signed this new operating agreement. Although Olson was paid more than $100 million after he left the LLCs in 2005 (which represented his 2005 earned compensation and capital accounts), he claimed that Halvorsen and Ott had orally agreed to pay him the six-year declining interest contemplated by the draft operating agreement.

The LLCs were formed under Delaware law, which for more than a century has provided that contracts that cannot be performed within a year must be in writing. A Delaware statute enacted decades later provides that an LLC is not required to sign its "limited liability agreement." The Delaware LLC Act defines this to include "any agreement (whether referred to as a limited liability company agreement, operating agreement or otherwise) written, oral or implied, of the member or members as to the affairs of a limited liability company and the conduct of its business." (6 Del. C. § 18-101(7).)

Is Olson entitled to receive more than his 2005 earned compensation and capital account? How could Olson have avoided this lawsuit? [*Olson v. Halvorsen*, 986 A.2d 1150 (Del. 2009).]

7.3 A settlement agreement involving an unpaid student loan provided that the student must "remit[] not less than $600.00 monthly with each payment arriving at [the appropriate lending agency], not less more [sic] than 30 days apart . . . ." During later litigation, the parties argued as to whether the agreement meant the student had to make the payments more than or less than thirty days apart.

What factors would a court look at in determining how to interpret the above wording? Is a court required to interpret a contract's words literally, even if that would result in an "absurdity" or would "render[] the contract ineffective to accomplish its purpose?" [*United States v. Birch*, 2013 WL 1842065 (E.D. Pa. Apr. 30, 2013).]

7.4 In 1999, the plaintiff sold his New York–based public relations firm, Lobsenz Stevens, to the defendants, Publicis S.A., a French global communications company, and its American subsidiary. The sale involved two contracts: a stock-purchase agreement pursuant to which the plaintiff sold all of his stock in the firm to the defendants, and an employment agreement pursuant to which the plaintiff was to continue as chairman and CEO of the new company, named Publicis-Dialog (PD), for three years. Under the stock-purchase agreement, the plaintiff received an initial payment of $3,044,000 and stood to earn "earn-out" payments of up to $4 million if PD achieved certain levels of earnings before interest and taxes during the three calendar years after the closing. The employment agreement described the plaintiff's duties as the "customary duties of a Chief Executive Officer." Within six months of the closing, signs of financial problems appeared, including the loss of PD's largest pre-acquisition client. In March 2001, the plaintiff was removed as CEO of the business and given several options, including (1) leaving the firm, (2) staying and working on new business, and (3) coming up with another alternative. Thereafter, Bob Bloom, former chair and CEO of Publicis USA, and the plaintiff exchanged a series of e-mails, which culminated in a March 28 message from Bloom that set forth his understanding of the parties' terms regarding the plaintiff's role at PD as follows:

> Thus I suggested an allocation of your time that would permit the majority of your effort to go against new business development (70%). I also suggested that the remaining time be allocated to maintaining/growing the former Lobsenz Stevens clients (20%) and involvement in management operations of the unit (10%). This option, it would seem, is in your best interest because it offers the best opportunity for you to achieve your stated goal of a full earn-out. When I suggested this option you seemed to have considerable enthusiasm for it and expressed your satisfaction with it so I, of course, assumed that it was an option you preferred.

The plaintiff responded with an e-mail that stated, among other things, "I accept your proposal with enthusiasm and excitement. . . . I'm psyched again and will do everything in my power to generate business, maintain profits, work well with others and move forward." Bloom responded that he was "thrilled with [the plaintiff's] decision." Each of the e-mail transmissions bore the typed name of the sender at the end of the message. The plaintiff subsequently filed a lawsuit based on the terms of the original employment agreement. The defendants filed a motion for summary judgment claiming that the e-mail exchanges did not constitute "signed writings" within the meaning of the statute of frauds.

What arguments would you make on behalf of the defendants? Which party do you think will prevail? [*Stevens v. Publicis, S.A.*, 854 N.Y.S.2d 690 (2008).]

7.5 Hydrotech Systems, Ltd., a New York corporation, agreed to sell wave-pool equipment to Oasis Waterpark, an amusement park in Palm Springs, California. Although Hydrotech was not licensed to install such equipment in California, it agreed to install the wave-pool equipment after Oasis promised to arrange for a California-licensed contractor to "work with" Hydrotech on any construction.

The contract between Hydrotech and Oasis called for Oasis to withhold a specific portion of the contract price pending satisfactory operation of the wave pool. Although the pool functioned properly after installation, Oasis continued to withhold payment for both the equipment and the installation services.

Section 7031 of the California Business and Professions Code provides that a suit may not be brought in a California court to recover compensation for any act or contract that requires a California contractor's license unless the plaintiff alleges and proves that it was duly licensed at all times during the act or contract.

Can Hydrotech recover its compensation due under the contract? Does Hydrotech have a valid action against Oasis for fraud? Is it ethical for Oasis to try to use California law to defend itself? [*Hydrotech Systems, Ltd. v. Oasis Waterpark*, 803 P.2d 370 (Cal. 1991).]

7.6 BJ's Wholesale Club offers its members use of a children's play center where parents can drop off their children