

FEBRUARY 2011 MICHIGAN BAR EXAMINATION

ES SAY PORT ION

MORNING SESSION

QUESTION 1 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I

Meredith and her boyfriend, McDreamy, were out on a date. Because his mother, Abby, wanted him to make a good impression, McDreamy was allowed to drive his mother's brand new Camaro. Although he was driving, he was texting his friend to give him the details of his date with Meredith. He looked up at the last moment, just in time to notice that he was driving into oncoming traffic. He swerved to avoid an oncoming car, but clipped the fender anyway. His car spun out of control and smashed into a tree. Meredith was taken to the hospital for her injuries.

It is undisputed that Meredith suffered the following injuries: a fractured bone in her leg that required a surgical procedure to install a metal rod; she wore a cast for two months and was on crutches temporarily; she underwent several months of physical therapy; she was off from work for approximately two months; per her doctor's instructions, she was not allowed to lift anything over five pounds or do household chores for approximately three months, but now has no restrictions; she also loved to bicycle before the accident but cannot anymore because it causes her too much pain; she still has difficulty standing or sitting for prolonged periods of time.

Assuming McDreamy will completely admit liability as to the cause of the accident, assess under Michigan law whether Meredith is entitled to any non-economic damages for her injuries. Additionally, who are the potential defendants? Explain your answers.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I*******

QUESTION 2 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I

Deliriously Delightful Depot (DDD) is a Michigan corporation whose stated corporate purpose is to bake and deliver unique baked goods throughout the mid-Michigan area. The company was founded in 1985 by Dan York and several of his family members. The articles of incorporation permit only 100 shares, all of equal class and series. Dan owns 30%, while his brother Greg owns 52% of the corporation. Dan's Uncle Bob and his cousin Chris each own 9%.

Thirty days prior to the annual shareholder's meeting, notice was personally given to all shareholders that a proposal to amend the articles of incorporation to expand its stated corporate mission was to be presented at the upcoming meeting. The following resolution was presented:

To buy, sell, hold and otherwise deal in,
acquire, and dispose of vintage and/or
antique automobiles, vintage and/or antique
automobile parts, and related automobile
memorabilia.

The proposed amendment was adopted by a vote of 52 shares to 48 shares. Subsequently, a certificate amending the articles of incorporation was filed with the State of Michigan.

Dan, the Director of Creative Development of DDD, voted against the adoption of the resolution. He claimed that the amendment to the articles of incorporation was invalid and interfered with the company's purpose of creating distinctive confectionary delights. When Dan sought to transfer his shares of the company to his friend Faye as a belated birthday gift, Greg reminded Dan that a shareholder agreement was unanimously executed in 1999, requiring shareholders to sell their shares to the other shareholders of DDD.

Infuriated, Dan filed a lawsuit. First, Dan claims that because he is the creative genius behind DDD's success, his shares should have twice the voting weight of the other shares. Second, Dan seeks to have the amended articles of incorporation declared invalid. In the alternative, Dan seeks to have the shareholder agreement prohibiting the transfer of shares declared void.

Discuss the merits of Dan's claims regarding (1) the voting weight of his 30 shares; (2) the validity of the amended articles of incorporation; and (3) the likelihood that Dan will be able to transfer his shares to his friend Faye. Explain your answers.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I*******

QUESTION 3 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I

The Chips, Chips, and More Chips Cookie Company (Chips) has been baking and selling cookies for 40 years. One of its best customers, Warbucks Coffee, refused to pay for a purchase of 2400 dozen cookies for its many stores because Warbucks said Chips had changed its decades-old, beloved recipe without notice. After Chips could not persuade Warbucks that the recipe was the same as ever, Chips sued Warbucks for the purchase price, \$28,800 or \$1 per cookie. Warbucks filed an answer to Chips' complaint, disputing it owed Chips the money.

The case was assigned to a Michigan circuit court judge who, in accordance with the court rules, referred the case for case evaluation. Chips was happy with the referral because, as its president complained, "I don't want to spend \$25,000 on lawyers and all of their nonsense to get my \$28,800." After both sides attended the case evaluation, the panel made a unanimous award of \$24,700 to Chips. Chips accepted the award but Warbucks rejected, all the while contending the recipe had changed and the cookies were not right.

