

FEBRUARY 2019 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

At age 21, Bob and John had graduated from college and were looking for ways to make a living. Being fans of social media, the two agreed that they would create videos and post them on-line to see how much money they could make. In order to make money on social media, they needed to attract the public's attention. They decided to record daring stunts, and John came up with the perfect one: John would shoot an arrow at an apple resting on Bob's head, and they would title it "Return to Robin Hood."

Bob was not fond of the stunt idea, mostly because he didn't want the apple shot off his head. But after discussing it more with John, who was the better archer of the two, he reluctantly agreed to perform the stunt. Thus, with the camera rolling, John took aim and shot at the apple. As the arrow left the bow, it somehow split in half, with one half splitting the apple and the other half hitting Bob in the shoulder. Unfortunately for Bob, his shoulder was severely damaged by the half arrow tearing into his tendons and muscle. But, the video was a great success, as it was seen by millions, including Bob's mom Gloria, who had no idea that the two were performing the stunt. When viewing the video a day after the stunt was performed, Gloria was shocked by both the nature of the injury and the stupidity of the stunt.

As a result of the injury, Bob and Gloria sued John. Bob alleged battery, and Gloria alleged negligent infliction of emotional distress.

Applying Michigan law, set forth the elements for each tort and explain in detail whether Bob and Gloria can succeed on their claims against John.

\*\*\*\*\*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**

Peter Pettigrew owns a substantial number of shares in Voldy Serpentine Manufacturing (VSM), a Michigan Corporation that manufactures automotive belts.

In 2016, VSM had a record-breaking year, amassing 3.2 million dollars in profit. According to a report provided by a public accounting firm hired by VSM, the company pension plan was underfunded and would be insolvent by 2024 without a substantial infusion of funds. As a result, rather than distribute a record-breaking amount of dividends to shareholders, the VSM Board of Directors decided, on December 15, 2016, to put that money into the VSM retiree pension plan. This decision was disclosed in VSM's 2016 annual financial report.

Peter Pettigrew, a VSM shareholder who relies in large part upon the dividend for his income, read the VSM financial report and was furious. How could those directors side with retirees rather than the owners of the company-its shareholders?! Making matters worse, the next day Peter read in the local paper that a VSM officer, John Smith, had been charged with embezzling one million dollars from VSM, money that otherwise would have been available for allocation by the Board of Directors.

Peter filed a lawsuit in a Michigan circuit court against VSM and Smith. As to VSM, Peter alleged that the directors had breached their fiduciary duty by failing to distribute dividends. VSM responded that no corporate bylaw afforded Peter the right to the distribution of dividends, and that Peter could not establish that the directors' decision was erroneous. As to Smith, Peter alleged that Smith committed the tort of conversion by taking monies that could have been used for a dividend payment. Smith, however, argued that he could not be sued for a tort in his role as an officer of VSM.

Applying principles of Michigan Corporations Law, thoroughly discuss:

1. Whether Peter has a viable claim against VSM for breach of fiduciary duty.

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

2. Assuming Peter meets the elements of a conversion claim, whether Smith can be personally sued for a tort he committed while in his role as a corporate officer.

\*\*\*\*\*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**

Proteus Corporation manufactures and sells board games and puzzle cubes, with manufacturing facilities throughout Michigan. Steve Daedalus is Proteus' General Counsel as well Senior Vice President of Manufacturing.

At the end of each quarter, at Daedalus' direction and solely for his review, the manufacturing department prepares a detailed report ("quarterly report") comparing the department's actual performance with its earlier, pre-quarter projections. Included in each quarterly report are supplies lost due to human or machine error, maintenance updates, and time lost due to injury or sickness, mechanical breakdowns, or other problems, as well as analyses of how and why the supplies or time were lost. After reviewing the quarterly report, Daedalus provides a quarterly update (in both oral and written form) on manufacturing to the corporation's Board of Directors.

