

**FEBRUARY 2013 MICHIGAN BAR EXAMINATION**

**ESSAY PORTION**

**MORNING SESSION**

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

Sam Smith, an avid hiker, took his two close friends, John James and George King, on a long, 15-mile hike through the Michigan woods. James and King were out of shape, and they quickly started to lag behind Smith. They also constantly complained about the pace, the terrain, and seemingly everything else about the hike. Perturbed, Smith repeatedly told the two men to keep quiet and move faster.

Hours more into the hike, the situation remained poor, but mostly because of James, who was now closest behind Smith and complaining the most. Eventually, James threatened to turn around because his feet were aching. In response, Smith picked up a big stick, turned and threw the stick towards James, stating "I'll show you what really hurts!" As Smith threw the stick, James was looking forward, saw the stick and quickly ducked, closely avoiding being hit. King, however, was not looking towards Smith and never saw the stick coming, as he was ducking under an overhanging branch. Unfortunately, the stick hit the branch and deflected into King, cutting his head.

**James and King both sue Smith for an assault and a battery. Can they establish these claims? 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**

Chris Collins wanted to open his own business, Muscle Machine (MM), specializing in training elite bodybuilders. In order to raise necessary start-up capital, he arranged a February 1, 2012 meeting with his three investors, Bob Bane, Dan Dunn and Greg Goop. All three men agreed to invest in Muscle Machine. Bob and Dan each signed documents, which provided in relevant part:

"I, the undersigned, agree to purchase shares (to be issued) of Muscle Machine common stock, a company to be incorporated in the State of Michigan for the purposes of training bodybuilders. I agree to purchase 100 shares at \$100 per share, payable on or before May 1, 2012. I understand that payment in full is required as a condition of issuance of the stock certificates."

Greg, who was vacationing in Puerto Rico, participated via conference call and orally agreed to the terms.

Two weeks later, on February 15, 2012, Chris received a signed letter from Dan, informing Chris that Dan changed his mind and no longer was going to invest in MM.

On March 1, 2012, Chris properly filed the relevant articles of incorporation with the State of Michigan. A few days later, Bob, Dan and Greg each received a copy of the above agreement, signed by Chris as President and CEO of Muscle Machine.

On May 1, 2012, Greg called Chris, indicated that he had recently made some bad investments, did not have sufficient liquid assets, and no longer wished to invest in MM. That same day, Bob called Chris and explained that, based on MM's financial data, he did not believe a share of MM was worth \$100. Believing that \$50 per share more accurately reflected the true market value of a share of MM, Bob offered Chris \$5,000 in exchange for 100 shares of MM common stock. Chris refused.

**Based on principles of Michigan corporate law, discuss: (1) the validity and enforceability of the agreement against Bob, Dan and Greg; and (2) the possible avenues of recourse, if any, against each. Explain your answers.**

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

John Drain was a wealthy Michigan businessman who had a penchant for fast speed boats. One spring, he was in Florida and attended a boat show. While there, he saw a Runfast Turbo speedboat, and liked what he saw. He spoke with the owner of the Florida dealer, Speed Boats Florida Corporation (SBFC), and the dealer informed Drain that the boat was the fastest on the market. After talking to Drain about where he lived, the owner also told him that it would be perfect for Great Lakes boating.

Upon returning to Michigan, Drain contacted his local boat dealer and asked to buy a Runfast Turbo. The Michigan dealer did not have any in stock, so Drain suggested the dealer contact SBFC in Florida and see if they could ship one up. The Michigan dealer made the contact, and though SBFC typically sold boats only in Florida, he agreed to send one up. The Michigan dealer then facilitated the contract between Drain and SBFC, the only terms of which were price and delivery date. The following week, the owner of SBFC, who happened to have a vacation scheduled in Michigan, brought a Runfast Turbo to Michigan. While in Michigan, the owner signed the contract and the parties exchanged the consideration supporting the contract.

Once Drain ran the boat on Lake Michigan, he discovered that the Runfast Turbo was not the fastest boat on the water, and in fact was slower than what he previously owned. Furious, he sued SBFC in Michigan state court alleging breach of contract. Once SBFC was served, it filed a motion for summary disposition, arguing that the Michigan court did not have jurisdiction to proceed against it.

