

FEBRUARY 2017 MICHIGAN BAR EXAMINATION

ESSAY PORTION

MORNING SESSION

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

After ten years of marriage and two children, Arthur and Abby Crosswell divorced. Their judgment of divorce awarded Abby sole physical custody of their children, Ken and Carl, who were nine and eight, respectively, at the time the divorce judgment was entered. Arthur was awarded fairly standard parenting time of every other weekend from Friday at 7 p.m. to Sunday at 3 p.m., plus Wednesdays from 5:30 p.m. to 8:30 p.m. Arthur was also awarded half the school vacations and half of summer recess. The judgment provided for joint legal custody.

A few years after the judgment was entered, when the boys were 13 and 12, Abby wanted to relocate from Michigan to Colorado with the boys. On the other hand, Arthur wanted to spend more time with the boys as they were growing older, were becoming more attached to their father, and wanted to spend more time with him. Moreover, Arthur had switched jobs, which allowed him a much more flexible work schedule, albeit requiring him to move some 35 miles away.

Two motions were filed in a Michigan circuit court.

Abby filed her motion to change domicile (legal residence) of the children to Colorado. Her petition, prepared by herself, simply stated (1) she has the sole physical custody of the children, (2) she wanted to move away, and (3) permission should be granted to her. Arthur contested Abby's motion, contending he was entitled to a hearing under the applicable Michigan statute for a judicial determination under the statutory factors regarding the propriety of relocating the children.

Arthur filed a motion for a modification of parenting time. He has no real dispute that Abby is adequately providing for the boys with guidance, discipline, the necessities of life, education, and the like, and has been doing so for many years. He simply asked to have his Sunday return time extended from Sunday at 3 p.m. to Monday at 8:30 a.m. He would get the boys to school Monday morning. Arthur also asked to pick the boys up from school on Fridays at 3 p.m. rather than 7 p.m. from Abby's house. He would, of course, provide dinner and get them to their after-school activities. The boys' school did not require weekend homework. Arthur also sought deletion of his Wednesday non-overnight parenting time. Abby disputed Arthur's request,

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

contending he had not established proper cause or a change of circumstances to allow the court to revisit the original award. She reasoned that - much like custody modifications - normal life changes like Arthur alleged, do not amount to proper cause or a change in circumstances, to allow additional parenting time. She also argues the additional time would disrupt the established custodial environment she has with the boys, without sufficient basis.

Applying Michigan law, answer the following:

1. Is Arthur entitled to a hearing under Michigan's change of residence statute, or may Abby simply request the move and be given permission? Why or why not?

2. For his motion, must Arthur demonstrate proper cause or a change in circumstances to the same degree as a custody modification? Why or why not?

3. If an established, custodial environment is involved, does the modification Arthur seeks alter that established custodial environment? Why or why not?

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

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

Angie is employed as a customer service representative at ABC Call Center (ABC). ABC hired XYZ Maintenance Company (XYZ) to clean its offices nightly.

Angie is paid by ABC on an hourly basis with a daily starting time of 9 a.m. and quitting time of 5 p.m., five days per week. She typically arrives at work about 10 minutes before her starting time.

One morning, Angie arrived at work at 8:50 a.m. She hung up her coat and began to walk to her workstation. Near her workstation, Angie slipped and fell on the slippery wooden floor. The night before, the crew of XYZ had polished the wooden floor leaving it especially slick. XYZ had left no warning sign to indicate the floor was slick.

Angie's fall resulted in a back injury. Angie is considering pursuing workers' compensation benefits from ABC and/or a tort action against XYZ. In order to make an informed decision on how to proceed, she needs the answer to these two questions:

1. Could she receive both a workers' compensation recovery from ABC and a civil tort recovery from XYZ for the same injury? Fully explain your answer as well as any limitations on recovery.

2. Does she have a viable workers' compensation remedy against ABC? Fully explain why or why not.

Answer both questions with reference only to Michigan workers' compensation law.

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

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

Paige, a minor living with her parents in Wisconsin, was injured during a school ski trip to the Slabside Ski Resort in Keystone City, Michigan. The trip was coordinated and supervised by Diana, a teacher from the Gotham Bay School District, located in Gotham Bay, Wisconsin.

