

## QUESTION 1

Officer One and Officer Two, police officers, are having lunch at a restaurant. Suspect parked his car in the parking lot, where the Officers could clearly see him. A few moments later, Defendant parked next to Suspect. Officer One and Officer Two witnessed Suspect and Defendant engage in a quick exchange of cash. Suspect and Defendant each drove off immediately.

Officer One stopped Suspect's car. Suspect was immediately ordered out of the vehicle and placed in handcuffs. On the passenger seat, Officer One saw what he knew to be a large quantity of heroin based on his training and experience. Without any prompting, Suspect blurted out an immediate and full confession admitting to purchasing the large quantity of heroin from Defendant. During this confession, Suspect described Defendant as a "drug kingpin."

**1. Identify any crime(s) with which Suspect may be charged based upon the facts above. Identify the crime(s) and the elements only. Do not discuss drug tiers or class of offense.**

**2. Identify the two motions Suspect's attorney could reasonably consider filing. For each motion, identify any applicable Constitutional or legal standards. For each motion, discuss the likelihood of the motion succeeding and describe why.**

\* \* \*

Officer Two stopped Defendant's car after observing a traffic violation. Officer Two then heard on the police radio that Suspect confessed and implicated Defendant. Officer Two took Defendant into custody and learned he was convicted of Assault First Degree three years ago. Officer Two searched Defendant's pockets and found \$1,000 in cash. On Defendant's front seat, Officer Two found a cell phone. Officer Two picked up Defendant's cell phone and submitted it for an analysis that would provide the contents of the phone. Officer Two did not obtain any search warrants.

The analysis revealed Defendant's cell phone contained numerous incriminating text messages regarding drug sales and photographs of Defendant posing with a real gun on the day of his arrest by Officer Two.

**3. Identify any crime(s) with which Defendant may be charged based upon the facts above. Identify the crime(s) and the elements only. *Do not discuss drug tiers or class of offense.***

**4. Identify the motion Defendant's attorney should consider filing. Identify any applicable Constitutional or legal standards. Discuss the likelihood of the motion succeeding and describe why.**

\* \* \*

Both Suspect and Defendant are indicted and tried together. At trial, Prosecutor intends to introduce Suspect's statement in which Suspect implicated Defendant and described him as a "drug kingpin." Suspect will not testify.

**5. Will the Prosecutor be able to introduce the statement at a joint trial? Why or why not? *Do not discuss the Delaware Rules of Evidence in your response.***

\* \* \*

The State has a report from Chemist, who tested the heroin. The report is signed and notes the substance seized is, in fact, heroin. Chemist is on vacation during trial and, therefore, is unavailable to testify.

**6. Can the State introduce the report into evidence? What Constitutional or legal standard applies? Do not discuss the Delaware Rules of Evidence in your response.**

## QUESTION 2

Three friends—Avery, Bobby, and Casey—decide to open a bakery called Beach Bakes. They decide to form a Delaware limited liability company.

**1. What information must be included in the Certificate of Formation for the limited liability company?**

**2. What information must be included in the name of the limited liability company?**

\* \* \*

Avery, Bobby, and Casey enter into an Operating Agreement for Beach Bakes. The Operating Agreement identifies each of them as a member of the company. The Operating Agreement does not alter any of the default standards under the Delaware Limited Liability Company Act.

Bobby and Casey each contribute \$100,000 in cash to Beach Bakes. Avery contributes the title to real property consisting of a building where Beach Bakes will operate. The property Avery contributes is valued at \$100,000.

*Assume, for purposes of Questions 3 and 4, that the Operating Agreement does not specifically address the allocation of management rights, profits and losses and distributions.*

**3. How are management rights in Beach Bakes allocated among the members? Explain the basis for your answer.**

**4. If Beach Bakes turns a profit, in what proportion would the profits be distributed among the members? Explain the basis for your answer.**

\* \* \*

Although the Operating Agreement is silent on roles or positions, over time each of the members begins exclusively performing certain responsibilities for Beach Bakes. Avery works the counter at the store. Bobby negotiates the company's contracts and maintains the financial records, which are available to each of the members for review. Casey is the baker and manages the kitchen.

One day while working the counter, Avery strikes up a conversation with Hilary, a local honey supplier. Hilary offers to provide Beach Bakes

with local honey at an attractive price, and asks whether Avery can make decisions about purchasing supplies for Beach Bakes. Despite knowing that Bobby handles the company's contracts, Avery replies, "Yes, I can." Without consulting Bobby or Casey, Avery signs a contract with Hilary on behalf of Beach Bakes. Upon learning about the contract, Bobby says that Beach Bakes will not honor the contract because Avery was not authorized to enter into the contract.

