

**JULY 2011 MICHIGAN BAR EXAMINATION**

**ESSAY PORTION**

**MORNING SESSION**

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

Betty's Best Burgers, a national fast food chain, has had a location just off the high-traffic expressway on a busy Michigan street. The business has been there ten years and has been run by the owner of the property, Sam Seller. Betty's and Sam's ten-year contract is coming to an end and both parties have some interest in a ten-year renewal of their agreement. During negotiations, Betty's continued to demand more and more from Sam such as better signage, improved lighting, and repaired parking areas -- all of which are expensive. Sam balked at these demands and returned the new contract to Betty's unsigned, one day before the ten-year agreement ended.

Unbeknownst to Sam, Betty's learned that Sam was negotiating with Handy's Hamburger Haven to enter into a contract for use of Sam's property for one of Handy's stores. Infuriated, Betty's filed a one-count complaint in the local circuit court for injunctive relief. Specifically, Betty's requested an order prohibiting Sam from allowing Handy's to take over the location and operating a fast food business there.

At the hastily scheduled hearing on Betty's request, the court learned the following: (1) the prior ten-year contract has expired; (2) the renewal contract was never signed; (3) Handy is one of Betty's chief competitors; (4) Sam, in compliance with the old contract, has taken down all signage relating to Betty's and offered its return to Betty's; (5) despite the excellent location, Sam's profits are the worst of the 200 restaurants operated under Betty's name and, accordingly, Betty's share of those profits is equally dismal; and (6) as Betty's suspected, Sam has been talking to Handy's.

**Discuss the factors the court must consider in passing on Betty's request for an injunction and indicate, after an analysis of the salient facts, whether the court will grant or deny the injunction.**

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

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

The Rippy Company, a properly formed Michigan corporation, designs and manufactures men's bow ties. The corporation's articles of incorporation indicate that the Rippy Company "elects to have shareholder preemptive rights," but provides no further elaboration. Dan Dion and his sister Carolyn Call each own 100 shares of Rippy stock.

In July 2010, the company sustained heavy financial losses after its new product line, Gouda cheese bow ties, did not sell as well as anticipated.

In order to raise badly needed capital, the board of directors voted to call a special meeting of the shareholders, proposing to issue an additional 100,000 shares of Rippy corporate stock. The board provided 15 days notice to all shareholders of record by e-mail, describing the purpose of the meeting. Because Dan was going on an extended vacation and was unsure whether he would return in time for the shareholder meeting, Dan forwarded the e-mail to his sister Carolyn from his personal e-mail account. The message sent along with the forwarded e-mail authorized Carolyn to vote for the resolution on Dan's behalf by proxy. At the August 14, 2010 meeting, Carolyn took a copy of the e-mail Dan sent to her as proof of her proxy authorization and voted both her shares and Dan's shares in favor of the stock issuance. The stock issuance was approved by 58% of the shares entitled to vote. A certificate amending the articles of incorporation was filed with the state, and the proper authorizations were obtained from the Michigan Corporation and Securities Commission.

Two weeks later, the board of directors sent out notice to all shareholders of record, indicating that the 100,000 shares would be offered to the shareholders for \$10 per share, and that each shareholder would be entitled to purchase 5 shares for every share of Rippy stock currently held. The notice also provided that if any shareholder failed to claim all or part of the shares before November 1, 2010, that the board of directors would sell the shares to other interested Rippy shareholders on a lottery basis for the same price. When Dan Dion returned from his vacation on November 21, 2010, he discovered that all 100,000 shares of the newly offered Rippy stock had been purchased. All but 4 shareholders (including Dan) had opted to purchase their share of the new stock. Dan's share was sold to Greg Greedy, a fellow Rippy shareholder. Dan demanded to purchase 500 shares of stock for \$5,000, but Greg refused.

Using Michigan law, assess the validity of Dan's claims challenging (1) the validity of the proxy Dan gave to his sister Carolyn; (2) the vote of the shareholders authorizing the additional issuance of stock; and (3) the terms prescribed by the board of directors for the acquisition of Rippy stock.

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

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

Police were dispatched to the scene of a reported felonious assault. The report received was that a male had attacked a young woman in a parking lot and left on foot heading northbound on First Avenue. An officer and his canine partner arrived at the scene and witnessed a young man, later identified as Peter, running along a nearby sidewalk. The officer released his dog but also yelled at the man to stop. Peter immediately stopped and placed his hands in the air. Before the officer could command the dog to stop, the dog jumped up on Peter and bit him in the shoulder.

It was later determined by the officer that Peter had just been out jogging and was not the man involved in the attack on the young woman. Nonetheless, Peter suffered serious injuries to his shoulder, which required multiple surgeries, time off work, and exceptional pain and suffering.