On the day of the accident, Paige and a group of students were on the slopes with Diana. A few of the students wanted to ski an "experts-only" ski run called the Netherworld. Paige told Diana that she was only a novice skier, and that she was worried that it would be too challenging for her. Diana suggested that Paige give it a try anyway. A couple of the students decided to go down an easier run, but Paige followed Diana's suggestion and went down the Netherworld. On the way down, Paige picked up too much speed, lost control, and crashed into a tree, suffering serious injuries.

Paige's parents filed a lawsuit against Diana in Michigan in the Kasnia County Circuit Court, alleging that she was grossly negligent in sending Paige down an "experts-only" hill despite knowing that she was only a novice skier. Diana filed a motion for summary disposition, requesting that the court apply Wisconsin's governmental immunity law because all of the parties were from Wisconsin. Under Wisconsin law, Diana is absolutely immune from liability as an agent of a school district performing a discretionary task.

In response, Paige argued that Michigan law should apply because the accident occurred in Michigan. Paige also argued that Diana's motion should be denied because there is a genuine issue of material fact as to whether Diana was grossly negligent, which is an exception to governmental immunity under Michigan law.

Discuss the factors the court should consider in determining whether to apply Wisconsin or Michigan law, and which state's law should apply.

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

GO TO BLUEBOOK II

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

Debbie and Phil were great friends who shared an apartment in Quiet Town, Michigan as roommates for five years, agreeing among themselves to each be responsible for half of the \$1,000 monthly rent. On four different occasions during that time, Phil asked Debbie to cover his 50% portion of the rent because of a temporary financial challenge. Debbie did so without complaint or hesitation by paying the landlord the entire rental amount each of those times. Each time Phil attempted to repay Debbie his portion of the rent shortly after the rental period Debbie covered, Debbie always declined to accept saying "No bother. I'll just get it from you later when I need it and I'll let you know." She never requested the money from Phil throughout the duration of their shared living arrangement.

Approximately one year after Phil's last offer to repay the covered rent money, Debbie and Phil's relationship soured and he moved out of the apartment. Phil took all of his personal belongings when he vacated, except for a three-piece vintage luggage set that he never used. After Phil moved, Debbie contacted him three times regarding removing the luggage from the apartment. When he was completely nonresponsive to her requests, and made no attempt to retrieve the luggage after six months, Debbie sold the set for \$1,000.

Debbie then demanded that Phil pay back the \$2,000 she loaned him for rent, and filed a lawsuit against Phil for the money when he refused to comply. Phil filed an affirmative defense to the lawsuit contending that the \$2,000 was a gift from Debbie that he is not obligated to reimburse. Phil also filed a counterclaim against Debbie for the \$1,000 that she received from her sale of the luggage. Debbie filed an affirmative defense that Phil abandoned the set and that she was, therefore, at liberty to dispose of it as she pleased without liability to him.

Applying Michigan law, fully discuss:

- 1. Phil's gift defense to Debbie's lawsuit and the likelihood of success.**
- 2. Debbie's abandonment defense to Phil's counterclaim and the likelihood of success.**

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

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

Bridget, who lived in Seasaw, Michigan, had sizeable assets. She kept a journal in which she wrote about her thoughts almost daily. One day in her 2014 journal on the page preprinted with the date June 20, 2014, Bridget wrote the following entry in her own handwriting:

Today is a glorious day and I'm in a good and generous mood. I think I'd like to leave all of my possessions to my dear cousin Abe when I make my earthly transition. Abe has always been my confidante and has struggled financially in the past, but he has great ideas and a kind heart. I know he would be so grateful if I did so.

Nothing further was written in that entry. At the time of the journal entry, Bridget was 53 years of age and had sufficient mental capacity to make a will. Bridget had a \$500,000 life insurance policy for which she designated her only two children, Brandon and Stephanie, as sole equal beneficiaries of the proceeds. There were no other writings distributing any assets.

Bridget died in November 2016, and both of her children and Abe survived her. Bridget was also survived by her brother, Carl. She had neither a surviving spouse nor any other living relatives. At the time of death, Bridget had approximately \$1 million in assets and the life insurance policy was still in effect. Abe wants to know whether he is entitled to all of Bridget's assets, as well as the life insurance policy proceeds, based upon Bridget's discovered journal entry.

