby and Ben's criminal defense lawyer. The lawyer arrives before Alby and Ben answer any questions and demands that he be allowed to see them. However, the

police do not allow the lawyer access to the brothers, nor do the police tell the brothers that the lawyer is present at the station.

The police arrest Alby and Ben and bring their case file to the Attorney General's office for prosecution. Alby and Ben each obtain separate counsel.

1. Identify and discuss the charges the prosecutor can bring against Alby and Ben. Your answer should address the elements of those charges and the facts that support each charge.

2. Identify and discuss the applicability of all legal defenses available to Alby and/or Ben presented by the facts.

3. Identify, discuss and resolve any issue(s) that must be addressed if the prosecution intends to use the statements of both Alby and Ben in a joint trial with a single jury.

4. Identify and discuss the legal and factual bases for all pre-trial motions available to Alby and Ben.

* * * * *

QUESTION 6

Subsidiary Corporation (“Subsidiary”) is a Delaware corporation that manufactures and sells widgets. Parent Corporation (“Parent”) owns 60% of Subsidiary’s issued and outstanding common stock. Parent is wholly owned by Oscar Owner. Subsidiary’s business has been expanding rapidly over the past several years. Accordingly, Subsidiary has acquired a new factory to accelerate its production of widgets. It purchased the factory from Parent for \$30 million (the “Factory Transaction”). The Factory Transaction was approved by the board of directors of Subsidiary (the “Board”).

The Board has six directors: (i) Oscar Owner, who serves as Chief Executive Officer of Subsidiary, for which he receives an annual salary of \$700,000 plus benefits and bonuses; (ii) Connie Carter, who serves as Subsidiary’s President, for which she receives an annual salary of \$400,000, plus benefits and bonuses; (iii) Al Attorney; (iv) Larry Lewis, who serves as Chairman of the Board; (v) Mary Munson; and (vi) Ned Neagle. Attorney is a solo practitioner and regularly represents Subsidiary. Attorney’s firm receives approximately \$300,000 in fees from Subsidiary each year, which accounts for approximately 30% of his total annual revenue from the practice of law. Lewis is a law school professor, and Munson and Neagle are engineers. Each of Lewis, Munson and Neagle has no connection to Owner, Parent or Subsidiary, other than serving on the Board for nominal director fees.

One of the regular clients at the law firm by which you are employed is Patsy Plaintiff. Patsy is a record stockholder of Subsidiary. Patsy tells you that she has heard about the Factory Transaction and, although the new factory has served its purpose of increasing Subsidiary’s production of widgets, Patsy believes that the Factory Transaction was unfair to Subsidiary.

The Factory Transaction was approved by the whole Board of Subsidiary, not a special committee comprised of the independent directors. The terms of the Factory Transaction were

negotiated by Carter on behalf of Subsidiary, and by Owner on behalf of Parent. Prior to approval, the Board had obtained an appraisal estimating the value of the factory at \$25-\$30 million. That appraisal was performed by Banker & Co. (“Banker”), an investment bank that frequently does work for Parent and Owner. General market conditions, however, appear to contradict an appraised value of even \$25 million for the factory. Based on all of these facts, Patsy believes that Subsidiary paid too much for the factory.

After making a demand upon Subsidiary pursuant to Section 220 of the Delaware General Corporation Law, Patsy obtains certain documents concerning the Factory Transaction. From those documents, Patsy learns that Parent’s initial offer to sell the factory was for \$30 million and that the Board’s counteroffer of \$25 million was rejected by Parent. The Board then approved acceptance of the \$30 million offer. Patsy also learns that Banker has received over \$20 million in fees from Parent and Owner in the past five years, and that the Board was aware of that fact when it retained Banker in connection with the Factory Transaction on Owner’s recommendation. Finally, Patsy learns that the Board did not consider any alternative sites or factories to purchase.

At Patsy’s direction, you file a derivative suit in the Delaware Court of Chancery on behalf of Subsidiary (the “Derivative Action”) seeking rescission of the Factory Transaction or, in the alternative, damages. Parent, Owner and the remaining members of the Board are named Defendants. Subsidiary is named a nominal defendant. The Verified Complaint in the Derivative Action alleges all of the facts described above.