**Should the motion be granted? 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**

Dan Defendant is charged with the murder of Vic, who was gunned down in an apparent drive-by shooting at the corner of First and Main. That corner was a known hangout for drug dealers and both Dan and Vic were often spotted there. Vic was shot on February 15 around 11 p.m. The police located no eyewitnesses. Earlier that day, Dan had been released from the county jail after serving time for possession of marijuana.

The prosecutor wants to introduce at Dan's trial the testimony of Warren, who was incarcerated in the county jail when Dan was there. Warren will testify that, the day before Dan was released, Warren heard Art, another inmate, tell Dan in the exercise yard, "When you get out tomorrow, meet Vic at First and Main at 11 p.m." Warren will also testify that Dan looked scared because he saw Dan's eyes widen at the mention of Vic's name and saw his throat tighten as Art walked away.

In an effort to prevent Warren from testifying altogether, Dan's lawyer asks the court in a pretrial motion to disqualify Warren as a witness because he has a felony conviction. As a fall-back position, Dan's lawyer argues in the same motion that Warren quoting Art, who will not be presented as a witness, would be inadmissible hearsay. Dan's lawyer also argues that Warren should not be allowed to say that Dan looked scared of Vic because that statement is hearsay, and in addition, Warren is hardly an expert on human behavior. Finally, Dan's lawyer wants to impeach Warren with his felony conviction for assault with a dangerous weapon.

**What arguments should the prosecutor make in response? 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**

Andy, a second-year associate with Big Law, faces an annual billing requirement of 2100 hours. At mid-year, Andy is concerned whether he will be able to achieve the firm's expectation. He hears from Fred, a law school buddy, about "value" or "block" billing, a concept that Fred describes as billing for value, meaning billing in excess of the actual time expended. For example,

(1) for a two-minute client telephone call, bill a minimum of .4 hours (24 minutes) on the theory that the interruption distracts the associate from his other work for at least that long;

(2) for editing a motion previously filed in another case, bill the time spent on the original motion, i.e., if it took the associate 1.5 hours to draft the original motion, bill 1.5 hours for recycling it in another matter rather than the 10 minutes actually expended on editing;

(3) if, in court for three hours on a motion call that addresses multiple motions and different client matters, bill the entire three hours to each matter.

Fred did not say he actually used value billing, only that he had heard about it.

Hearing that most of Big Law's other associates are on track for 2100 hours, Andy assumes that Fred's value billing concept is the way to meet the firm's expectations. Andy incorporates value billing into his practice, even though Big Law's fee agreements allow billing only for actual time expended in one-tenth hour (six minute) increments.

At the end of Andy's first month of value billing, Andy approves his time entries and co-signs his client cover letters with Peter, his supervising partner, for forwarding to the clients.

Realizing that his hourly billings are soaring, Andy expands his value billing to include a minimum .5 hours per letter and .3 hours per email. Andy also ignores voice mails from several clients wanting to discuss time entries on the firm's most recent invoices. As the next month-end approaches, Peter receives an alarming call from Accounting that Andy has billed more than 24 hours a day at least twice in the past week. Peter confronts Andy, who denies billing anything other than actual time worked. However, when asked to explain his time entries, Andy reluctantly acknowledges his adoption of value billing. Andy does not reveal

to Peter his avoidance of client calls, even though Peter asks whether any clients have complained.

What, if any, ethical duties has Andy violated? What, if any, ethical duties has Fred violated? What responsibility does Peter have? Explain your answers.

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

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

Fantastic Homes, a contractor specializing in building mansions, contracted with hedge fund manager Mr. Big Money, for construction of Mr. Money's dream home. Fantastic Homes, in turn, solicited bids from its two favorite and most frequently used builders. The bid process specified that Fantastic Homes was soliciting bids on behalf of Mr. Money. The bid process also required submission of a fixed sum bid (i.e., not time and materials) and required work to commence within two months and be completed within eight months of commencement. After some minor back and forth, Owen Outlier submitted a bid of \$3.3 million to complete Mr. Money's mansion, and Irvin Insider submitted a bid of \$3.1 million to complete the same work. Both bids were within the amounts and other parameters authorized by Mr. Money. Fantastic Homes selected Insider's bid without any changes and notified Insider to commence work. Fantastic Homes also notified Insider that he would receive a \$100,000 bonus if his costs were equal to or less than his bid.

