

**JULY 2020 MICHIGAN BAR EXAMINATION
MORNING SESSION**

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

Pax Healthcare Solutions is a national company providing home health care services. Pax also licenses its branded system through franchise agreements. In May 2010, Delta Home Assistance signed a franchise agreement with Pax that granted Delta the exclusive right to operate a Pax Healthcare Solutions business within a 20-mile radius in Michigan for 10 years. The franchise agreement included a covenant not to compete that prohibited Delta from competing with Pax within the designated service area for a period of one year after termination of the agreement.

As the franchise agreement was about to expire, Delta sent Pax a letter stating that it was not going to renew its Pax franchise and that Delta intended post-termination to continue operating and servicing Pax patients under a new name, Cobalt Caregiving.

In June 2020, after confirming that Delta was indeed operating in violation of the covenant not to compete, Pax sued Delta in a Michigan state court for breach of contract and seeking damages and injunctive relief.

Pax also filed a motion for preliminary injunction requesting that the court order Delta to immediately refrain from soliciting new patients within 20 miles of its former franchise or contacting any Pax patients that Delta served while operating as a Pax franchisee.

Pax claims that without preliminary injunctive relief, it will suffer a loss of reputation and goodwill with existing and prospective customers, and that it would be unfair to allow Delta to compete using confidential information it acquired as a Pax franchisee.

In opposing Pax's motion, Delta argues that the non-compete provision is unenforceable and that any injury to Pax is compensable by money damages. Delta also maintains that its existing patients would be harmed if it could no longer provide care for them. Pax responds that it already has another franchisee lined up to take over Delta's service area and that it has procedures in place that are specifically designed to assist with transitioning patients.

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

*******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**

Olivia's mother was the sole owner of a beautiful cottage and the three acres of land upon which the cottage sat in Lady, Michigan. In early April 2019, Olivia's mother promised to convey the cottage and land to Olivia for \$50,000, but was slow to begin the process.

Not wanting anything to do with the property, on May 15, 2019, Olivia sold the cottage and land to Peter for \$300,000, giving Peter a warranty deed. Shortly thereafter, Peter went on a four-week cruise and decided to record the deed immediately upon his return.

Laura was in the market to buy property in Lady, Michigan and heard from a friend that Olivia may be selling the cottage and land and was "in talks with someone." Laura scoured the internet to see if she could confirm whether Laura was selling the property and called a few local real estate agents to try to get any insight on the status of the property, however, both searches provided no insight. Laura found Olivia's number and informed Olivia of her interest to purchase the property. When Laura asked Olivia if she had already sold the property, Olivia dodged the question and merely said, "why - are you interested in the property?" On May 30, 2019, Oliva sold the cottage and land to Laura for \$400,000, giving Laura a warranty deed. Laura recorded her deed with the county register of deeds office on May 31, 2019.

Unbeknownst to Peter or Laura, Olivia did not obtain title to the property until June 7, 2019, after Olivia's mother conveyed the cottage and land to Olivia by deed for \$50,000.

Peter recorded his deed on June 14, 2019, shortly after he returned from his trip.

Applying principles of Michigan law, discuss whether Peter or Laura would prevail in a quiet title action. Explain your answer.

*******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**

David bought his home in 1988. The backyard was surrounded by a solid six-foot high fence. Over the years the fence rotted, decayed and finally fell apart. David read the City ordinance and got a permit to replace his fence.

The City ordinance stated:

It shall be unlawful for the owner of a premises to erect a fence unless application is first made in writing for a permit. All fences shall be of an open "X" crisscross pattern.

The penalty for any violation of this ordinance is for a first offense: \$300.00. Continued noncompliance is a misdemeanor punishable by up to 93 days imprisonment.

The new fence David erected has one very small two-inch opening at the bottom only but no "X" crisscross pattern. The code enforcer issued David a ticket for violation of the fence ordinance and told him to remove the fence. David paid the fine, but did not remove it. Six months later the enforcer issued a ticket for David's noncompliance with the fence ordinance and David is now charged with a misdemeanor.

David drove around the city and observed many different styles of fences that are not in an "X" crisscross pattern. Fences in his own neighborhood were not in a crisscross "X" pattern. The code enforcer approved a large number of picket fences; a steel fence with perpendicular bars eight inches apart for David's next door neighbor; and rail fences comprised of long horizontal boards separated by a space of 10-inches at the house behind David. None of these fences have an "X" crisscross pattern.

