

**FEBRUARY 2020 MICHIGAN BAR EXAMINATION
ESSAY PORTION
MORNING SESSION**

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

Jennifer and Jonathon's 14-year marriage was not only headed for divorce but also a divorce trial, given that all efforts at resolution had proved ineffective. While division of the parties' assets was quickly resolved, the couple refused to negotiate when it came to their three children: thirteen-year-old twins Paula and Paul, and six-year-old Tyler. The sticking point: Jonathon wanted joint legal custody and made that request to the court while Jennifer wanted sole legal custody.

The trial evidence indicated Jennifer and Jonathon could generally agree on physical custody being awarded to Jennifer and significant parenting time to Jonathon. But they could not agree and fought tooth and nail about whether the twins should start orthodontic treatment, whether Tyler's educational needs would be better served in public or private school, whether Paul should play full-contact football, and whether Jennifer should become involved in travel soccer. These disagreements often reached a feverish pitch and nearly as often were within earshot of the children. The parents could not even be civil to one another during exchanges of the children. This has upset the children, causing the twins to become sullen and withdrawn and Tyler to skip meals due to nausea.

At the conclusion of the trial, the Michigan judge is called on to decide whether Jonathon should be awarded joint legal custody or Jennifer should be awarded sole legal custody. (There is no dispute that Jennifer will receive sole physical custody.)

Under Michigan law, address the following questions and explain your answers:

1. Must the court consider Jonathon's request for joint legal custody?
2. What factors must the court consider in deciding whether to award joint legal custody?
3. On the facts presented, is an award of joint legal custody likely?

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

4. If the parties are awarded joint legal custody and Jennifer is awarded sole physical custody, will post judgment resolutions of important decisions affecting the welfare of the children be made by Jennifer, as sole physical custodian, if she and Jonathon cannot agree?

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

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

P.T. is a minor child with autism living in Declan, Michigan. Concerned that he was not receiving an appropriate education from the local public school, P.T.'s parents disenrolled him and placed him in a highly-regarded private educational therapy program. The program was not a state-approved educational program, so the Declan Board of Education filed a petition charging P.T.'s parents with truancy.

In response, P.T.'s parents agreed to enroll P.T. in a state-approved private school. They were concerned that the private school may not be the best long-term arrangement for him. Thus, they want the option of removing him again in the future if necessary.

Fearing further prosecution for truancy, P.T.'s parents filed a lawsuit against the Declan Board of Education in a Michigan state court under the federal Individuals with Disabilities Education Act ("IDEA"). While their case is pending, P.T.'s parents seek a preliminary injunction against the Declan Board of Education prohibiting it from charging them with truancy again.

P.T.'s parents claim that Michigan's truancy laws are preempted by IDEA, which they argue permits them to place P.T. in a private educational program of their choosing, regardless of whether it is approved by the state. The Declan Board of Education responds that there are a number of suitable state-approved private schools for P.T. to attend, and that a truancy charge would therefore not conflict with IDEA. The Board also contends that the state has a strong interest in ensuring that minor children are enrolled in state-approved schools, and that P.T.'s parents cannot, in any event, show an immediate threat of prosecution justifying preliminary injunctive relief. P.T.'s parents dispute that assertion, pointing to the fact that they were already charged once with truancy.

Explain the requirements for obtaining preliminary injunctive relief under Michigan law and how the court should rule on the motion filed by P.T.'s parents in light of those requirements.

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

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

Jeb is a loan officer employed by Pleasantville Bank in Michigan. Pleasantville Bank advised him and his fellow loan officers of the upcoming Michigan Banking Conference in Traverse City, Michigan. This three-day conference affords loan officers the opportunity to network with one another and attend breakout sessions updating them on recent developments in federal banking regulations. Pleasantville Bank told its loan officers to attend the conference because the bank would benefit from the education the loan officers would receive. The bank also explained how its relationship with federal banking regulators would be enhanced by their attendance. The loan officers were informed their attendance or non-attendance at the conference would be a factor in their salary reviews. Pleasantville Bank would provide paid leave for them to attend the conference, pay their conference registration fees, and pay for their hotel rooms where the conference would be held.

Jeb attended the conference. He went to breakout sessions and also mingled with other loan officers and bank regulators. The second day of the conference ended with a dinner in the hotel for the attendees. After the dinner, Jeb was returning to his hotel room when he passed a bar in the hotel lobby. He decided to go in the bar for a drink. Over the next half hour, Jeb consumed a beer and talked with the bartender and others at the bar about an important football game taking place the next day. No other conference attendees were at the bar. As Jeb was conversing about the upcoming football game, he twisted and seriously injured his back.

