

JULY 2009 MICHIGAN BAR EXAMINATION

ESSAY PORTION

MORNING SESSION

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

Dan Dechini is on trial for the murder of Cameron Cole, Dechini's arch nemesis and primary sales competitor to Dechini's narcotics empire. According to the prosecutor's theory, Dechini opened fire on Cole as he left a local pizzeria on a Tuesday evening in September. Dechini plans to present an alibi defense to the jury, claiming that he was tango dancing at a club with his longtime girlfriend, Kelli Kolada.

The trial prosecutor, Amber Starr, wants to present several pieces of evidence in the trial against Dechini. First, during preliminary plea discussions with the prosecution, Dechini offered to turn over the murder weapon in exchange for a reduced charge. Second, the prosecutor plans to call Miguel Morales, a third-grade special education student who speaks no English, to testify that he saw Dechini's vehicle leaving the pizzeria parking lot at a high rate of speed the evening of the murder. The prosecutor plans to use Miguel's mother, Carolina, to interpret during Miguel's testimony. Third, the prosecutor plans to call Circuit Judge York, who overheard Dechini coaching Kelli Kolada in the courthouse corridor regarding his alibi defense concerning their evening of tango dancing.

Utilizing the Michigan Rules of Evidence, assess the admissibility of the prosecutor's evidence. Explain your answer.

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

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

Paul Potine was an avid kayaker. On May 4, 2005, Potine went kayaking along the Red Cedar River in East Lansing, Michigan, in his brand new, state-of-the-art kayak. Drunk Donald, a resident of Kentucky, was operating a small motorboat along the river and enjoying both the unseasonably warm May weather and a few too many Margaritas. Potine noticed Donald motoring erratically toward him. Afraid that Donald did not see him, Potine began shouting and waving his paddle to make Donald aware of his presence. Despite Potine's warnings, Donald plowed into Potine's kayak from behind at a high rate of speed, flipping it over. Potine did not suffer any physical injuries, but his kayak, valued at \$2,000, was destroyed.

On June 15, 2009, Potine filed suit in Ingham Circuit Court alleging that Donald negligently operated his motorboat, causing injury to Potine's property. He sought \$2,000 in damages. Process was validly served on Donald at his Kentucky home. With the help of his attorney, Sam Shady, Donald filed an answer to the suit on July 22, 2009. Donald denied being negligent, but did not raise any affirmative defenses.

After dismissing Shady as his counsel, Donald has come to your firm seeking help for his defense. Your boss, a partner at the firm, believes that Donald might be able to have the suit dismissed for lack of personal jurisdiction (MCR 2.116[C][1]), lack of subject-matter jurisdiction (MCR 2.116[C][4]), and failure to file the suit within the appropriate statute of limitations (MCR 2.116[C][7]).

Your boss has asked you to prepare a memorandum for him explaining the likelihood of Donald prevailing on each of these grounds, in advance of a meeting with Donald that will occur later today, July 28, 2009.

*******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

In June of this year, Debbie Defendant walked into her local police department and offered to confess to murder. After being apprised of all of her constitutional rights, including her right to counsel, and her right against self-incrimination, and after making a full, complete, voluntary and knowing waiver of all of her constitutional rights, Debbie confessed to murdering her 82-yearold father in September 1992. Debbie claimed that she became tired of caring for her father, who resided with her. Debbie stated that after careful consideration of her situation, she decided to poison her father. She confessed to stealing a lethal drug from a pharmacy at which she worked in 1992. Then one evening in September 1992, she mixed the lethal drug into some warm milk that was consumed by her father. Her father died in his sleep shortly after drinking the milk. The county coroner arrived at Debbie's home the morning following her father's death. The death certificate prepared in conjunction with her father's death indicated that death was the product of natural causes. No autopsy was performed and no photographs of the crime scene were taken. Debbie arranged for her father's body to be cremated.