In Michigan, the following statute applies to dog bites making it a strict liability tort:

"(1) If a dog bites a person, without provocation while the person is on public property, or lawfully on private property, including the property of the owner of the dog, the owner of the dog shall be liable for any damages suffered by the person bitten, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness. MCL 287.351."

**Peter is suing the police officer and his employer, the city, based on a strict liability theory for the damages he suffered as a result of the dog bite. Evaluate the likelihood of success of Peter's lawsuit. 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**

Paul Plaintiff owns a retail fur shop located in the National Bank Building in Gaylord, Michigan. His business is the selling and repairing of fur coats as well as storage of furs in the off season. Paul is one of several tenants in the building, which is owned by Larry Landlord. Paul has a written lease and leases three rooms. One room is a show room for the display and sale of furs. Another is a work room for repairs, which is adjacent to the show room. The third is a climate controlled storage room located in the back of the building off a common area shared by all tenants.

Larry Landlord entered into a contract with Quick Repair Company to repair the common portion of the building used by the tenants, including Paul. Their agreement required Quick Repair to furnish labor and material to repair the common area according to the specifications prepared by Larry Landlord's architect. In addition, the contract provides:

"All work to be performed pursuant to the plans provided by the architect and specifications provided therein and in such a way and manner as to cause a minimum of disruption to the building tenants."

Neither Paul nor any other tenant was a party to the contract.

Victor Vendor came to see Paul at the fur shop. Victor brought a box of twenty-two sable hats which he wanted Paul to buy for resale. Paul was reluctant, but agreed to discuss it over lunch with Victor. Victor asked Paul if he could store his sable hats in Paul's climate controlled storage room while they ate. Paul agreed. Paul and Victor went to lunch and were gone for two hours.

Quick Repair entered the building just after Paul left. Seeing that his shop was closed, they immediately undertook to perform demolition work in the common area in Paul's absence. When Paul returned from lunch with Victor, he walked into his storage room and saw his furs covered with dirt, wet plaster and dust. Victor discovered that his sable hats were covered with the same debris. All of the damaged inventory had to be professionally cleaned and repaired before either Paul or Victor could display their items in a showroom for potential sale. The delay caused both Paul and Victor to miss an entire fall/winter season when sales of their respective inventory are typically at peak levels.

Paul intends to sue Quick Repair for damage done to the furs and his loss of sales that are attributable to that damage. Victor

intends to sue Quick Repair for the damage done to his hats.

**Can Paul maintain a non-tort cause of action against Quick Repair? If so, under what theory and what is the likely result? Can Victor maintain a non-tort cause of action against Quick Repair? If so, under what theory and what is the likely result. Explain your answers.**

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

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

GeneriCorp is a corporate client of LawFirm. Partner and Associate are defending GeneriCorp in a civil case. The authenticity of a document is at issue, and the plaintiff filed a request for production of documents, including certain electronically stored information and the metadata (for example, document properties) within the electronic document. Thus, plaintiff seeks all electronic versions and drafts of the document at issue, as well as the final, executed paper version. After the parties litigated the issue of whether GeneriCorp was required to produce the electronic information under the discovery rules, the circuit court held that such production was required and entered an order compelling GeneriCorp to produce all electronic versions of the document, including embedded metadata.

All of GeneriCorp's electronic and paper documents relevant to this lawsuit are in LawFirm's office. Immediately after the order compelling discovery was entered, Partner received a call from GeneriCorp's Chief Executive Officer (CEO) asking for the return of the electronic files so he could substitute the "correct" version. When Partner asked for clarification, the CEO explained that the metadata would show that the critical document was actually created four days after it was purportedly executed and legally effective. This could establish plaintiff's claims and cost the company millions of dollars. The CEO told Partner he wanted LawFirm to respond to the document request and order to compel discovery without turning over the unfavorable evidence.

Partner has shared this information with Associate and directed Associate to carry out the CEO's instructions and either remove the metadata or return the electronic document to the CEO. Associate has been following blogs and articles about cases in which trial courts have imposed significant discovery sanctions for intentional and negligent failure to comply with discovery rules and orders.

**Analyze whether the course of action proposed by the CEO and Partner would violate the Michigan Rules of Professional Conduct, and, if so, which lawyers would be in violation? What actions should the lawyers take, if any? 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**

Dan Defendant's house caught fire and suffered smoke damage. Dan was not present at the time of the fire, but was the last person home before it started. When Dan returned home, the fire department was putting out the fire. Dan told a fireman the fire was an accident. He claimed that he mistakenly left food on his stove and forgot to turn the stove off. The state has charged Dan with arson on account of the fire even though the report from the state's arson expert was inconclusive.