On February 28, 2018, Leo Bloom was touring a manufacturing facility and, while walking near a conveyer belt, he fell on it and broke his arm. On September 12, 2018, Bloom sued Proteus Corporation in a Michigan circuit court on several negligence-based theories involving the failure to maintain and faulty design of the conveyor belt. A few days after Bloom filed the lawsuit, Daedalus briefed the Board of Directors about the lawsuit, and as part of his presentation, Daedalus gave the board members an analysis of the lawsuit ("lawsuit memo") prepared by a law-school intern working in the General Counsel's office.

On December 18, 2018, Bloom's lawyer served Proteus Corporation with two discovery requests: (1) a notice to depose Daedalus, and (2) a demand for all written records, created from July 1, 2017 to the present, in the possession of or created by or at the direction or supervision of Daedalus (which would include quarterly reports and the lawsuit memo). Proteus Corporation moved the circuit court for a protective order to quash all discovery requests involving Daedalus, arguing that the discovery requests (1) do not meet the general standards for discovery, and (2) seek privileged or otherwise protected information.

Applying Michigan law, set forth in detail the proper disposition of the motion, including:

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

1. The limitations (if any) on the overall scope of discovery.
2. Whether the quarterly reports need to be produced.
3. Whether the lawsuit memo needs to be produced.
4. The proper scope of Daedalus' deposition if a deposition is permitted.

\*\*\*\*\*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**

Dorothy lay in a bed in a hospital room being treated for a gunshot wound to her arm. She could not move from the bed because she was hooked up to an IV of medicine, an oxygen machine and a blood pressure machine. Her cell phone was on her nightstand next to her.

Dorothy's family was visiting her at the hospital but had just left her room to eat dinner in the hospital cafeteria. Two police officers entered Dorothy's hospital room through the open door. The officers left the door open and sat next to her bed. The officers told her they were investigating the circumstances of her gunshot wound.

Dorothy told them she was the sole patron in a party store buying cigarettes when an unknown, masked assailant entered the store, robbed the cashier and fled. She said she and the cashier exited the store to see if the gunman was gone. They stood next to each other. They saw the gunman running away, then turn around, look toward them and fire a gunshot in their direction. Dorothy was struck in the arm by the bullet.

The police told Dorothy the cashier's version of the facts was the same as Dorothy's version.

The police continued to talk to Dorothy for fifteen minutes. Dorothy repeated that she was awaiting surgery for her bullet wound and was in pain. The police continued to question her as she lay in her bed. At one point Dorothy said she was "tired" and no longer wished to talk. The police continued to ask her questions. After another ten minutes, Dorothy blurted out that she went to the store with her boyfriend but entered alone. She called him on his cell phone from within the store and told him it was empty. Her boyfriend then entered the store, robbed it, fled and shot her by mistake.

Dorothy was never given any *Miranda* warnings. The people seek to use Dorothy's statement against her.

Determine whether the statement can be introduced against Dorothy at trial. Provide the legal basis for your conclusion.

**\*\*\*\*\*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

Cindy worked as a nurse and lived with her boyfriend, Doug, who was a drug dealer. Cindy owned a Cadillac SUV which she purchased from her nursing wages. Doug grew marijuana in their house which he sold. He also sold prescription drugs.

Doug was arrested for the sale of drugs. The police executed a search warrant on Cindy and Doug's home. They seized Doug's Jeep, his laptop, marijuana plants and cash. The police also seized Cindy's Cadillac. The police sought to forfeit all the property as drug proceeds. Doug did not contest the forfeiture of any of the property. Cindy sought to contest the forfeiture of her Cadillac.

The relevant statute provides that property may be seized incident to a lawful arrest, which happened in this case. The law continues that if a person seeks to contest a forfeiture they must post a bond in the amount of 10% of the value of the contested item but no bond amount greater than \$5,000 is required. If no bond is posted the property is forfeited.

Cindy's Cadillac was worth \$35,000 so she was required to post a \$3,500 bond. However, despite all her best efforts, Cindy could only post \$2,000 and did so.

