

FEBRUARY 2018 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**

Ellen Exterminator and Buggy Business just completed performance of a contract under which Ellen provided monthly treatments to the exterior of Buggy's premises to kill wasps and other outdoor insects. The price was \$25 per month, with no guarantee.

The parties desired to enter a new six-month contract under which Ellen would provide monthly treatments to the interior of Buggy's premises to kill indoor insects. Ellen sent Buggy a written contract with a price of \$50 per month. The contract provided that as part of the service, Ellen would call Buggy the day before each treatment so that Buggy could prepare. The contract included the following guarantee: "At any time after the first treatment, if Buggy spots more than 10 insects in one month that are covered by this service, Buggy will not be charged for that month's service." The contract stated that Buggy could accept by signing and returning the document.

Buggy crossed out the \$50 price and wrote "\$25," signed the document and returned it to Ellen. Ellen did not sign it at any time. The next day Ellen went to Buggy's Business without calling ahead. Buggy was prepared, however, and invited Ellen inside to perform the treatment.

Several months later, Ellen sent Buggy a bill for services rendered, at the price of \$50 per month. Buggy sent the following reply: "Because you failed to call ahead for the first treatment, you breached the contract and I am not paying for that month. In the second month, dozens of wasps swarmed our customers as they approached our front door, so under your guarantee I do not owe you payment for that month. As for the rest of the months, I will pay you at our agreed-upon price of \$25 per month."

Applying Michigan's common law, evaluate each of Buggy's arguments.

*******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**

A Michigan district court awarded Lauren a \$20,000 money judgment against Rita in connection with a breach of contract action Lauren filed when Rita failed to fully repay a loan she received from Lauren several years earlier. Currently, Rita is gainfully employed and earning an annual salary of \$90,000 at a local private hospital. Rita shares with her husband Henry, a joint savings account with a balance of \$5,000. She also solely and fully owns a 2012 motor vehicle that is lien free.

At the time the court entered the judgment, Rita angrily proclaimed in open court to Lauren that she was not giving Lauren a cent. The following day, Rita transferred to Rita's mother's bank account the full \$4,000 balance from a savings account that was solely held by Rita.

One week after the judgment was awarded, Lauren is now seeking legal advice on how to collect on the judgment if Rita does not promptly pay in full.

Assuming that Rita does not legally challenge the judgment, detail Lauren's legal options under Michigan law for collection based upon the above information regarding assets. Include in the analysis when collection efforts may begin and how long they may continue.

*******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**

Polly claims she was sexually harassed at work by her supervisor Sully. She filed suit against her employer after her employer's internal investigation concluded Sully had not sexually harassed Polly. At trial in a Michigan state court, Polly's employer seeks to call as a witness its vice president, Vince. Vince did not have a direct role in addressing Polly's internal claim; Vince's role was to "rubber stamp" the decision made by others that Polly's internal claim was without merit. Vince is handsome and well spoken. Vince is also Sully's older brother.

Before Vince is sworn, Polly's attorney objects to Vince taking the stand. At sidebar, Polly's counsel argues that Vince is an unqualified witness due to his inescapable bias in favor of his younger brother Sully. Polly's attorney further argues that, should Vince be allowed to take the stand, Polly intends to impeach Vince with evidence that he had an extramarital affair several years ago. Finally, Polly's counsel argues that, should Vince deny his unfaithfulness on the stand, Polly has located Vince's former mistress and will call her to the stand to prove Vince is lying.

The employer responds that Vince is a competent witness under MRE 601 and that Polly's threatened impeachment evidence is improper character evidence under MRE 608, as well as irrelevant and unduly prejudicial. Outside the presence of the jury, the court asked Vince if he was willing to take an oath, and whether he understood his obligation to testify truthfully. Vince answered "yes" to both questions.

1. How should the court rule on Polly's objection to Vince's qualifications as a witness? Explain.

2. How should the court rule on the employer's response that Polly's impeachment evidence is irrelevant and unduly prejudicial? Explain.

3. How should the court rule on the employer's response that Polly's impeachment evidence does not comport with MRE 608? Explain.

