

## QUESTION 1

*Assume for purposes of all questions herein that the 2025 amendments (i.e., SB 21) to the General Corporation Law of the State of Delaware (the “DGCL”) are not applicable.*

Jessie and Quinn decide to form a stock corporation in Delaware (the “Corporation”) with one class of common stock.

**1. (a) What information must the Corporation’s certificate of incorporation contain?**

**(b) What formal steps must be taken in the State of Delaware to give effect to the Corporation’s certificate of incorporation?**

\* \* \*

Jessie and Quinn prepare a Certificate of Incorporation for the Corporation, but the Certificate of Incorporation does not list the initial directors.

**2. Who appoints the initial directors of the Corporation’s board of directors (the “Board”)?**

\* \* \*

Jessie and Quinn decide they want to exculpate directors of the Corporation for breaches of fiduciary duty as part of the initial incorporation of the Corporation.

**3. (a) What section of the DGCL permits exculpation?**

**(b) What breaches of fiduciary duty can be exculpated and which breaches of fiduciary duty, if any, cannot be exculpated?**

**(c) What actions need to be taken to provide for exculpation as part of the initial incorporation of the Corporation?**

\* \* \*

Jessie and Quinn decide they want to require that, to the extent any stockholder of the Corporation brings a lawsuit involving the Corporation, such lawsuit must be brought in Delaware courts. They hire an attorney, who advises them that the Corporation cannot require *all* lawsuits be brought in Delaware.

**4. (a) Identify and describe the claims the Corporation can require to be brought only in Delaware courts.**

**(b) What actions need to be taken in order to create this requirement?**

\* \* \*

The Corporation becomes publicly traded on the New York Stock Exchange. No single stockholder owns more than 10% of the Corporation's outstanding shares of common stock or is otherwise considered a controlling stockholder of the Corporation. TakeoverCo LLC ("TakeoverCo") sends the Corporation's Board an offer to purchase all outstanding shares of common stock of the Corporation for \$10 per share. At this time, the Corporation's Board consists of five directors – Jessie, Quinn, Morgan, Ryan, and Spencer. Jessie is the only director that is also an officer of the Corporation. TakeoverCo makes statements indicating that it would like Jessie to remain an officer of the Corporation after the transaction, and would like Jessie, Quinn and Morgan, who is also a stockholder, to convert their equity in the Corporation into equity in the surviving entity rather than receiving cash consideration for their shares.

The Corporation's attorney has advised that two of the five directors (Ryan and Spencer) are considered independent and disinterested with respect to the Board's consideration of TakeoverCo's offer, and three of

the directors (Jessie, Quinn and Morgan) are not considered independent and disinterested.

After receiving the offer from TakeoverCo, the Board considers adopting a stockholders' rights plan that would cause the Corporation to issue additional shares of stock in the Corporation in the event that any stockholder acquires more than 10% of the Corporation's outstanding shares of stock.

**5. (a) Can the Board legally adopt a stockholders' rights plan? Why or why not?**

**(b) Is a Delaware court able to perform an equitable review of such action?**

**6. (a) If a stockholder files a lawsuit alleging that the adoption of the stockholders' rights plan was a breach of fiduciary duty by the Board, what standard of review would apply and why?**

**(b) What will the court consider in evaluating the stockholders' rights plan?**

**(c) Who would bear the burden of proof, and what must they prove?**

**7. In what Delaware state court(s) can stockholders file the breach of fiduciary duty claim? Why?**

\* \* \*

*Assume for purposes of Question 8 that the Board negotiates a merger agreement pursuant to which the Board agrees to a merger of the Corporation with TakeoverCo upon a successful tender offer by TakeoverCo for a majority of the shares of the Corporation's issued and outstanding stock. Also assume that Jessie, Quinn and Morgan will (i) receive a combination of cash and shares in TakeoverCo as consideration in the Merger, (ii) be offered employment by TakeoverCo as officers upon completion of the merger, and (iii) that all other stockholders will receive cash as consideration in the merger. Further assume that the Board did not adopt a stockholders' rights plan for the Corporation.*

**8. (a) What standard of review would apply to a claim alleging the directors breached their fiduciary duties by approving the transaction and why?**

**(b) Who would bear the burden of proof and what must they prove?**

\* \* \*

*Assume for purposes of Questions 9 and 10 that the Board has not yet entered into negotiations with TakeoverCo or approved the transaction with TakeoverCo and that there is a controlling stockholder of the Corporation.*

The Board decides to form a Special Committee of the Board to evaluate TakeoverCo's offer, negotiate with TakeoverCo, and make a recommendation to the full Board.

