

FEBRUARY 2014 MICHIGAN BAR EXAMINATION

ESSAY PORTION

MORNING SESSION

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

While sitting in his recliner watching television in his home, Mr. Garrison heard what sounded like glass breaking in his kitchen. Before he could even get out of his chair to investigate, a young man, Clark, stood in front of him. Frightened, Garrison slumped back into his chair.

Clark faced Garrison. He had his right hand in a sweatshirt pocket, moving it within the sweatshirt but never removing it. While doing so, Clark fixed his eyes on Garrison's and demanded angrily, "Give me the money or take a bullet." Garrison, frightened by the demand, pulled out his wallet containing \$75 and gave it to Clark, who then said, "Got a car?" When Garrison didn't answer, Clark left the house through the same glass door he had broken and ran to the front of the property.

Just as he got to the house's driveway, Garrison's daughter, Melody, was pulling into the driveway in her father's car. She was returning from getting an oil change, which Garrison had asked her to have done for him. As soon as she opened the door, Clark pulled Melody from the car, threw her aside, jumped in the car, and drove away.

Unfortunately for Clark, the sound of the glass breaking triggered a silent alarm alerting police. The Garrison car was quickly stopped and Clark was arrested and searched. No gun was found in the sweatshirt, in the car, or anywhere else.

Clark was charged under Michigan statutes with armed robbery, first-degree home invasion, and carjacking. Does the evidence support conviction for these charges? 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

Donald Defendant's Buick was lawfully stopped by Michigan State Troopers when he ran a red light. A subsequent lawful search revealed cocaine in a clear plastic bag under the driver's seat. Defendant was later charged with possessing cocaine with the intent to deliver.

Defendant's trial began in July 2013 with jury selection and with the prosecutor making an opening statement. Defendant's counsel reserved his opening statement until after the close of the prosecution's case. The prosecutor then called Defendant's neighbor as the first witness. After establishing that the witness had lived in the neighborhood with Defendant for a few years, the prosecutor asked the witness to "give his opinion as to Defendant being an honest or dishonest person."

Defense counsel objected, contending that the prosecutor was attempting to elicit improper character evidence.

Later, after the prosecution rested, and sensing that Defendant might testify in his defense, the prosecutor asked the court, outside the presence of the jury, to allow introduction of Defendant's three prior convictions for impeachment purposes, should he testify in his defense. The convictions are: 1) a 2006 conviction for the misdemeanor Making a False Statement to Police, for which Defendant was released from a jail sentence in 2007; 2) a felony conviction for sexual misconduct for which Defendant finished serving a prison sentence in 2005; and 3) a 2000 felony larceny conviction for which Defendant completed a probation sentence in 2002.

How should the court rule on defense counsel's objection to the question to Defendant's neighbor? Explain your answer.

Which, if any, of Defendant's convictions are admissible should Defendant testify? Explain your answer.

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

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

Sam Kelly was in police custody in the interrogation room with a homicide detective. Before questioning Kelly, the detective advised him of his *Miranda* rights pursuant to a written form that Kelly read, and then signed, indicating he understood his rights.

The detective began interrogating Kelly about a shooting that had killed a young boy in the vicinity of Kelly's house. Although multiple questions were asked, Kelly said nothing in response and just continued to look down at the floor, and especially at the table in front of him. On occasion Kelly would respond to questions by saying "yeah," "no," or "I don't know." For the most part, Kelly sat silent.

The interrogation continued in this fashion for nearly three hours, with virtually nothing of substance having been said by Kelly. The detective then asked Kelly, "Do you believe in God?" Kelly made eye contact with the detective and said "yes." Kelly's eyes welled up with tears. The detective then asked, "Do you pray to God?" Kelly responded "yes." The detective asked, "Do you pray to God to forgive you for shooting that boy down?" Kelly answered "yes" and looked away. The interrogation ended 15 minutes later.

Kelly was charged with murder and gun offenses. Prior to trial, he moved to suppress his statement to police. The central contention of Kelly's motion was that he had invoked his right to remain silent and, accordingly, the detective should have ceased interrogating him and the detective's continued interrogation warranted suppression.