Realizing that incarceration will not be pleasant, Debbie stopped talking to police. Thereafter, police obtained a valid warrant to search Debbie's home. The search of Debbie's home did not reveal the presence of any lethal drugs. The pharmacy at which Debbie worked closed in 1995, and no records remain from the pharmacy. Further, while the pharmacist who owned and operated the pharmacy recalled Debbie Defendant having worked for him, he had no record or recollection of any drugs that were not accounted for during Debbie's employment.

The local prosecutor charged Debbie with first-degree premeditated murder.

Discuss the charge asserted against Debbie Defendant. Will the prosecutor be successful in the prosecution of Debbie Defendant? 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

Chris Cop, a Michigan State Police trooper stationed in Marquette, Michigan, vacationed in Las Vegas. While there, Chris rented a car. Chris was driving back to his hotel after a night of hitting the Las Vegas club scene when he observed in the roadside several police cars with lights flashing. Traffic slowed immediately and Chris observed police officers in the road, between the lanes of traffic. The officers approached every car. Within one minute, an officer approached Chris' car. The officer informed Chris that the stop was a sobriety checkpoint to investigate the possibility that he might be too intoxicated to drive. The officer asked Chris to blow into a portable breath-testing device. Chris, who never consumes alcohol, complied with the request and passed the test. The officer released Chris.

Chris recognized that this procedure would greatly enhance the public safety, as it would result in the arrest of many drunk drivers and produce a deterrent effect over the long term. When Chris returned to Michigan, he persuaded his supervisor to implement a roadside sobriety checkpoint on a Sunday morning from 1:00 a.m. to 3:00 a.m., one-half mile down the road from the busiest pub in Marquette. The supervisor at the Marquette State Police post issued a press release announcing her intent to conduct a roadside sobriety checkpoint. The press release provided the date, time and location at which the checkpoint would be implemented and noted that police records show a high incidence of drunk driving arrests in that place and time frame. The press release indicated that every car on the designated roadway would be stopped during the checkpoint and that warning lights and signs would clearly be visible as drivers approach the checkpoint area. The press release indicated that a portable breath tester would be used and that the length of the stop would be minimal. The ACLU vowed to challenge these sobriety checkpoints as being in violation of the federal and state constitutions.

Discuss whether the implementation of sobriety checkpoints violates the Michigan Constitution. Discuss whether the implementation of sobriety checkpoints violates the United States Constitution. Explain your answer.

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

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

Wendy Witness observed an assault and robbery committed against an elderly woman, Sarah Smith, who was walking in her neighborhood. Wendy was approximately 30 feet away from the scene of the crime, which was committed at noon on a sunny day. Wendy's view of the crime was unobstructed. Sarah could not describe her assailant, stating only that the assailant took her purse, which contained one credit card. Wendy described the assailant as a clean-shaven Caucasian male, approximately 20 to 22 years old, 5 feet 8 inches tall, and 150 pounds. Wendy indicated the assailant had short black hair and wore blue jeans, white running shoes and a white sweatshirt.

Later that day, Peter Perpetrator, a clean-shaven 24-year-old Caucasian male with short black hair, 5 feet 10 inches in height, and weighing 160 pounds, was arrested on an outstanding warrant unrelated to the crime against Sarah Smith. When police inventoried Peter's personal items, they discovered that Peter had a credit card issued to Sarah Smith. Police believed Peter committed the crime against Sarah. The next morning, police placed Peter in a lineup with five other Caucasian males. During the lineup and at the time of his arrest, Peter wore blue jeans, white running shoes and a white tee shirt. All participants in the lineup were clean shaven, had short hair and wore blue jeans and white running shoes. Additionally, the persons in the lineup other than Peter are described as follows:

<u>Age</u>	<u>Height</u>	<u>Weight</u>	<u>Hair</u>	<u>Shirt</u>
18	6'0"	170	brown	black tee shirt
25	6'2"	190	black	blue sweatshirt
19	5'11"	170	brown	beige tee shirt
22	5'11"	180	brown	black sweatshirt
23	6'0"	175	black	white button shirt

No lawyer assigned to protect Peter's interests was present during the lineup. Before Wendy viewed the lineup, she was told by police that a suspect was in custody and would be in the lineup. Within seconds of Wendy viewing the lineup and without any prompting from police, Wendy identified Peter Perpetrator as the assailant. Wendy stated, "I am certain he is the assailant." Peter was charged with assault and unarmed robbery.