Wanting to bring the lawsuit to an end, Chips' attorneys then prepared and filed a motion for summary disposition. Warbucks responded and the court heard oral arguments from counsel. During oral argument, Warbucks' lawyer was pressed on the validity of his client's defense: i.e., that Warbucks did not owe the money because of the changed cookie recipe. Warbucks' lawyer responded that indeed the cookies had been delivered and the number of cookies was correct. The problem, counsel argued, was that the recipe had changed. When pressed again, counsel responded (1) he did not know how it had changed; (2) he had made no inquiry into the subject; (3) that he had relied on Warbucks because they knew more about cookies than he did; and (4) Warbucks was a good, long-time client and he would not doubt the word of its employees. Counsel conceded he had signed the answer to the complaint and the response to the motion.

The trial judge granted the motion for summary disposition by Chips and entered judgment for the \$28,800 requested. The trial judge ruled that Warbucks had failed to show there was a genuine issue of material fact under MCR 2.116(C) (10).

Happy about winning, but irritated about the money Chips had to "spend on lawyers," Chips' president wants Warbucks, or someone to pay for "all the lawyers' fees" Chips paid.

What motion(s) should Chips' lawyers make under any applicable Michigan statutes and the Michigan Court Rules to be reimbursed for money Chips spent on legal fees? What is the possibility of success of each motion? Explain your answers.

*****THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I*****

GO TO BLUEBOOK II

QUESTION 4 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

Dan Defendant was playing poker at a local casino with Victor Victim. During the course of the game, a dispute broke out when Victor accused Dan of unethical conduct. The two men exchanged words and tensions escalated until the poker room manager intervened. After hearing a recount of what occurred, the manager concluded that Dan acted improperly and asked Dan to leave. Dan became so infuriated that two security guards had to restrain him and escort him to his car. As he was exiting the poker room, Dan pointed at Victor and proclaimed, "You will not make it home alive!" Dan got in his car, drove to the rear of the casino and retrieved a .38 caliber loaded handgun that he had in the trunk of his car. Dan then drove back to the front of the casino and parked across the street from the valet entrance, where he sat with gun in hand and waited for Victor to leave the casino.

When Victor exited from the casino three hours later, Dan rolled down his window and fired six shots in the direction of Victor, emptying his gun. Dan immediately left the scene. Victor died at the scene from a gunshot wound to the head. Dan was arrested and charged with first-degree premeditated murder. During the jury trial, it was undisputed that five bullets were found in the wall over the door from which Victor exited, 25 feet above the ground. It was also undisputed that the fatal bullet ricocheted off the carport overhang 30 feet above the ground, before it struck and killed Victor. Dan testified and admitted to all of the facts stated above. Nonetheless, Dan testified that he did not intend to kill Victor. Dan testified that he intended "only to scare Victor by shooting over his head into the wall of the casino."

At the close of the evidence, the trial judge indicated her intent to instruct the jury on first-degree premeditated murder and asked the litigants if other instructions should be given. Dan Defendant's lawyer asked that the jury also be instructed on involuntary manslaughter. The prosecution objected to the involuntary manslaughter instruction, and asked for an instruction on second-degree murder. Defense counsel objected to the second-degree murder instruction.

Should the trial court give the jury an instruction on second-degree murder? Explain your answer.

Should the trial court give the jury an instruction on involuntary manslaughter? Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II*******

QUESTION 5 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

In the late 1990's, Cherry Hill was a sparsely populated town located in northern Michigan. However, many Michigan real estate developers recognized that Cherry Hill's proximity to the Great Lakes offered a unique opportunity to turn this small community into a tourist hotspot. Over the next decade, developers constructed luxury resorts, golf courses, fishing lodges and ski resorts in and around Cherry Hill. Residents from neighboring states began purchasing vacation homes in the Cherry Hill area. Though still charming, the once sleepy town now bustled with restaurants, clubs, art studios, and an array of retail shops.

With the development came jobs, although most of the positions were seasonal and did not pay a high wage. Several low-income subdivisions and apartment complexes emerged in and around Cherry Hill in which most of the seasonal employees lived with their families. This population influx caused a strain on local public schools. All the local public schools were overcrowded and lacked sufficient infrastructure to effectively educate students.

