

**FEBRUARY 2012 MICHIGAN BAR EXAMINATION**

**ES SAY PORTION**

**MORNING SESSION**

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

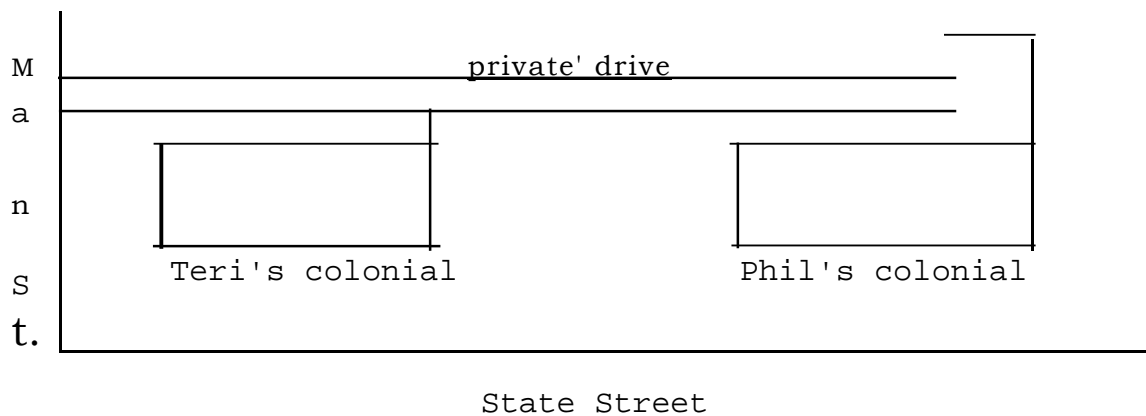
On the opening day of hunting season, Fred Finder went hunting with his friend, Larry Landowner, on Larry's forty acres of undeveloped land in northern Michigan. While they had split up to scout the best places to wait for deer, Fred saw a glimmering object on the ground--a ring containing a considerable cluster of diamonds and the engraving "TSC." Meanwhile, Larry noticed a burlap sack on the ground beside his trail. Upon closer inspection, Larry saw that the burlap sack covered a hole about a foot deep that contained a plain metal box weighing several pounds. The box was locked and contained no identifying marks, but after using the tools that he kept back at his cabin, Larry was able to pry it open. It contained several gold ingots. Neither Larry nor Fred knew who left either the metal box or the ring.

**Under Michigan law, assess whether: (a) Fred can take ownership of the ring; (b) Larry can take ownership of the ring; and (c) Larry can take ownership of the gold ingots.**

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

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

In 1980, Teri purchased a stately colonial home on a large double lot, located at the corner of Main and State Streets near picturesque downtown Oakland. A driveway provided access to Main Street behind the home. In 1990, Teri decided to build a complementary colonial home on the extra lot and sell it to her brother, Phil. As part of the construction, Teri extended the driveway so that it reached the new home as well. After construction was completed, Teri divided the property, and sold the new colonial and the land on which it sat to Phil.



At the sale, Teri gave Phil a warranty deed; the deed did not grant any right to Phil to use the driveway that passed over Teri's land, but Teri nonetheless allowed her brother to use it. Further, as a condition of the sale, Teri and Phil entered into a separate contract wherein Phil promised that he would never use his colonial for any purpose other than a family dwelling, and that the contract would be binding on Phil's heirs and successors. Both the sales contract and the separate contract were promptly and properly recorded with the Register of Deeds.

In 2010, Phil received an out-of-state job offer that he could not refuse and sold the house to Kevin. Kevin decided that the colonial would be the perfect location for his new business, the Caravaggio, a trendy art gallery designed to appeal to the recent influx of prosperous young professionals to Oakland. Needless to say, Teri was aghast at the thought of a business opening next door. Teri told Kevin that he could no longer cross her land on the driveway, and that the contract between Teri and Phil prohibited the use of the colonial as anything other than a family residence. Kevin retorted that the contract was not binding on him and he correctly noted that the land was zoned "residential or light commercial," which thereby allowed him to open his business.

He further stated that he will sue Teri for the right of continued use of the driveway for both himself and patrons of The Caravaggio.