Discuss the law and procedure Peter's defense counsel will use to support a motion to suppress Wendy Witness' identification of Peter Perpetrator. How will the trial court rule on such a motion? Explain your answer.

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

GO TO BLUEBOOK III

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

Jack works for an automobile supply company where business has recently declined. Jack had suffered a serious work-related back injury last year. Believing Jack would not be able to procure work elsewhere because of the severe restrictions resulting from that back injury, Jack's employer created a job tailored to meet Jack's restrictions. The job was not a meaningful one, but the employer felt obliged to help Jack.

Within a year of Jack's injury, it became evident that the automobile supply company was destined to close due to adverse economic conditions. Jack and the other employees were so advised. Jack told his employer he wanted workers' compensation benefits once the plant closed, given the work injury he sustained 11 months earlier. The employer told Jack it would continue to pay for any medical care associated with his injury, but it would not pay him weekly wage-loss benefits. The employer's reason was Jack will be out of work due to adverse economic conditions, not due to his work injury. The employer assured Jack that he would receive unemployment compensation benefits upon the plant closing.

Does Jack have a basis to make a successful claim for weekly workers' compensation benefits under Michigan law? Why or why not? Does Jack's anticipated receipt of unemployment compensation benefits have any impact on a claim for weekly workers' compensation benefits under Michigan law? Why or why not?

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

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

Pat the lawyer's client, Gertrude Guard, explained to Pat that she was thinking of divorcing her husband, Gary Guard, but she needed some advice. She and Gary, both prison guards in Ionia, Michigan, earning approximately the same salary, had lived together for nearly 10 years before they decided to marry. They lived in an apartment to save money because they planned to build a home on 5 acres of land that Gary's father deeded to him during the eighth year they lived together.

The land was given free of any encumbrances. For tax purposes, Gary quit claimed the property to himself and Gertrude after they were married. After 10 years of cohabitating and 5 years of marriage (without having children), the couple's joint bank account, which they had agreed to use for the construction of the home, was worth approximately \$60,000. However, explained Gertrude, she was sure that Gary was having an affair. In addition, she was worried about her future because she had slipped on a grape at the local supermarket and injured her leg, making it difficult for her to effectively perform her guard duties. In fact, she had settled the case and received a \$5,000 settlement check from the supermarket that was specifically designated for her pain and suffering, although she had not yet cashed the check. Three questions are raised:

1. The market value of the 5 acres is less now than it was when the property was transferred to Gary. Will Gertrude receive anything in a divorce for the 5 acres of land?

2. Will Gertrude be awarded spousal support?

3. Should Gertrude cash the settlement check from the supermarket now or should she wait until she files for divorce, or even wait until the divorce is final?

How should Pat respond to Gertrude's questions? Identify the issue(s) presented and explain your answers.

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

JULY 2009 MICHIGAN BAR EXAMINATION

ESSAY PORTION

AFTERNOON SESSION

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

While a member of Carpet & Wall, P.C., Tim represented Manuel in personal affairs and on matters involving Manuel's business ventures. One of the matters involved the formation of a business entity ICON, where Manuel became one of three managing members who found investors to invest in the ownership of an office building. No one else at Carpet & Wall participated in any of the Manuel matters. After five years with Carpet & Wall, Tim moved his practice to Law Enterprise, LLC. At Manuel's request, Carpet & Wall transferred Manuel's files to Tim at Law Enterprise, LLC.

Carpet & Wall currently represents the non-managing investors in the office building in a business dispute that does not involve Manuel. In addition, disputes have now arisen between the non-managing investors and the managers of ICON, including Manuel. The claims include fraud and misrepresentation concerning the nature of the investment and other representations made at the time of the investment. Tim still represents Manuel.