Part 1

Assume that Patsy alleges in the Verified Complaint that she did not make a demand upon the Board because a demand would be futile. The defendants respond by filing a motion to

dismiss for failure to adequately allege demand futility as required by Court of Chancery Rule 23.1(a).

1. Identify the standard that the Court will apply to the motion to dismiss, and discuss each argument you should make in opposition to the motion.

* * * * *

Part 2

While the Derivative Action and the motion to dismiss remain pending, Parent proposes to acquire Subsidiary pursuant to a merger of Subsidiary with and into Parent. Under the terms of the initial merger proposal, each share of Subsidiary stock not owned by Parent would be converted into \$10.00 cash per share. The market price of Subsidiary stock at the time of the proposal is \$8.00 per share. Thus the proposed merger price represents a 25% premium. The proposal comes as no surprise, as Parent and Subsidiary publicly announced well before the Factory Transaction that they had had preliminary discussions about a possible merger. Analysts generally agree that a merger between Parent and Subsidiary would make business sense because the merger would allow Parent and Subsidiary to eliminate duplicative executive and administrative personnel (for instance, by having a single human resources office) and to eliminate the overhead expenses associated with operating Subsidiary as a public corporation.

The Board appoints a special committee consisting of directors Lewis, Munson and Neagle to consider and possibly negotiate a merger with Parent (the “Committee”). The Committee is duly authorized to: (i) hire legal and financial advisors; (ii) reject or counter any merger proposal made by Parent; and (iii) recommend to the full Board whether a merger should be approved. The Committee retains as its legal counsel Good & Better, LLP, a Delaware law

firm with a respected corporate practice, which has no ties to Parent, Owner or Subsidiary. The Committee retains Financial Advisor & Co. (“FA”), an international investment bank, as its financial advisor. FA also has no ties to Parent, Owner or Subsidiary. The Committee does not conduct an auction of Subsidiary because Parent makes clear that it will not sell its stock in Subsidiary.

The Committee rejects Parent’s initial, \$10.00 per share offer, and negotiations between the Committee (assisted by its legal and financial advisors) and Parent ensue. After several weeks of negotiations, Parent makes a “take it or leave it” offer of \$11.00 per share for Subsidiary’s stock that it does not already own, representing a 37.5% premium over the trading price of Subsidiary’s stock before the first merger offer. Parent informs the Committee that, if the Committee rejects the final offer, Parent will break off merger negotiations and, instead, launch a tender offer for all the shares of Subsidiary it does not own at a price of \$9.00 per share, or 10% below the initial proposed merger price. FA promptly opines that \$11.00 per share is within a range of prices that are fair to Subsidiary’s minority stockholders from a financial point of view.

The Committee recommends that the full Board accept the \$11.00 per share offer and approve the merger, and the full Board does so. Because Subsidiary’s certificate of incorporation requires the affirmative vote of 67% of Subsidiary’s stockholders to approve a merger, Subsidiary duly notices a special meeting of stockholders to vote on the proposed merger with Parent.

Before the stockholder vote takes place, Patsy brings an action against Parent and the members of the Board in the Delaware Court of Chancery to preliminarily and permanently enjoin the merger (the “Merger Action”). In the Verified Complaint in the Merger Action, Patsy

alleges that: (i) effecting the merger would constitute a breach by Parent of its fiduciary duties; (ii) Parent breached its fiduciary duties by refusing to allow an auction of Subsidiary; and (iii) the members of the Board breached their fiduciary duties by approving the merger.

2. Based on the facts set forth in Part 2, discuss in detail:

(A) What standard of review will the Court apply to the merits of the Merger Action and who will bear the burden of proof? Explain in your answer the factors the Court will consider in allocating the burden of proof. Do not include in your answer any discussion of the standard for obtaining a preliminary or permanent injunction.

(B) Will the Court hold that Parent breached its fiduciary duties by refusing to sell to any other bidder, thus foreclosing an auction of Subsidiary? Why or why not?

* * * * *

Part 3

Assume that the merger described in Part 2 takes place. All shares of Subsidiary other than those held by Parent (including those held by Patsy) are converted into cash. The defendants in the Derivative Action move for summary judgment on the grounds that the merger extinguished any standing Patsy had to challenge the Factory Transaction on behalf of Subsidiary.

3. Will that motion succeed? What factors will the Court consider in deciding whether to grant the motion? Do not discuss the standards for granting or denying summary judgment.