**9. Who should the Board appoint to the Special Committee and why?**

**10. What effect, if any, would use of the Special Committee have on (a) the standard of review, and (b) the burden of proof applied by the court to a claim alleging a breach of fiduciary duty in connection with the Board's approval of the transaction?**

*Do not discuss the impact a vote by the stockholders might have.*

\* \* \*

***Assume for purposes of Questions 11, 12 and 13 that TakeoverCo does not acquire the Corporation.***

Sometime later, one director proposes converting the Corporation to a Delaware limited liability company.

**11. (a) Is Board approval required to convert the Corporation to a limited liability company?**

**(b) Is stockholder approval required to convert? If so, what is the threshold for such approval?**

***Assume for purposes of Question 11(c) that the Certificate of Incorporation restricts the stockholders from acting by written consent.***

**(c) What notices does the DGCL require the Corporation provide in connection with the proposed conversion? To whom must the notices be provided, and when?**

\* \* \*

Sam, a common stockholder of the Corporation, is unhappy with the decision to convert to a Delaware limited liability company and votes against the conversion. Sam is the beneficial owner of the shares of the

Corporation, while Sam's stockbroker is listed on the Corporation's stock ledger as the holder of record.

**Who, if anyone, can demand appraisal for the shares that Sam beneficially owns?**

\* \* \*

Shortly after demanding appraisal, but before filing an appraisal petition, Sam sells his shares to a third party.

**12. Can the third party continue to seek appraisal for the shares that it purchased from Sam? Why or why not?**

## **QUESTION 2**

Tom woke up at his home in Dover, Delaware and drank a large bottle of vodka. While drinking, he heard his roommate yell at him to take out the trash. Tom yelled back at his roommate with slurred speech and staggered over to confront his roommate. Tom then struck his roommate in the face with a set of metal knuckles (metal objects shaped to fit around knuckles used for fighting) causing a large cut over his roommate's eye. After Tom struck his roommate, Tom ran to Tom's bedroom and hid the metal knuckles.

Tom then drove to a local park and parked his car. Tom said hello to the only person in the park while he urinated on a park bench. After seeing that the person was upset, Tom stumbled out of the park into a residential neighborhood.

In the neighborhood, Tom kicked in the door of the home of a well-known gun collector whose home and guns were featured in a video Tom recently viewed. Once inside, Tom found a display case containing a gun that he knew to be worth at least \$5,000. Tom smashed the display case and took the gun. The homeowner rushed into the room. Tom faced the

homeowner and pointed the gun directly at him. Tom then turned and fled the home with the gun. The homeowner called the police to report the break-in and describe the intruder.

**1. Identify all possible crimes. For each crime, identify the elements, and if applicable, the degree.**

\* \* \*

A police cruiser was near the residence and the police officer saw Tom running erratically down the street holding something. Tom matched the description the homeowner had provided to the police. The police officer stopped and shouted at Tom to stop. Tom stopped, dropped the gun and the police officer handcuffed him.

Tom was taken to the police station where he was read his *Miranda* rights. Tom immediately asked for an attorney. Tom's attorney arrived a few hours later and with his attorney present, Tom admitted to the events of the day to the police officer, including striking his roommate with metal knuckles.

The police officer then went to Tom's home. Tom's roommate came to the door holding an ice pack on his bleeding, swollen face. He told the

police officer that Tom struck him with metal knuckles but that he didn't know the location of the metal knuckles. He then gave the police officer consent to search the entire home.

The police officer entered a bedroom in the house. In the bedroom, the police officer saw mail addressed to Tom on the only bed present. The police officer also found an insurance card bearing Tom's name on the dresser. The police officer located metal knuckles in a drawer of the dresser. The police officer seized the metal knuckles as evidence. Tom's attorney filed a motion to suppress the evidence seized from the house for lack of a warrant.