The police told Cindy that her bond was insufficient because she was \$1,500 short of the proper amount. The prosecutor told her the same thing and forfeited her Cadillac.

Cindy has filed a petition in court claiming she has been deprived of her constitutional ability to contest the forfeiture of her car.

How should the court rule on Cindy's petition? Explain the legal basis for your conclusion.

\*\*\*\*\*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**

Dan owns a 400 acre hunting ranch in northern Michigan. Dan often hunts on it with his best and lifelong friend Dave. Dave scouts game without a gun and Dan shoots it. Dan frequently evicts unauthorized hunters from his property. Victor is one of those unauthorized hunters who Dan frequently chases off the property. Dan chased Victor from the property three weeks ago and said to Victor, "I'm tired of telling you to stay off my property. If you come back you're going to get hurt."

Dan was hunting with a gun on his property with Dave. Dave saw Victor and told Dan. Dan became angry. Victor was with Val but Dan did not see Val. Dan yelled at Victor to "leave his property." Victor had earphones in his ears and did not hear Dan yell to him. Dan ran toward Victor. Victor heard rustling in the brush when Dan got closer to him and thought it was a deer. Victor, holding his rifle, turned toward Dan. Dan saw Victor turn toward him. Dan aimed his rifle low and shot at Victor while running toward him. Dan missed Victor and shot Val in the arm.

The police seek charges against Dan.

Applying Michigan law, explain what legal charges can be brought against Dan and the legal basis for them.

**\*\*\*\*\*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

**A Tale of Three Wedding Gowns:**

**ONE:** Belle, who was recently married, took her \$5,000 wedding gown to Darby's Cleaners to be cleaned and preserved. Belle paid a \$75 deposit to Darby's when the gown was dropped off, with the \$75 balance due at the time of pickup two weeks later. In the meantime, however, the gown was ruined when one of Darby's employees accidentally knocked over an uncapped bottle of chemical floor wax stripper onto the garment. The chemical stripper, which is usually stored in a closet, had been temporarily placed on the table generally used for inspection and cleaning of garments.

**TWO:** Glenda, who was slated to be married in two weeks, asked to store her \$5,000 wedding gown at the apartment of her dear friend Cara so that Glenda's fiancé would not inadvertently see it ahead of the wedding. Cara happily agreed as a favor to Glenda. In the meantime, Cara's cat clawed the gown to shreds. The cat, which had been Cara's pet for four years, had never before damaged clothing.

**THREE:** As requested, Asia agreed to loan her \$5,000 ten-year old wedding gown to her cousin Tracy to wear at Tracy's upcoming wedding. As the poolside wedding reception was ending, the groom who was well-known to Tracy as a practical joker, tossed Tracy into the pool like he had done on a prior occasion, ruining the gown. Tracy, a competitive swimmer, laughed as she exited the pool, exclaiming to the groom "I knew you would do something silly like this!"

Applying Michigan law, fully explain whether Darby's, Cara and Tracy would likely be legally responsible for the damaged wedding gown in each of their respective scenarios above.

\*\*\*\*\*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

Approximately six years ago, Benjamin Berry at age 55 prepared the following document entirely in his own handwriting, except for the signature of the witness:

This is my last will and testament dated December 12, 2012. I give all of my possessions and assets to my lovely daughter Freda when I leave this earth. She is my heart and soul.

Signed: Benjamin Berry  
Printed: Benjamin Berry  
Witness Signature: Tyler Brown

Benjamin legally adopted Freda 25 years ago when she was five years old and her biological parents could not properly care for her. Freda's biological father is Benjamin's brother, Fred Berry. Benjamin died in late 2018. He was survived by only Freda and Fred. There were no other writings regarding distribution of Benjamin's assets, which are valued at \$300,000. Fred challenges the validity of the will. Fred claims that because the will is invalid, he is entitled to Benjamin's entire estate because Freda is an adopted child of Benjamin, and her status as Benjamin's biological niece does not allow her to share in the assets ahead of Fred as his sibling.