Utilizing Michigan law, assess: (1) whether Teri can stop Kevin from using his colonial as an art gallery; and (2) what right Kevin and patrons of his business have to future use of the driveway. 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**

Amanda Alistair, millionaire heiress and social recluse, recently died at the age of 51 after a sudden illness. Her will, handwritten by Alistair in May 2010, provided in relevant part:

"I, Amanda Alistair, being of sound mind, wish to dispose of my fortune in the following manner upon by death:

"My cats, Mr. Greggy, Mr. Wiggles and Mr. Magee, have provided me with great enjoyment and unconditional love. For that reason, I wish to establish a trust, in the amount of \$20,000,000, to provide for my cats after my death. I appoint my maid, Candy Coffman, to hold and administer the trust and serve as caretaker for the cats, providing them with a loving and nurturing home.

"Mrs. Coffman shall attend to the cat's needs, including, but not limited to, food, grooming, veterinary care, medications, etc., in the manner to which they are accustomed. Mrs. Coffman is to be paid \$10,000 per month as recompense.

"After a cat has died, Mrs. Coffman shall arrange for burial where my body has been buried. After the death of the last cat, all remaining assets shall be distributed to my great-niece, Jessica JeJune.

"/s/ Amanda Alistair  
"May 2, 2010"

Jessica JeJune claims that no valid testamentary trust was established, and that all of the money should go to Jessica as Amanda's only remaining heir. Even if a valid testamentary trust was established, Jessica claims that \$20 million dollars is a ridiculous amount of money to spend on cats. She asks that the trust assets be reduced to a reasonable amount, and that she receive the rest immediately.

**Applying Michigan law, assess: (1) the validity of the testamentary trust; and (2) assuming that the trust is valid, whether there is legal authority to reduce the trust assets as requested by Jessica JeJune. Explain your answer.**

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

Alex and Barbara were married in 2004, and their daughter Claire was born in September 2007. They lived near Alex's mother, Marge, in Kalkaska, Michigan. Barbara did not like Northern Michigan and spent extended periods of time with her family in Detroit. Alex and Barbara divorced in early 2009, at which time Alex and Claire moved in with Marge, and Barbara moved to Detroit. Barbara quickly found work, but Alex remained unemployed. The trial court's final December 2009 parenting time order granted the couple joint legal custody, with Alex receiving primary physical custody. Barbara did not object to the arrangement because Alex did not have a job and could stay at home with Claire. Because of the distance between Detroit and Kalkaska, Barbara's parenting time was limited to two weekends per month. Barbara regularly paid child support to Alex and always saw Claire during her scheduled parenting time.

By the fall of 2010, Barbara noticed that Alex was never at Marge's home when she picked up or dropped off Claire. She initially assumed that Alex did not want to see her, but after questioning Marge, she learned that Alex had moved to Grand Rapids and was only occasionally in Kalkaska. She also learned that the reason Alex was not spending time with Claire was that his new girlfriend from Grand Rapids had been convicted of physically abusing her own children, and as a consequence of her convictions, she was prohibited from being alone with any minor children.

When Barbara learned that Alex was not living in Kalkaska, she filed a motion to change primary custody to herself. She also requested that the court retroactively modify her child support to end her support obligation as of the date that Alex moved to Grand Rapids, or as soon thereafter as possible. In his answer to Barbara's motion, Alex admitted that he had changed his mailing address and the address on his driver's license to Grand Rapids. He stated that he had not abandoned Claire, however, and that he spent weekends in Kalkaska with Claire and Marge when Claire was not with Barbara. He did not agree that Barbara should receive primary physical custody, and indicated that he was considering moving back to Kalkaska.

**(1) Should Barbara's motion to change custody be granted? In your answer, discuss the parties' best arguments, and the applicable burden(s) of proof.**

**(2) Should the court grant Barbara's motion to modify child support? If so, when should Barbara's support obligation terminate?**

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

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

Dealer Don ("DD") was a distributor of vehicle parts throughout the state of Michigan. DD anticipated that there would be a great new demand for deep cycle batteries to power hybrid electric cars, electric vehicles, scooters, bikes, and boats. DD has had an open line of credit with Bank A to obtain inventory. There was a duly signed security agreement in place covering "inventory owned, held or hereafter acquired by [DD]." The financing statement was also duly filed.

Subsequently, DD entered into negotiations with ABC Batteries, LLC ("ABC"), and ABC offered to open an account for DD with a \$40,000 credit balance. DD purchased \$40,000 of deep cycle "A-Type" batteries from ABC. DD received the "A-Type" batteries from ABC and paid for them using \$20,000 from its ABC account and \$20,000 from cash on hand. Within a week, ABC duly filed a financing statement in regard to "A-Type batteries" and gave proper written notice to Bank A of its expectation to receive a security interest in the "A-Type batteries."

