

JULY 2016 MICHIGAN BAR EXAMINATION

ESSAY PORTION

MORNING SESSION

**QUESTION 1 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I
OR IN SOFTEST ANSWER SCREEN 1**

Paula Plaintiff, a 56-year-old registered nurse, lived an active life. Not only did her employment require her to walk several miles a day during her rounds (and one more mile when she frequently worked overtime), but each summer she was in a golf league with her husband and during each Michigan winter, she was in a tennis league with her daughter. In her spare time, Paula helped care for her elderly parents and occasionally would watch her grandchildren.

One day in December 2014, Paula was lawfully walking across the street when she was struck by a car driven by Dave Defendant. As a result of the accident, Paula had broken one leg, fractured her hip, and had a wide, eight-inch long cut along her forehead. After a week in the hospital, Paula was discharged with a cast and 20 stitches on her forehead. Three months later the cast was removed, and after another six months of intense physical therapy, Paula returned to work, but at a desk job with no overtime. She also resumed caring for her parents and babysitting her grandchildren. In July 2015, Paula's doctor told her not to play tennis or golf for at least another six months. After much work and follow-up care, Paula returned to playing tennis and golf in July 2016. At that time she also returned to her prior RN duties.

Paula was embarrassed by the eight-inch scar across her forehead. A plastic surgeon told her that it could not be removed. Though she tried to cover it up with makeup, it was still visible to the naked eye because of its coloration, and people frequently would stare at it.

Paula Plaintiff filed a timely lawsuit against Dave Defendant, seeking to recover non-economic damages for her injuries.

Applying Michigan law, answer in detail these questions:

- (1) Can Paula establish liability against Dave Defendant for her injuries, and**
- (2) Will a judge or jury decide these issues?**

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK 1*****
OR IN SOFTEST ANSWER SCREEN 1**

**QUESTION 2 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I
OR IN SOFTEST ANSWER SCREEN 2**

Robert Reston decided to redecorate his master bedroom and bathroom. In anticipation, he telephoned Greg's Granite and spoke to Greg. Reston introduced himself, told Greg the size and type of granite that he needed for his bathroom, and that his "interior decorator would be stopping by to formalize the order."

Two days later, Reston selected Decor by Dennis as his interior decorator. Reston called Dennis and invited him over to sign the contract. He also told Dennis that Greg's Granite would be supplying the granite, but that the order needed to be placed. En route to meet with Reston and sign the contract, Dennis first stopped by Greg's Granite, identified himself to Greg as Robert Reston's interior decorator, and placed the granite order.

Subsequently, Reston and Dennis signed a contract permitting Dennis to "design and implement" a complete redecoration of Reston's master bedroom and bathroom. Reston selected the color scheme and generally described what he wanted, but left the rest of the details completely up to Dennis. Dennis secured various craftsmen to accomplish the project, including Cal Carpenter and Pete Painter.

Toward the end of the project, Dennis and Pete went out for drinks after work one night and got into a heated political argument. Dennis punched Pete in the face, breaking Pete's jaw.

After the project was completed to Reston's satisfaction, Reston refused to pay either Greg's Granite or Cal the Carpenter. Pete filed a lawsuit against Reston for his broken jaw, claiming that Reston is vicariously liable for Pete's injuries.

Applying principles of Michigan agency law, discuss whether Reston is required to pay

- (1) Greg's Granite or
- (2) Cal Carpenter.

Also discuss whether Reston will be liable to Pete for his injuries.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I*****
OR IN SOFTEST ANSWER SCREEN 2**

**QUESTION 3 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I
OR IN SOFTEST ANSWER SCREEN 3**

Plaintiff Paul Perry and Defendant Donald Dolen are friends who met at Stockton Nightclub for a drink. When they left the club, Perry's vehicle would not start. Dolen, who was intoxicated, offered to let Perry drive him home and then would allow Perry to drive his (Dolen's) vehicle home. After dropping Dolen off at his home, Perry lost control of Dolen's vehicle on a curve, rolled over and crashed into an embankment. Perry received substantial injuries for which he was hospitalized. Dolen's vehicle was totaled, and Dolen's auto insurer had the vehicle towed to a public junk yard for storage.