Applying Michigan law, fully explain:

1. Whether the will is valid.
2. Assuming the will is not valid, how Benjamin's assets would be distributed.

\*\*\*\*\*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

Harry Hairston operates Harry's Barber and Beauty Shop in Uptown, Michigan. Harry leases the barbershop space from his cousin Reba who is the property owner, pursuant to a lease that allows either party to terminate the tenancy at will. At the beginning of the tenancy three years ago, Harry installed six barber/salon chairs which were bolted to the floor and three shampoo sink bowls that were secured to the wall and connected to existing plumbing in the building. Harry also had framed mirrors affixed to the wall positioned at each chair station. Although Harry's hair business is booming, he recently used much of the profits to invest in another enterprise that has not been successful. As a result, Harry is now two months behind on the \$1,500 monthly rent owed to Reba under the lease.

Reba is considering terminating the tenancy and simply regaining possession of the property without regard to rent. On the other hand, Reba might be just as satisfied if Harry paid his back rent and continued to operate his thriving business at the property, with Reba recovering possession of the property if the rent owed is not paid soon.

Applying Michigan law, fully explain:

1. The legal steps Reba would be required to take to proceed with each of the two options she is considering regarding repossession of the property.

2. Whether Harry would be entitled to remove the barber/salon chairs, shampoo sinks and mirrors from the property if he chooses to voluntarily vacate.

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

FEBRUARY 2019 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**

Dessie solely owns Dessie's Design Company (DDC) that specializes in home improvement design and renovation. After a consultation with Dessie, Lydia hired DDC to redesign and renovate the second-floor master bedroom in her 100-year-old home. Lydia and Dessie signed a written contract for DDC to remove and replace the entire bathroom wall and floor tile, hardware, fixtures and lighting for \$15,000.

DDC subcontracted with Betty Builder to perform the actual renovation work in Lydia's bathroom. Dessie expressly prohibited Betty from making any contract changes without first obtaining Dessie's approval. Betty performs work for other design and renovation companies. However, for purposes of project brand continuity, Dessie required Betty and her crew, like other DDC subcontractors, to wear DDC identifying shirts and to be transported to the worksite in a DDC van displaying the company logo when working on DDC projects, including the project for Lydia. Betty and Lydia saw each other almost daily while Betty and her crew renovated Lydia's bathroom over the course of a five-week period. Betty supervised the work on-site which Dessie rarely visited.

At the worksite near completion of the project, Lydia and Betty signed a written form on DDC letterhead, agreeing for DDC to remove the original antique stained-glass window in the bathroom for purposes of performing repairs and reinstallation in exchange for \$1,500. Betty destroyed the window when it accidentally fell from the second floor to the ground as it was being removed later that day. Dessie was not aware of the "window" contract addition until after the damage.

Applying Michigan law, fully explain whether Dessie's Design Company is liable to Lydia for damage to the window caused by Betty.

**\*\*\*\*\*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**

Rob owned a restaurant and vegetable garden. In May 2017, Rob and Vicki Veggie entered into a two-year written contract in which Vicki agreed to weed Rob's garden and harvest vegetables daily for Rob's restaurant, and Rob agreed to pay Vicki \$100 weekly plus a monthly amount equaling 10% of restaurant sales. Vicki told Rob she could not provide services on Mondays, since she had a five-year contract with a greenhouse to provide services every Monday. Rob said that would be fine because the restaurant was closed on Mondays. The parties thus agreed that Vicki would provide services Tuesdays through Sundays from June through September.

In July 2017, Rob and Vicki entered the following oral agreement: In consideration solely of Rob's paying Vicki 10% of the restaurant's June 2017 sales, Vicki agreed to promote Rob's restaurant on her social media accounts for two years.