*******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**

Joe Smith arrives at your law office for advice on a potential workers' compensation claim. Joe explains that he is an employee of ABC Company (ABC), a mail order warehouse in Pleasantview, Michigan. He tells you that last year he suffered a non-work related sports injury to his back, necessitating a visit to his doctor. He has had back pain off and on since that sports injury. Two months ago at work, Joe lifted a heavy box in performance of his job, and the lift triggered a flare-up of his back problem. Joe returned to his doctor, and his doctor advised him not to return to any work requiring lifting over 20 lbs. All of ABC's jobs entail lifting over 20 lbs. As a result, Joe has not worked for the past two months.

Joe asks if the lifting incident at work, and his current back problems, qualify as a compensable personal injury for workers' compensation purposes. And, if so, can he be considered disabled and entitled to weekly wage loss benefits for his time lost from work.

Applying Michigan workers' compensation law, answer both of the following questions:

1. Do you have enough information to advise Joe whether he has sustained a compensable work-related back injury? If so, explain why and whether he sustained a compensable work-related back injury. If not, what further information would you need?

2. Assuming Joe has suffered a compensable work injury, do you have sufficient information to advise Joe whether he also suffered a disability? If so, explain why and whether he suffered a disability. If not, what further information would you need?

*******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**

Cobalt, Inc., manufactures axle assemblies for the automotive industry. Cobalt contracted with Delmar Demolition to demolish one of Cobalt's plants in Hub City, Illinois. Cobalt and Delmar are both Michigan corporations with their principal places of business in Michigan. The contract was negotiated at Cobalt's Michigan headquarters, and specified that it would be governed by Michigan law.

Pamela Parsons, a Michigan resident employed by Delmar, was seriously injured when a section of the Cobalt plant's roof collapsed during the demolition work. Delmar's workers' compensation insurance carrier provided medical benefits and reimbursed Pamela's lost wages. Claiming additional damages for pain and suffering, Pamela filed a lawsuit against Cobalt and Delmar in Michigan in the Riverdale County Circuit Court.

Cobalt, in turn, filed a cross-claim against Delmar under a provision in the Cobalt-Delmar contract, requiring Delmar to indemnify Cobalt for "any and all . . . injuries to persons" occurring during the demolition work.

Delmar moved for summary disposition, arguing that the indemnification clause is void under Illinois law. Cobalt argues in response that the contract's choice-of-law provision requires application of Michigan law, under which the indemnification clause is permissible.

Discuss the factors that the court should consider in determining whether Illinois or Michigan law should apply, which law should be applied, and how the court should rule on Delmar's motion for summary disposition.

*******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**

Karl and Cathy Beech had been married for 35 years before Cathy filed for divorce. In their mid-sixties, the couple no longer had minor children, but had accumulated significant marital assets despite starting the marriage with little or nothing. Included are a paid-for marital home worth \$750,000, a Florida vacation home worth the same, certificates of deposit totaling one million dollars, and other investments and personal property worth another \$500,000. Karl was a successful businessman and Cathy a homemaker. Indeed, Cathy had not worked outside the home while Karl remained at the top of his work game running his own business. As a result, only Karl was fully aware of the couple's financial assets and Cathy only knew what Karl told her. During pretrial proceedings, each signed a sworn statement of assets indicating that "no other assets are held by the party, have been concealed by the party, or have not been disclosed by the party."

Shortly before trial, it came to the attention of Cathy's lawyer that, unbeknownst to Cathy, Karl had been diverting marital assets and/or removing money from a joint account and purchasing other items of personal property. Karl had purchased a \$275,000 Bentley convertible.

At trial, Cathy's counsel took a highly aggressive approach and demanded - due to Karl's non-disclosure and concealment of the Bentley - that Karl forfeit the entire marital estate as punishment for his wrongdoing. As a fallback position, counsel sought forfeiture of the Bentley to Cathy, again as punishment for Karl's wrongdoing, before the division of the remainder of the marital estate. In support of Cathy's position, counsel cited Michigan's "automatic forfeiture rule" as the basis for the award of the entire marital estate or the alternative award.

Discuss the merits of Cathy's positions under Michigan law and, if Cathy is not entitled to the property award she seeks under the arguments she makes, discuss what Michigan law would call for as the means of property distribution. Fully explain your answers, including a discussion of Cathy's arguments.