Within a few days of the accident, Perry hired a lawyer. Perry told his lawyer that the tires on Dolen's vehicle were bald, and that this was the reason he lost control of the vehicle. However, neither Perry nor his lawyer said anything about the tires to Dolen or Dolen's insurance company. Three months after the accident, Dolen's insurance company directed that Dolen's vehicle be scrapped. As part of the scrapping process, the vehicle's tires were sent to a recycling plant, where they were shredded into crumb rubber and intermingled with thousands of other shredded tires.

Six months after the accident, Perry sued Dolen for negligence, arguing that Dolen's failure to properly maintain his tires in good condition was a proximate cause of the accident. Dolen answered and filed a motion to dismiss, arguing that because his vehicle had been scrapped, Perry would be unable to prove his negligence, and thus, as a matter of law, the negligence claim against Dolen should be dismissed.

Applying Michigan law:

- (1) Discuss the merits of Dolen's motion.
- (2) Assuming Dolen is entitled to relief, is dismissal or any other relief warranted – why or why not?

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I*****
OR IN SOFTEST ANSWER SCREEN 3**

GO TO BLUEBOOK II

**QUESTION 4 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II
OR IN SOFTEST ANSWER SCREEN 4**

Desperate to improve her score on the Law School Acceptance Test (LSAT), Katy met with a representative from Do Or Die Review (DDR), a test preparation service. Seeking to turn Katy's anxiety into a sale, the representative said, "You better take our course or you'll never get into law school. Besides, if your score doesn't improve, we'll refund your tuition."

Katy signed DDR's contract for the course, which stated that it "constitutes the entire agreement between the parties" and contained the following provision:

If student's score does not improve, student may repeat the course for free. To qualify for this guarantee, student must have paid the full \$1,000 tuition by the last class.

Katy mailed regular payments to DDR but did not know that her last \$25 payment was lost in the mail. DDR never informed her of the missing payment.

Katy completed the course and took the LSAT but was unhappy with her score, which she claimed had not improved. She brought suit against DDR, seeking a refund based on the representative's statement.

DDR responded that:

- Katy did not qualify for the guarantee because she had not paid the tuition in full;
- Katy's score had actually improved; and
- even if it hadn't, she was entitled only to repeat the course for free. Katy argued that such limitation did not apply to her because she signed the contract under duress.

The contract did not define "improve." Both Katy and DDR offered evidence of what they had understood "improve" to mean at the time of signing. The evidence would show that both interpretations were reasonable.

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OR IN SOFTEST ANSWER SCREEN 4**

Applying Michigan law, explain your answers, including an explanation of what evidence the court could consider:

- (1) Is Katy entitled to a refund?
- (2) Is Katy entitled to repeat the course for free?
- (3) Is her duress defense valid?

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**QUESTION 5 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II
OR IN SOFTEST ANSWER SCREEN 5**

Lawrence Lawyer represents client Greg in a case where Lawrence has come to suspect that opposing counsel directed his assistant to notarize an affidavit attached to a pretrial motion when the witness was not in fact present before the assistant/notary. (The affidavit contained standard "jurat" language by which the notary attests that the affidavit was "Subscribed and sworn to by [name of affiant] before me on the [date]." Emphasis added.) Lawrence shares his suspicion with Greg, who tells Lawrence, "don't raise a stink or tell anyone; I don't want to jeopardize our settlement negotiations by antagonizing opposing counsel."

While working on an unrelated matter, Lawrence discovers that his partner has misappropriated client funds from the firm trust account. Lawrence confronts his partner, who admits that he converted the funds to his own use, and then deposited a sum equal to the amount he misappropriated into the trust account before the client learned that the money was missing.

Finally, Lawrence represents attorney Andy in a criminal matter arising out of Andy's arrest for operating a motor vehicle while intoxicated. Andy pleads guilty and is convicted. Andy tells Lawrence that this was "out of character" for him and he "would prefer that Lawrence not call attention to this matter and observe the strictest confidentiality."