Jeb thinks his injury should be covered by workers' compensation. Pleasantville Bank disagrees. Jeb visits an attorney who files a formal claim for workers compensation with the state.

Applying Michigan workers' compensation law, answer the following:

1. What is Jeb's best argument that his injury is covered by the workers' compensation statute?

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

2. What is Pleasantville Bank's best argument that Jeb's injury is not covered by the workers' compensation statute?

3. What is the most likely outcome of litigation of this issue?

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

GO TO BLUEBOOK II

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

In a civil action filed in a Michigan circuit court, plaintiff claimed that defendant was liable for plaintiff's injuries suffered when plaintiff was hit by a car driven by defendant. Defendant filed a motion for summary disposition under MCR 2.116(C)(10), to which plaintiff filed a timely response. The court granted the motion, reasoning as follows:

"This Court concludes no genuine issue of material fact exists because: (1) defendant's testimony in the unsigned affidavit is more detailed than plaintiff's deposition testimony, and thus more worthy of belief as to what occurred; (2) statements made by a witness as to what a police officer said occurred, contained in a newspaper article attached to defendant's motion, is consistent with defendant's version of what occurred; (3) the Court decided last weekend to visit the accident scene and as a result concludes that defendant's version of what occurred is more accurate, and (4) as evidence, plaintiff only attached an affidavit in response to defendant's motion."

In deciding the motion the circuit court made multiple errors. Identify the errors and explain why the court erred in relying on them.

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

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

The Michigan Widget Corporation (MWC), a Michigan corporation, is owned by five shareholders - Larry, Moe, Curly, Joe and Shemp. Each shareholder owns 20% of the shares, which has been the case since the company was formed back in 1985. Larry and Moe serve on the Board of Directors. Larry is the President and CEO, while Moe serves as the Vice-President and CFO.

In 2017, MWC entered into a 7-year contract with the Dinwiddie Graphite Company (DGC). Under the terms of the agreement, DGC agreed to be MWC's exclusive supplier of graphite at a fixed price. Moe entered into this contract after becoming aware that the International Association of Graphite Miners, a trade organization in the field of graphite mining, predicted that there would be a shortage of graphite in the coming years which would drastically increase the price.

However, the cost of graphite did not rise dramatically. Indeed, the cost of graphite fell by nearly 66%. Unhappy with the company's performance, Shemp discovered that the primary reason for MWC's poor profits was that it was paying ridiculously high amounts for graphite pursuant to the terms of the contract with DGC. Shemp demanded a meeting of the shareholders in order to oust Moe and elect a new director. In anticipation of a shareholders meeting, Shemp drafted a confidential agreement, signed by Curly, Joe and Shemp, agreeing to vote for Curly as a corporate director in lieu of Moe.

However, prior to the shareholder's meeting, Joe indicated that he changed his mind and would not vote for Curly. Joe indicated that Larry, an ardent supporter of Moe, persuaded Joe to vote for Moe.

Applying principles of Michigan corporation law, fully explain:

- 1. How can Shemp pursue legal action against Moe;**
- 2. Whether the shareholders have any possible recourse against Moe; and**
- 3. Who can Joe vote for at the next shareholder's meeting, Curly or Moe?**

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

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

John Smith was at a local hardware store looking to buy a few electrical items. Smith told the sales associate that he was looking for fuses, electrical tape, light bulbs, and a few other items. With his help, Smith found all the items, including some fuses. Because Smith forgot a shopping cart, and his hands were getting quite full, he put the fuses in his pocket to carry to the checkout line. A store security officer saw Smith place the fuses in his pocket. After gathering the rest of his items, Smith proceeded to the checkout line.

At the register Smith presented all his items to the sales clerk, except the fuses. He paid for the other items, and the officer watched him leave the store. After placing the bag of goods into his car, Smith reached into his pocket and realized he forgot to pay for the fuses. As Smith turned to go back into the store and pay for them, he was confronted by the security officer. The officer took Smith back into the store and into a windowless back room. There, the officer asked Smith to empty his pockets, which revealed the fuses. Smith stated he had the money and meant to pay for the fuses, but forgot they were in his pocket. Because Smith failed to produce a receipt, the officer told him to wait in the room until he returned, and that the door was being locked.