*******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**

In the middle of a sunny Saturday afternoon in Springfield, Michigan, Mark Smith pulled into Grocery Time's parking lot to buy some groceries. After exiting the car, he walked through the parking lot toward the store entrance. Before reaching the end of the aisle of parked cars, Smith saw a large hole, roughly six-feet wide and three-feet deep, in the middle of the lot. Unbeknownst to Smith, a small sinkhole had just developed in this spot. Grocery Time employees, informed of the hole, were in the process of bringing orange cones to place around the hole, but had not yet put them in place. Because Smith was curious, he walked close to the edge of the hole in an attempt to see how deep it was. In doing so, his left foot slipped off the edge, causing Smith to tumble into the hole and injure himself.

Smith sued Grocery Time to recover damages for his injuries. After discovery closed, Grocery Time moved to dismiss, arguing that as a premises owner it was not liable for Smith's injuries.

Applying Michigan law, describe in detail what elements Smith must prove and whether he can succeed in his claim against Grocery Time.

*******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**

Mary Smith lived with her two children in Sunnyview, Michigan in Apartment A owned by Landlord Inc. After a heavy rain, water leaked from Apartment A's ceiling, requiring repair. Smith and her children were granted permission to move into another apartment (rent free) in the same building, and Smith unilaterally stopped paying rent for Apartment A. Three months later, Smith and the children moved back into Apartment A. Eventually, Landlord Inc. asked for the past-due rent on Apartment A. Smith refused to pay on the basis that the apartment had mold and had been uninhabitable.

Landlord Inc. sued Smith in the district court for overdue rent and possession of the property. Landlord Inc. submitted proofs that it had provided rent-due bills to Smith for those three months, that Smith had failed to pay, and argued for the requested relief. For her part, Smith argued that mold existed in Apartment A, making it uninhabitable, which, in turn, relieved her of the responsibility of paying rent. After considering the evidence and arguments, the district court ruled that Smith owed the rent because although Apartment A was wet and dingy, there was no mold and it was not uninhabitable.

Smith, individually and as Next Friend for her children, subsequently sued Landlord Inc. in circuit court for negligence and premises liability. Specifically, Smith argued that she and her children suffered harm from the mold inside Apartment A. Landlord Inc. eventually moved to dismiss, arguing that Smith already lost her chance to litigate whether mold existed in Apartment A. Nonsense, argued Smith, as the district court case involved possession of property and overdue rent, and nothing more; and, her children were not part of the district court case.

Applying Michigan law, explain:

1. The issues raised by the parties' arguments.
2. Whether Landlord Inc.'s motion should be denied, including your reasons why or why not.

*******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**

Widgets R Us (WRU) is a Michigan corporation located in Genesaw County, Michigan.

Sam Smith, through his friend, Eddie Edwards, sent a written demand to WRU, seeking to inspect the company's list of shareholders. The written demand was accompanied by a notarized document authorizing Eddie Edwards to act on Sam Smith's behalf. Sam, who owned .1% of WRU stock, claimed that the purpose for demanding the list of shareholders was his interest in seeking a position on the board of directors.

In February 2017, Larissa LaRue, owner of 10% of WRU stock, and also a vice-president at one of WRU's fiercest competitors, sent a written request to WRU. Larissa demanded to inspect the design specifications of WRU's newest widget. She claimed that the purpose for the request was to ensure that the new widget design was aesthetically pleasing.

WRU summarily denied both requests. WRU claimed that Sam Smith had no right to inspect the company's list of shareholders, because he only owned a miniscule amount of WRU stock and because he did not personally make the demand. Rather, he made it through his friend. WRU claimed that Larissa had no right to review the design specifications of the newest widget, because she was employed by WRU's competitor.

Subsequently, both Sam and Larissa filed suit in Genesaw circuit court, demanding to view the corporate records sought.

Applying Michigan law, discuss:

1. Which party has the burden of proof.
2. Sam and Larissa's likelihood of obtaining the corporate records sought.

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

FEBRUARY 2018 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**

When Kate and Spencer became engaged to be married, Spencer presented Kate with a beautiful emerald and ruby antique engagement ring that his grandmother had worn. Kate took the ring to Joseph the Jeweler and paid him to have it cleaned, resized, and the stone settings reinforced. Kate left the ring with Joseph for the work to be performed, and planned to pick it up the following week.