* * * * *

Part 4

Again, assume that the merger described in Part 2 takes place, and assume that the stock of Subsidiary is listed on a national securities exchange.

4. Will the stockholders of Subsidiary have appraisal rights in connection with the merger described in Part 2? Why or why not?

* * * * *

QUESTION 7

In western Sussex County, Delaware, near the Maryland state line, two men own adjacent properties. Frank Farmer owns a farm and timber tract that has been in his family since the early 1800s. He takes great pride in the fact that he is able to maintain the agricultural and forestry uses in the face of pressure to develop the site, by growing and selling crops and timber, even during times of economic recession.

Bob Builder, the adjacent property owner, has decided that he has had enough of farming and therefore wants to subdivide his land into single family lots, sell some or all of the lots to a national builder, and enjoy the profits he would reap without the uncertainties of farming the land.

To receive approval for his proposed subdivision from the Zoning Commission and to acquire the permits he needs to develop the tract, Bob engages a surveyor to determine the metes and bounds of his property, mark the corners with monuments, and prepare surveys and plans for submission to the Zoning Commission.

When Bob's application comes before the Zoning Commission for a public hearing on the preliminary site plan prepared by Bob's surveyor, Frank appears and speaks neither for nor against the application. However, he states that, whatever else Bob does, Frank wants to make sure that his farm and his timber tract will not be disturbed by any development activities on Bob's land. Having been assured by the Zoning Commission that a 50-foot wide buffer will be maintained on Bob's property where it is adjacent to his, Frank concludes that his interests will be protected.

Bob is granted the approvals and secures the permits to develop his land. Bob begins to develop his tract by hiring Charlie Cutter, a Maryland resident and sole proprietor of a site preparation business in Maryland. Bob and Charlie meet at the site, and Bob shows Charlie where he should clear and excavate the land in order to get the site ready for development. Although Bob does not bring the site plans and surveys to the site for the meeting with Charlie, Bob assures Charlie that copies of the plans and surveys will be delivered within a few days of their meeting. However, Bob never delivers the plans or surveys to Charlie. Charlie returns to the site several days later, relying on his memory of what Bob has shown him, and tells his crews where to work and what he wants done. Charlie's crews do what they are told and, in the course of clearing, cut through the area set aside as the forested buffer, cross onto Frank's land, and begin to cut and remove trees from Frank's timber tract.

When Frank becomes aware of the timber cutting on his land, he retains you to stop Charlie from further cutting down his trees. You advise Frank that you may be able to go to the Court of Chancery and secure a temporary restraining order to stop Charlie from cutting additional trees.

1. Does the Court of Chancery have personal jurisdiction over Charlie?
Explain your answer.

2. Assuming the Court has jurisdiction over Charlie, what is the standard the Court of Chancery will apply for determining whether a temporary restraining order will issue?

3. What facts support the granting of a temporary restraining order against Charlie?

* * * * *

While preparing Frank's case, your research leads you to a section of the Delaware Code regarding timber trespass. The applicable section of Title 25 of the Delaware Code provides:

§ 1401. Liability for damages; court's authority to determine whether trespass intentional; exemplary and actual damages.

(a) Whoever wilfully, negligently or maliciously cuts down or fells or causes to be cut down or felled a tree or trees growing upon the land of another, without the consent of the owner, shall be liable for damages as set forth in subsection (b) of this section.

(b) In civil actions brought for an act of timber trespass the court shall have the authority to determine whether such trespass was unintentional or wilful and award damages accordingly. If the plaintiff shall satisfy the court that the metes and bounds of that plaintiff's property at the place of the trespass were appropriately established and marked by reasonably permanent and visible markers, or establish that the trespasser was on notice that the rights of the plaintiff were in jeopardy, the court shall find that the trespass was wilful and shall award exemplary damages equal to triple the fair value of the trees removed plus the cost of litigation. If, however, the court shall find that the trespass was unintentional, the court may award the plaintiff damages equal to the conversion value of the trees taken or damaged plus cost of litigation.

Before the Court of Chancery hears Frank's application for injunctive relief, you tell Frank about this timber trespass law and advise him that he may be able to recover triple damages for the timber cut by Charlie.