While Insider always worked from fixed sum bids, he routinely incurred higher costs than he bid, including on other builds he had done for Fantastic Homes. In the past, when he realized he was going to exceed the bid price, he simply advised Fantastic Homes without comment or further negotiation. In each case, Fantastic Homes had just paid Insider the excess costs at the conclusion of the project.

In this case, as the build progressed, Insider informed Fantastic Homes that the build would cost approximately \$200,000 more than the original bid. Fantastic Homes thanked Insider for the "heads up." Insider continued on with the work as planned, although he would have been willing to make some changes that could have reduced the final cost without compromising quality. Insider completed the work by the deadline at a cost of \$3.3 million, \$200,000 over his bid.

While Fantastic Homes had not mentioned it to Insider, it had tired of Insider always exceeding his bid. Insider's costs ended up within the range authorized by Mr. Money, but Insider's excess costs meant less profit for Fantastic Homes. Therefore, upon finding the work complete, Fantastic Homes informed Insider that he would be paid in accordance with his bid, i.e., the \$3.1 million, and would have to cover the \$200,000 additional cost himself, since he had not received written authorization from Fantastic Homes to exceed the bid.

**What contract theory could Insider utilize to recover the**

\$200,000? Assuming no contract theory supports recovery of the \$200,000, what alternative theory of recovery could Insider argue? What is his chance of success on either theory and how much would he recover if successful? Explain your answers.

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

Janet bought a house and its accompanying llama farm in picturesque Caravaggio City, Michigan, in 2005. Janet immediately undertook renovations of the house: she repainted every room, updated all of the appliances, and installed an expensive Tiffany chandelier in the main foyer that befit the house's character and style. Further, Janet assembled and installed a large mechanical loom in a backroom of the house, using the loom to weave llama fleece into yarn, which she then sold.

In 2012, David approached Janet with an offer to purchase the house and farm, stating that it was his life-long dream to work with llamas. Janet agreed to the sale and delivered to David a warranty deed of the real estate in the usual form. When David moved into the house the day after closing, he discovered that Janet had removed the Tiffany chandelier from the foyer and the mechanical loom from the backroom. Both of these items had been in the home on the day that the contract of sale was signed. David and Janet had never discussed whether these items would come with the property, and the contract of sale and deed simply described the real estate to be sold and were silent with regard to whether any items came with the house. Nevertheless, David had assumed that these items would remain with the house and thus he decided to pursue legal action against Janet to recover the items.

In the meantime, David took out two loans. First, David took out a loan with Local Bank so that he could make structural improvements to the house. David used his home as collateral for the loan and granted a mortgage to Local Bank. Two weeks later, David took out a small business loan from National Bank in order to make improvements to the farm. David again used his home as collateral and granted a mortgage to National Bank; when National Bank completed a title search, it confirmed that there were no other encumbrances on the property. National Bank promptly and properly recorded its mortgage. A week later, Local Bank properly recorded its mortgage.

Unfortunately, David was not adept at raising llamas, his business floundered, and he soon found that he could no longer make payments on either mortgage.

**Applying Michigan law, first assess whether David could properly recover from Janet: (a) the Tiffany chandelier, and (b) the loom. Then, if an action for foreclosure on the home is brought by either Local Bank or National Bank because of David's default on his mortgage obligations, assess the priority of the competing interests in the home.**

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

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

After a long and successful career in the investment banking industry, May Moffman decided to make a gift to the order of nuns at the St. Mary's Orphanage where May had been raised as a child. After contacting her attorney, May signed documents creating a trust for the benefit of the Order in April 2010. The language of the trust appointed Big Bank as trustee, and required it to pay \$50,000 per year to provide for the "Health and comfort of the Sisters of the Order of the Immaculate Heart at the St. Mary's Orphanage." The trust also provided that, in the event that the intended purpose of the trust could no longer be carried out, the remainder of the trust would revert back to May, or to her great-granddaughter Amanda Avers, if May was not then living. Two million dollars was transferred to the trustee that same day.

In June 2010, May unexpectedly died in a car accident, and the vast majority of her multi-million dollar fortune was distributed to family and friends according to the terms of her will.