Evaluate Kelly's argument for suppression and discuss its likelihood for success. 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

Ted owns Ted's Wine and Words, which provides wine tastings with expert commentary to select groups of aficionados. Wishing to expand his customer base, Ted sent a brochure to several upscale wine stores and groups, stating:

"As a special introduction, Ted's Wine and Words is offering a two-hour guided wine tasting with commentary for \$2,000 (wine included). This offer expires on March 18, 2013."

On March 19, 2013, Ethan, a wine-store owner, paid a visit to Ted. After chatting about Ted's services, Ethan said, "I accept your offer. I'll pay \$2,000 for a tasting on Saturday for my best customers." Ted responded "Great!" and added that they "really should" put their agreement in writing. Ethan agreed, but neither ever did so.

That night, while working on his business budget, Ethan realized that he could not afford Ted's services. He called Ted the next day and told him "the deal is off." Shortly after, Ted received a call from Wines R Us, a mass-market retailer trying to get into the high-end market. Wines R Us offered to pay Ted \$2,000 to provide a tasting for whomever happened to be in their store on Saturday. Ted declined, explaining that he provided his services only to discriminating wine drinkers.

Ted informed Ethan that he was suing for breach of contract. Ethan replied, "There was no deal - you gave nothing, just a promise to give a pretentious speech to a bunch of snobs for an outrageous fee." Ethan also argued that no contract was formed because Ted's offer had expired, their agreement was never reduced to writing, and they had failed to specify the type of wine to be used at the tasting. Finally, Ethan said that, in any event, Ted could have avoided any loss by accepting the offer from Wines R Us.

Evaluate Ethan's contentions. 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

Phil, an attorney in a Michigan law firm, recently met attorney Sam when Sam filed an implied warranty lawsuit on behalf of his client against Phil's client, DEF Corporation.

After Phil filed DEF's answer in circuit court, Sam, unbeknownst to Phil, telephoned DEF's engineering manager, Walter, who was certain to be a key witness for DEF in the case. Sam used an alias and did not advise Walter that he was an attorney, or that he represented a party who was suing DEF. Rather, Sam posed as a buyer of DEF's products and asked questions about the engineering of the product that was the subject of the complaint Sam had filed.

Sam then issued a deposition subpoena and notice for Walter. Sam had Walter served but did not serve a copy of the subpoena or notice on Phil. Taking the deposition, Sam represented that he had advised Phil of the deposition (even though he had not) and that Phil apparently had decided not to attend. While Walter sensed Sam sounded familiar, he did not make the connection until Sam started yelling, screaming and accusing Walter of perjury every time Walter gave an answer in any way unfavorable to Sam's client. Walter, realizing what was happening, walked out of the deposition with Sam grabbing him and physically trying to prevent him from leaving. Walter escaped, went straight to Phil, explained what had just happened, and asked why Phil had not been there to represent him.

Phil made a few inquiries and identified three other attorneys who had similar experiences with Sam.

What, if any, ethical duties has Sam violated, and how? What, if any, responsibility does Phil have under the Michigan Rules of Professional Conduct? 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

The State of Michigan established its Nova Scholarship Program to assist low-income, academically gifted students with college expenses. The scholarship may be used at any accredited public or private college or university in Michigan. In accordance with the Michigan Constitution, the program guidelines provide that recipients may not use the \$5000 annual scholarship to pursue a degree program in theology or religious vocation. Art 1, § 4 of the Michigan Constitution provides in relevant part:

No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose.

Ron was awarded a Nova Scholarship and chose to attend Oslow College, a private, church-affiliated, accredited college that is eligible to participate in the program. Ron selected pastoral ministries as his major. It is uncontested that his chosen major is a "religious vocation" degree. Ron was advised that, while he could take some religious classes, he could not use Nova Scholarship funds to pursue a degree in pastoral ministries. Ron refused to select another major and was denied Nova Scholarship funds. Ron filed suit, arguing that the denial of the scholarship funds violated his First Amendment Rights and the Equal Protection Clause.