Does Lawrence have a duty under the applicable rules to report these matters to the Attorney Grievance Commission? Analyze and explain why or why not.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK. II*****
OR IN SOFTEST ANSWER SCREEN 5**

**QUESTION 6 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II
OR IN SOFTEST ANSWER SCREEN 6**

Defendant Barkey is awaiting trial in state court on charges of felony possession of a controlled substance with intent to distribute. Drug Task Force Officer Witherspoon arrested Barkey as Barkey waited in a parking garage for a pre-arranged drug buy. Barkey resisted arrest while a bystander, who identified himself as Montana and claimed not to know Barkey, waited patiently to be interviewed by Witherspoon. As Barkey's disruptive conduct continued and the night wore on, Montana was allowed to leave, giving his name and address and a promise to report to task force headquarters at noon the next day. The next day, Montana appeared as promised and provided a sworn statement. He continued to insist he was in the parking garage by pure happenstance, and described in detail what he had witnessed.

In pretrial proceedings, the prosecution announced plans to introduce Officer Witherspoon's police report of Barkey's arrest so that the jury could consider the sworn and highly incriminating statement of eyewitness Montana. Montana - as it turns out - provided Officer Witherspoon with a false name and address, and now cannot be found anywhere. The prosecution also announced its intent to use Barkey's felony identity theft conviction from three years earlier in the event Barkey takes the stand.

Barkey's counsel objects to the police report as hearsay. He also argues that the conviction is more prejudicial than probative and thus cannot be used. The prosecution argues that the police report is admissible under MRE 803(8), the public records exception, or under MRE 803(6), record of regularly conducted activity, or, alternatively, under MRE 804(b), because Montana is unavailable. The prosecution also contends that the conviction will be used only for impeachment purposes.

(1) How should the court rule on both of Barkey's objections? Explain your answers.

(2) Discuss why each hearsay exception offered by the prosecution will or will not succeed.

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OR IN SOFTEST ANSWER SCREEN 6**

GO TO BLUEBOOK III

**QUESTION 7 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III
OR IN SOFTEST ANSWER SCREEN 7**

After a divorce trial, the court entered judgment dissolving the parties' 25-year marriage, dividing the marital estate evenly and awarding alimony to wife Kelli to be paid by husband Clarence. The salient provision in the judgment contained the following language:

The court finds Clarence makes \$100,000 per year while Kelli makes \$25,000 per year. The parties are of similar age, but Clarence has superior health, skills and earning power. Accordingly, the court awards periodic alimony to be paid by Clarence in the amount of \$1,500 per month for a period of six years.

Three years later, Kelli petitions the court for an increase in alimony. She contends an increase is warranted because her health has slipped but, more importantly, the grocery store where she works as a cashier has been using more self-checkout lanes, resulting in her working fewer hours and reducing her income to \$20,000 per year. Since her hours were cut from 40 per week to 32, Kelli lost her fully covered health care benefits and is required to pay \$350 per month to maintain her insurance. Clarence, on the other hand, has had an increase in his income as the company he works for is doing better than ever because, ironically, the company makes self-checkout machinery. He now makes \$115,000 per year.

Clarence's defense is two-pronged. First, he maintains that the court's alimony award is not modifiable--that his obligation is forever limited to the stated amount and for the stated period of time. Second, he contends that, even if possible, a modification is not warranted on the facts presented.

Applying Michigan law, evaluate both of Clarence's defenses and indicate, if necessary, what factors the court will consider and what decision is likely.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III*****
OR IN SOFTEST ANSWER SCREEN 7**

**QUESTION 8 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III OR IN
SOFTTEST ANSWER SCREEN 8**

On May 1, 2016, ABC Air Conditioning (ABC) entered into a valid written contract with Central Supply, Inc. (CSI) to purchase 500 pounds of liquid Freon at \$20 per pound. Under the contract, full payment was due by July 22, 2016 and delivery of the Freon was to be made on July 23, 2016. Delivery costs were to be wholly assumed by the purchaser (ABC).

In June 2016 the price of liquid Freon plummeted due to a shift in the market. As a result, ABC contacted CSI seeking to modify its contract to reflect a purchase price of \$15 per pound. CSI agreed to the price reduction and the modification was reduced to writing.

In early July 2016 the price of liquid Freon continued to drop. Without seeking consent from CSI, ABC delegated its responsibilities under the contract to another local air conditioning company (XYZ) and assigned its rights under the contract to XYZ. XYZ failed to make any payment to CSI by July 22, 2016.