The officer investigated the situation. He spoke with the electrical aisle sales associate, as well as the sales clerk, who both confirmed that Smith was a long-time customer who was not acting suspicious. An hour after starting the investigation, the officer met with his supervisors and the supervisors decided that Smith did not intend to steal the fuses and that he should be released upon paying for the fuses. However, because he thought Smith was trying to steal the fuses, the officer did not release Smith for another two hours, hoping that would teach him a lesson.

Smith is now suing the hardware store for his wrongful detention.

Identify:

1. The most relevant cause of action;
2. Set forth the elements for the claim;
3. Explain whether Smith can prevail; and,
4. What damages can he seek.

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

GO TO BLUEBOOK III

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

Hieu Chin was employed as a seasonal worker in rural Michigan. He was arrested and charged with armed robbery. Both the arresting officer and the detective who interviewed Chin concluded Chin did not speak English or Spanish. The court also knew Chin did not speak or understand English or Spanish.

MCL 775.19a states:

If an accused person is . . . tried and it appears to the judge that the person is incapable of adequately understanding the charge or presenting a defense to the charge because of a lack of ability to understand or speak the English language . . . the judge shall appoint a qualified person to act as an interpreter.

At the beginning of the trial the court asked Chin's attorney if Chin needed an interpreter. Chin's attorney declined and asserted the presence of an interpreter at trial would prejudice Chin. Chin said nothing. The court did not ask Chin and did not appoint an interpreter for him.

Trial commenced. Several of the prosecution witnesses spoke Spanish, not English. They testified through a court interpreter. The law requires an interpreter to translate verbatim only the questions of counsel and only the responses of the witnesses.

During the testimony of the witnesses, it became clear that the interpreter deviated from a literal translation of the specific questions posed by the lawyers and the specific answers provided by the witnesses. Instead, the interpreter engaged in long, private dialogues with the witnesses. Chin's attorney objected each time. The interpreter responded, "I am just clarifying the answer," or "I am just reconciling the witness' true answer with what was said earlier," or "The witness doesn't understand."

Chin was convicted.

Chin contends he did not participate in his trial because he did not have an interpreter appointed for him, he did not understand what happened during trial and did not know what the witnesses said. Chin states he was only physically present at trial.

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

1. Identify and discuss the requirements for a valid waiver and whether the waiver of the interpreter was valid in this case.

2. Specifically identify which, if any, of Chin's constitutional trial right(s) were violated? If so, explain how they were violated. Do not discuss ineffective assistance of counsel.

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

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

Paul begged his friend Daniel to loan him \$5,000.00. Daniel reluctantly agreed but only if Paul repaid it in full in a week because Daniel needed it to pay another debt. Paul agreed. However, Paul did not repay Daniel. Daniel asked Paul repeatedly for the money. Paul avoided Daniel and Daniel felt increasing pressure of his debt deadline.

Daniel heard through others that Paul had the money. Daniel decided to confront Paul at Paul's house. Paul was much bigger and stronger than Daniel, so Daniel asked Tom and Jim to accompany him. All three went to Paul's house. Daniel knocked on the door and Paul answered. Daniel demanded Paul repay the loan. Paul stepped out of the house onto the cement porch and said he did not have the money. Daniel became enraged.

Paul laughed it off and said it was Daniel's "own fault" for making the loan and told Daniel to leave. Daniel pushed Paul with no effect. Paul said he did not have the money and that he did not know if he would ever have it. Daniel grew more agitated and pushed Paul again. Paul pushed Daniel back and Daniel fell down on top of a small chunk of cement. Daniel was furious. Paul again told Daniel to leave and turned to walk into the house. Daniel got up, picked up the piece of cement and hit Paul on the back of the shoulder. Paul fell, turned and looked up at Daniel and said, "You'll never get the money, I gambled it away and I'm glad." Daniel started to walk away, but then turned, walked back to Paul as Paul was getting up and hit Paul on top of the head with the cement still in his hand. Paul died that night of blunt force trauma to the head.

Under Michigan law, the prosecutor is considering charging Daniel with second degree murder or manslaughter.