Applying Michigan law, discuss fully:

- 1. Whether Bridget's journal entry constitutes a valid will.**
- 2. How Bridget's assets, as well as the life insurance policy, would be distributed.**

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

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

Freda is the relatively new owner of a residential apartment complex in Sunset, Michigan. Jared rents one of the few three-bedroom apartments in the complex on a month-to-month basis at a monthly rate of \$1,000 without a written lease agreement. Jared is current on his rent, but Freda now wants to rent that apartment to her niece, who recently moved to town with her family.

Freda also rents an apartment to Bryce pursuant to a written one-year lease for \$700 per month. Bryce is two months behind on his rental payments because his finances recently took a tumble, and, as such, he is in breach of the lease agreement. Bryce is only four months into the one-year term.

Additionally, Freda discovered that Maya, with whom Freda had no tenancy arrangement and who otherwise had no possessory interest in the property, has been living in a vacant studio apartment in the complex for more than a month.

Applying Michigan law, fully discuss if and how Freda may legally recover possession of each of the respective apartments:

1. from Jared;
2. from Bryce because of his nonpayment of rent;
3. from Maya.

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

GO TO BLUEBOOK III

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

Lester built an apartment complex on his property and installed a septic system without a permit and in violation of the health code. He then sold the property to Sally without informing her of the non-compliant septic system. Sally purchased the property as an income-bearing investment, and earned her living from the apartment rentals for several years, during which time the septic system functioned properly. Sally then sold the property to Paula, who also intended to earn income from the rentals. The contract, which required Paula to make installment payments to Sally over several years, stated: "Purchaser has examined this property and agrees to accept it as is." Paula did not know that the septic system had been installed without a permit.

Several days after the closing, a tenant discovered raw sewage seeping through the cracks of the sidewalk surrounding the apartment complex. Subsequent testing revealed that the septic system was failing. The health department promptly condemned the property and obtained a permanent injunction forbidding anyone from living in the apartments until the septic system was repaired to meet code requirements. Due to the defects of the system and the size of the property, however, the system could not be brought into compliance with the code, rendering the property worthless.

Paula stopped making the contractually required payments to Sally. Paula did not know that Sally had been using those payments to pay off a loan for a recently purchased boat. Sally had no other source of income and defaulted on the boat loan, incurring a large penalty.

Sally brought a breach of contract action against Paula, seeking to recover the missed payments under the sales contract and the penalty for the boat loan default. Paula counterclaimed, seeking rescission of the contract. Neither party disputes that the contract is valid and that if it is not rescinded, Paula breached it.

Applying Michigan law, evaluate the claims of Paula and Sally.

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

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

On July 1, 2016, the district court in Probably, Michigan entered three separate default judgments in favor of plaintiff U-New Credit Company ("U-New") and against defendants Adele, Brian and Colby. The judgments arose from three separate credit card accounts that were past due, each defendant having failed to pay their respective U-New credit card bills. Pursuant to U-New's requests four months later when none of those judgment balances were satisfied, the district court issued writs of garnishment which U-New served on the following garnishees: (1) Adele's bank, seeking to receive any funds it was then holding in her bank account; (2) Brian's corporate employer, seeking to periodically receive (i.e. every pay day) the maximum legal portion of his wages; and (3) the State of Michigan, seeking to receive any state income tax refund due to Colby in 2017.

Each defendant timely filed objections to their respective garnishment. Adele asserted that her bank account was populated solely with social security funds, which it was. Brian claimed that the underlying judgment against him should be set aside as invalid, and that he is planning to file for bankruptcy in a few months. Colby contended that the Probably district court had already entered an installment payment order that she was honoring and which allowed her to pay the judgment balance in \$100 monthly installments.

Applying Michigan law, identify whether U-New has any valid legal responses to the objections to garnishment of each defendant, and, discuss fully why or why not.

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

Justine Tenant is getting ready for trial in a Michigan state court in her personal injury lawsuit against Larry Landlord. The dispute arose out of Justine's complaints to Larry over the stairwell banister in the townhouse Justine rents with her housemate Heidi. The banister had become detached near the top of the stairs, creating an unsafe condition that Larry had been resistant to repair.