CSI now seeks your legal advice, under Michigan law, on the following two questions:

(1) Can ABC legitimately delegate its responsibilities and assign its rights under the contract to XYZ without CSI's consent? Explain your answer.

(2) Can CSI recover the original contract price of \$20 per pound? Why or why not?

**QUESTION 9 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III
OR IN SOFTEST ANSWER SCREEN 9**

On June 1, 2014, Peggy was involved in an automobile accident and injured her back, requiring her to miss work. As required by Michigan law, Peggy's insurer, D-Lux Automobile Insurance Company, paid personal injury protection insurance (PIP) benefits to Peggy until she returned to work on February 18, 2015.

However, Peggy left her job on August 5, 2015, claiming that the back injury she suffered in the automobile accident prevented her from working. Initially, D-Lux resumed payment of PIP benefits, but also sent Peggy to be examined by an orthopedic surgeon. The orthopedic surgeon opined that nothing prevented Peggy from resuming her previous employment. Based on this opinion, D-Lux terminated its payment of PIP benefits on November 19, 2015.

On June 11, 2016, Peggy filed a lawsuit in Kandor County Circuit Court under Michigan's no-fault act, seeking to recover payment of PIP benefits, 12% penalty interest, and attorney fees. Peggy also filed a motion for preliminary injunction, requesting that the court order D-Lux to pay her PIP benefits pending a final determination of her claim. Peggy argues that without the payment of benefits, she will be impoverished and unable to continue her lawsuit. In support of her motion, Peggy supplied an affidavit from her own orthopedic surgeon, who has opined that she is unable to return to work.

D-Lux responds that it should not be required to pay contested benefits because Peggy will likely not be able to reimburse D-Lux if it ultimately prevails. D-Lux further argues that a preliminary injunction would be improper because it would have to provide all of the relief Peggy is seeking without a hearing on the merits, and that Peggy's ability to recover PIP benefits, attorney fees, and interest affords an adequate legal remedy.

Discuss the requirements for obtaining preliminary injunctive relief under Michigan law, and how the court should rule on Peggy's motion in light of those requirements.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III*****
OR IN SOFTEST ANSWER SCREEN 9**

JULY 2016 MICHIGAN BAR EXAMINATION

ESSAY PORTION

AFTERNOON SESSION

**QUESTION 10 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV
OR IN SOFTEST ANSWER SCREEN 10**

Cedric owns and operates a bicycle shop in Grace City, Michigan where he sells high-end bikes and accessories and performs bike repair and upgrade work. Benny took his bike to Cedric's shop for repairs and accessorizing. Benny told Cedric that he needed the bike work completed and the bike returned as soon as possible to prepare for a road race. Cedric estimated that he could have the bike ready within a week and quoted Benny a price of \$300 to perform the work. Cedric accepted a \$150 deposit from Benny, who left the bike with Cedric for that purpose. Cedric completed work on the bike within a week, as he had estimated to Benny. At that time, Benny began to repeatedly telephone to retrieve the bike from Cedric's shop. However, for nearly another week Cedric misrepresented that the work was not yet finished, and began using Benny's bike to run personal errands. Cedric rode Benny's bike to his local bank where he left the bike unattended and unsecured while he conducted personal banking inside. When he exited the bank, Cedric discovered that Benny's bike was missing. It was never recovered.

Applying Michigan law, discuss fully:

- (1) The nature of the relationship between Cedric and Benny, and**
- (2) Any theories of recovery Benny could pursue against Cedric for the missing bike, including the likelihood of success.**

**QUESTION 11 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV
OR IN SOFTEST ANSWER SCREEN 11**

Mary was the sole owner of a home in Sock City, Michigan. In 2014, when she was 65-years old and in strong mental and physical health, Mary handwrote the following on a sheet of paper:

My home is all I have and when I die I want my only sister Amanda to have it. Dated: July 10, 2014.

Mary signed the document in her own handwriting following the date. No one else signed.

Mary had no other assets on July 10, 2014, and acquired nothing more until November 2015, when she received 3 million dollars from the State of Michigan as a lump-sum payment for a winning lottery ticket that she had purchased. Mary made no changes to the July 10, 2014 document.