**2. (a) What should the prosecution consider in opposition to the motion to suppress the evidence?**

**(b) What are the applicable legal standards and how should the court rule?**

\* \* \*

Tom was indicted. While Tom's case was pending trial, he was granted bail and released. The police officer who originally questioned Tom had additional questions for Tom about the pending charges. The

police officer called Tom directly and asked if he would come to the police station to answer his additional questions. Tom had never been arrested prior to these charges. The police officer did not mention that he could bring his defense attorney, so Tom agreed and came to the police station alone to meet the police officer. The police officer interviewed Tom for the second time. Tom provided more details on how he gained access to the gun collector's residence and where Tom got the gun. Tom's defense attorney filed a motion to suppress Tom's statement made during the second police interview.

**3. Should the statement from the second police interview be suppressed? Explain your answer, including identifying the applicable legal doctrines that should be applied.**

\* \* \*

During trial the police officer who apprehended Tom was called as a witness. He testified that he saw Tom running erratically. As he got closer to Tom, he noticed Tom smelled of alcohol and Tom's eyes were glassy. The police officer said he believed Tom was impaired.

Tom's defense attorney objected to the admission of the police officer's opinion that "Tom was impaired" because he was not identified as an expert.

**4. How might the judge rule on the objection and why?**

\* \* \*

Prosecutors discovered Tom's roommate had a forgery conviction. During trial Tom's defense attorney attempted to question the roommate about his forgery conviction.

**5. Can Tom's defense attorney ask Tom's roommate about his forgery conviction on cross-examination during trial? Why or why not?**

\* \* \*

During trial the prosecutor could not produce the witness who saw Tom urinate on the park bench or any witness who observed Tom drive to the park. However, Tom's statement confessing to the events of that day was admitted as evidence.

**6. At the close of the prosecution's case, what motion would be appropriate for the defense to make and why?**

### QUESTION 3

Alice and Ben are next-door neighbors in Anytown, Delaware. Ben does not have a fence around his yard and often lets his pet dog out without a leash. Without a fence or leash, Ben's dog constantly wanders into Alice's yard when Ben lets the dog out. On several occasions, Ben has come into Alice's yard to retrieve his dog and has stepped on and ruined Alice's flower garden. Alice's 6-year-old child, Carson, who lives with Alice, loves dogs and has told Ben several times (outside the presence of Alice) that both the dog and Ben are welcome in their yard. Alice intends to file a lawsuit against Ben.

**1. (a) What cause of action in intentional tort can Alice assert against Ben? Identify its elements.**

**(b) Would Alice's claim for the tort identified in 1(a) likely be successful? Explain your answer.**

**(c) What types of damages may be awarded for such a claim? Describe each type of damages identified and discuss what Alice's damages would be (applying the facts above) if her claim is successful.**

**2. (a) What defense can Ben consider asserting against Alice's tort claim discussed in Question 1(a)?**

**(b) If Ben asserts such defense, what will he argue and will he likely be successful? Explain your answer.**

\* \* \*

One day, Ben is walking his dog without a leash in common space in the neighborhood. Alice is also taking a walk. Alice sees Ben and the dog and, as Ben and the dog pass Alice, the dog bites Alice on the leg, causing a cut that requires stitches. Ben's dog has never bitten anyone before.

**3. (a) Other than causes of action based in negligence, what cause of action can Alice assert against Ben? Identify its elements and exceptions.**

**(b) Would Alice or Ben have the burden of proof for proving the exceptions do *not* apply?**

**(c) If Alice asserts such a cause of action, will she likely be successful?**

\* \* \*

After Alice recovers from the dog bite, she devises a plan to trap Ben's dog the next time it comes onto her property. She purchases a reusable trap. The trap is a metal cage that is buried four feet deep in the ground, with an open top that is even to the surface of the ground. The trap has a spring door that snaps shut and locks from the outside when an animal falls into the trap, such that the animal is enclosed from all sides. Alice installs the trap in her yard directly in front of the gate in her fence that she often leaves open and covers the opening of the trap with sticks and leaves. Alice knows her other neighbor Dan's 5-year-old child, Edith, often comes into Alice's yard through the gate to play with Carson. After Alice has installed the hidden trap, and when no one is home at Alice's house, Edith goes into Alice's yard and falls into the trap. The door snaps shut over the top of Edith, and she has no way out. Edith screams for help and begins crying.