In early 2011, the St. Mary's Orphanage closed and was replaced by the St. Mary's Residential Treatment Center for Mentally Ill Children. The nuns continued to play a role in the residential treatment center, but that role was substantially decreased. Additionally, membership in the Sisters of the Order of the Immaculate Heart was at an all-time low. The last of the sisters, Sister Joan, died in January 2012, at age 89. Upon her death, the Order was formally dissolved.

In January 2013, when St. Mary's failed to receive the usual \$50,000 disbursement, it contacted Big Bank. The trustee informed St. Mary's that the remainder of the trust, now worth over four million dollars, would be given to Amanda, now age four, in accordance with the terms of the trust.

St. Mary's filed suit against Big Bank, seeking to enforce the trust. St. Mary's claimed that, as it is still in existence, it is entitled to the continuation of the trust. Amanda intervened as a party defendant.

**Applying principles of Michigan law, discuss: (1) whether a valid trust was created by May Hoffman; (2) whether St. Mary's is entitled to continue receiving its annual stipend; and, (3) if not, what options the judge may employ to best carry out the wishes of May Moffman. 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**

Carolyn Carowner owns a convertible titled in Michigan in her name. In November 2012, she began experiencing engine problems with her convertible. She took the convertible to a local repair shop, Greg's Garage, for repairs. Greg diagnosed the engine problems. He gave Carolyn a written estimate of \$2,000 for the repairs, which Carolyn then authorized in writing. When she went to pick up the repaired vehicle a few days later, however, she claimed that she could not pay the \$2,000 bill and did not know when she would be able to pay it.

Greg told Carolyn that he would not release the vehicle to her until she paid the bill in full. He also explained that he would begin charging a storage fee of \$5 per day if the vehicle remained in his possession for more than one week after the repairs were complete. Carolyn demanded her vehicle back while she figured out how she would pay for the repairs and threatened legal action to recover her vehicle. Greg again refused to return Carolyn's convertible to her.

Several days later, Laura Lee saw Carolyn's vehicle in Greg's storage lot and liked it so much that she offered him \$5,000 for it on the spot, even though there was no "for sale" sign on it. Laura left her business card with Greg and told him that he could take a couple of days to think over her offer.

**Assess under Michigan law: (a) whether Carolyn will be successful in recovering the vehicle from Greg if she sues him; (b) whether Greg may charge a \$5 daily fee for storing the vehicle; and (c) whether Greg may accept Laura's offer for the vehicle. Explain your answers.**

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

**FEBRUARY 2013 MICHIGAN BAR EXAMINATION**

**ESSAY PORTION**

**AFTERNOON SESSION**

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

Louie LaVoy won his campaign to be sheriff of Montmorency County based largely on his "tough on drunk drivers" platform. After he took office, he implemented several measures designed to identify and apprehend drunk drivers, including establishing a hot line number for citizens to report suspected drunk driving and ordering additional police patrols at bar closing time. Sheriff LaVoy also decided to implement sobriety checkpoints as a means of identifying drunk drivers and providing deterrence to drunk driving. Under the plan, police cars (with flashing lights) would close all but one lane of traffic on selected roads in Montmorency County, forcing traffic to merge and slow down to a crawl. As each car approached the checkpoint, an officer approached the car, explained that the police were investigating the possibility that the driver might be too intoxicated to drive, and examined the driver for signs of intoxication. If the officer found signs of intoxication, the officer directed that driver to the side of the road, where the driver was asked to blow into a hand-held machine which tested the driver's breath for the presence of alcohol. If the driver was found to be intoxicated, he was arrested. The average delay for motorists who did not show any signs of intoxication was less than 30 seconds.

Several licensed drivers living in Montmorency County filed suit, seeking declaratory and injunctive relief. The drivers claim that the sobriety checkpoints are unconstitutional.

**Applying principles of constitutional law, discuss whether the Implementation of sobriety checkpoints violates the United States and Michigan Constitutions. 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 January 2, 2013, Ray-Ray walked into the G-12 convenience store in Lansing, Michigan. Ray-Ray looked around at the chips and other snacks, but kept a watchful eye on the other customers as they completed their purchases and left the store. Now alone with the clerk, Ray-Ray approached the cash register. Ray-Ray pulled a gun from under his jacket and pointed it at the clerk. "Give me the money or you die," Ray-Ray screamed. The clerk saw the gun and was scared, fumbled with the cash register keys, and pretended the cash register was jammed. The clerk had instead tripped the store alarm and, in a few moments time, police sirens could be heard. Ray-Ray bolted from the store without having received any money. Ray-Ray was caught a block from the store.