Following another argument with Larry that ended with Justine threatening to withhold rent payments and vowing to report Larry to the housing authority, Justine was awakened at 3:00 a.m. by what sounded like someone trying to break in. As she grabbed the banister and started down the stairs, the banister gave way completely and down the stairs she fell. The commotion woke up Heidi, who ran downstairs to find Justine, still conscious and, from all appearances, entirely lucid. Grabbing her smart phone, Heidi hit the record function and asked Justine what had caused her fall. Justine explained, somewhat breathlessly, that she heard someone outside, grabbed the broken banister, fell, and then saw Larry peering in at her. After sharing this information with Heidi, Justine faded into unconsciousness. When Justine awoke in the hospital the following morning, she recalled nothing about the events that led to her hospitalization.

With the trial now imminent, Justine has not regained memory of the events, and so wants the transcript of Heidi's recording in evidence as an exhibit to prove her case against Larry. Larry's counsel stipulates that the transcript matches the audio recording, but challenges the transcript as hearsay and as lacking authenticity under MRE 901 on the theory the recording could have been made after the fact. Justine's counsel agrees the transcript fits the definition of hearsay but argues the transcript is admissible as a recorded recollection under MRE 803(5), or alternatively that, because Heidi shared the recording with the emergency room doctor that night, it is a statement made for purposes of medical treatment under MRE 803(4). Heidi is prepared to identify the voices on her recording and the accuracy of the transcription, to confirm when she recorded it, and to confirm that there have been no changes to it. Justine will testify she still does not recall the events described by her in the transcript, but she does recall

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

speaking to Heidi while she had memory of the events, and that she also recognizes her voice on the recording.

Applying Michigan law, answer the following:

1. How should the court rule on the two hearsay exceptions offered by Justine and explain why.

2. What alternative hearsay exception(s) or exclusion(s) could Justine successfully rely on and explain why.

3. How should the court rule on Larry's challenge to the recording's authenticity and explain why.

FEBRUARY 2017 MICHIGAN BAR EXAMINATION

ESSAY PORTION

AFTERNOON SESSION

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

Marty and Joe were charged under Michigan law with armed robbery. At the preliminary examination in district court, the People presented a lone witness, Caroline Clerk. She testified she was working as a convenience store clerk on the date in question. She stated that two men came into the store, looked around a little, looked at each other a lot, and when the store was otherwise empty, approached the cash register together.

Once at the cash register, one man said "give up the money!" When Caroline hesitated, the man repeated "give up the money or we will blow you away." The other man raised the pocket of his jacket where he concealed his right hand and pointed directly at Caroline. Caroline testified she was afraid she would be shot so she opened the cash register. As she gathered the larger bills, a police siren was heard. The two men ran out of the store with no money received.

At the preliminary examination, the People rested after Caroline identified Marty and Joe as the robbers. Defense counsel put Marty and Joe on the witness stand. Both men testified similarly. They were together at a Tiger game, 50 miles away, at the time of the robbery. Both also testified they were often mistaken for others due to their common looks. Defense rested.

The assistant prosecutor moved to bind over both defendants for trial in circuit court on armed robbery charges. Both defendants challenged bind over, albeit for different yet related arguments.

Regarding the factual elements, both defendants argued that, because no money was taken, there was no robbery and, accordingly, no armed robbery. Marty argued that the victim did not testify as to seeing a gun and the quoted words could not be an adequate evidentiary substitute for a gun. Joe argued the hand gesture was equally insufficient to establish a gun.

As to proof of their identities, Marty and Joe argued that their own testimony proved their lack of culpability because the store clerk simply mistook them for the actual robbers. Both Marty and Joe requested dismissal instead of bind over.

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

Basing your answer on Michigan law, address each of the arguments made, and indicate whether the armed robbery charges should be dismissed or bound over for trial. Fully explain your answers.

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

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

Patrol Officer Murphy was travelling one night behind a late-model truck when it stopped at a red light. Officer Murphy noticed only one brake light illuminated when the vehicle stopped. Murphy followed the vehicle to the next stop light where it again stopped; only one brake light illuminated.

When the vehicle began moving again, Murphy activated his siren and lights and pulled the driver, Dirk David, over for a violation of a local ordinance requiring working brake lights. Murphy approached the truck and questioned Dirk. While questioning Dirk, Murphy detected the strong odor of marijuana emanating from Dirk and his truck. Murphy also saw what appeared to be a large, clear-plastic bag underneath Dirk. The bag appeared to contain marijuana. Dirk was ordered out of the vehicle. As he got out, a large bag of marijuana was clearly visible. Murphy seized the marijuana.