Are Ron's arguments likely to prevail? 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

Carl met Alice in late 2002. Carl was finishing business school and Alice was in her last year of law school. Courtship was rapid. They married in December 2003. Neither had any debts; they likewise had few assets. Nevertheless, Carl and Alice signed a prenuptial agreement in late summer 2003, which stated in part as follows:

Article Three - Separate Property

- A. Carl has owned, since 2000, 10,000 shares of Popcorn.com, presently worth approximately 10 cents per share for a total value of \$1000.
- B. Alice has owned, since 2001, 100 shares of SS Keskee, presently having a per-share value of \$14 and a total value of \$1,400.
- C. Carl and Alice have fully discussed these assets. Each will retain sole ownership and control of their respective asset, including any appreciation throughout the marriage. In the event of a divorce, Carl will retain the Popcorn.com stock and any appreciation thereon. Alice will retain the SS Keskee stock and any appreciation thereon. Neither stock nor any appreciation thereon will be included in the marital estate, but will remain separate property.

Article Four - Marital Property

This prenuptial agreement applies only to the property listed in Article Three, not property acquired during the marriage, which will be distributed according to Michigan divorce law.

After 9 years, Carl filed for divorce. Alice filed a motion to have the prenuptial agreement declared void and unenforceable, which Carl opposed. The motion papers revealed the following uncontested facts: the parties' income throughout the marriage had been very similar; the parties had, since the marriage, fully paid for the marital residence, now worth \$350,000; the parties had acquired other assets, including two new cars; Alice and Carl are near the top of their rewarding careers with job solidity and satisfaction high; they are both in good health; and, Carl told Alice before she signed the prenuptial agreement that the Popcorn.com stock "could go

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

nowhere, or to the moon" and Alice said she "didn't care about any 'dot.com' junk."

Of specific significance, Alice's SS Keskee stock had tripled in value to \$4,800 and Carl's stock value in Popcorn.com rose to \$100,000.

Alice makes four arguments for non-enforceability. First, that the prenuptial agreement cannot be enforced because its terms contemplated divorce. Second, that she had no legal counsel when she signed the prenuptial agreement and, accordingly, it is invalid. Third, that the agreement was unconscionable when executed. Finally, that enforcement would be unfair, as circumstances have drastically changed since execution of the agreement given Popcorn.com's dramatic increase in value.

Evaluate Alice's arguments including their likelihood of success. Explain your answer.

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

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

LNC Inc. is a large Michigan construction company that is particularly conscientious in instructing its employees on safety procedures related to machinery operation. One of these safety procedures is the requirement that all employees flip a well-marked safety switch before using the mechanical wood cutting saw. The safety switch prevents the saw from operating except while an employee is depressing a foot pedal attached to the machine.

Zack, an employee of LNC, is an experienced carpenter who has also worked at other manual jobs during his work life. LNC had thoroughly instructed Zack on the safety procedures to be used when operating its machines. Zack became especially well acquainted with the necessity of engaging the safety switch before using the mechanical woodcutting saw.

One day while working, Zack needed to cut a piece of lumber on the mechanical saw. He negligently, but unintentionally, forgot to flip the safety switch before operating the saw. The saw began operating when Zack depressed the foot pedal. But, because Zack had not engaged the safety switch, the saw continued to operate after Zack released the foot pedal. Unfortunately, Zack's hand was still in the machine when he released the foot pedal and the saw cut his dominant arm, injuring the tendons.

Zack now undeniably cannot return to any manual labor job. He seeks workers' compensation benefits from LNC. LNC has rejected Zack's claim citing two reasons. **Answer the following two questions with reference to Michigan workers' compensation law.**

First, LNC says it took all due precautions and the accident was due solely to Zack's negligence. Discuss and evaluate the merits of this defense. How is a workers' compensation judge likely to rule on this defense, and why? Explain your answer.

Second, LNC says that, although it has no non-manual jobs to offer Zack, Zack is likely to be able to procure an equal paying, non-manual job elsewhere. And, for that reason, LNC maintains no workers' compensation wage loss benefits are payable. Zack responds that he should not be required to seek work at jobs he has never held before. Explain and evaluate LNC's and Zack's positions on this point.

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

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

Ryan Motor Company sent a purchase order to a reputable auto parts supplier, Stanley Wiper Supply, for the purchase of 40,000 windshield wipers for \$600,000. The purchase order contained a clause which stated that "Buyer, Ryan Motor Company, expressly limits acceptance to the terms of this offer." Ryan has the capability of manufacturing the wipers, but wanted to hire a supplier due to the size of the order.