The local school board realized that the only way to ensure school operations was to raise revenue. The board considered the use of a recently enacted statute that authorized the board of a school district to levy property taxes for school operating purposes. The statute specifically and expressly exempted "homesteads" and "recreational property" from the tax. "Homestead" was defined as that portion of a dwelling or unit in a multiple-unit dwelling owned and occupied as a principal residence by an owner of the dwelling or unit. "Recreational property" was defined as luxury resorts, golf courses, fishing lodges and ski resorts. At a public hearing, many Cherry Hill property owners whose principal residence was outside of Michigan, objected to paying the majority of the school operating tax and receiving no benefit. The school board nonetheless passed a resolution levying the highest tax possible under the statute.

A large group of non-exempt property owners who resided outside of Michigan, formed a taxpayer organization and filed a declaratory action in the state circuit court against the school board alleging that both the "homestead" and "recreational property" exemptions were discriminatory.

Assess the potential merits of the plaintiff's claims under Article IV of the United States Constitution and the 14th Amendment of the United States Constitution, as well as any corresponding provision(s) under the Michigan constitution. Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II*******

QUESTION 6 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

On December 1, 2008, Peter Perpetrator and Oscar Occupant were enjoying a few beers with Wendy Witness at a local pub. The three left the pub together, with Peter and Oscar leaving in Peter's car and Wendy leaving in her car. The two cars departed the pub in opposite directions. Shortly after leaving the pub, Peter's car ran a red light and struck a car traveling through the intersection, instantly killing the occupant. Peter and Oscar were ejected from their car, with Oscar sustaining fatal injuries and Peter sustaining only minor injuries. Peter was treated and released from a local hospital, when he was immediately arrested and orally given his *Miranda* rights. Upon arriving at the police station, Peter signed a form acknowledging his *Miranda* rights. The oral and written statements fully complied with the requirements of law and it is undisputed that Peter understood his *Miranda* rights.

For four hours, Officer Jones questioned Peter in an interrogation room about the events of the evening. Peter ignored the officer's questions. Finally, Peter stated, "I am tired, I want to go to bed." Jones placed Peter in a holding cell with a bed and Peter went to sleep. The next morning, while preparing Peter to be transported to court, Jones again asked Peter about what had transpired the prior evening. Peter said, "I was not drunk. I only had two beers. I was distracted by my cell phone and that is why I ran the red light. I am so sorry."

Peter was charged with two counts of involuntary manslaughter and released on personal bond. The court found Peter to be indigent and appointed counsel to represent him. Defense counsel filed a witness list, which identified Peter and Wendy Witness as the only defense witnesses. Wendy was never interviewed by police and never gave a statement to any party regarding her testimony. On March 1, 2009, Peter's appointed counsel died unexpectedly. The trial court instructed the court clerk to appoint new counsel and set the matter for a pretrial conference. The court clerk did not appoint counsel and failed to set the matter for a conference.

On June 1, 2010, the court clerk discovered that no action was taken on Peter's case. The trial court immediately appointed Lisa Lawyer to represent Peter. Peter informed Lisa that Wendy will testify that Oscar was driving Peter's car on the night of the accident. Lisa tried to locate Wendy, but Wendy had moved out of Michigan and nobody knew where she could be found. The trial court set a September 1, 2010 trial date. Lisa filed two motions with the court: a motion to suppress Peter's statement to Officer Jones; and a motion to dismiss with prejudice all charges against Peter.

How should the court rule on the motion to suppress Peter's statement? Explain your answer.

How should the court rule on the motion to dismiss with prejudice the charges against Peter? Explain your answer.

*****THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II*****

GO TO BLUEBOOK III

QUESTION 7 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III

At the height of the real estate bubble in 1998, Jamie, an up-and-coming medical professional, purchased a beautiful vacation home in northern Michigan for \$200,000. Her initial purchase was financed by Local Bank, to whom she granted a mortgage. On the same day the sale closed, Local Bank properly recorded its mortgage.

Five years after the initial purchase, Jamie decided to construct an addition to the home. Jamie financed the \$100,000 addition by executing a second mortgage on the home, which was granted to National Bank. National Bank properly recorded its mortgage, which contained a power of sale clause. The home's addition was subsequently completed.