- 1. What are the elements of each charge?**
- 2. What are the reasons one charge is more appropriate than the other?**

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

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

Michigan State Police officer Smith was on routine patrol on westbound Interstate 96 at 11:00 p.m. on Saturday night. He received a radio dispatch of an anonymous person reporting erratic driving on eastbound I-96, about a mile from his location, heading directly toward him. The caller reported:

"A black pickup truck with a red tail gate bearing partial Michigan license plate "RO 2," with two occupants is traveling at a high rate of speed on eastbound 96. The pickup was in the far left lane, sped up onto the bumper of the car in front of it (tailgated very close) to make the car in front of it change lanes and get out of the way. The car did not move quickly so the pickup abruptly changed lanes without signaling, crossed all 3 lanes of traffic to pass the traffic and is darting in and out of traffic without signaling, coming dangerously close to the other traffic."

Smith saw a black pickup coming towards him and exit on Main Street. Smith also exited I-96. The pickup turned into a large parking lot of a popular bar. The parking lot was full and contained many pickup trucks. Smith drove around and saw a black pickup with a red tailgate, two occupants and a Michigan license plate which read in part "RQ 2" driving in the lot. Smith did not see the driver commit any driving infraction or do anything illegal. He stopped the pickup and approached the driver's side, the driver, Don Davis, produced his license and registration. Smith asked Don if he was on I-96. Don simply replied, "I'm late for work." Smith handed the license and registration back to Don, looked past Don into the cab of the truck and saw a small zip lock baggie with several small white rocks that he recognized as crack cocaine, and a gun. Smith seized the bag and arrested Don for possession of the gun and suspected crack cocaine.

Don contends Smith did not see him do anything wrong and Smith could not stop him.

1. Did Officer Smith properly stop Davis? Discuss the applicable law and explain how it applies.

2. Were the gun and rocks properly seized by Officer Smith? Discuss the law that applies and conclude.

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

**FEBRUARY 2020 MICHIGAN BAR EXAMINATION
ESSAY PORTION
AFTERNOON SESSION**

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

Joe Smith married Mary Smith in November 2004, after which they resided in Hometown, Michigan. At the time of their marriage, Mary had two minor children from a prior marriage, Jane and Jack, 9 and 12 years old respectively. Joe developed a strong father-child relationship with Jane and Jack. The relationship was so strong that even though Joe never adopted them, Jane and Jack changed their last names to Smith.

In December 2006, Joe, with the assistance of his attorney, executed a valid will that left all of his real property (at the time, valued at \$2 million) to Mary. The remainder of his estate was left to Jane and Jack to share equally.

Mary and Joe separated in 2010 and divorced in 2011. The divorce was not contentious and the two remained friends. In fact, even after the separation and divorce, Joe and Mary continued to celebrate family holidays together, along with Jane, Jack, and their families. Joe even participated in Jack's 2013 wedding ceremony and gave Jack \$20,000 toward the cost of a home as a wedding gift.

In 2012, upon Jane and Jack's recommendation and advice, Joe began fostering a 13-year-old boy named Bobby. Joe grew very fond of Bobby and on many occasions would say, "Bobby, I should try to adopt you and make you an official member of the family." Joe even discussed with his attorney the possibility of adoption and an overview of the adoption process. No further actions were taken with respect to the adoption. In 2015, Joe informed Mary that he had purchased a \$600,000 life insurance policy for the benefit of "his children." In the policy, he designated Jane, Jack and Bobby as sole equal beneficiaries of the proceeds.

Joe died of a sudden heart attack in July 2019 at the age of 49. Joe was survived by Mary, Jack, Jane, Bobby and an estranged brother with whom Joe had no relationship and with whom he had not spoken for almost 32 years. Joe had no surviving parents nor any other living relatives. At the time of Joe's death, his estate was worth approximately \$5 million and his life insurance policy was still effective.

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

Applying Michigan law, fully discuss:

1. The effect of the December 2006 will on the distribution of Joe's estate; and

2. How Joe's estate, as well as the life insurance policy, would be distributed.

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

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

Annmarie was at her neighborhood's annual community pool party with her friend Kate when she accidentally sat on her sunglasses. Frustrated that her \$20 pharmacy sunglasses would not bend back properly, Annmarie threw the sunglasses towards the trash can, however, the sunglasses landed next to the trash can. Shortly thereafter, Annmarie turned to Kate and asked if she was ready to leave so that they could get out of the sun. Preoccupied in conversation, Kate forgot her brand new \$3,000 designer sunglasses on a table next to where they were sitting.

Later that evening, one of the neighborhood kids, Beth, noticed Annmarie's sunglasses next to the trash can, picked them up and took them home. Beth, being a creative design student, fixed the glasses, painted the sides and added jewels and other items to create more of a designer look. Beth then posted the glasses online for sale and sold them for \$2,000. Annmarie later found out about the sale and demanded that Beth either return the sunglasses or the sale proceeds to her immediately because they were her sunglasses. Beth refused.