In the meantime, Kate discovered that Spencer had not been forthcoming about his previous marriage years ago to another. Kate called off the engagement because of a lack of trust. She also subsequently discovered that the engagement ring was stolen during an after-business hours burglary of Joseph's jewelry shop, which occurred even though the shop had been properly secured.

Spencer wants Kate to pay him for the ring, and Kate wants the value of the ring from Joseph. Kate contends that because the ring was a gift, and because Spencer's deceit triggered the breakup, she is not required to return it or its value to Spencer. Joseph claims that since he was not at fault for the theft, he is not liable to Kate for the ring.

Without regard to any insurance coverage, and applying Michigan law, fully discuss the following:

1. Whether Kate's defenses against any liability to Spencer for the ring's value have legal support.

2. Whether Kate is likely to recover the value of the ring from Joseph.

*******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**

Sisters Mary and Ashley owned a mansion as tenants in common in Lake Peace, Michigan, out of which they operated a bed and breakfast establishment providing short-term lodging to visitors. Eventually, Ashley tired of the demands of the property and business, and without her sister's permission or knowledge, sold her interest in the mansion to Renee for \$500,000. Renee also owns a local apartment complex, and had rented a unit in the complex on a month-to-month basis to Mary's best friend, Marvin, for a number of years without incident or complaint by either.

From the beginning, Renee and Mary did not get along. After one particular disagreement, Renee told Mary "I'll fix you." Renee then promptly delivered to Marvin (who she knew was Mary's best friend) a notice to quit to terminate his tenancy. When Marvin did not move pursuant to the time-sufficient notice, Renee filed a summary proceedings action in the local district court seeking to recover possession of the unit. Marvin, who always timely paid rent, alleges that Renee is not entitled to a judgment of possession, because she is attempting to illegally evict him in retaliation for her troubles with Mary. Mary contends that Ashley's sale of her interest in the property to Renee should be rescinded, because Ashley's property interest could not be validly sold without Mary's permission.

Applying Michigan law, fully discuss:

1. Whether Marvin's retaliatory eviction allegation is a successful defense to Renee's request for entry of a possession judgment.

2. Whether Ashley's sale of her interest in the mansion can be successfully challenged on the basis that Mary had no prior knowledge of and gave no permission for the sale.

*******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**

Margo lived in Meadow, Michigan, and owned a sizeable collection of visual art. The entire collection was valued at 1.2 million dollars, \$700,000 of which was kept in a commercial storage facility. The remaining pieces, valued at \$500,000, were displayed in Margo's home. In early 2017, Margo was honored at an awards banquet for her art education advocacy in the community. During her acceptance speech before an audience of approximately 300, Margo stated the following:

"I am so humbled to receive this award. I have a fantastic art collection in storage that I am placing in a trust for the benefit of the Meadow community to promote art education. I would like the Meadow art museum to serve as trustee and ensure that the collection is displayed for the artistic enjoyment and enrichment of its patrons."

Shortly following the awards banquet, Margo unexpectedly passed away leaving an estate consisting only of art collection items and a home valued at \$400,000. Margo was survived by only two brothers. One was her half-brother Blake with whom she biologically shared her father. The other was her brother Dennis with whom she biologically shared both parents. Margo left a valid will which disposed of her estate, other than the art work, by dividing her estate equally between her two brothers. However, the will contained a provision, which stated, "I do not wish for Dennis to ever receive any portion of my art collection or its value." The will did not otherwise dispose of Margo's art collection.

Applying Michigan law, discuss fully:

1. Whether Margo created a valid trust during her lifetime.
2. How Margo's estate will be distributed.

*******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**

When three-year old Babe's mother went out of town, she left Babe in the care of her boyfriend, Dante. When Babe arrived at pre-school the next day, his lunchroom teacher saw a blackened right eye as well as marks on Babe's arms. She asked Babe about the injuries but he said little. Babe was then taken to a classroom, which provided greater light. With his injuries even more visible, his main teacher asked, "Who did this to you?" Reluctantly Babe repeated "Dante, Dante." A supervisor was called and Babe communicated more answers: "Dante hit me with a stick on my face and whipped my arms."