**4. (a) What cause of action in intentional tort might Edith (through her parents as guardians) have against Alice? Identify its elements.**

**(b) If Edith asserts such a cause of action, will she likely be successful? Explain your answer.**

***Do not discuss potential defenses.***

\* \* \*

Dan, who had been watching Edith from his yard, sees her fall into the trap. He runs over to the trap and releases Edith. Dan is greatly distressed by seeing his daughter fall into the trap.

**5. (a) What cause of action in intentional tort might Dan have against Alice? Identify its elements.**

**(b) If Dan asserts such a cause of action, will he likely be successful? Explain your answer.**

***Do not discuss potential defenses or causes of action Dan might bring on behalf of Edith.***

\* \* \*

Later, Alice goes out to her yard to reset the trap. She reviews the manufacturer's instructions sent with the trap, and following the instructions, she pulls back the spring door and hooks it in place. As she does so, Alice does not notice that the hook to reset the trap is bent. The

hook breaks almost immediately, and the door slams shut on Alice's right hand. Although the force of the door slamming shut would not ordinarily cause significant injury to a person, Alice has extremely brittle bones and two of her fingers are fractured by the door. This causes great pain for Alice and also requires her to seek costly medical treatment, which is covered by her medical insurance. Additionally, Alice is wearing a ring on her right hand, which is also damaged by the door slamming shut on her hand. Upon further inspection, Alice sees the trap's hook was made of flimsy plastic. The trap is now unusable.

**6. If Alice brings a cause of action alleging strict product liability against the manufacturer of the trap, will she likely be successful? Explain your answer.**

\* \* \*

Assume Alice brings a cause of action for negligence against the manufacturer of the trap and is successful.

**7. Identify and describe the damages for which the manufacturer could be liable. Include in your discussion whether Alice would be successful if she seeks punitive damages.**

\* \* \*

Happy that Edith was not hurt after the fall into the trap, Dan invites Ben over to his yard to celebrate. When Ben gets there, Dan pulls out some fireworks and begins setting them off. One of the fireworks misfires and blows backward into Ben, who sustains third-degree burns and is rushed to the hospital. The misfired firework also catches Dan's shed on fire and the fire department is called. Before the firefighter arrives, Dan lights another firework behind a bush near the shed but it does not go off right away. Dan is aware that the firework behind the bush may still be live, but never tells the firefighter about that firework. When the firefighter arrives, the firefighter asks Dan to step aside, and begins putting out the shed fire. The defective firework goes off, injuring the firefighter and resulting in medical expenses.

Assume the relevant Delaware statute reads:

*For the safety of the public, a person may not store, sell, offer or expose for sale, or have in possession with intent to sell or to use, discharge or cause to be discharged, any fireworks, firecrackers, rockets, torpedoes, other*

*fireworks or object intended for pyrotechnic display,  
anywhere in the state of Delaware.*

**8. (a) What cause of action can Ben assert against Dan? Identify its elements.**

**(b) If Ben asserts such a claim, will he likely be successful? Explain your answer.**

**(c) Does the firefighter have a claim against Dan? Explain your answer.**

## QUESTION 4

Victoria buys an electric car from Green Co. She buys a model called the G500. Green Co. advertises that the G500 can travel 500 miles on a single charge. With the car fully charged, Victoria goes on a road trip that is 200 miles. With only five miles left in her trip, it begins to snow heavily. Her car slows to a stop because the battery has run out of power. She is stuck in her car on the side of the road for hours and suffers frostbite before help arrives. Victoria sues Green Co. for her personal injuries in the Delaware Superior Court, and a jury trial is held.

Victoria alleges in her Complaint that the battery in her car was defective. Green Co. denies this allegation and asserts that it was unaware of any battery problems with the G500 model before Victoria's incident. In discovery, it is revealed that, three years before Victoria's incident, Green Co. had received several reports that the battery in G400 models—the *predecessor* to the G500 model—quickly lost power in cold weather, reducing each car's range to only 100 miles. At trial, Victoria's lawyer asks Green Co.'s Chief Executive Officer ("CEO") about the company's knowledge of the incidents described in those reports. Green Co.'s lawyer

objects to the question on the basis that the incidents described in those reports are not relevant under Rule 401 of the Delaware Uniform Rules of Evidence (the “Rule(s)”) and that the evidence should be excluded under Rule 403.