David informed the code enforcer that those approved fences did not have an "X" crisscross pattern. The code enforcer responded to David that he personally knows what the city council intended by the ordinance, that the fence have sufficient space between the boards. The code enforcer told David he knows what the council wants and what space is sufficient because he overheard city council members talk about it at a restaurant after a meeting.

The code enforcer refused to approve David's fence. David is charged with a misdemeanor for violation of the ordinance. David challenges the ordinance because it is vague and the ticket was arbitrarily issued.

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

Is David correct? State the law that controls, apply the law to the facts of this case, and give reasons for your conclusion.

*****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**

Michael was born and raised in Monroe, Michigan where he lived in the same house for over 30 years. Three years ago, Michael received an inheritance and used the money to purchase a 90-acre farm and a farmhouse in Toledo, Ohio. He moved many of his personal belongings to the farmhouse, and now spends 7 ½ months a year growing and selling produce on his farm and living in the farmhouse.

Michael has not completely cut his connection with Monroe, however. For 4 ½ months every year since purchasing the farm, he lives in his Monroe house, which he refers to as his "home." He maintains an active social life in Monroe, is a member of a church and health club in town, and obtains medical and dental care from his long-time doctors in Monroe. He also votes in Monroe and he still has his Michigan driver's license and car registration.

Sally Foods, Inc. is a food distributor that sells fresh produce to grocery stores throughout a five-state region, including Michigan and Ohio. Sally Foods is incorporated in Minnesota and is headquartered in Ohio. It has food processing, warehousing, and distribution facilities in each of the five states in its distribution region.

Three years ago, Michael and Sally Foods entered into a four year contract providing that Michael would sell all the produce grown on his farm each year to Sally Foods. The contract was negotiated and signed by the parties at Sally Foods's corporate headquarters. Michael only earned \$20,000 for each of the first two years of the contract, and did not expect to earn any more than that in the next two years. Recently, Sally Foods learned that Michael's prices were higher than other farms in the area. At a meeting at its corporate headquarters, Sally Foods's CEO asked Michael to drop his prices. When Michael refused, the CEO informed him that Sally Foods was terminating the contract.

Michael sued Sally Foods for violating a federal statute which prohibits "material misstatements, omissions or non-performance in contracts in connection with the distribution of perishable goods." He is seeking \$80,000 in damages for his expected loss of produce sales for the two years remaining on the contract. The lawsuit has been filed in the United States District Court for the Eastern District of Michigan. Due to some unexpected litigation costs Michael incurred after filing his lawsuit, Michael has sold his Monroe house and now resides full-time in his Toledo farmhouse.

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

Sally Foods has moved to dismiss Michael's lawsuit for lack of subject matter jurisdiction. Michael argues that diversity and federal question jurisdiction exist.

Analyze whether both forms of jurisdiction can be established.

*****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**

Brandon Biggs is an avid art collector. In February 2016, he paid \$20,000 to Sasha Sloan to purchase a painting purported to be the original work of world-renowned artist Josh Landing. The painting was included in Sasha's extensive private art collection for several years prior, and she occasionally sold pieces in her collection. Prior to the sale for which there was a writing, Brandon personally inspected the painting, was anxious to purchase, considered the price very attractive, and relied on an accompanying certificate of authenticity. Sasha had also relied on that certificate of authenticity at the time she acquired the artwork. Upon purchase, Brandon took possession of the painting and initially placed it in storage for two years. He then displayed the painting in his home for another two years. Convinced that the value of the painting had surely increased following the artist's then recent death, Brandon had it professionally appraised in February 2020 and learned for the first time that it was not an authentic Josh Landing piece. A second appraiser immediately and easily confirmed the lack of authenticity. Brandon then notified Sasha that he no longer wanted the painting because it was not an original Landing work, and demanded return of the purchase price.

Applying Michigan's version of the Uniform Commercial Code, discuss whether Brandon is entitled to recover damages against Sasha with respect to the sale. Include in your discussion whether deeming the transaction commercial in nature affects the analysis.