Dante returned after pre-school that afternoon to pick up Babe. Though reluctant to let Babe go with Dante, the staff relented. Being a mandatory reporter of suspected child abuse, the supervisor had already alerted Child Protective Services. The next day, Babe was found by a social worker at Dante's mother's house. Dante was charged with multiple counts of child abuse. Having learned that the prosecution intended to call Babe's teachers and their supervisor as witnesses to quote Babe's words implicating Dante, defense counsel moved to exclude their testimony. The prosecutor responded that, due to his age, Babe was not competent to testify under a state rule of evidence concerning child witnesses and further another state rule of evidence allowed reliable and trustworthy statements of child abuse victims. Defense counsel replied that, any rules of evidence analysis aside, Dante's constitutional right to confrontation would be denied should Babe not testify and his out-of-court statements implicating Dante were admitted through school personnel. The court rejected Dante's argument because the statements were not "testimonial." Trial proceeded without Babe testifying and school personnel quoting Babe's implication of Dante, who was convicted.

Based on the foregoing, address the following questions and fully explain your answers.

1. Define what is meant by "testimonial" statements.
2. What is the significance of classifying Babe's statements as testimonial?
3. Applying the definition of testimonial statements to

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

the facts presented, did introduction of the teachers' testimony violate Dante's right to confrontation?

*****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**

Executing a search pursuant to a validly issued warrant, members of the Drug Enforcement Team (DET) entered and searched a single-family dwelling located on Washtenaw Avenue in Laredo, Michigan. The home was a two-bedroom, single-story house that also contained a kitchen, dinette, and living room.

The search of the home yielded the following evidence. On a coffee table in the living room were two small bundles of mail with one group of letters addressed to Sam Sellers and the other group to a Hugh Harvey. Hidden within the seat cushions of the living room couch were four small plastic bags containing a white powder suspected, and later tested, to be cocaine. In the front bedroom, officers found multiple packs of cigarettes and normal bedroom items, including a closet full of leisure suits in size triple extra-large. Police knew Harvey to be 6'1" and to weigh 295 pounds.

In the back bedroom, officers found a prescription for a cholesterol medication for Sam Sellers in a nightstand drawer. In the same bedroom's closet, officers found a sizeable amount of white powder in a large plastic bag, later tested to be 32 grams of cocaine. Also found were a scale and packaging materials, including four small baggies, each with a substance of white powder inside, later tested to be cocaine. A handwritten ledger containing names, amounts of money and what appeared to be drug quantities was also found in the nightstand drawer. Clothing in the bedroom closet, while a variety from dress to casual clothes, all bore the size "medium." Officers knew Sellers to be 5'8" and to weigh 165 pounds.

Based on the seized items and their location, Sellers was charged with Possession with Intent to Deliver less than 50 grams of cocaine. Harvey was not charged. Under Michigan law, possession with intent to deliver is a far more serious crime than possession of cocaine. Sellers contends that the charge should be dismissed because the evidence does not establish that (1) he actually possessed cocaine, and (2) he had the intention to deliver cocaine. He did not dispute that the substance was cocaine.

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

Given the foregoing, address the following under Michigan law:

1. What are the elements of the charged offense?
2. Does Sellers make a persuasive argument that to be convicted, he must be in actual possession?
3. Evaluate Seller's claim that the facts fail to demonstrate the intent to deliver. Fully explain your conclusion.

*****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**

Prison inmate Josh James was serving the second year of his 5-to-15 year sentence at the Michigan Reformatory. State troopers suspected James in an unrelated gas station robbery committed before he had entered prison. James was escorted by a corrections officer from his prison cell to a conference room, where he was questioned by two state troopers about the robbery. The interrogation was lengthy, lasting almost three hours, but at no time was James given *Miranda* warnings. James was not told he did not have to speak with the troopers, but was told, more than once, he was free to return to his cell. The troopers were armed, but James was not held by restraints.

The conference room door was sometimes open and sometimes closed. A number of times James said he no longer wanted to discuss the matter with the troopers, but did not ask to go back to his cell. James eventually confessed to the robbery and the interview ended, but he had to wait another 20 minutes for an escort back to his cell. James was charged with the gas station robbery and the troopers were listed as prosecution witnesses to testify as to his confession. James' counsel moved the court to suppress the confession, contending that, because no *Miranda* warnings were given, suppression of the confession was required.

Discuss whether defense counsel's position has merit. If *Miranda* warnings were required, explain why, and the remedy for their absence. If not required, explain the rationale for your conclusion.

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