**5. Does Avery have the authority to bind Beach Bakes under the Delaware Limited Liability Company Act? Why or why not?**

\* \* \*

Frustrated by Avery's behavior, Bobby and Casey decide to remove Avery as a member of Beach Bakes.

**6. Can Bobby and Casey unilaterally remove Avery as a member of Beach Bakes? Why or why not? Assume the Operating Agreement is silent on this issue.**

\* \* \*

Bobby and Casey change their minds and ultimately decide not to attempt to remove Avery as a member of Beach Bakes. At this time,

Beach Bakes has not yet turned a significant profit. The company is worth \$200,000 but owes its creditors \$190,000 for baking ingredients and other supplies. Although Avery and Bobby both know that Beach Bakes is insolvent, they are anxious to enjoy the benefits of their hard work and approve distributions of \$15,000 to the two of them, for a total of \$30,000, payable immediately.

**7. Were the distributions to Avery and Bobby permissible? Why or why not? Do Avery and Bobby have any potential liability as a result of the distributions?**

\* \* \*

Four years after the distributions were made, Beach Bakes becomes wildly successful and has a value of \$5 million. Casey learns for the first time about the \$15,000 distributions to Avery and Bobby and files a lawsuit against Avery and Bobby the following week. Avery and Bobby move to dismiss the lawsuit, arguing that under the Delaware Limited Liability Company Act, too much time has passed.

**8. Will Avery and Bobby's defense likely succeed? Why or why not?**



\* \* \*

Several months later, Avery and Casey learn that Bobby had been a defendant in a lawsuit related to Bobby's failure to pay a contractor, Shore Construction, for services rendered at Bobby's home. As a result of that lawsuit, a judgment was entered against Bobby in the Superior Court of the State of Delaware for \$50,000. Shore Construction is now seeking to collect on the judgment.

**9. Can Shore Construction obtain a charging order against Bobby's limited liability company interest in Beach Bakes? Why or why not? If yes, what conditions apply?**

\* \* \*

In an effort to avoid Shore Construction's collection efforts, Bobby assigns Bobby's limited liability company interest in Beach Bakes to Bobby's adult child, Quinn. Quinn is also a baker and is interested in learning more about Beach Bakes' business, including its contracts. Quinn requests access to all of Beach Bakes' supplier contracts.

**10. Is Quinn entitled to Beach Bakes' supplier contracts? Why or why not? Assume the Operating Agreement is silent on this issue.**

\* \* \*

The members eventually decide to dissolve Beach Bakes.

**11. Under what circumstances may a limited liability company be dissolved?**

\* \* \*

At the time of dissolution, Beach Bakes has a value of \$10 million. None of the members has made additional contributions since their initial contributions when Beach Bakes was formed. Beach Bakes owes its creditors \$700,000.

**12. After Beach Bakes' business is wound up, without naming any specific members, who will be entitled to receive distributions of assets, and in what order of priority will Beach Bakes' assets be distributed? *Assume the Operating Agreement is silent on this issue.***

### **QUESTION 3**

In January 2015, Bryce purchases a single-family house in Heritage Hollow, a small, quiet, secluded neighborhood in Delaware. Bryce is aware that he is taking title to the property subject to the restrictive covenants recorded by the Heritage Hollow Homeowners' Association (the "HOA"), which apply to all homeowners in the community. Among other covenants, the Declaration of Restrictions of the Heritage Hollow Homeowners' Association (the "Declaration") provides that: (1) "any accessory structure" must be approved by the Architectural Review Committee (the "ARC") prior to construction, and (2) "the operation of a commercial business" on a homeowner's property is strictly prohibited. The Declaration expressly gives the HOA the authority to enforce the covenants in the Declaration.

In February 2015, Bryce constructs a 24' x 32' metal shed on his property, without seeking prior approval from the HOA. In March 2015, Bryce posts a flyer on the news board at the community pool advertising the grand opening of First State Fur Academy LLC, Bryce's new home-based dog-training business, at the end of that month. Immediately after

the grand opening, Bryce generates a solid stream of business. His neighbors observe steadily increasing numbers of dogs and owners entering and exiting the shed on Bryce's property every weekday for the next three years. Due to the commercial success of the business, Bryce invests in several upgrades to the shed, expanding it to accommodate additional training sessions and services.