**1. (a) What is the test for relevance under Rule 401?**

**(b) What should Green Co.’s lawyer argue in support of excluding the evidence as not relevant?**

**(c) What should Victoria’s lawyer argue in support of admitting the evidence as relevant?**

**2. (a) What is the standard for exclusion of relevant evidence under Rule 403?**

**(b) What should Green Co.’s lawyer argue in support of exclusion under Rule 403?**

**(c) What should Victoria’s lawyer argue in opposition to exclusion under Rule 403?**

\* \* \*

In discovery, it is revealed that, after Victoria’s incident, Green Co. conducted a recall and replaced the batteries in all G500 models with a

new battery that does not lose power in cold weather. At trial, Victoria's lawyer asks Green Co.'s CEO about the replacement of the batteries. Green Co.'s lawyer objects to the question.

**3. (a) What should Green Co.'s lawyer argue in support of the objection?**

**(b) What should Victoria's lawyer argue in opposition to the objection?**

**(c) How should the court rule, and why?**

\* \* \*

In discovery, Green Co. produces an email from Green Co.'s CEO to Green Co.'s accountant in which the CEO told the accountant that the company needed to set aside funds for Victoria's lawsuit because the battery in her car may have been defective. At trial, Victoria's lawyer asks Green Co.'s CEO about this email, and Green Co.'s lawyer objects that the email is a privileged communication and therefore inadmissible.

**4. How should the court rule on the objection, and why?**

***In your answer, do not address any discovery issues such as whether Green Co. provided a privilege log regarding the email or whether a privilege was waived.***

\* \* \*

Victoria testifies at trial. During Victoria's testimony, her lawyer asks her when she purchased the car. Victoria testifies that she does not remember when she purchased the car. Victoria's lawyer has a copy of Victoria's receipt from her car purchase which shows the date of purchase.

**5. (a) Explain the step-by-step process through which Victoria's lawyer can attempt to refresh Victoria's recollection about when she purchased the car using the receipt.**

**(b) What is Green Co.'s lawyer entitled to do with Victoria's receipt under Rule 612?**

\* \* \*

Green Co. hired an expert in electric car battery safety to testify at trial. Near the end of the expert's testimony at trial, Green Co.'s lawyer asks the expert whether he believes the battery was defective. Victoria's

lawyer objects on the basis that the question improperly asks the expert to offer an opinion on an issue to be decided by the jury.

**6. What argument should Green Co.'s lawyer make in opposition to the objection?**

\* \* \*

Before Victoria purchased her car, it was Green Co.'s policy to have a third-party company, Safety Corp., test each car's battery before the car was sold to a customer. Green Co. and Safety Corp. have acknowledged in a written agreement that Safety Corp. acts as an agent of Green Co. During discovery, Victoria's lawyers subpoenaed the testing records from Safety Corp., and Safety Corp. produced its complete and certified testing records, as well as a certified copy of the written agreement with Green Co. The testing records are organized by a specific number for each car. The testing records show that the batteries for cars numbered 122 and 124 were tested, but there is no entry for car 123, which is Victoria's car.

Victoria's lawyer subpoenaed a representative from Safety Corp. to testify at trial about the testing records. Victoria's lawyer asks the Safety Corp. representative why the testing records do not include an entry for

car 123. Green Co.'s lawyer objects on the basis that the testing records are hearsay.

**7. (a) What is hearsay under Rule 801?**

**(b) What argument should Victoria's lawyer make that the testing records are not hearsay?**

**8. (a) If the court rules that the testing records are hearsay, what hearsay exception(s) might apply?**

**(b) What foundation must Victoria's lawyer present to meet the requirements of the exception(s)?**

\* \* \*

One of the first responders who assisted Victoria during the incident took photographs of the scene, including a photograph of the car's dashboard screen which showed the battery had 0% power. During Victoria's testimony, Victoria's lawyer shows her that photograph and asks her to describe to the jury what it shows. Green Co.'s lawyer objects to the question and the use of the photograph on the basis that Victoria cannot authenticate the picture because she did not take the photograph.

**9. (a) What is the standard for the authentication of evidence under Rule 901?**

**(b) What arguments should Victoria's lawyer make in opposition to the objection?**