**First, under general common law principles, can Ray-Ray be convicted of armed robbery? Second, under Michigan law, can Ray-Ray be convicted of armed robbery? Are there other gun-related crimes that Ray-Ray can be convicted of under Michigan law? Explain your answers.**

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

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

On April 24, 2012, Danny Driver was showing off to his passenger, his wife Patty, by driving their new orange Camaro at 90 miles an hour on 1-75 (speed limit 70). State Troopers Smith and Jones were parked in the median and set out after Driver. Smith also radioed ahead to Troopers Clark and Campbell, parked a couple miles ahead.

Smith and Jones eventually pulled Driver over and Clark and Campbell arrived seconds later, parking behind Smith and Jones' cruiser, which was behind the Camaro. Smith approached the Camaro's driver's side while Jones approached the passenger side. Smith asked Driver for his license. Driver said, "I don't have one, it's suspended." Driver was asked to get out of the car and Smith placed him under arrest, handcuffed him, and put him in the backseat of his cruiser which was equipped with handles that did not open the doors from the inside.

Jones asked Patty for her license, which she produced along with the vehicle registration bearing her's and Danny's names, and proof of insurance. Nevertheless, Patty was asked to exit the vehicle--which she did. She was handcuffed and placed in the back of the Campbell-Clark cruiser, equipped identically as the Smith-Jones cruiser. Just before locking her in, Jones said, "You'll be able to drive that hot-rod home, but hubby is coming with us. We'll let you know when we're done."

With Jones watching Driver and Clark and Campbell watching Patty, Smith went back to the Camaro, opened its door, and saw a man's jacket behind the driver's seat. Smith went through the jacket and found both a small handgun and one ounce of cocaine, both of which he seized.

After only Driver was charged with gun and drug offenses, his counsel moved the court for suppression of those items, claiming the search was invalid because it was done without a search warrant. The prosecutor responded only that the search and resultant seizure were lawful as an exception to the warrant requirement as "a search incident to a lawful arrest."

**What arguments should Driver's attorney make in response to the prosecutor? Should Driver's motion be granted? 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**

Melissa is a longtime employee of YMO, an online office supply company that services its customers by mail order. Melissa's job consists of distributing work assignments to YMO's 50 employees, supervising the employees, and on occasion--as her time may permit-- typing on a keyboard to help input customer information.

In the last year, YMO's business began to decline. This led YMO to begin reducing its workforce. As the workforce was reduced, Melissa was asked to assume more and more of the typing work herself. The typing caused Melissa to experience pain in her wrist and numbness in her fingers. Melissa advised YMO's management of her problem, but YMO did not have any non-typing alternative jobs for her.

Melissa, who is 59-years old, grew tired of struggling with the increased typing and concluded she could not continue working at YMO due to her wrist and finger problems. So, she terminated her employment from YMO on June 30, 2012. About the same time, Melissa visited her doctor for her wrist and finger problems. The doctor advised Melissa that she had carpal tunnel syndrome, an entrapment of the nerve in her wrist which causes numbness in the fingers. The doctor attributed the carpal tunnel syndrome to the repetitiveness of typing at a keyboard. The doctor said Melissa could still work in supervisory positions, but could no longer work at any position that required typing. Non-typing supervisory positions are unquestionably available in Melissa's locale, but they all pay less than what Melissa had earned at YMO. Melissa does not dismiss the possibility of working elsewhere rather than trying to live on her savings, but she is definitely uninterested in working at any lesser paying supervisory jobs. She also intends to apply for and receive her federal old age social security benefits at the appropriate time, in about three years.

Melissa advised YMO of her doctor's conclusions. YMO agreed that Melissa's problems were work related and, therefore, began to pay all past and future medical expenses related to Melissa's treatment of her hands under its workers' compensation policy.

After speaking with a friend, Melissa now thinks she might also be entitled to weekly wage loss workers' compensation benefits from YMO under its workers' compensation policy, in addition to the medical benefits she has begun receiving from them.