May Carpet & Wall, P.C. represent those interests adverse to Manuel? 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

Best Brakes contracts to be exclusive sales representative for Allied Aftermarket Products, a Michigan corporation that manufactures brake parts and oil/engine filters. Best Brakes' contract is to sell Allied's brake products line throughout Michigan from January 1, 2007 through December 31, 2008. The contract also provides that only an Allied vice president has authority to modify any contract provision and that any and all modifications must be mutually agreed upon and in writing. The Best Brakes' contract does not cover sales of Allied's filter products because another sales representative, Fab Filters, has a similar contract to sell that product line throughout Michigan.

In June 2007, one of Best Brakes' largest customers, Excellent Auto Repairs, expressed dissatisfaction to Best Brakes with the service Fab Filters was providing. Excellent Auto asked Best Brakes to take over Allied's filter sales to Excellent Auto, promising that it would mean a significant increase in filter business.

Allied's Vice President of Operations, Paul Processes, also heard from Excellent Auto of its desire to switch its filter business to Best Brakes. Wanting to please the customer, Processes called Best Brakes and confided that Allied wanted it to handle the filter sales for Excellent Auto. Best Brakes agreed and asked Processes to confirm the agreement in writing. Processes, not wanting to put anything in writing at least until Fab Filters' contract expired, responded that his word was binding on Allied and was all that was needed, and that Allied would pay Best Brakes commissions on all sales--brake parts and filters--starting immediately. Processes also promised that any renewal agreement would include both brake parts and filters.

Satisfied, Best Brakes began handling filter sales to Excellent Auto. However, when Best Brakes received its quarterly commission payment, Allied included no payment for the filter sales. Best Brakes promptly called Processes, who explained that Best Brakes' contract only covered brake products and that, since there had been no written modification as required by the contract, there would be no commissions on filter sales.

Best Brakes would like to sue Allied to collect the commissions on filter sales that it believes it has earned, and should continue to earn at least through the end of its contract term. What advice do you give Best Brakes? 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

In 2000, Roger Smith purchased 500 shares of stock in Big Loans Are Us (BLAU), a publicly traded Michigan corporation. The purchase price was \$10 a share. As residential real estate loans became more readily available through the 2000's, BLAU revenues dramatically increased, as did its stock value. Indeed, by January 2008, the value had skyrocketed to \$50 a share, and there seemed to be no end in sight to the good fortunes of BLAU and its stockholders. Because the number of loan applications more than quadrupled during this same time frame, BLAU increased the number of entry-level employees and management-level employees. By the end of 2007, BLAU had 250 management-level employees.

At the start of 2008, new loan and refinance requests started to decline. Nevertheless, to reward the hard work of its management-level employees, and in recognition of the financial success of recent years, the BLAU board of directors decided to grant each management-level employee 1,000 shares of BLAU stock. Thus, the board approved the issuance of 250,000 new shares, which doubled the number of outstanding shares.

Meanwhile, in the next few months, loan and refinance applications continued to decline. Layoffs ensued. Within five months of the decision and issuance of the shares, BLAU's stock price spiraled downward, reaching \$20 by June 1, 2008. Roger Smith was furious, as he had planned on selling his 500 shares at \$50 a share and paying for part of his granddaughter's college education. As a retired CPA for a Fortune 500 company, Smith believed that the decision to issue so many new shares diluted the value of all outstanding shares, and was done at a time when the overall economy and BLAU's business was on a clear downturn. He was so upset with the decision that he sent a letter to the board on June 15, 2008, asking that the board reverse its decision to grant the stock.

Not having heard back from the board, and after dropping off his granddaughter at college, on September 30, 2008, Smith sued the board of directors for breach of the duty of loyalty and good faith, while also naming BLAU as a defendant. Smith sought to recover the lost stock value he suffered, to set aside the stock issuance, and for other damages against the board. The case proceeded through some limited discovery, including Smith's deposition. During the deposition Smith became so frustrated with BLAU, that he sold his stock the next day, November 15, 2008, for \$8 a share.