*******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**

Mike Smith had a small collection of uncut diamonds. Mike was seriously ill, his death was imminent and, believing this, on March 12, 2020, he visited his regular jeweler. Mike asked the jeweler to carefully tag and package his diamonds with a note that the package was for Mary Smith, his sister, who was serving in the military in Afghanistan. The jeweler tagged and packaged the diamonds as requested. Mike asked the jeweler to hold the package for his sister and ensure its delivery upon his death. The jeweler agreed and did so pursuant to the following written direction from Mike:

"In the event of my death, please give the uncut diamonds packaged and tagged as item no. 123456 to my sister, Mary Smith, who is currently serving in the military in Afghanistan.

Yours truly, Mike Smith."

That same day, Mary called Mike to check in on him, as she knew he was very ill. Mike informed her that he was not getting better and that he wanted her to have his collection of uncut diamonds if something happened to him. Mary tearfully said "thank you, but do whatever you want" and promised to try to get home to see him soon.

Mike never recalled the diamonds or gave the jeweler any other or further direction and the jeweler maintained possession of the diamonds. On March 13, 2020, Mike was admitted to a hospital in Hampton, Michigan and remained under hospitalization until his death on March 30, 2020. At the hospital, on March 27, 2020, Mike executed a valid will in which he devised and bequeathed his entire estate to his best friend, Dan Davis.

Mary was unable to return home before Mike's death and has not yet attempted to collect the diamonds. Dan learned of the diamonds in possession of the jeweler and demanded that the jeweler give him the diamonds pursuant to Mike's will.

Confused on what to do, the jeweler has visited the law firm where you are clerking for legal advice on whether to give the diamonds to Mary or Dan. The firm's partner requests a memorandum on the matter.

Applying Michigan law, who is entitled to the diamonds? Explain your answer.

*******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**

Mike and his dad Steve went to Mike's Michigan apartment to remove his last big pieces of furniture. When they pulled into the driveway and exited the vehicle, they both saw a large pothole, roughly two feet wide and a foot deep. The pothole was located in the driveway where the front walk to the apartment met the driveway. Mike said to Steve, "Geez dad, that's about as big as the Grand Canyon, we better watch out for that one!" The first piece of furniture to bring out was a large desk. Steve picked up one end and Mike the other, and Steve started to move backwards toward the door. Mike asked his dad if he wanted Mike to take that end, and be the one to walk backwards while carrying the desk. After all, Mike said, his dad's right ankle was weak from an old hockey injury, and it might be easier for him to carry the desk while moving forward. Steve declined, not wanting his son to think he had lost a step now that he was over 50. As they carried the desk towards the car, however, Steve's right ankle started to hurt, and he wanted to get to the car quickly. As they left the front walk and entered onto the driveway, Steve stepped backwards and his right ankle went into the pothole, causing his ankle to twist and his leg to break.

Steve sued the owner of the apartment, defendant Apartments R Us, in tort arguing that the owner was liable for his injuries. After discovery was complete, defendant moved to dismiss, arguing (1) it had no responsibility for injuries occasioned by the pothole, and (2) Steve can't recover for his broken leg because his pre-existing weak ankle caused the leg to break.

Discuss each of defendant's arguments, and whether defendant will prevail on either argument.

*******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**

Millionaire Kia Knight, age 25, is a well-known and popular beauty influencer. Every year for the past five years, Kia and her two childhood best-friends, Jane Johnson and Sara Sampson, take a two-week spa trip in northern Michigan. The trip is spent relaxing, doing yoga, getting massages and facials, enjoying a special spa treatment called the "Magic Dragon," and drinking plenty of wine. Kia looks forward to the trip every year, but she realizes that the cost of the trip may be financially burdensome on her friends.

On March 18, 2018, while having breakfast at the spa resort, Kia stood up and made the following statement to all of the other patrons and employees at the restaurant:

"I love these girls with all of my heart. I have been so lucky and fortunate to have such a successful career in the beauty industry. I own 1,000 shares in ABC Beauty Company. Starting today, I am going to hold and manage that stock in trust, with me as the trustee, and use it to pay for our annual spa trip - and I mean pay for everything - transportation, lodging, food, yoga, massages, facials, our favorite spa treatments (hello Magic Dragon), wine - everything! This way, Jane, Sara and I will be able to continue our trips with no financial stress and enjoy each other until the last one of us dies."

The following year in March 2019, Kia funded the entire spa trip for herself and her friends, paying for all of the related expenses with the ABC Beauty Company stock dividends. Later in the year, the "Magic Dragon" spa treatment became illegal, but the girls decided that they would continue the treatments if they are able. Unfortunately, Kia died in a car accident two months before the 2020 trip.