**Answer with reference to Michigan workers' compensation law: (1) Can**

**Melissa receive weekly wage loss workers' compensation**

benefits from YMO **once she** begins receiving her old age social security benefits? Will her receipt of the social security benefits have any effect on the amount of weekly wage loss workers' compensation benefits she might receive? Explain your answer.

(2) Does Melissa's ability to **continue working** at available lesser paying supervisory jobs have any effect on her potential claim for weekly workers' compensation wage loss benefits? If not, why not? If so, what is the effect? 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**

Xavier has been a chef at various local restaurants his entire adult life. Xavier has decided to fulfill his lifelong dream of opening a restaurant--Xavier's Eats--in his hometown of Flint, Michigan.

Xavier is determined to succeed on his own. Xavier thinks he has a fair collection of culinary equipment that he has accumulated through his years as a chef. But, Xavier does not have an industrial stand-mixer, which he thinks he will need. While out scouting the area for a suitable rental location, Xavier happens to see a restaurant supply company--The Kitchen Company ("K Co")--which is advertising various items at bargain prices. Xavier decides to take advantage of the pricing and purchases a stand-mixer via a six-month financing plan offered by K Co. Xavier has just enough money to make the first payment on the stand-mixer and plans to make the future payments from his business income after he opens. Xavier proceeds with signing the documents that outline his purchase of the stand-mixer under K Co's financing terms. Xavier takes possession of the stand-mixer and continues to search for a suitable location for his restaurant.

Xavier soon finds a rental vacancy to his liking. Maintaining his goal of opening the restaurant alone, Xavier declines financial support offered by his family and friends, and, instead, opts for a general business loan with Flint First Finance Company ("F Co"). Xavier thinks that a \$10,000 business loan should be just enough to pay his first month's rent and meet his food and bar stocking requirements. Xavier plans to make his loan payments to F Co with income from his business. Xavier signs the documents outlining the terms of his loan, with F Co claiming an interest in "any and all restaurant equipment, presently owned or hereafter acquired." Following execution of the loan documents, F Co files a proper Financing Statement with the Michigan Secretary of State.

Xavier's Eats opens in the ensuing weeks and initially appears to be a success. Its first two months of operation generate enough income to enable him to make his payments to K Co and F Co per his respective agreements with them. But, Xavier's Eats' success proves brief and illusory. Its food is unpopular, there is no repeat business, and business dramatically deteriorates. Xavier is forced to close Xavier's Eats before fully repaying the balance of what he owed to K Co for the stand-mixer or the \$10,000 loan from F Co. K Co and F Co want satisfaction.

**(1) Which of their interests has priority with respect to the stand-mixer? Explain your answer.**

(2) Other than demand payment under the agreement, are there any other remedies under the UCC available to the party who has priority? If yes, identify and explain them. If not, why?

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

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

Jack was a butcher at Wonderful Grocery, who met and married a cashier, Diane. The couple continued working together in the store until they had a child, Tim. Years later, after Tim started elementary school, Diane returned to work on a different shift than Jack. Their marriage deteriorated with Jack leaving the home and divorcing Diane two years later.

In the divorce judgment, the court adopted the agreement of Jack and Diane to share legal custody of Tim, with Diane having physical custody during the school year and Jack having physical custody during holiday and summer vacations. Child support was not allowed unless there was a significant departure from the custody schedule or significant disruption of the income of either parent.

Jack and Diane observed all the conditions of the divorce judgment for the next five years, and Tim seemed well adjusted. Unfortunately, however, Jack had to stop working when he cut his hand while slicing meat for a customer on Christmas Eve. Although he could have received workers' compensation benefits, disability insurance benefits, and possibly unemployment benefits from his employer, Jack sought none fearing that he'd jeopardize his return to work at Wonderful Grocery in the middle of the next calendar year when he was expected to have recovered from his injury.

Jack now wants ongoing physical custody of Tim after the Christmas vacation saying, "I can now be a full-time parent while Diane is working." And, Jack wants child support payments from Diane during the Christmas vacation and thereafter, saying he will need the money to help pay for Tim's support. Diane has refused Jack's requests. And, Diane now wants custody of Tim during the Christmas vacation and permanently thereafter.

Jack files a motion for change of custody and support. Diane also files a motion for change of custody. **Evaluate Jack's and Diane's competing claims under Michigan law.**

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