Defendants have now filed a motion to dismiss, which only addresses Smith's ability to bring these claims. It does not

address the merits of the claims. You are the clerk to the local circuit court judge. Prepare a memo describing whether Smith can bring these claims in any capacity. 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

William Long passed away in early 2009 at the age of 89 leaving a probate estate worth one million dollars. William was never married and his only natural heirs are two adult sons named Carl and Joe. Carl and Joe have different mothers and were never able to get along when they were young. After his death, Carl and Joe searched all of William's personal effects in an attempt to find a formal will, but only found a handwritten letter, signed by William, and that was written when they were young. It states as follows:

To whom it may concern:

I have managed to save a little money and I want my children and the church to have it when I die. I intend for this letter to be treated as my Will and I know my family will honor it as such. I leave the contents of my home to my children to be split as equally as possible. I also leave my sons, Carl and Joe, \$5,000.00 cash apiece. The rest of my estate I leave to Good Church in Flint, Michigan, to be used to help the poor of Flint.

For personal reasons known to them, I know that my children do not get along. To avoid family conflict, it is my wish that any person who challenges this Will take nothing from my estate.

*Signed,
William Long
May 26, 1950*

I, Chad Ireland, hereby witness the signature of William Long on May 26, 1950.

*Signed,
Chad Ireland
May 26, 1950.*

Carl and Joe believe that the entire letter is in their father's handwriting although they do not remember the letter because it was written so long ago. They are both positive that the signature at the end of the letter is their father's signature. Carl and Joe remember Chad Ireland as one of their father's old drinking buddies and believe his signature is genuine. They found evidence, however, along with the letter that their bequest of \$10,000.00 cash would have constituted nearly all of their father's estate in 1950.

You represent Good Church in Flint, Michigan, in the probate

of William's estate and intend to have the letter admitted as William's Will. Carl and Joe have notified you that they intend to either challenge the validity of the Will or elect against the Will and take their share as though William died intestate. If they do so, how is the estate likely to be distributed under each scenario? 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 early March 2009, Chris Cook hunted for deer without a hunting license on a 100-acre parcel of undeveloped property he owned in Kraft County, Michigan. After he shot and killed a doe, Cook noticed something beneath a tree with branches covering it arranged in a crisscross pattern. When Cook moved the branches, he found a small suitcase covered in spider webs.

After Cook returned home with the deer and the suitcase, he pried open the suitcase and discovered that the suitcase contained \$125,000 in cash as well as a key to a safe deposit box from a local bank. The suitcase contained an inventory of the contents of the safe deposit box, indicating that the safe deposit box held a 4 carat diamond ring as well as several loose gemstones. The inventory was signed by "A.S.T." and was dated 2/27/2001.

You are the lawyer Chris Cook has consulted for legal advice. Utilizing Michigan law, discuss whether Chris Cook may claim an ownership interest in the deer, the cash, and the contents of the safe deposit box. 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

Mike and Kate went to MyBank in order to apply for a second mortgage on their home. On the loan application, Mike indicated that they were applying for a second mortgage and listed the name of their primary lender, Bank Zero. However, on some of the other relevant documents, Kate inadvertently forgot to disclose any information about their primary lender. During the application process, MyBank learned that Mike and Kate had just closed on their first mortgage during the preceding week, but that Bank Zero had not yet recorded its mortgage. Nevertheless, MyBank closed on their mortgage and recorded it on June 21, 2009. After firing about half of its staff and rehiring more competent employees, Bank Zero finally got around to recording its mortgage on June 23, 2009.

Although the extra cash flow from the second mortgage helped Mike and Kate stay afloat for a while, they began to sink further and further into debt. Eventually Mike and Kate defaulted on their mortgages to both MyBank and Bank Zero.

Discuss the relevant issues regarding the impending mortgage priority dispute between MyBank and Bank Zero, including your opinion on which bank has the superior lien. Explain your answer.

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