Mary, another neighbor, picked up Kate's designer sunglasses towards the end of the pool party and gave the designer sunglasses to the HOA president. She asked if she could send out an email notification or letter informing their fellow neighbors about the sunglasses that were left behind. The very next day, the HOA president sent the following notice to each owner by first class mail along with its monthly newsletter.

Hello Neighbors!

A pair of sunglasses was found by the pool at the end of our pool party. We are holding the sunglasses at our office (ABC Drive, Bass City, Michigan). If the property is not claimed within four (4) months of the date of this letter, the property will be considered abandoned and disposed of pursuant to applicable law.

Best regards, HOA Property Management Staff

Four months later, knowing that no one had claimed the sunglasses, Mary decided that she would go pick them up from the office. The HOA office agreed that Mary could take the glasses. One month later, when Kate was visiting Annmarie, she came across

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

the notice letter and was excited that someone found her glasses. She quickly went to the HOA office and demanded her glasses be returned to her. The HOA office informed her that Mary had the sunglasses. Kate immediately demanded the return of the sunglasses from Mary. Mary refused.

Applying Michigan law, fully discuss:

1. Whether Annmarie is entitled to the \$2,000 proceeds from the sale of the pharmacy sunglasses; and

2. Whether Kate is entitled to the return of the designer sunglasses.

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

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

Nancy and Drew married in 2015, and shortly thereafter purchased two condos with cash: one in downtown Pleasantville, Michigan and another approximately 250 miles away from downtown Pleasantville, in Sunnyville, Michigan. Each property was deeded to Nancy and Drew, jointly as husband and wife. Nancy and Drew spent most of their time at their condo in Pleasantville and would spend their vacation days at their Sunnyville condo.

In 2017, Nancy and Drew purchased a fixer upper with longtime friend and handyman, Steve, in Fixitville, Michigan. The property was deeded to Nancy, Drew and Steve as joint tenants with rights of survivorship.

In 2018, Nancy, Drew and Steve purchased another fixer upper, in Mannsville, Michigan, which was deeded to Nancy, Drew and Steve as joint tenants.

In 2019, Nancy and Drew separated. Nancy remained in the Pleasantville condo and Drew moved to the Sunnyville condo. Although Nancy and Drew were planning to divorce, Drew and Steve died in an automobile accident in 2019 before the divorce was final.

Following Drew's death, Nancy went to the Sunnyville condo to get things prepared for sale and discovered Drew's girlfriend, Jen, had been living at the condo with Drew for the past year. Nancy informed Jen that she wanted Jen out of the property and that she would be evicting her from the property pursuant to applicable law. Jen refused to vacate and demanded that Nancy leave her property while showing her a quitclaim deed from Drew transferring the Sunnyville condo to Jen in exchange for "love and affection." Jen also informed her that she was also going to initiate partition proceedings for each of the Fixitville and Mannsville properties and showed Nancy similar quitclaim deeds to each of those properties.

Applying Michigan law, fully discuss:

1. Whether Drew's conveyance of the Sunnyville condo to Jen is valid and whether Nancy has the authority to lawfully evict Jen from the property;

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

2. Whether Drew's conveyance of the Fixitville property to Jen is valid, and if so, whether Jen would prevail in a partition proceeding; and

3. Whether Drew's conveyance of the Mannsville property to Jen is valid, and if so, whether Jen would prevail in a partition proceeding.

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

GO TO BLUEBOOK V

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

Test-x, a Michigan corporation, provides testing services to determine the percentage of cannabidiol (CBD) in various products. Mellow-Glo manufactures CBD-infused skin-care products. The companies executed a valid contract in which Test-x agreed to provide a determination of the percentage of CBD in Mellow-Glo's products "accurate to within 1%." The contract stated that Mellow-Glo intended to use this information on its product labels to differentiate its products in a very competitive market.

After performing its analysis, the president of Test-x called the president of Mellow-Glo to report that Mellow-Glo's products contained 3% CBD. Mellow-Glo immediately began a successful advertising campaign based on the claim that its products contained 3% CBD.

The following week, Mellow-Glo received Test-x's written report. In light of the telephone call, no one at Mellow-Glo read the report, which stated that Test-x's determinations were "accurate to within 5%."