Jane and Sara sought to take the trip in 2020, but Kia's mother refused to turn over either the stock or the dividends, claiming that she owned the stock as the sole beneficiary of Kia's will.

Applying Michigan law, fully discuss:

- 1. Whether Kia created a valid trust in March 2018;**
- 2. The standard of proof needed to establish whether a valid trust had been created and whether such standard was met; and**
- 3. Assuming that a valid trust had been created, whether the trust proceeds may be used to fund all costs of the spa trip,**

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

including the transportation, lodging, food, yoga, massages, facials, the Magic Dragon spa treatments, and wine.

*****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**

Larry and Faith were the parents of six-year-old triplets when they divorced in 2012. Their divorce judgment awarded Faith custody and required Larry to pay \$1,000 monthly in child support, based on the Michigan Child Support Guidelines, using Faith's income of \$3,000 per month and \$10,000 per month for Larry. Because Larry and Faith leased and rented virtually everything and saved almost nothing, the marital estate was near non-existent. No alimony was awarded or reserved. In the seven years since their divorce, neither parent remarried nor had other children.

On March 1, 2019, Faith's employer permanently reduced her income by \$1,000 per month due to automation. Larry, on the other hand, was headed in the other direction as he hit the lottery. He kept working his job and opted to collect his prize monthly -- \$15,000 per month after taxes -- starting February 1, 2019 for 30 years. The kids, Faith, and the local Friend of the Court were all made aware of this by "Lucky Larry."

Because she did not have money for an attorney and for other reasons, Faith waited until August 1, 2019 to file and serve on Larry a Petition for Modification of the judgment to increase child support. An evidentiary hearing was held on August 28, 2019 and testimony was taken on the parties' incomes. Faith requested three things: (1) an increase in support based on (a) the child support guidelines, but now using her income of \$2,000 per month and (b) Larry's income at \$25,000 per month; (2) the support increase be effective February 1, 2019, when Larry got his first lottery payment; and (3) an award for attorney fees to defray the cost of Faith's attorney. In support of request number 3, Faith attached her affidavit reciting her bare-bones monthly budget (\$25 in discretionary, left-over spending) and indicating she had borrowed \$500 from her father to pay half her lawyer's retainer fee, a total of \$3,000.00.

Larry countered that (1) any increase in support was "unwarranted" because the kids "had all they need; (2) any support increase - if ordered - cannot be made retroactive; and (3) he is no longer married to Faith and does not need to pay her bills, especially her attorney fees.

Applying Michigan law, discuss who should prevail on each of the three requests based on the arguments made. Fully explain your answer. (You are not being asked to numerically calculate a support figure.)

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

**JULY 2020 MICHIGAN BAR EXAMINATION
AFTERNOON SESSION**

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

Mrs. Mayville's Cookie Company (MMCC) is a Michigan corporation. Al Albert, a shareholder of MMCC, requested to inspect and examine the records of the corporation. Al, who is publicly in the process of opening his own cookie company, made a written demand in January 2020 for a list of all of MMCC's ingredient suppliers and the prices paid for each ingredient. Al claimed in the letter that the purpose for the request was to satisfy his curiosity regarding whether MMCC was getting a "good deal" on cookie ingredients.

In March 2020, Bob Bennett, through his attorney, Chad Crumb, presented a written demand and power of attorney, seeking a list of all MMCC shareholders. Bob, a shareholder of MMCC, indicated that the purpose for demanding the list of shareholders was to enter into voting agreements with several of the shareholders.

MMCC refused to provide information to either Al or Bob. MMCC claimed that Al had no right to the list of suppliers and prices because he was in the process of opening a competing cookie company. MMCC claimed that Bob had no right to a list of the shareholders because he made his demand through an attorney, and because MMCC wishes to discourage voting agreements amongst its shareholders.

Applying principles of Michigan corporate law, fully discuss whether Al and Bob are likely to prevail in their demands for corporate records of MMCC, including any relevant burdens of proof.

*******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

Defendant DeWitt is scheduled for trial in state court for burglary of goods, cash and other valuables. The crime occurred at the home of DeWitt's next door neighbors, the Vincents. Wally, the 11-year-old son of the Vincents' other next door neighbor, was the only eyewitness to the charged events. Wally, upon seeing DeWitt enter the Vincents' home in the early evening hours and then exit 20 minutes later laden with multiple overflowing cloth bags, promptly called 911.