DD soon realized that its competition had also taken an interest in "green" energy and that DD had overextended itself in an unsustainable market. It soon defaulted on its ABC account.

**ABC claims a security interest in DD's purchase. (1) Does ABC have a purchase-money security interest in the A-Type batteries? Explain your answer.**

**(2) Assuming ABC has a purchase-money security interest, is that interest superior to that of Bank A? 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**

Jack and Henry are employees of their friend Peter's small electric company, ABC Electric (ABC). Peter obtains work for his company by asking large general contractors in the area whether they need any electrical work done on their projects. A well-established general contractor, GK Contractors, Inc. (GK), after being solicited by Peter, said they did need some electrical work done immediately on one of their current projects. Peter was pleased and GK and ABC quickly entered into a contract for ABC to provide its electrical contracting services to GK for the project. Peter then assigned all five of his full-time employees, Jack and Henry included, to work at the GK project site.

One day while Jack and Henry were working together on a scaffold at the GK site installing electrical wiring, they began to talk about sports as they often did. Their discussion turned into a disagreement over whether the coach of their favorite team should be fired. As the disagreement escalated, Jack pushed Henry saying he knew nothing about sports. Unfortunately, Henry stumbled after he was pushed and fell from the 20-foot scaffold breaking his leg. An ambulance took Henry to the hospital from the work site.

Peter learned the details of the accident and visited Henry in the hospital. While there, Henry told Peter he assumed ABC's workers' compensation insurance company would cover the cost of his hospitalization. But, Peter replied: "Sorry, Henry, but I don't have any workers' compensation insurance covering ABC, I never have. Besides you and Jack were arguing about sports; that's got nothing to do with work." Henry now does not know how he will pay for his hospitalization and treatment.

**Applying Michigan workers' compensation law, answer the following questions posed by the above facts:**

(1) **Is Peter correct that Henry's injury would not be considered an injury covered by the workers' compensation statute because the discussion and argument leading to the injury related to sports, a non-work related matter? Why or why not?**

(2) **Does Henry have any procedural method to obtain workers' compensation benefits within the workers' compensation system, given ABC's lack of workers' compensation insurance? Why or why not?**

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

University Hospital Corporation, a large national hospital chain, operates hospitals throughout the United States, including one in Lansing, Michigan. Recently, the Lansing hospital was having financial troubles, particularly in the Emergency Department. UHC sent a temporary manager, Mike Smith, to oversee the Lansing hospital's Emergency Department. Smith was a long-serving UHC manager from Tennessee who was near the end of his career. After several months, Smith was not able to fix the problems in Lansing. As a result, Gene Johns, a UHC executive specializing in Emergency Department operations, was moved to Lansing as the new manager and immediately began to review the department's operations. Johns ultimately determined that Smith was incompetent as a manager and recommended his employment be terminated, which UHC eventually did.

Smith filed suit in a Michigan circuit court against both UHC and Johns alleging age discrimination under state law. UHC, a Delaware corporation with its principal place of business in Chicago, Illinois, filed a Notice of Removal to the U.S. District Court in Michigan on the basis that complete diversity existed between the parties, and that the amount in controversy exceeded \$75,000. After issuing an order to show cause why the case should not be remanded to state court, and hearing the parties' arguments, the court remanded the matter to state court.

Once back in state court, discovery ensued. In his deposition, Johns testified that he was concerned that Smith was "slowing down" and that Smith's age was a concern in that regard, but that he recommended the termination because Smith was a poor manager. Neither party requested a copy of the deposition. Eventually Johns and UHC filed a joint motion for summary disposition, arguing that there was no genuine issue of material fact that Smith was terminated for poor performance, not because of his age. Attached to the motion was an affidavit signed by Johns wherein he averred that Smith's age was never something he considered in any manner. In his response, Smith argued that Johns testified in his deposition that age was a concern because Smith was "slowing down," and though he did not yet have the deposition filed with the court, he would do so the next day. The trial court granted defendants' motion. The next day Smith filed a copy of Johns' deposition, and filed a motion for reconsideration, arguing that the testimony created a question of material fact. That motion was also denied.