Bryce's neighbors begin complaining to the HOA based on the following occurrences:

- Unleashed dogs have roamed onto adjacent homeowners' property, frightening children and pets and disrupting the peaceful character of that section of the community;
- Noise disturbances caused by frequent dog barking have similarly disrupted the peaceful nature of the community, especially in the evenings;
- Bryce's grass and mulch beds have suffered extensive damage, rendering his property visually inconsistent with the neighboring properties;

- A bathing service that Bryce offers to the dogs, which is performed in an overflowing basin in his backyard, has led to excessive water drainage onto adjacent properties, causing those neighbors to have to regrade their yards;
- The neighbors' driveways have been regularly blocked due to the frequent coming and going of customers; and
- Neighbors have generally not felt comfortable spending time outside given all of the activity on Bryce's property.

**1(a). What claim could one of Bryce's neighbors reasonably assert against Bryce based on the above facts? Do not address any claims based on which the relief sought is monetary damages.**

**1(b). What elements must the neighbor show to support the claim? What other considerations would the court take into account when evaluating the claim?**

**1(c). Is the claim likely to succeed, and why or why not?**

**2(a). What temporary remedy could the neighbor seek while their claim on the merits is pending, and what would that remedy achieve? *For purposes of 2(a), do not discuss any defenses available to Bryce in your answer.***

**2(b). When is such a remedy appropriate?**

**2(c). What elements must the neighbor show to support the remedy?**

**2(d). What arguments would Bryce assert in response to the neighbor's requested remedy?**

\* \* \*

In May 2018, at the urging of several community members, the HOA filed an action against Bryce based on violations of the provisions of the Declaration, including Bryce's failure to obtain ARC approval for the shed on his property and the prohibition on operating a commercial business on a homeowner's property. There is no dispute that Bryce's shed classifies as an "accessory structure."

**3. In which Delaware court should the HOA file its deed restriction enforcement action, and why?**

\* \* \*

Sam is the president of the HOA. Since the opening of Bryce's business in March 2015, Sam has heard informal complaints from Heritage Hollow community members about Bryce's dog training business and the aesthetic inconsistency of the metal shed with the unique style of the houses in Heritage Hollow. The topic was also discussed during annual HOA meetings in 2016 and 2017. However, the HOA did not take any corrective action until it filed its deed restriction enforcement action in 2018. In fact, Sam's daughter even took her dog to Bryce for a few training sessions in December 2017.

Jesse, vice president of the HOA, attended a community picnic in July 2017, where Bryce was also present. Jesse told Bryce "not to worry" about the neighbors' complaints about Bryce's training business, and any opposition would "blow over." After all, Jesse noted, another Heritage Hollow resident named Alex had been operating a cat grooming business out of her garage for over four years, and Alex never received any formal notice of a violation by the HOA. Jesse also confided to Bryce that Jesse and his wife had built a detached garage on their property in 2016 without

seeking ARC approval. Jesse added that he was considering refurbishing used lawn equipment and selling it out of the garage.

**4. Based on the foregoing facts, what equitable defenses could Bryce assert against the HOA in the deed restriction enforcement action? Define the elements of each defense and explain why each defense is supported by the facts. Assume for purposes of Question 4 that the HOA officers have the authority to act on behalf of the HOA and that any actions or inactions of the HOA officers are binding upon the HOA.**

\* \* \*

Bryce decides to close his business in Heritage Hollow, and he moves to Lewes, Delaware. Bryce develops a first rate reputation as a trainer in Delaware and the surrounding region, and he is offered a position as lead trainer with the Delaware Shetland Sheepdog Society (“DSSS”).

Bryce enters into a five-year employment contract with DSSS on December 31, 2018. The contract provides that, if DSSS does not intend to renew the contract, “written notice specifying the reason for non-



renewal must be sent by registered mail” to Bryce on or before December 31, 2023. The contract states that failure to give notice in the prescribed manner on or before that date would result in the automatic extension of the contract by a period equal to the original term of the contract.

During his employment with DSSS as a trainer, Bryce receives only positive reviews for his work. On December 15, 2023, Bryce receives a registered letter from DSSS notifying him that his employment contract would not be renewed and restating the contract’s termination clause, but DSSS failed to specify a reason for its non-renewal.

Bryce sues DSSS in the Court of Chancery for specific performance of the employment contract’s automatic extension provision, arguing that DSSS violated the employment contract by failing to specify a reason for non-renewal, and that his loss of status in his profession is incapable of being measured in monetary terms.

**5(a). What is specific performance? Under what circumstances would this remedy be appropriately sought?**

**5(b). Is Bryce likely to succeed on his request for specific performance? Why or why not?**

## QUESTION 4

AB Company (“ABC”) is a Delaware corporation. Devon is ABC’s sole director and stockholder.