4. Frank has amended his complaint in the Court of Chancery to allege a claim for monetary damages. Does the Court of Chancery have subject matter jurisdiction over the claim? Explain.

5. What effect, if any, would this amendment have on Frank's pending request for a temporary restraining order? Explain.

* * * * *

Assume that you have not added a claim for monetary damages to the Court of Chancery complaint, and that the Court hears Frank's motion for a temporary restraining order and grants

the relief. Charlie thereafter complies with the temporary restraining order and consents to the entry of a preliminary injunction.

Based on your advice, Frank believes that he should recover the value of his timber and the statutory triple damages. He contacts a timber appraiser who determines that the actual value of the timber lost is \$45,000. Frank tells you he is not sure he wants to pursue his damages claims in the Court of Chancery and seeks your advice.

6. What other Delaware state court(s), if any, have jurisdiction over Frank's damages claims? Describe the effect, if any, of Frank's seeking triple damages.

* * * * *

Assume that Frank pursues his claims in the Superior Court of Delaware and engages in discovery with Charlie, including interrogatories and document production requests. During the depositions of Charlie and Bob, you learn of Charlie's pre-construction meeting with Bob and conclude that Bob's conduct also caused Frank's losses. Based upon your advice, Frank decides to add Bob as a defendant to the suit. You file the appropriate motion to add Bob as a party and, while the motion is pending, the statute of limitations runs on the cause of action related to Bob's alleged conduct.

7. Should the Superior Court of Delaware grant Frank's motion to join Bob as a party defendant despite the running of the statute of limitations? Explain.

* * * * *

Assume that Frank's case is pending in the Superior Court of Delaware, that discovery is complete, and that the motion to add Bob is granted. Assume further that an appraisal of timber value has been performed on behalf of Frank, and that Charlie and Bob do not obtain appraisals. You decide that Frank can prevail by filing a motion for summary judgment.

8. What is the standard by which Frank's motion for summary judgment will be considered by the Court?

9. Identify and discuss any facts on which Charlie's and Bob's lawyers could rely in responding to the motion. Explain the specific relevance of those facts to Charlie's and Bob's arguments.

* * * * *

Assume that Charlie and Bob file cross motions for summary judgment against Frank.

10. What effect, if any, does the filing of the cross motions have on the Superior Court's procedural considerations?

* * * * *

Assume no cross motions are filed by either Charlie or Bob, and that Frank's motion for summary judgment is denied.

11. Can Frank appeal the Court's decision to the Delaware Supreme Court? If so, what are the applicable standards? Explain.

* * * * *

QUESTION 8

Part 1

Adams owns a parcel of land located on Main Street, in Capital City, Delaware. Adams' property is approximately ten (10) acres in size and is bounded to the north by Main Street and to the South by property owned by Benson. Benson's property is five (5) acres in size and fronts on Second Street.

To allow common passage to and from Main Street and Second Street, Adams and Benson enter into a written agreement creating a cross-easement on their properties. The express language of the cross-easement provides that it is for "ingress and egress" only, between Main Street and Second Street through Adams' and Benson's properties. Adams dedicates a 500 foot long x 20 foot wide strip of land to the cross-easement to provide ingress/egress to both properties, and Benson dedicates a 250 foot long x 20 foot wide strip of property to provide ingress/egress to both properties.

In July 2010, Benson informs Adams that he (Benson) intends to begin construction of several improvements on his property. One of the planned improvements is a retaining wall to prevent the collapse of material to be used to raise the grade of a section of his property. A portion of the retaining wall will be located on Benson's property within the cross-easement area and will restrict vehicular access to Adams' property. As of July, 2010, Adams is not using his parcel and has no intention to develop the property in the near future. Adams, on rare occasions, visits the property to inspect it and insure that no one has trespassed on or otherwise harmed his property.

In response to Benson's declared intentions, Adams informs Benson that the retaining wall will encroach on the cross-easement and restrict Adams' access to his property. He demands that Benson halt the construction of the retaining wall. Benson refuses, indicating that Adams has used the cross-easement only to walk the land to check for squatters and that Adams can always walk to his property, as the retaining wall does not interfere with pedestrian ingress-egress via the cross-easement.