(1) Assuming the amount in controversy exceeded \$75,000, did the district court err in remanding the case back to state court? (2) Focusing on procedure only, did the circuit court properly grant defendants' motion for summary disposition? (3) Did the trial court correctly deny the motion for reconsideration? 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**

John Smith and Peter Ryan were next-door neighbors in the city of Delta. Smith was also Mayor of Delta, a city known for well-manicured lawns and well-kept homes. Across the street from Mayor Smith and Ryan lived John Johnson, with whom Smith and Ryan had a longstanding dispute over Johnson's failure to maintain the standards of Delta. In fact, Johnson's house was in poor condition--his lawn was always long, his bushes were rarely trimmed, paint was chipping off his house, and vines were growing over some of his windows. As a result, Smith and Ryan wanted Johnson out of the neighborhood, but Johnson refused to move--or to fix up his property.

Mayor Smith contacted the city inspector, who viewed Johnson's property with the Mayor and Ryan and informed them that he found no violation of any city ordinance. Mayor Smith and Ryan disagreed with the inspector's assessment. At the next city council meeting, after regular business concluded, Mayor Smith (who, as Mayor, presides over each council meeting) said that Johnson "could not take proper care of a doll house--his property is a nuisance, an embarrassment to the entire neighborhood, and is in violation of our ordinances." Johnson, also in attendance, objected and said that his house had passed an inspection. In response to inquiries from council members, the city inspector testified to council that there were no violations, and city council took no action against Johnson.

After the meeting ended and the council left, Ryan complained to any citizen who would listen that Johnson had caused his house to be "in violation of several ordinances and his house should be condemned," or minimally, he should be jailed (the ordinances are criminal in nature).

Johnson sued both Mayor Smith and Ryan for slander. After admitting that they made the respective statements, Smith and Ryan separately moved for dismissal. Smith sought dismissal on two separate immunity grounds, while Ryan argued that no genuine issue of material fact existed that Johnson could not establish a prima facie case of slander.

**Should the motions be granted? 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**

Enfoo Enterprises (EE), a properly formed Michigan corporation, designs and manufactures baby toys. According to EE's bylaws, the annual meeting is held on the last Friday of September. In August 2011, EE sent out notices to all shareholders of the annual meeting, indicating that the shareholders would be electing the Board of Directors. While most of the directors were well-regarded by the shareholders, one director, Greg Goldfinger, was considered controversial.

On the appointed day, all but two of the fifteen shareholders arrived at the annual shareholder meeting. Tamara Terville, an EE shareholder, brought with her a video of her sister, Carolyn Cook. In the video, the meeting participants recognized a smiling and suntanned Carolyn. Carolyn stated that she was unable to attend the meeting because she was on a tropical vacation, and authorized Tamara to vote her shares by proxy. However, while Tamara voted her own shares, she was not permitted by EE to vote Carolyn's shares at the shareholder meeting.

Additionally, Dan Dumas, another EE shareholder, phoned into the shareholder meeting, seeking to participate telephonically. Dan was placed on speaker phone, and the other participants could readily communicate with Dan. Although EE's telephone display indicated that the phone call originated from Dan's home telephone, and the distinctive falsetto voice was unquestionably Dan's, he was not permitted to participate in the meeting remotely because the corporation's bylaws did not address the issue.

The remaining shareholders voted, and Greg Goldfinger was re-elected to the Board of Directors by a narrow margin. It is uncontested that if Tamara had been permitted to vote Carolyn's shares, or if Dan had been permitted to participate in the meeting telephonically, Greg's re-election would have been defeated. It is also uncontested that Greg's re-election was the only matter of business which would have been affected by Carolyn's proxy and Dan's participation.

**Applying Michigan law, assess (1) the validity of Carolyn's proxy to Tamara; (2) whether Dan was wrongfully denied the ability to participate in the meeting; and (3) the actions and remedies, if any, available to Carolyn and/or Dan. Assume that EE's articles of incorporation and corporate bylaws are silent regarding these issues. Explain your answers.**

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

**FEBRUARY 2012 MICHIGAN BAR EXAMINATION**

**ESSAY PORTION**

**AFTERNOON SESSION**

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

Arnie Attorney telephoned a former client (Dan Defendant) who owed him \$5,000 for representation of Dan in connection with criminal charges. Arnie had negotiated a very good deal for Dan. Drug-dealing charges were dropped and Dan's plea to simple possession was accepted because the State could not prove the essential elements of the more serious charge. In fact, Dan had admitted to Arnie those elements--that he had just started to work for a drug distribution ring and he was about to deliver drugs to certain buyers. He also admitted to Arnie that he pocketed the money he convinced the buyer to pay in advance. Both the drug dealers Dan worked for and the buyer erroneously believed the police confiscated the money. In Arnie's phone conversation with Dan, he not only reminded Dan that his payment for fees was seriously past due, but Arnie also said: "I've been more than patient. I need my money, and you really don't want to make me angry. I may have to tell the court and the cops what really happened. Also, it would be a shame if the truth came out and your 'friends' found out what really happened to the money you took."