In November 2009, Jamie fell upon hard economic times and could no longer afford to pay the mortgages on her vacation home. Realizing that the value of the home was now substantially less than the remaining principal on her mortgage, she ceased paying both mortgages that month but continued to use the property. National Bank decided to foreclose on its mortgage, so it posted notice of the impending foreclosure by sale in the county newspaper for each of the four weeks in February 2010, and nailed a copy of the foreclosure to the front door of the vacation home. On March 15, 2010, a public foreclosure sale was held wherein National Bank, the highest bidder, purchased the home for the outstanding balance (\$80,000) of the mortgage, and a sheriff's deed was executed in National Bank's name the same day.

In April 2010, the ABC Corporation announced that it wished to purchase property in the area in order to develop a large, government-subsidized wind farm in northern Michigan. Jamie, realizing that the property suddenly became very valuable once again, now wishes to keep the home.

Assess: (1) whether National Bank's foreclosure was valid; (2) assuming the foreclosure was valid, what options, if any, exist for Jamie to reassert her interest in the foreclosed vacation home; and (3) the status of Local Bank's mortgage. Explain your answers.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III*******

QUESTION 8 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III

After Dwayne's wife died in 2001, Dwayne created a valid trust for the benefit of his son Paul. The language of the trust requires the trustee, Big Bank, to pay, \$25,000 per year to Paul for 20 years. After the expiration of the 20-year period, the remainder of the trust is to be evenly distributed between Ed and Scott, Dwayne's best friends. The trust contains the following language:

No interest of any beneficiary in the income or principal of this trust shall be transferable by the beneficiary, nor shall such interest be subject to the claims of the beneficiary's creditors by garnishment, attachment, or other legal process.

When Dwayne died in September 2004, the trust's assets were worth nearly \$3,000,000. In accordance with the directives of the trust, Big Bank paid Paul \$25,000 every January 1 for several years. In June 2010, Paul filed a petition to set aside the trust. Paul claimed that Dwayne lacked capacity to form the trust, that the trust did not reflect Dwayne's true intent, that the trust was the result of the undue influence of Ed and Scott.

In July 2010, Paul's ex-wife Sara filed a claim seeking an interest in Paul's annual trust distribution. Sara sought to enforce a valid child support judgment which was currently approximately \$39,000 in arrears. Sara demanded that the entire amount of the child support arrearage be paid in full.

Assume that this is otherwise a valid testamentary trust under Michigan law. Discuss the likelihood of success of: (1) Paul's challenge to the validity of the trust; and (2) Sara's claim against Paul's annual trust distribution. (3) Would the analysis regarding Sara's claim be different if the trust contained the following distribution provision in addition to the above-quoted provision: "The trustee is hereby given the power to pay the beneficiary in such amounts as the trustee in its sole judgment shall determine."

Explain your answers.

*****THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III*****

QUESTION 9 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III

Gina Giftgiver is the aunt of Nancy Niece. Two months before Nancy's 21 birthday, Gina told Nancy she would give Nancy her pearl necklace and \$20,000 on Nancy's 21' birthday, no strings attached.

The next week, Gina was critically injured in an automobile accident and was hospitalized in the Intensive Care Unit.

When Nancy visited Gina in the ICU, Gina was about to undergo serious surgery. When she was wheeled into the operating room, Gina handed Nancy her diamond bracelet and said, "I want you to have this if I don't make it."

Remarkably, Gina recovered from her injuries and returned home. On Nancy's 21' birthday, Gina invited Nancy over to her house and presented her with the pearl necklace. The next morning Nancy called Gina to thank her for the necklace and casually inquired about the \$20,000. Gina erupted in anger, told Nancy that she wasn't getting any money, and demanded that Nancy return both the pearl necklace and the diamond bracelet at the next family gathering. In the meantime, Nancy has visited your office for some legal advice.