Dirk was charged with possession with intent to deliver marijuana. Defense counsel moved to suppress the seizure of the marijuana. Counsel's request is based solely on the argument that the stop of Dirk's truck violated his Fourth Amendment rights. Counsel argues that the local ordinance on which Murphy stopped Dirk only requires one working brake light. Because Dirk did have one working brake light, there was no traffic violation and, therefore, Murphy's stop of Dirk was improper. Counsel says without the stop, the seizure was invalid, requiring suppression. Counsel does not contest the seizure was valid if the stop was valid.

The prosecutor conceded that the stop must be valid to allow the seizure of the marijuana. The prosecutor counters, however, that the stop was valid. Agreeing that the ordinance requires only one working brake light (and that Dirk's vehicle had one working brake light), the prosecutor nevertheless argued that Officer Murphy's mistake about what the law required, which led to the stop, did not render the stop invalid for Fourth Amendment purposes. The prosecutor contended Murphy's mistake was a reasonable mistake of law.

Defense counsel replied that it did not matter if Murphy's mistake was a reasonable mistake of law, because only reasonable mistakes of fact are allowed under the Fourth Amendment to

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

justify a stop. Counsel added that even assuming a reasonable mistake of law, suppression is still required by the Fourth Amendment.

1. Fully address the Fourth Amendment principles involved.
2. Discuss their application to Dirk's suppression motion.
3. How should the court rule on Dirk's motion to suppress?

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

When students at Douglas Dodd High School (DDHS) learned that a parade honoring an alumnus returning home from military service would be passing by the school, they sought permission from school officials to take part. School officials approved the request as a social event or class trip. Because the parade would pass by the school during class time, students were allowed to leave class and stand on the sides of the street as the parade passed. Teachers and administration personnel were present to monitor student activities.

DDHS senior Sam Signet, along with three of his friends, attended the parade and brought along a large 14-foot banner. Other students were displaying banners, with most reading "Welcome Home," "We love you Sgt.!", and "DD's favorite son." As television cameras approached Sam's location, he and his friends unfurled their banner which read:

"METH Shots 4 MOSES!"

The letters were large and easily viewable by other students on both sides of the street.

Seeing the banner's message from across the street, Principal Clarke Kelly crossed the street and confronted Signet and his friends. Principal Kelly demanded the banner be taken down. All four boys sassed Principal Kelly, however, all but Signet complied. Signet continued to try to hoist the banner, refusing Kelly's directive. Kelly confiscated the banner and ordered Signet to his office. Signet was suspended from school for ten days.

Hearings were held pursuant to school procedures. Principal Kelly testified that the school had a long-standing published policy prohibiting public expression or assembly that advocates the use of substances that are illegal to minors. This anti-drug use policy was promulgated due to repeated drug use at DDHS and other area high schools concerning marijuana, methamphetamine, and Xanax. A companion policy provision requires pupils who participate in approved school social events or field trips to conduct themselves as they would during the regular school classes.

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

Principal Kelly testified that he believed the banner's message promoted drug use, in contradiction of the stated policies.

Signet maintained he just wanted to get on television. At the conclusion of the in-school hearing, the confiscation and suspension were upheld. Despite Signet's claim that his First Amendment rights were violated, the hearing board concluded the message on his banner promoted illegal drug use and that that promotion took place at a school function. Signet, dissatisfied with the hearing result, brought suit claiming a violation of his First Amendment rights.

In his suit, he maintains he was not trying to promote drug use, but rather just to get the attention of the television cameras. He also maintains it was unreasonable to consider the language as promoting drug use.

Were Signet's First Amendment rights violated by the confiscation and suspension? Discuss the applicable analytical framework under the First Amendment to support your conclusion.

GO TO BLUEBOOK V

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

Brian started a lawn maintenance business in March 2016. His brother Steve supplied all of the needed lawn maintenance equipment (lawn mowers, blowers, etc.). Brian did all of the lawn maintenance work himself, with the occasional assistance of some local teenagers. For the first few months of operation, Brian gave half of the gross profits to Steve as payment for the lawn equipment, and kept half for himself.