**Which of the Michigan Rules of Professional Conduct apply to Arnie's efforts to collect his fee using the information learned from Dan? Explain your answer.**

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



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

On December 1, 2011, campaign consultant Paula Politico received a call in her Chicago office from Carl Charisma, a Michigan state senator with whom she had previously worked. Carl told Paula he intended to seek his party's nomination in 2012 for a seat in the U.S. House of Representatives. Because the incumbent was retiring and his probable opponents were relatively unknown, Carl felt confident that he would prevail in the August 7, 2012 primary.

Carl told Paula that he wanted to retain her to devote full time to managing his campaign, which would require that Paula move to Michigan for its duration. "After I win in November," said Carl, "I will hire you for a top staff position in my Washington office because of your political savvy." Paula told Carl that she was flattered and would be interested in working in Washington, but she was considering feelers from potential clients in other states. Carl therefore needed to make her an attractive offer for the whole election season if he wanted to lock up her services. Paula also reminded Carl that in her business, she earned the bulk of her income in even-numbered years.

Carl immediately told Paula that he would pay her the standard campaign management fee of \$15,000 per month through the November 6, 2012 general election, whether he won the primary or not. He also said that he was so confident of winning that he would pay Paula \$8,000 monthly during all of calendar year 2013, even if he lost the election and had to pay it personally.

Paula said: "I accept." The two ended their conversation by saying they would formalize their understanding later. However, Carl's campaign was soon in full swing, and they never got around to putting their agreement into writing. Meanwhile, as of January 1, 2012, Paula sublet her Chicago apartment for one year at a loss of \$1,000 per month and rented an apartment in Carl's district.

It turned out that Carl had been too optimistic. Despite Paula's exemplary work, a political newcomer edged him out in the primary. The next day, Paula said to Carl: "I'm sorry you lost, but I expect you to honor all of the commitments you made that led me to come to work for you." Carl replied: "Sorry, but you know can't afford to do that. Besides, why should I keep on paying you? There is nothing for you to do."

**Can Paula expect to recover damages if she immediately sues Carl for breaking his promises? Explain your evaluation of whether Paula has a strong or weak case and how her recovery, if any, should be measured.**

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

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

Rita's claim that her supervisor, Jack, sexually harassed her is going to trial next month. Rita works in an administrative job for Global 1 Auto Supplier where Jack is the top-performing sales manager. Unfortunately for Rita, although the acts of harassment were ongoing over an eight-month period and included crude requests for sexual favors and brushing against Rita's body, they all happened in Jack's office, behind closed doors with no witnesses. Jack's alleged conduct ceased once Rita told Global 1 she planned to file a lawsuit. Jack denies all of the alleged conduct. Rita fears that the trial will be a credibility contest that Jack will win in light of his history of successful performance in management positions.

Rita wishes to supplement her own testimony in this "he said-she said" case with the testimony of three witnesses. The first is her co-worker Helen, who frequently socializes with Rita. After informing Global 1 of her intent to sue, Rita told Helen exactly what Jack said. Rita's tone when sharing the information was matter of fact and she spoke in the past tense. Rita also had one conversation with Helen that pre-dated her announcement that she was going to sue. On that occasion, Rita came to Helen in tears and exclaimed, "That jerk just grabbed me!" Rita held out her arm, which bore horizontal red marks. When Helen asked what had occurred and who the "jerk" was, Rita walked away in a daze. Only after Rita filed suit did she tell Helen that Jack had been the one who grabbed her.

Rita also wishes to call Ralph, who used to work for Global 1 in Human Resources. Ralph did not know Rita or Jack and has no experience related to harassment claims. All of his HR experience was limited to benefits administration. Rita wants Ralph to offer his opinion that, based on rumors he heard about other employees during his employment it was likely Jack had harassed Rita.