In January 2016, Mary passed away having spent none of the lottery winnings. At the time of her death, Mary was survived only by her sister and by 3 adult daughters; 1 of whom was her natural born child, 1 of whom was her adopted child, and 1 of whom was her stepchild. Mary's adopted child, however, passed away 3 days after Mary died.

Applying principles of Michigan law, fully discuss the following:

- (1) Did Mary have a valid will and, if so, what if any property is disposed of by the will?**
- (2) How would Mary's estate be distributed (to whom and to what extent)?**

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV*****
OR IN SOFTEST ANSWER SCREEN 11**

**QUESTION 12 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV
OR IN SOFTEST ANSWER SCREEN 12**

Pamela owned commercial property located in Quiet Town, Michigan. In January 2015, she and music producer Desmond entered into a 2-year written lease agreement. Desmond agreed to pay \$1,000 to Pamela by the first of each month to rent the property for use as a music studio. Desmond made property renovations that were allowed under the lease. He installed new overhead lighting, as the previous lighting was insufficient for his use of the property, and mounted acoustic speakers on the walls. Desmond also outfitted the property with his own office furniture and supplies, along with other studio equipment, and began to produce music for talented artists from that location.

After several months of sluggish rental payments, Desmond failed to pay rent for the month of June, and paid no other rent after that time except for a partial monthly payment in early September 2015. Pamela became so frustrated with Desmond's uneven payment history that, while Desmond was out of town during the last two weeks of September, Pamela had all of Desmond's studio supplies, furniture and equipment, except for the lights and speakers, removed to a local storage facility, and changed the locks on all of the studio property doors. Although upon his return Pamela immediately gave Desmond keys to the storage facility to where she had moved his personal property, Desmond was quite upset. A week later, he has come to you for legal help.

Applying Michigan law:

- (1) Explain fully how Desmond might legally regain possession of the studio property; and**
- (2) Advise Desmond on whether he is entitled to recover the lights and speakers he installed on the property if he chooses not to seek repossession of the studio space.**

GO TO BLUEBOOK V

**QUESTION 13 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V
OR IN SOFTEST ANSWER SCREEN 13**

Tommy Thompson was arrested on a validly issued murder warrant by a homicide detective and a uniformed officer. His mother saw the arrest on the front lawn. She hollered out to the officers, "Where are you taking my son?" The detective responded "to the detective bureau at the police station."

Tommy's mother immediately called their family attorney. Attorney Askins quickly excused himself from a meeting and headed to the police station. However, due to the distances involved, the detective arrived 15 minutes earlier, so Tommy was taken into the detective bureau for questioning.

Before Detective Upton began the interrogation of Tommy, he got a call from the front desk sergeant who told him an Attorney Askins was there, had been retained by Tommy's mother, and that Askins wanted to be present with Tommy. Upton simply said, "Yeah" and hung up the phone.

Without mentioning that Askins was there to see Tommy, Upton advised Tommy of his Miranda rights. Tommy waived his rights under Miranda and signed a departmental issued form confirming his understanding of his rights and his waiver of them. Tommy then quickly confessed to the murder.

After Tommy was charged, Askins moved the court to suppress Tommy's confession. The prosecutor responded that Tommy's confession was perfectly admissible, he had been advised of his rights, waived them, and both his understanding and waiver were documented by the signed form. Askins responded that Upton's failure to advise Tommy he was present and wanted to speak with him, invalidated Tommy's Miranda waiver.

(1) Discuss what factors the court must consider to determine whether Tommy validly waived his Miranda rights. Also discuss whether Askins' argument, in light of those factors, should be sustained.

(2) Discuss whether your answer would be different under Michigan law.

**QUESTION 14 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V OR
IN SOFTEST ANSWER SCREEN 14**

Sixteen-year-old Jimmy Giles was convicted by a jury of first-degree felony murder, committed when he was 16. At sentencing, the state court judge imposed, over objection, a sentence of death by lethal injection. Jimmy appeals his sentence on constitutional grounds.

Seventeen-year-old Betty Brown was convicted in a bench trial of armed robbery and assault with intent to murder, committed when she was 16. At sentencing, the state court judge imposed the maximum sentence of life imprisonment without parole, over objection. Betty appeals her sentence on constitutional grounds.