1. Adams wants to bring an action to prevent construction of the retaining wall and comes to you for advice. Will Adams succeed in preventing construction of the retaining wall? In your answer, state the legal basis, or bases, and factual predicate for Adams' action to prevent construction of the retaining wall, and analyze Benson's defenses to any such action brought by Adams. Do NOT discuss the elements of an injunction in your answer. Your answer should be based only upon the facts recited in Part 1.

* * * * *

Part 2

Despite Adams' demand that Benson not construct the retaining wall, Benson moves ahead with his planned improvements. Seeing commencement of the construction of the retaining wall, Adams demands that Benson remove the retaining wall from the cross-easement. Benson refuses. Adams then files an action to compel removal of the retaining wall, and the complaint is served in the early stages of the wall's construction. Adams does not seek injunctive or other expedited relief. Benson not only completes construction of the retaining wall while the litigation is pending, but he also extends the retaining wall beyond the cross-easement and onto Adams' property.

While Benson's construction of the retaining wall is being completed, Adams loses interest in the litigation, which languishes on the docket with no activity. Adams still has no plans for development of his property, although on rare occasions he continues to walk his property via access by the cross-easement. During one of his walks, Adams realizes that the retaining wall extends beyond the cross-easement and onto Adams' property. Each time Adams walks the property thereafter, Adams affixes to the retaining wall a sign saying "Get this retaining wall off my property!" It is not clear if Benson ever sees the signs, as they are always affixed to the end point of the wall, on Adams' property.

Adams' litigation against Benson is dismissed for lack of prosecution. Adams' property remains undeveloped, though Adams continues to inspect the property, as he did in the past. Twenty years later, Adams decides that the property is a prime location for a giant "box" store and begins plans to develop the Adams parcel, which plans require use of the cross-easement for ingress and egress. To that end, Adams renews his demand that Benson remove the retaining wall. Benson again refuses.

2. Adams wants to bring an action to compel removal of the retaining wall and comes to you for advice. Will Adams succeed in an action to remove the retaining wall? In the context of your answer, state the legal basis, or bases, and factual predicate for Adams' action to compel removal of the retaining wall, and analyze Benson's defenses to any such action brought by Adams. Do NOT discuss the elements of an injunction in your answer.

* * * * *

Part 3

Yeats owns a house that sits on a one-half acre lot in an exclusive, gated community known as Beach Front. Pursuant to the deeds of all the properties in Beach Front, all Beach Front lot owners are required to be members of the Beach Front Homeowners Association and agree to be reciprocally bound by the deed restrictions and restrictive covenants included in every deed for Beach Front.

Yeats subsequently purchases a second house, immediately adjacent to his home in Beach Front, that, like every home in Beach Front, also sits on a one-half acre lot. Yeats purchases the adjoining property for the purpose of leveling the second house to the ground so that he can use the second lot to increase the size of his back yard. The Beach Front Homeowners Association learns of Yeats' plans to demolish the house on the adjoining lot. As every lot in Beach Front is one-half acre in size, the Homeowners Association is concerned that Yeats' resulting yard would be so large as to be out of character with the neighborhood design. The Homeowners Association brings an action against Yeats for a preliminary injunction to enforce the restrictive covenants contained in Yeats' deeds to his properties. The applicable restrictive covenants read as follows:

Restrictive Covenants

Approval of Plans:

No building, fence, wall or other structure shall be commenced, erected or maintained, nor shall any addition to or change or alteration therein be made, until the plans and specifications, showing the nature, kind, shape, height, materials, floor plans, color scheme, location and frontage on the lot and approximate cost of such structure shall have been submitted to and approved in writing by the Homeowners Association. The Association shall have the right to refuse to approve any such plans or specifications which are not suitable or desirable, in its opinion, for aesthetic or other reasons; and in so passing upon such plans and

specifications it shall have the right to take into consideration the suitability of the proposed building or other structure and of the materials of which it is to be built, to the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of the building or other structure, as planned, on the outlook from the adjacent or neighboring properties.

3. Yeats seeks your advice as to whether the Homeowners Association will be successful in its attempt to enforce the restrictive covenants. Assume the above restrictive covenants are the only applicable provisions in the deed. Based on the restrictive covenants, will the Homeowners Association be successful in preventing Yeats from demolishing the house? What argument(s) can Yeats assert in defending against the Association's efforts to enforce the restrictive covenants? Do NOT discuss the elements of an injunction in your answer.

* * * * *