The final witness Rita would like to call is a therapist, Fern. Rita treated with Fern several years earlier after Rita divorced her husband. Shortly after filing her sexual harassment lawsuit, Rita called Fern. Rita told Fern she would not undergo therapy again as she had not found it helpful in the past; she just wanted to tell Fern what had occurred because she knew Fern was excellent at taking notes. Rita described for Fern in minute detail Jack's alleged sexual conduct, then asked Fern for her notes. Since Rita was adamant about not entering therapy, Fern did not retain a copy of her notes or create a file on Rita's visit. Rita would like Fern to testify at trial to authenticate the notes Fern took during that one meeting with Rita.

Analyze the admissibility of the evidence Rita wishes to present through the three witnesses, explaining the issues and probable outcomes.

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

A man wearing a mask walked into a bank, went straight to the tellers' counter, and hopped over the counter to gain access to the tellers' cash drawers. While pushing one teller to the side and grabbing the contents of her drawer, he looked at the next teller and said, "Give me what you got or I will blow your face off." She moved aside and the man took a stack of bills. He then hopped over the counter and started heading for the door when a security guard approached. The man picked up a heavy wood desk chair with metal-pronged feet and threw it at the security guard and then ran out the door.

The man jumped into a car. Unfortunately for him, the police had been alerted. As the man started to drive away, a marked police car with lights flashing and siren blaring directed the man to stop. He instead drove around the police car and led pursuing police vehicles on a ten-mile high-speed chase before he finally pulled off the road and was arrested.

**With what felonies should the man be charged with committing? Explain your answers.**

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

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

The State of Michichusetts recently passed a law prohibiting all state and local governmental agencies from taking payroll deductions of its employees for "political activities," including "electoral activities, independent expenditures, or expenditures made to any candidate, political party, political action committee or political issues committee or in support of or against any ballot measure." Under the law, an employee's union dues could be deducted from his paycheck, but money for a union's "political activities" could not be deducted, even with the employee's permission. Several unions representing Michichusetts public employees filed suit in federal court, challenging this prohibition on payroll deductions. It is uncontested that the unions would encounter tremendous difficulty collecting funds from its members and contributing to candidates without the utilization of payroll deductions. Because the prohibition specifically targeted "political activities," and hampered the unions' ability to engage in political activities, the unions argue that the law is unconstitutional. The attorneys for the State of Michichusetts argue that the ban does not violate the constitution, and that the various unions do not have standing to challenge the law.

**Applying relevant federal constitutional law, assess: (1) whether the unions have standing to challenge the law, and (2) the constitutionality of the Michichusetts statute. Explain your answers.**

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

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

After an emergency 911 call was received regarding an unconscious female, the first to arrive at the residence was a private ambulance company. The driver hurried into the home to find the female laying motionless. The ambulance driver found no signs of life. Turning to the homeowner, the driver asked who the person was and what had happened. The homeowner said, "She's someone I met last night. She stayed over. I gave her some morphine to get high. She overdosed."

Next to arrive was a local police officer. Surveying the scene, he turned to the homeowner and asked if the morphine was the homeowner's. He said, "Yes, it was." He repeated what he had said to the ambulance driver.

A deputy sheriff then arrived on the scene and took over questioning the homeowner. When he again told the same story, the deputy sheriff directed the local police officer to remove the homeowner and place him in the officer's squad car. The officer handcuffed the homeowner, placed him in the back seat of his squad car, and locked him in there to return to the house.

Moments later, the deputy sheriff came to the squad car, told the homeowner that the girl was dead and asked about the morphine. At this point, the homeowner said, "Well I shouldn't have shot her up with so much morphine. I just wanted her to enjoy her high. I did the wrong thing."

The homeowner was then transported to the police station where two homicide detectives interrogated him after advising him of his *Miranda* rights. At the conclusion of the advice of rights, the homeowner said, "Well, is this when I'm supposed to ask for a lawyer?" In response to the question, one of the detectives asked, "Well, do you want a lawyer?" The homeowner responded, "Well isn't it always best to have a lawyer?" He then said, "Oh well, I'll talk to you." A full confession followed.

The homeowner was charged with delivery of drugs causing death. Prior to trial, defense counsel moved to suppress the defendant's statements that were made to the ambulance driver, the local police officer, and the sheriff's deputy because of a lack of *Miranda* warnings. Counsel also sought suppression of the confession to the homicide detectives because, although *Miranda* warnings were given, the detectives ignored the defendant's request for counsel by continuing to question him.

What should the court rule on the defendant's requests?  
Explain your answer.

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