Assess: (a) whether Nancy is required to return the pearl necklace to Gina; (b) whether Nancy is required to return the diamond bracelet to Gina; and (c) whether Gina is legally obligated to give Nancy the \$20,000 gift she promised. Explain your answers.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III*******

FEBRUARY 2011 MICHIGAN BAR EXAMINATION

ES SAY PORT ION

AFTERNOON SESSION

QUESTION 10 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV

Claire is 20 years old and employed in the billing department of XYZ Corporation (XYZ), a medium-sized medical supply company. Recently XYZ's employees asked XYZ to provide a parking lot for the employees, something they felt they needed due to the scarcity of nearby public parking. XYZ begrudgingly agreed and did provide the employees a parking lot.

One morning Claire drove her car to work, arriving approximately 20 minutes prior to her usual 9:00 a.m. starting time. She parked her car in the employer-provided parking lot. After exiting her car and while walking toward the employee entrance, she stumbled on a few random pebbles on the ground in the parking lot and twisted her right knee. She reported to work and told her employer of her knee problem. Because Claire's job did not require her to be on her feet much, she did not miss any time from work that day or thereafter.

Over the next few days, Claire's knee continued to bother her. She initially dismissed the problem as not serious because she had suffered a strained ligament in the same knee while playing soccer as a high school senior, 1 years earlier. When the knee pain worsened over the ensuing days, however, Claire decided to see a doctor. After a thorough examination, including appropriate diagnostic films and tests, the doctor told Claire she had aggravated the previously strained ligament and the ligament was now torn and required surgery.

Claire asked XYZ to pay for her surgery and related medical treatment via its workers' compensation insurance. XYZ refused telling Claire this was primarily a soccer-related injury and, in any event, workers' compensation coverage does not encompass injuries occurring in the parking lot while on the way to work.

Answer the following two questions presented by the above facts in accord with Michigan workers' compensation law:

(1) Given Claire's preexisting soccer-related ligament injury, can XYZ be held liable for a subsequent tear of the same ligament? Explain your answer.

(2) Is Claire's alleged injury in the parking lot within the scope of the Workers' Disability Compensation Act? Explain your answer. Explain which workers' compensation rules are engaged in reaching your conclusion.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV*******

QUESTION 11 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV

Sticker, Inc. is a Michigan company that designs and manufactures adhesive labels for a variety of purposes. Organics, LLC, is a Michigan company that produces organic fruit for distribution to independent local produce markets throughout the state of Michigan. Organics sought to expand its distribution by selling its produce to chain grocery stores. Organics learned that to sell produce in grocery stores, its fruit had to be identified by type, size and how it was grown.

A representative of Organics inquired into whether Sticker could provide labels that Organics could attach to its fruit and/or its fruit containers. The representative phoned Sticker and spoke to a salesman, who indicated that Sticker had previously provided such labels to other companies. The two generally discussed the number of labels required, price, and shipping arrangements. The representative of Organics said that he would discuss the conversation with his superiors, and if they agreed to the terms discussed, he would provide Sticker a written offer memorializing those terms for a yearly contract. Sticker received the offer, reviewed it, and filled in the agreed terms on a Sticker's purchase order form. The reverse side of the purchase form included a conspicuous statement expressly disclaiming any warranty of merchantability and further indicating that the product was sold "as is" and that there are no warranties which extend beyond the description on the face of the document. Organics received the purchase order form, read the handwritten terms on the front page, and simply filed it.

In May, Organics informed Sticker that it required labels for the upcoming blackberry and raspberry season. Sticker produced the labels and shipped the required amount to Organics. The labels were attached to the plastic berry containers, the produce was successfully shipped, and Organics received no complaints from the grocery stores about its product. In late August, Organics informed Sticker that it required labels for the upcoming plum and apple season. Sticker again produced the labels and shipped the required amount to Organics. Organics' employees attached the labels directly to the plums but soon discovered that many of the labels they attached had fallen off. Organics called Sticker and complained about the problem and a Sticker's representative indicated that sometimes the adhesive did not bond directly to some fruits. He also told Organics that it had purchased the labels "as is" and that there would be no refund or any replacement labels. Organics expressed concern that the labels would not be suitable for other large orders, including apples, its largest crop, which soon needed to be distributed. Organics cancelled payment to Sticker for

the shipment of plum and apple labels and refused to order any more of their labels from Sticker.

Can Sticker recover the payment for the plum and apple labels that Organics cancelled? Explain your answer.

Can Organics refuse to order any further labels from Sticker within the one-year contract period? Explain your answer.