Business thrived, so Rob decided to open the restaurant on Mondays. Vicki decided that since the restaurant was doing so well, there was no need to continue promoting it on her social media accounts, which she then closed.

In May 2018, Rob and Vicki decided to make a new contract for the new season. Rob asked Vicki to sign a new written contract, which stated that Vicki agreed to provide services every day of the week from June through September 2018. Vicki signed the contract.

Vicki did not thereafter provide services to Rob on Mondays.

Rob sued Vicki for breach of contract based on her refusal to provide services every day of the week. Vicki offered two defenses: First, she sought to introduce evidence of her conversation with Rob the previous summer to prove she was not required to provide services on Mondays. Second, she argued that the understanding they reached the previous summer had created an implied contractual provision that she did not need to provide services to Rob on Mondays.

Rob also alleges breach of the contract to promote the restaurant on Vicki's social media accounts.

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

Applying Michigan contract law, evaluate Rob's claims and Vicki's defenses.

\*\*\*\*\*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

Defendant Dolan is getting ready for trial on homicide charges in the death of his estranged wife. Dolan's defense is to blame his girlfriend, Gillian, who Dolan claims murdered his wife out of jealousy. Gillian actually witnessed Dolan killing his wife. Gillian nevertheless denies any knowledge of the murder, including any knowledge of Dolan committing the act.

While incarcerated and awaiting trial, Dolan asked a deputy to take to Gillian a note he had written for her. Gillian, at that moment, had arrived after visiting hours but was trying to re-schedule a future time to visit Dolan. The deputy agreed to the request but used his smartphone to photograph the note before giving it to Gillian. The handwritten note instructed Gillian to "stick to the story you've been telling and I will find a way to exonerate you."

Based on the deputy's photograph, law enforcement later found the note in Gillian's possession and planned to use it at trial as evidence that Gillian has a motive to deny Dolan's guilt. Gillian, however, denied any knowledge of the note, claiming someone must have planted it on her.

In final pre-trial proceedings, the prosecutor advised he would call the deputy to introduce the note into evidence. Dolan objects that the note cannot be used because it cannot be authenticated under MRE 901(a), Requirement of Authentication or Identification, because Dolan disputes giving the note to the deputy. Therefore, there is no witness who can authenticate it as a note that came from him, even though it was found in Gillian's possession. Dolan also objects that the note itself is hearsay under MRE 801.

1. How should the court rule on Dolan's MRE 901(a) objection? Explain.

2. How should the court rule on Dolan's MRE 801 objection? Explain.

\*\*\*\*\*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**

Declan Innovations, a Michigan corporation, manufactures and sells automotive mufflers. One of its largest customers is Pym Industries, also a Michigan corporation. Pym incorporates Declan's mufflers into complete automotive exhaust systems that it supplies to Kaxton Automotive's main assembly plant in Ohio.

The parties' 2015 supply agreement provides that Declan will supply mufflers to Pym at a price of \$49.94 per muffler, but "subject to all applicable steel surcharges." From 2015 to 2017, Declan supplied more than 600,000 mufflers, at a cost of approximately \$30 million. In 2018, however, steel tariffs increased the cost of the raw materials that Declan uses in its mufflers. As a result, Declan sought a price increase from Pym that would raise the cost of each muffler to \$58.57. Pym refused, asserting that the parties had modified their agreement in 2017 to remove steel surcharges.

Disputing that it had ever agreed to waive steel surcharges, Declan threatened to stop supplying mufflers within 30 days unless Pym agrees to pay the increased price. Declan informed Pym that it cannot afford to continue supplying mufflers at the original price, and would be forced to declare bankruptcy if Pym does not agree to the price increase.

In response, Pym filed a lawsuit in a Michigan circuit court for breach of contract and seeking a preliminary injunction requiring Declan to continue supplying its mufflers at the original price. Pym claims that if Declan were to stop supplying mufflers, it would be unable to supply its exhaust systems to Kaxton, which in turn would result in an assembly line shutdown at Kaxton's Ohio plant, subject Pym to monetary penalties from Kaxton, and harm Pym's relationship and goodwill with Kaxton.