Beginning in July 2016, the lawn maintenance business experienced a huge upsurge in business, and gross profits improved substantially. Brian gave Steve approximately the same amount of money he had given him in previous months, and kept the remainder of the proceeds for himself. Steve protested, claiming that, as a partner in the lawn maintenance business, he was entitled to a larger amount of money. Brian denied the existence of a partnership, and no writing exists.

Applying principles of Michigan partnership law, discuss:

- 1. Which party bears the burden of proof regarding the existence of a partnership?**
- 2. What is the burden of proof required to establish a partnership in this case?**
- 3. Whether a partnership exists between Brian and Steve? Discuss your answers in full.**

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

John Smith lived in Anytown, Michigan, which had an ordinance prohibiting dogs from defecating on property other than its owner's property. If a dog's owner is cited more than three times for violating the ordinance, the city had the power to put down the dog.

Mike Jones was Smith's neighbor. Smith owned Fido, a German Shephard dog. Jones hated Fido, because the dog would bark almost every night, causing Jones to often lose sleep. Jones eventually was to the point that he needed to stop Fido's barking. After some research, Jones located the dog ordinance, and developed a plan to convince city officials that Fido was defecating on his property. Specifically, Jones took pictures of Fido defecating in Smith's backyard, and edited the photos to make it look like Fido was doing it in Jones' yard. Jones then presented the photos on three separate occasions to city officials, who each time cited Smith for an ordinance violation. After the third citation, Jones requested that the city attorney prosecute Smith, and invoke the remedy of putting down Fido. The city attorney refused.

Undeterred, and still losing sleep on a nightly basis, Jones filed an action in the local district court, asserting the repeated ordinance violations and asking the court to issue an order for the destruction of Fido, and to hold Fido in the local animal shelter pending the outcome of the case. The court placed Fido in the shelter. Smith then answered the complaint by denying that Fido had ever been in Jones' yard, let alone defecating in it. Smith also asserted that the photos were faked. Three months later at the bench trial, the court utilized an expert who testified that the photos were in fact fake. At that point, Jones agreed to dismiss the case and Fido was eventually returned to Smith.

Fuming about the frivolous lawsuit and Jones' antics, Smith filed a tort claim against Jones in circuit court, seeking to recoup as damages the costs of defending the district court action and for emotional distress.

Applying Michigan law, identify the claim brought by Smith and explain whether it will succeed.

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

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

Power Company and Donovan, Inc. contracted for Power to deliver 300,000 widgets to Donovan, in three shipments, at a total cost of \$75,000. Donovan promptly paid Power \$25,000 following the initial shipment, but only paid Power \$20,000 after receiving the second shipment and invoice. Donovan paid nothing after Power delivered the third shipment and invoice. Power filed suit for breach of contract in Kandor County, Michigan, alleging \$30,000 in damages.

Pursuant to a scheduling order entered by the trial court, and after a brief period of discovery, the case was submitted to case evaluation. Following briefing and a hearing, the case evaluation panel issued a unanimous evaluation award of \$25,000 in favor of Power. Within a week, Power filed a written acceptance of the award. Donovan did not respond to the award.

Two months after the case evaluation panel issued its award, Power filed a motion for summary disposition, seeking judgment in the amount of \$30,000 as well as case evaluation sanctions. Power attached the contract, the invoices, and the canceled checks evidencing payment of \$45,000 as support for the motion, along with an affidavit from Power's CFO indicating that Donovan failed to pay for the widgets as bargained. Donovan opposed the motion, alleging that part of the second shipment and all of the third shipment contained defective widgets. In support of its response to the motion for summary disposition, Donovan only attached one affidavit. In that affidavit, Donovan's CEO asserted that she refused to pay Power's invoices in full because she had been told by Donovan's loading-dock employees that some of the delivered widgets were defective. The trial court granted the motion for summary disposition and entered a judgment in favor of Power and against Donovan for \$30,000. It also awarded Power case evaluation sanctions.

1. Focusing solely on Power's motion and Donovan's response, did the trial court properly grant Power summary disposition? Explain your answer.

2. Assuming the summary disposition motion was properly granted, did the trial court properly grant case evaluation sanctions? Explain your answer.

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