*****THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV*****

QUESTION 12 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV

Mia and Ronaldo began dating in 2000. At the time, Mia had sole custody of her 5-year-old son from another relationship. Ronaldo, who was the accountant for his family's soccer apparel business, proposed to Mia after they had dated for a little over a year. Upon learning that his son had proposed, Ronaldo's father became very concerned. He explained to Ronaldo that the family's soccer apparel store was doing very well. He was planning to open in new locations across the state, but he wanted to keep the business in the family. He also wanted Ronaldo to eventually take over the business, but he did not want Mia or her son to have any interest in the business should Ronaldo die or divorce Mia. He encouraged Ronaldo to get a written agreement from Mia waiving any interest in the business.

Ronaldo took his father's advice, but he only told Mia that his father was concerned about making sure that she would never be liable for any business debts. He did not mention any plans for opening new stores and keeping the business in the family because he did not want Mia to think poorly of his father. Mia agreed to sign a prenuptial agreement, and in 2002, she and Ronaldo signed a written agreement stating that each party waived any interest in the other party's previously owned property, as well as property acquired in their individual names during the marriage. The agreement also provided that, in the event of divorce, Mia would not have any claim or interest in Ronaldo's family business, and neither party would seek or be entitled to spousal support. At the time the agreement was signed, neither Mia nor Ronaldo had any substantial assets, and each was generally aware of what the other owned. Neither Mia nor Ronaldo had the agreement reviewed by an attorney.

Mia and Ronaldo were married in 2002 shortly after they signed the prenuptial agreement. Living in Michigan, Mia worked as a nurse and Ronaldo soon became the manager of his family's business. The business grew substantially and new stores were opened throughout the state.

In 2010, Mia discovered that Ronaldo was exchanging sexually explicit e-mails with other women and it appeared that he had engaged in one or more affairs. She immediately filed for divorce. Ronaldo's income at the time was approximately \$100,000 per year, and Mia's was \$65,000. Ronaldo expected to take over the family business within the next two or three years, at which point his income would substantially increase.

Mia filed a motion for declaratory relief with the family court. In her motion, she indicated that she had no desire to claim

any ownership in the soccer apparel business, but she wanted the prenuptial agreement to be declared void and she wanted substantial spousal support.

Discuss: (1) whether the prenuptial agreement between Mia and Ronaldo is valid; and (2) whether, if the court were to find that the prenuptial agreement was not valid, Mia can receive spousal support. Explain your answers.

*****THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV*****

GO TO BLUEBOOK V

QUESTION 13 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V

After initially retaining attorney Amy Adams to represent him in a personal injury case, and after Adams had done substantial work on the case, Bob Barnes fired Adams and hired you because of your reputation as an outstanding plaintiff's personal injury lawyer. You, too, did a considerable amount of work on the case, and eventually you obtained a settlement of \$90,000.00. (For purposes of this question, there are no costs associated with the litigation.)

Upon hearing of the settlement, Adams writes to you demanding a fee of \$40,000.00 based on her claim of a verbal fee agreement with Barnes. According to Adams, that fee agreement provided that if Barnes terminated her services and was later successful in obtaining a recovery, her fee would be 1/3 of the present value of the case as of the time her services were terminated. Several days before Barnes fired her, defense counsel had offered in writing to settle the case for \$120,000.00. When you ask Barnes if Adams' claim as to a verbal agreement and its terms is accurate, he agrees that it is.

1. Is Adams entitled to the \$40,000.00 fee she is demanding? Explain your answer.

2. If Adams is not entitled to \$40,000.00, how much is she entitled? Explain your answer.

*****THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V*****

QUESTION 14 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V

Brawny Corporation ("Brawny") manufactures industrial machinery in Michigan using complex, largely robotic assembly lines. When a line breaks down, Brawny sometimes calls Speedy Service Corporation ("Speedy Service"), a nearby business that provides repair services for specialized factory equipment. After a line breakdown disrupted production about two months ago, Brawny's production manager phoned Speedy Service and asked that its representatives assess the problem and quote a price for fixing it. While Speedy Service's crew was at the plant as requested assessing the situation, a crew member was injured when he slipped on a patch of ice in Brawny's parking lot.