Despite Wally's young age, the prosecution has built the case against DeWitt around Wally's eyewitness testimony. Wally was asked during police questioning whether he understood he was obligated to tell the truth. He said he understood that telling the truth was his responsibility and he agreed that he would do so. He was asked if he understood the difference between telling the truth and telling a lie, and he responded that he thought so. Questioned further whether the statement, "it is raining right now inside this room" was a lie, Wally answered he did not know whether it was a lie or not, but he knew it wasn't the truth.

The only other indicia of wrongdoing by DeWitt discovered by the prosecution are DeWitt's two prior convictions: (1) one for two counts of criminal fraud and false statement, to which he pleaded guilty 12 years ago, and was then released after serving four years in prison; and (2) the other for negligent homicide five years ago where, under his plea agreement to a three-year sentence, he was released after serving 15 months.

Following DeWitt's more recent release four years ago, he relocated and found a good job. Because he believes he has completely redeemed himself, he intends to take the stand to deny all charges against him. DeWitt objects to the prosecutor's use of his prior convictions, arguing they are too unrelated, too remote in time, and unduly prejudicial under MRE 609, Impeachment by Evidence of Conviction of Crime. He also objects to allowing Wally's testimony, claiming that a pre-teen cannot possibly be qualified as a witness under MRE 601, Witnesses; General Rule of Competency.

1. How should the Court rule on DeWitt's MRE 601 objection to Wally's testimony? Explain why.
2. How should the Court rule on DeWitt's MRE 609 objection to the criminal fraud and false statement convictions? Explain why.

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

3. How should the Court rule on DeWitt's MRE 609 objection to the negligent homicide conviction? Explain why.

*****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**

Peter worked as a security guard in a jewelry store at a mall. About 8 p.m., Peter saw a man in his mid-30s with a short red beard, wearing a red baseball cap, dark glasses, and a black vinyl jacket walk in the store alone. The man went to the Rolex watch counter, spoke to the sales clerk and tried on Rolex watches. The clerk turned her back and Peter saw the man push a watch up his sleeve. When the clerk turned back around, the man handed her only one watch back and started to leave. Peter approached the man. The man looked directly into Peter's face and hastily left the store into the mall. The clerk yelled to Peter she was missing a watch. The police were called at 8:10 p.m. Peter searched for the man but could not find him.

The police received the report at 8:10 p.m. and searched the area. About 9:00 p.m. the police found a man matching the given description named Donald at a Coney Island five miles away, eating with another man. Donald was arrested on an outstanding traffic warrant. The other man was also arrested. Both men were handcuffed and placed in the back seat of the police car.

About 9:10 p.m. Peter received a phone call from the police to meet them in the parking lot of the Coney Island. Peter arrived at 9:20 p.m.

Peter got out of his security car and walked to the police car before the officer got out of his car. Peter looked into the back seat and pointed to Donald wearing a red cap and black vinyl jacket and immediately said, "That's him." The police asked about the other man. Peter said he had never seen him before. The police charged Donald and released the other man at the scene.

Donald complains that in his encounter with Peter and the police: (1) he should have had an attorney as he was under arrest on an outstanding warrant; (2) he should have been in a live line up; (3) that too much time passed between the alleged incident and his encounter with Peter; and (4) the encounter was not fair because he was in handcuffs in the police car, which was prejudicial. Is Donald correct?

State and discuss the law that controls the encounter between Peter and Donald. Apply the law to the issues Donald raises and support your conclusions.

*******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**

Emily is an employee of ABC Medical Supplies (ABC). She works in one of ABC's regional field offices supervising a team of 60 sales associates who fill orders from hospitals, doctors, and in-home medical providers for medical equipment.

Although economic conditions for ABC's products were good, ABC's owners were intent on further increasing profits. To that end, ABC began reducing its staff of sales associates to help the company's bottom line. As a result of these staff reductions, ABC instructed Emily to begin doing work previously performed by some of her sales associates in addition to her usual supervisory duties.

Emily complied. Over the next few months, however, she began to feel stressed and anxious as she strove to satisfy the demands of her supervisory job and the additional sales duties. She had never experienced anxiety problems before. She complained to ABC, but ABC was unresponsive, explaining that it was intent on continuing its cost-cutting plan.