Upon receipt, Stanley Wiper Supply sent via U.S. Mail a confirmation to Ryan Motor Company that agreed to the price and quantity terms and included the following clause: "Seller, Stanley Wiper Supply, does not warrant its goods and specifically disclaims the **WARRANTY OF MERCHANTABILITY AND FITNESS.**"

Prior to the start of preparations by Stanley Wiper Supply, the quarterly reports for Ryan Motor Company showed that new car sales were substantially lower than expected. Ryan Motor Company wants to get out of the deal with Stanley Wiper Supply. The current market price for a wiper is \$10.

1. Is there a contract? If so, what are its terms? If not, why not? Explain your answer.

2. Assuming a valid contract, what damages would Ryan have to pay if it did not fulfill its obligations under the agreement? Explain your answer.

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

FEBRUARY 2014 MICHIGAN BAR EXAMINATION

ESSAY PORTION

AFTERNOON SESSION

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

Mike and David had been friends for many years. Recently, Mike noticed that David had been distant and severely depressed because he had lost his job and his wife had left him. David's depression seemed to worsen in spite of trying several anti-depressant medications.

One night, while at dinner together, David said to Mike, "I'm quite sure I'm not going to make it out of this, Mike. I can't take this depression any longer." Motioning to his wrist, David said, "You know this gold watch? I want you to have it." David took the watch off and clasped it on Mike's wrist. Mike smiled sadly and said, "Thanks, David. I cannot wait to hand it back to you once you make it out of this." Mike took the watch home and wore it every day thereafter.

David committed suicide three days later. David had a will, which left his entire estate to his son Herbie. Herbie knew his father had a gold watch and, after learning that Mike had it, asked Mike for it. Mike refused, and Herbie responded by suing Mike for the watch.

Applying principles of Michigan law, who is entitled to the watch? 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

After a long and lucrative life, Dwayne Dennis died in October 2013 of natural causes. Dwayne was not married and had no children. His will, executed many years earlier, provides in relevant part:

I devise my home, Greencastle, to my brother Otis. I leave my residuary estate to my favorite charity, Sisters of Divinity.

Otis died in 2006, leaving a will that bequeathed all of his property to his wife Jeanne. Otis was survived by Jeanne and his daughter Grace.

In 2012, Greencastle was struck by lightning and suffered extensive damage. In 2013, after Dwayne's death, the insurance company paid \$3.4 million dollars to Dwayne's estate for the damage sustained to Greencastle. Without the insurance proceeds, Dwayne's estate is worth \$1.1 million dollars.

Assume that Dwayne's will is valid. Applying Michigan law, determine how Dwayne's estate should be distributed among Jeanne, Grace, and Sisters of Divinity. 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

Danielle, an interpretive dance instructor, signed a one-year lease on a small commercial space to open a dance studio. Danielle diligently made her monthly rental payments per the terms of the lease. To facilitate dance instruction, Danielle had a practice bar and several large mirrors installed on one wall. Though she never signed a new lease, Danielle continued to pay her monthly rent payments after the first year. However, having recently fallen on hard times, Danielle did not pay last month's rent.

Landlord believes he can rent the space to a dance troupe for more money than Danielle has been paying. However, the troupe is only willing to rent the space if it is immediately available and suitable for practice. To make certain that the space is immediately available, Landlord plans on evicting Danielle himself by changing the locks as soon as possible. Landlord wants to rent the space with the improvements Danielle made so that the space is suitable for the troupe to practice. Accordingly, Landlord does not plan on letting Danielle know he is terminating her tenancy until after he has changed the locks.

Applying Michigan law, address the following:

- 1. May Landlord regain possession of the property in this manner? What other remedies might he have? Explain your answer.**
- 2. Is Landlord entitled to keep the practice bar and mirrors? Explain your answer.**

*******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

Paul Ping has been a minority shareholder in Callen Corp, a Michigan corporation, since its inception in 1988. After growing increasingly dissatisfied with the corporation's financial performance, Paul discovered that the annual salary of the members of the Board of Directors was increased substantially in 2012 to \$2 million each. On October 4, 2013, Paul wrote a tersely worded letter to the corporation, demanding that the board members' salaries be reduced to a reasonable amount.