Eighteen-year--old Harvey Henson was convicted of first-degree murder, committed when he was 16. His state's sentencing scheme mandates a sentence of life in prison without parole and makes no distinction between adults and juveniles convicted of first-degree murder. The state's parole statute buttresses the sentencing statute by precluding any possibility of parole. While sympathetic to defense counsel's notation that Harvey was "just a kid," the state court judge responds, "my hands are tied by the Legislature." Harvey is sentenced to life in prison without parole. Harvey, as well, appeals his sentence on constitutional grounds.

Identify fully the U.S. constitutional provisions common to the scenarios described above and articulate whether, when viewed in the light of the constitutional provision(s), the sentences imposed would be upheld. Fully explain your conclusions.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V*****
OR IN SOFTEST ANSWER SCREEN 14**

**QUESTION 15 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V
OR IN SOFTEST ANSWER SCREEN 15**

Suspicious that his wife Sally was being unfaithful to him, Carl left work three hours early to start the 30-minute drive home. He fully intended to confirm, or refute, his suspicion. On arrival, he began to anger when he saw a strange car, along with his wife's, parked in the driveway. On entry into the kitchen, he heard a male and a female voice he recognized as Sally's, emanating from an upstairs spare bedroom directly above the kitchen. His anger intensified. He reached for the legally registered but unloaded revolver in the breadbox. He grabbed for a handful of bullets from a nearby drawer.

While walking slowly up the stairway on the opposite side of the home (so as not to be heard), the voices and sounds of infidelity intensified. As he continued slowly walking up the stairs, Carl loaded the gun with six bullets.

Carl burst into the room to find Sally and his close friend Clint engaged in what Carl feared. Now enraged seeing the two, he shot and killed Sally and Clint.

Applying Michigan law on the facts presented, discuss what level of homicide, if any, Carl should be charged with. Explain your answer.

JULY 2016 MICHIGAN BAR EXAMINATION

ESSAY PORTION

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Applying Michigan law, discuss fully:

- (1) The nature of the relationship between Cedric and Benny, and**
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Sixteen-year-old Jimmy Giles was convicted by a jury of first-degree felony murder, committed when he was 16. At sentencing, the state court judge imposed, over objection, a sentence of death by lethal injection. Jimmy appeals his sentence on constitutional grounds.

Seventeen-year-old Betty Brown was convicted in a bench trial of armed robbery and assault with intent to murder, committed when she was 16. At sentencing, the state court judge imposed the maximum sentence of life imprisonment without parole, over objection. Betty appeals her sentence on constitutional grounds.

Eighteen-year-old Harvey Henson was convicted of first-degree murder, committed when he was 16. His state's sentencing scheme mandates a sentence of life in prison without parole and makes no distinction between adults and juveniles convicted of first-degree murder. The state's parole statute buttresses the sentencing statute by precluding any possibility of parole. While sympathetic to defense counsel's notation that Harvey was "just a kid," the state court judge responds, "my hands are tied by the Legislature." Harvey is sentenced to life in prison without parole. Harvey, as well, appeals his sentence on constitutional grounds.

Identify fully the U.S. constitutional provisions common to the scenarios described above and articulate whether, when viewed in the light of the constitutional provision(s), the sentences imposed would be upheld. Fully explain your conclusions.

**QUESTION 15 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V
OR IN SOFTEST ANSWER SCREEN 15**

Suspicious that his wife Sally was being unfaithful to him, Carl left work three hours early to start the 30-minute drive home. He fully intended to confirm, or refute, his suspicion. On arrival, he began to anger when he saw a strange car, along with his wife's, parked in the driveway. On entry into the kitchen, he heard a male and a female voice he recognized as Sally's, emanating from an upstairs spare bedroom directly above the kitchen. His anger intensified. He reached for the legally registered but unloaded revolver in the breadbox. He grabbed for a handful of bullets from a nearby drawer.

While walking slowly up the stairway on the opposite side of the home (so as not to be heard), the voices and sounds of infidelity intensified. As he continued slowly walking up the stairs, Carl loaded the gun with six bullets.

Carl burst into the room to find Sally and his close friend Clint engaged in what Carl feared. Now enraged seeing the two, he shot and killed Sally and Clint.

Applying Michigan law on the facts presented, discuss what level of homicide, if any, Carl should be charged with. Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V*****
OR IN SOFTEST ANSWER SCREEN 15**