On January 3, Speedy Service delivered to Brawny a signed price quotation on its standard quotation form. The front of the form had a large area for a description of the job and the quoted price, which Speedy Service filled in as follows:

Complete labor and materials for troubleshooting, repair and testing of assembly line: \$15,000 (no overtime work, no guaranteed completion date) OR, to guarantee completion of repairs within 3 business days: \$25,000 total labor and materials.

The back of the printed Speedy Service quotation form contained a number of terms, including these:

Customer [i.e., Brawny] shall indemnify and, if requested, defend Speedy Service against all claims, injuries and losses arising out of or related to the performance of the work covered by this quotation.

Customer's acceptance includes agreement to all terms appearing on the back of this quotation. To accept, return this form with your purchase order number or communicate acceptance in another reasonable manner.

On January 4, Brawny delivered one of its own purchase order forms to Speedy Service. The space on the front of the form labeled "Terms of Purchase" read:

Begin quoted assembly line repairs as soon as possible for the price stated in your Jan. 3 quotation, subject to all terms on both sides of this purchase order.

One of the several terms on the back of Brawny's purchase order that differed from Speedy Service's proposed terms read:

Seller is solely responsible for, and shall defend Brawny against, any injuries or claims asserted against Brawny arising out of or related to Seller's furnishing the services covered by this Purchase Order.

Speedy Service sent a crew to Brawny to begin the repair job that afternoon. The crew worked well into the night and, using lots of overtime, completed the repairs within 48 hours. Brawny's on-site production manager was told by the Speedy Service crew leader when the team arrived that they planned on working overtime and on finishing the job as soon as they could. The production manager complimented the crew leader on the speed with which the project was finished.

Speedy Service subsequently invoiced Brawny for \$25,000. When Brawny sent Speedy Service a check for \$15,000 marked "payment in full," Speedy Service returned the check and wrote Brawny that it owed \$25,000 "in accordance with the terms of our accepted quotation."

Meanwhile, Speedy Service's injured employee has threatened to sue Brawny, claiming that Brawny's negligence caused his slip-and-fall injury. Brawny has demanded that Speedy Service acknowledge its responsibility for providing Brawny's defense to that claim, but Speedy Service has refused to do so.

Answer the following questions and fully explain your reasoning: (1) How much does Brawny owe Speedy Service for the repair job, and on what legal theory? (2) Is Speedy Service responsible for providing Brawny's defense against the negligence claim made by Speedy Service's employee?

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V*******

QUESTION 15 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V

The Smiths' divorce trial is starting next week, and the main focus will be whether Mr. Smith was having an extra-marital affair. To prove that he was, Mrs. Smith will be calling her private investigator, Mr. Clark, to testify about a conversation he overheard between Mr. Smith and the alleged paramour, Diane. Specifically, while walking along a sidewalk, Clark saw Mr. Smith and Diane in a neighborhood park. After getting within earshot, Clark listened to the end of the conversation where Diane said, "You told me you loved me and that you would marry me as soon as you could leave your wife." In response, Mr. Smith nodded his head affirmatively, simultaneously hugged her, and then said, "I know about all that, but if you show up at trial and testify to that, I promise you that the world as you know it will be over and there will be hell to pay." Furious and frightened by this threat, Diane responded, "I can't believe you are doing this to me; I have been like a second wife to you all of these years." She then left the country and is not expected to return until after the trial.

Clark went to Mrs. Smith's attorney, and related what he overheard. Mrs. Smith's attorney was thrilled with this evidence, realizing that he could use it to prove that an affair was taking place and obtain a better property division. He sent a process server out to serve Diane with a subpoena, but she could not be located for trial. Mrs. Smith's attorney also contacted Mr. Smith's attorney hoping this damaging evidence would gain Mrs. Smith a last-minute settlement. Instead, it resulted in a motion *in limine* from Mr. Smith's attorney, seeking to preclude Clark from testifying about Diane's statement.

Assess under the Michigan Rules of Evidence (1) whether Diane's first statement ("you told me you loved me") can be attributed to Mr. Smith as a party admission and admitted through Clark; and (2) whether Diane's second statement ("I can't believe you are doing this to me") is admissible through Clark. Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V*******