Six weeks later, Paul ran into Sam Smith. Sam, one of the directors of the Callen Corp, told Paul that the board considered his letter at its last meeting. Sam told Paul that all of the directors laughed at Paul's letter and tore it up. The following day, Paul filed a shareholder derivative suit against Callen Corp and its board of directors, seeking to recover for alleged breach of fiduciary duty.

The Callen Corp asked the circuit court to appoint a panel of three disinterested persons to determine whether Paul's derivative suit was in the best interests of the corporation. The trial judge did so. After conducting a thorough investigation, the panel concluded that the continuation of Paul's derivative suit was not in the best interests of the corporation. After the trial court made the necessary findings, Callen Corp made a motion to dismiss the suit, which was granted.

Paul appealed, arguing dismissal was inappropriate because he had satisfied the requirements for filing a shareholder derivative suit. Paul also argued that the trial court improperly dismissed the case based on the panel's investigation.

Applying Michigan law, discuss (1) whether Paul satisfied the procedural requirements necessary to filing a shareholder derivative suit, and (2) whether the trial court properly dismissed Paul's lawsuit. 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

In August 2010, Morton Pine was attending a nightclub in his hometown of Lansing, Michigan. George Donaldson, an Ohio resident who was visiting Lansing, also was at the nightclub and accidentally injured Pine on the dance floor.

In December 2010, Donaldson permanently relocated to Lansing. In January 2011, Pine served Donaldson with a complaint filed in a Michigan circuit court, alleging that Donaldson negligently injured him and caused him serious injuries. Donaldson removed the case to the U.S. District Court in Michigan, contending that the amount in controversy exceeded \$75,000 and that, because he was an Ohio resident at the time of the incident, complete diversity existed between the parties. In March 2011, the U.S. District Court sua sponte remanded the case to the Michigan circuit court. After remand, despite numerous admonitions by the circuit court, Pine failed to comply with any of the court's discovery or pretrial orders. Donaldson moved for involuntary dismissal, which the circuit court granted based on Pine's blatant and willful disregard of its orders. Pine appealed the order of dismissal, and that appeal remains pending.

In July 2011, Pine re-filed the identical complaint against Donaldson in the Michigan circuit court. In lieu of filing an answer, Donaldson argued that the claim was barred and moved for dismissal of the complaint.

(1) Assuming the amount in controversy exceeded \$75,000, did the U.S. District Court err in remanding the case to the Michigan circuit court? Explain your answer.

(2) Should the circuit court grant Donaldson's July 2011 motion for dismissal of the complaint? Explain your answer.

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

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

Paula Plaintiff was walking on a sidewalk with Fluffy, her beloved Chihuahua. Paula stopped at a hot dog stand, purchased a hotdog and put a large number of catsup packets in the pocket of her shorts for later use. As Paula was walking Fluffy, a bike rider crashed into them, causing Paula to fall on the sidewalk. Paula started crying hysterically once she saw her blood covered leg. Meanwhile, a few feet away Fluffy was struggling to free her hind legs, which were entangled in the bike spokes.

Dan Defendant, a passerby who happened to be a registered nurse at a nearby hospital, heard Paula's cries for help. As Dan approached Paula, she said "Sir, my leg is cut and I am bleeding badly, but first check on my precious Fluffy, whose legs are caught in the bike spokes and might break." Dan looked at Fluffy, and then at Paula's leg, and said "I am not worried about a dog, I am only concerned about you." After wiping the blood from Paula's leg, Dan discovered only a small cut. The "blood" on her leg was mostly catsup that had leaked from the packets in her pocket. Realizing this, Dan simply wiped off the cut, tied a cloth around it, and left. As he was leaving, Paula offered Dan her hot dog as compensation and again asked him to help Fluffy, who was still struggling in the spokes. Dan refused to accept the hot dog or to render Fluffy aid.

Paula's cut became badly infected and Fluffy broke two legs from twisting in the spokes. Paula sued Dan, alleging that he was negligent when he failed to (1) properly address her cut and (2) provide assistance to Fluffy. In regard to Fluffy, Paula only seeks to recover the emotional damages she suffered as a result of seeing Fluffy in pain and ending up with broken legs.

Dan asserts that his treatment of Paula is entitled to immunity and that Paula cannot recover emotional distress damages for seeing what occurred to Fluffy. Should Dan succeed on these grounds? Explain your answer.

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