In opposing Pym's request for injunctive relief, Declan argues that Pym has other options, such as paying the price increase or finding an alternate muffler supplier. Declan also presented evidence of the harm it would suffer if it were required to continue supplying mufflers without its requested price increase. Pym acknowledges that it has other potential suppliers, but is concerned about production delays.

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

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

\*\*\*\*\*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**

Charlotte is one of six employees at a small Michigan start-up company, Data Entry Inc. (DEI). The job of all six employees is to enter sales data by typing sales statistics into DEI computers. After performing such work for a year, Charlotte developed carpal tunnel syndrome (pressure on the median nerve) in her right wrist. The condition causes numbness, tingling, and weakness in the wrist. Charlotte's doctor advised her to stop working at jobs requiring repetitive typing because such activity likely caused her condition and will continue to worsen it. Charlotte consequently advised DEI that she could not return to work there.

After reviewing Charlotte's doctor's report and findings, DEI did not dispute that Charlotte has carpal tunnel syndrome attributable to her DEI work and that she is unable to continue working at DEI given that typing is the predominant requirement of all its jobs. DEI began voluntarily paying Charlotte weekly workers' compensation disability benefits.

After seven months of such payments, DEI began to suspect Charlotte was taking advantage of the situation. As a result, DEI notified Charlotte it would stop its payment of disability benefits and DEI did so. Charlotte promptly consulted a lawyer who filed a formal claim for workers' compensation benefits on her behalf.

In preparation for the upcoming hearing on her claim before a trial magistrate, DEI's attorney sent Charlotte's attorney a set of interrogatories asking Charlotte to describe her education and her skills and work experience besides typing. Charlotte's attorney responded saying Charlotte will not provide the requested information because DEI has no right to such discovery in a workers' compensation proceeding. Charlotte's attorney added, given that DEI had paid Charlotte disability benefits for seven months, it will be DEI's burden to disprove Charlotte's right to ongoing disability benefits at the upcoming hearing.

Before any further proceeding occurred, the parties discussed the possibility of settling (redeeming) Charlotte's case for a lump sum figure and such a resolution appears possible.

Applying Michigan workers' compensation law, answer the following three questions raised by these facts:

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

1. Is the information DEI's attorney seeks subject to pretrial discovery in a workers' compensation proceeding? Why or why not?

2. If there is a hearing on Charlotte's claim, which party will have the initial burden of proof on the disability issue? Explain your answer.

3. If the parties do agree to settle (redeem) the case, does the proposed settlement (redemption) need to be approved by the trial magistrate? Why or why not?

\*\*\*\*\*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**

Wallace and Donna Duncan were married for 28 years before their marriage ended in divorce and was dissolved after a contested divorce trial before a Michigan family division judge. However, the trial addressed only whether Donna would receive alimony/spousal support because other issues pertaining to property division and custody were previously resolved by the parties.

The trial judge awarded Donna \$2,500 per month in spousal support for a period of 15 years, or until Donna remarried. The award was based in part on Wallace's income of \$10,000 per month as an accountant and Donna's income of \$1,800 per month as a part-time legal secretary.

Ten years after entry of the divorce judgment, Donna lost her job as a part-time legal secretary and had taken up work at a dry cleaners making roughly \$1,400 per month. Wallace, on the other hand, had become eligible for firm bonuses and was receiving an additional \$15,000 in yearly compensation.

As a result of the changed financial conditions, Donna filed a motion to increase her spousal support to be heard by the divorce trial judge. Wallace filed a written response contending the following: First, the alimony award previously made was non-modifiable. Second, because Donna was living with her boyfriend, spousal support must terminate by the terms of the spousal support award language. Third, that a domestic relations referee must first hear Donna's request, not the original trial judge.

Applying Michigan law, evaluate the merits of each of Wallace's position. Fully explain your answers.

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