Ellis expresses a willingness to buy Devon’s shares of ABC stock for \$3 million. Devon is noncommittal.

Later, Devon says to Ellis, “I’ll sell you my stock in ABC if you agree to pay me \$5 million.” Ellis says, “You have a deal.”

Devon and Ellis negotiate a written agreement (“Purchase Agreement”). The Purchase Agreement contains a provision that states:

This Agreement contains the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings, oral or written, relating to the subject matter of this Agreement.

**1. Do Devon and Ellis have an enforceable contract and, if so, at what point in the negotiations was the contract formed? Explain your answer, including at a minimum identifying the elements of an enforceable contract and applying any relevant facts to each element.**

\* \* \*

Devon once loaned Ellis money (“Loan”). The Loan is outstanding, and Ellis remains obligated to repay the Loan.

Devon and Ellis execute the Purchase Agreement, which contains a provision that states, “On the Closing Date, Devon shall transfer all ABC stock that Devon owns to Ellis, and Ellis shall repay the Loan as previously promised. Ellis shall not be obligated to make any other payment” (“Payment Provision #1”).

**2. Identify and describe the legal principle, including all of its elements, that either party could rely on to argue that the Purchase Agreement is unenforceable because of Payment Provision #1. In answering question 2, do not address whether the argument would succeed.**

**3. How would a court likely rule on the argument that the Purchase Agreement is unenforceable because of Payment Provision #1? Explain your answer.**

\* \* \*

Devon irrevocably commits to invest \$5 million in another venture in reliance on the money Ellis agreed to pay for Devon's ABC stock. Without that money, Devon cannot satisfy the investment commitment.

***For questions 4 and 5 only, assume that there is not an enforceable contract between Devon and Ellis.***

**4. Identify and describe the legal principle, including all of its elements, that Devon could rely on to argue that Ellis's agreement to pay \$5 million should be enforced. In answering question 4 do not address whether the argument would succeed.**

**5. How would a court likely rule on Devon's argument that Ellis should be required to pay \$5 million for Devon's ABC stock? Explain your answer.**

\* \* \*

On a lawfully made audio recording ("Recording"), Ellis says, "I won't be able to pay you \$5 million all at once, but I can get you the money within several months of signing our agreement," to which Devon responds, "Okay." Devon and Ellis execute the Purchase Agreement after the Recording was made.

On the day of closing on the Purchase Agreement, Ellis claims to have several months to pay, but Devon disagrees (“Dispute”). The Purchase Agreement has a provision that states, “On the Closing Date, Devon shall transfer all ABC stock that Devon owns to Ellis and Ellis shall pay Devon \$5 million in immediately available funds” (“Payment Provision #2”).

*For question 6 only, assume that: (1) the Purchase Agreement is enforceable; and (2) Payment Provision #1 is not in the Purchase Agreement.*

**6. How would a court likely resolve the Dispute under Payment Provision #2? Explain your answer, including the relevant legal principles.**

\* \* \*

The Purchase Agreement includes a provision that states, “On the Closing Date, Devon shall transfer all ABC stock that Devon owns to Ellis, and Ellis shall pay \$5 million to Devon on the Closing Date but in no event later than 10 months after that date” (“Payment Provision #3”).

*For Question 7 only, assume that the facts applicable to Question 6 apply except that the Purchase Agreement does not include Payment Provision #2.*

**7. How would a court likely resolve the Dispute under Payment Provision #3? Explain your answer, including the relevant legal principles.**

\* \* \*

ABC and a third party (“Third Party”) have an enforceable contract governed by Delaware law (“Third Party Agreement”) that requires Third Party to pay ABC \$1 million. The Third Party Agreement has a provision that states, “Under no circumstances shall ABC or Third Party be liable to the other for any consequential damages.”

Third Party fails to pay \$1 million owed under the Third Party Agreement. Without that money, ABC cannot pay operating costs, which leads to other customers cancelling contracts with ABC. As a result, ABC loses \$2 million in profits that it would have earned had Third Party paid. ABC sues Third Party for breaching the Third Party Agreement.

**8. What are the elements of a breach contract claim and what specifically will ABC have to prove to succeed on its breach of contract claim against Third Party?**

**9. *Without discussing damages for lost profits*, what damages could ABC recover if it prevails in its lawsuit against Third Party? Explain your answer.**

**10. Would ABC be able to recover damages for the \$2 million in lost profits? Explain your answer.**