Unfortunately, Test-x's percentages were wrong. Because of a manufacturing flaw, Mellow-Glo's products contained no CBD. Upon learning this, Mellow-Glo removed the "3% CBD" claim on labels for products being currently manufactured but continued selling products already labeled "3% CBD."

After word got out that Mellow-Glo's "3% CBD" claim was inaccurate, Mellow-Glo's sales plummeted. In addition, pursuant to a truth-in-advertising statute, Mellow-Glo was fined for each sale of an inaccurately labeled product. Mellow-Glo was also sued by a new organization, DoRite, bringing lawsuits against select companies that make inaccurate claims about marijuana-derived products (including CBD).

Mellow-Glo sued Test-x for breach of contract, seeking:

- a) lost profits;
- b) the amount of the fines for statutory violations;
- c) the cost of defending the DoRite lawsuit; and
- d) punitive damages.

Test-x claims it did not breach the contract because its estimate was within the promised 5% accuracy rate that it clearly indicated to Mellow-Glo.

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

Applying Michigan contract law, answer the following questions:

1. Did Test-x breach the contract? Explain.

2. Assuming Test-x breached the contract, is Mellow-Glo entitled to the claimed damages? Analyze each.

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

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

Chance Cleary is a very accomplished and popular Michigan wedding photographer. In late 2017, demand for Chance's photography services began growing by leaps and bounds. As a result, Chance, who had been booking his own photography sessions directly with clients, hired Sophia Jones to help with coordinating scheduling of photo sessions and events, session preparation, invoicing, collections and client outreach efforts. Sophia, who was in the business of providing professional administrative services to several artistic entrepreneurs, soon became well-known publicly as the trusted assistant to Chance. Chance routinely directed potential clients to Sophia when approached about performing photography services. However, Chance expressly precluded Sophia from booking photography sessions and events without his prior approval.

Before hiring Sophia, Chance committed to photograph a wedding and reception for friends on August 3, 2019 in northern Michigan. Unbeknownst to Chance, Sophia booked him to cover the Henry wedding that was five hours away in southeast Michigan at the same date and time as the northern Michigan wedding. The Henrys worked exclusively with Sophia in arranging and coordinating photography for their wedding, and they delivered a \$5,000 down payment to Sophia to secure Chance as the photographer.

Chance, who did not learn of the Henry wedding until the day before, could not be in two places at once and covered only the northern Michigan wedding. The Henry couple was devastated and was forced to rely on cell phone snapshots captured by the guests. The Henrys sued Chance based upon Sophia having scheduled him to photograph their wedding. Chance's position is that he should not be liable to the Henrys because Sophia had no permission to bind Chance under the circumstances.

Applying Michigan law, fully explain the likelihood of Chance succeeding on his defense to the Henrys' lawsuit.

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

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

Defendant Davis is on trial in state court for homicide. The charges arose out of an adult birthday party that turned violent. Davis and two of his friends, all members of a criminal gang (the Sharks), arrived as invited guests. But then other guests, some whom were members of another criminal gang, noticed the Sharks were brandishing guns. Not wanting any violence, a rival gang member asked the Sharks to leave peacefully. Instead, a fight ensued that ended when Davis yelled at rival gang member Van to "get back, get back, or I'll shoot," before opening fire, killing Van. Davis does not deny being the shooter but claims he shot Van in self-defense. The Shark witnesses who accompanied Davis to the party deny seeing any violence by Davis.

The prosecutor plans to introduce two rap videos featuring Davis rapping about brandishing guns and escalating to deadly violence whenever he or his gang members feel disrespected. Other Sharks appear with Davis in both videos. The Sharks made one video one year before Van's death, and made the other nine months after the death. The prosecutor argues that the videos are evidence that Davis was not acting in self-defense, but rather out of a motive to instigate violence. The prosecutor also plans to introduce other evidence of the Sharks' gang affiliations to demonstrate their "see no evil" denials arise out of gang loyalty against "snitching" on Davis.

Davis objects to the rap video as hearsay under MRE 801 and also as violative of MRE 403 (Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion and Waste of Time). Davis also objects that the evidence of other witnesses' gang affiliation should be excluded under MRE 404(b) pertaining to admissibility of other crimes, wrongs or acts.

1. How should the court rule on each of Davis' MRE 801 and 403 objections to the rap videos? Explain why.

2. How should the court rule on Davis' 404(b) objection to the other Sharks' gang affiliations? Fully explain your analysis.

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