Soon thereafter, ABC began requiring more from Emily, including a demand she do the paperwork aspects of her supervisor job at home after her usual work office hours so she would have more time in the office to do sales associate work. Emily's anxiety increased with this additional workload. She told ABC its demands were increasing her anxiety and she questioned her ability to persevere under these conditions. ABC was unmoved and reiterated its intent to pursue its agenda.

A month later ABC directed Emily to be accessible by email or text 24 hours per day to respond to problems her sales associates were having filling orders. Emily immediately began fielding many off hours calls and texts from overworked sales associates. Emily again complained to ABC about the stress resulting from making herself available around the clock. ABC reiterated its intent to move forward with its program regardless of her anxiety complaints.

A month into the 24-hour program Emily experienced, in her words, "a nervous breakdown" in trying to keep pace with work demands. She visited her doctor who diagnosed an anxiety disorder that will require treatment and therapy. The doctor added she fortunately had no physical problems.

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

Emily also visited her lawyer. Her lawyer is considering filing a workers' compensation claim on Emily's behalf. Her lawyer is also considering filing a state court tort action against ABC for intentionally causing Emily's anxiety disorder.

Applying Michigan law, answer these two questions raised by Emily's case:

1. Does Michigan's workers' compensation statute allow recovery for mental injuries where there has been no physical trauma and no physical injury? Explain your answer.

2. Can Emily maintain a state court cause of action against ABC for an intentional tort? Why or why not? Ignore any possible claims brought under the Americans with Disabilities Act.

*****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

A roofing company contracted with a government housing agency in Michigan to provide roofing services for indigent homeowners. The contract includes the following provisions:

1. The agency will pay the roofer \$250,000 to replace 50 leaking roofs on the homes of the agency's "clients," defined as indigent homeowners who need assistance from the agency.
2. The roofer must inspect each home after completing the roofing work and give "both agency and client" a written guarantee regarding the quality of the work.
3. The agency will pay the roofer an additional \$25,000 for replacing the gutters on clients' homes with Drain-Rite, a new brand of gutter system.

After execution of the contract, it was discovered that the owner of Drain-Rite was the spouse of the agency employee who drafted the contract. In a lawsuit brought by a Drain-Rite competitor, a Michigan court held that any agency contract provisions calling for the use of Drain-Rite violate public policy.

Hans, a homeowner whose roof was replaced pursuant to the contract, alleges that his new roof leaked, causing toxic mold that damaged his house and caused respiratory problems. His friend Franz, who frequently stays at Hans' house while traveling for work, alleges that the toxic mold damaged his clothing and exacerbated his asthma. Hans and Franz have sued the roofing company for damage to their property and health, claiming the company's substandard performance of roofing services breached the contract.

The roofer argues that the contract is void and unenforceable because the provision requiring installation of Drain-Rite violates public policy. The roofer further argues that neither Hans nor Franz is a party to the contract, so neither can sue to enforce it.

Applying Michigan contract law, evaluate the roofer's arguments.

*******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**

Dan loaned his friend John \$5,000 so John could buy his girlfriend Pauline a diamond ring. John did not repay Dan. About three months after Dan made the loan, Dan was in a bar having a drink. Pauline came into the bar with her friend Gail and they sat at the bar. Pauline left her purse open on the bar and walked to the restroom. Gail went to the end of the bar, near the exit, to order drinks. Dan went up to the bar, looked into the open purse, saw a large amount of cash and the diamond ring John bought Pauline. Dan looked around, reached into the purse and took only the ring. Just then Pauline walked out of the restroom, saw Dan and yelled, "Get out of my purse." Dan looked at her and said, "Tell John to repay me and you can have the ring." Dan turned to leave the bar. Gail witnessed the event and tried to block Dan from leaving the bar by standing in front of him in the narrow aisle. Dan pushed Gail aside with his hands, causing her to lose her balance and spill the drinks, but she did not fall over. Dan left the bar with the ring. Pauline called the police. Dan was later arrested and charged with the crime of unarmed robbery.

Dan contends he cannot be charged with a crime because (a) he loaned John the money to buy the ring, (b) that he told Pauline he did not want to permanently keep it, and (c) he did not do anything that would be a robbery.

State and discuss the elements of the crime with which Dan has been charged. Is Dan correct in his claims? Give the supporting legal basis and factual reasons for your conclusions.

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