In a pre-trial motion, the prosecutor seeks to introduce evidence at trial of three other fires involving Dan which occurred over the last five years. In 2010, Dan's sailboat caught fire after he and a group of friends had been drinking and smoking cigarettes in the boat's cabin; when Dan stayed behind to lock up, he neglected to ensure that no lit cigarettes were left behind. In 2008, the engine of Dan's car erupted in fire immediately after he exited the vehicle. The car was completely destroyed, and Dan had to pay the balance owed on the car. In 2007, Dan's house was severely damaged by fire when Dan put his roommate's sweater on a propane heater to dry out. The fire started right after Dan and his roommate left the house. Dan claimed all three fires were accidents and was never charged with a crime relating to any of the previous fires. He filed for, and collected, insurance proceeds on the sailboat and house fires. He did not have comprehensive automobile insurance coverage and, therefore, did not file an insurance claim for the car engine fire.

The prosecutor argues that the evidence concerning the three prior fires is admissible to prove Dan's scheme, plan or system in doing a bad act, and absence of mistake or accident.

Dan's attorney has objected to the introduction of this proposed evidence on the grounds that: (1) Dan was not charged with a crime for any of the other fires; (2) Dan received little money as a result of the fires; (3) the events are not similar to each other or the fire now charged; and (4) there is no proof that Dan set any of the other fires.

**Discuss the analysis the trial court should engage in when ruling on the prosecutor's motion, and address the grounds favoring, as well as weighing against, the admission of the evidence.**

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

Vienna Victim owns two pieces of heirloom jewelry with immeasurable sentimental value: a diamond watch that has been appraised for \$3,000 and a gold bracelet that has been appraised for \$2,000. Earlier this month, she brought both items into Oliver's Jewelry Boutique for repair and cleaning, and paid for the services in advance. Believing the bracelet to have been beyond repair as a piece of jewelry, the store's sole proprietor, Oliver Owner, pocketed the bracelet, melted it, combined it with other gold he had in his possession, and placed the resulting pure gold ingot in his vault to be sold to an investor.

Oliver repaired the watch as instructed, but he neglected to place the watch in his state-of--the-art vault, instead leaving it on the store's counter night after night. A burglar broke into the store one night and stole Vienna's watch from the store. All the items in the vault, including the gold ingot, were untouched. The burglar advertised the watch on the Internet and sold the watch to Dan Defendant, who (after some intense negotiations) paid \$500 for it.

Vienna attempted to pick up her jewelry from Oliver's store and learned what had occurred. She was able to trace the watch to Dan. Dan refused to return the watch to Vienna. The burglar's identity is unknown.

**Assess the viability of potential remedies available to Vienna against Dan Defendant and/or Oliver Owner. 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**

Dennis Davis was out in the woods hunting when he was accidentally shot by a fellow hunter. After spending several days on life support, Dennis died. Dennis was divorced, and had an estate worth approximately \$1,000,000 after his debts and expenses were paid. No testamentary documents were found among his personal effects.

Surviving Dennis are his two siblings--his half brother Paul and his brother Scott. Dennis is also survived by Timmy Taylor, a 15-year old developmentally disabled foster child who has lived with Dennis since the age of two. Lastly, after reading Dennis' obituary, Ed Ermine appeared, claiming to be Dennis' biological father.

DNA testing ordered by the probate judge administering the Estate of Dennis verified that Ed Ermine is Dennis and Scott's biological father. Paternity had not previously been established. Scott claims that neither he nor Dennis ever knew Ed or knew that he was their biological father. Rather, the boys were raised by their stepfather, who was Paul's father. Both Paul and Scott claim that Ed neither visited nor supported Dennis and Scott during their childhood. Scott also claims that Paul is entitled to a lesser share of the estate because Paul and Dennis have only one parent in common.

**Using Michigan law, discuss what claims the following parties would have to the estate of Dennis: (1) Timmy, (2) Ed, (3) Paul and Scott.**

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

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

Julie and Nick both moved to Michigan in September 2010 in order to attend college. They entered into separate one-year lease agreements with the Caravaggio Apartment Complex (commonly known as the CAC) to rent adjoining apartments; the owner-manager of this complex is Michael.

Although neither tenant had problems moving into the complex and was generally satisfied with their apartments early in the leases, both started to notice that the CAC was not as great as it was held out to be. The breaking point came, however, in late December when each tenant noticed a serious mold infestation developing from within the walls of their apartments. Julie, who had allergies, became sick despite her best efforts to clean and clear the apartment of the presence of mold. Nick's efforts at clearing the problem also failed and he was forced to stay at a friend's house several days each week.

Both Julie and Nick reported these developments to Michael immediately, to no avail. Michael informed them that the presence of mold was not his fault, and because correction of the problem was not required by their lease contract, he would have to wait until spring in order for work crews to complete the structural work needed to rectify the problem. Julie informed Michael that this was unacceptable and that she was terminating her lease immediately. Julie vacated her apartment by the end of the month, paying no further rent. Nick instead refused to pay rent during the pendency of the problem and contacted the city's housing authority. The housing authority forced Michael to rectify the mold problem, which was completed by the end of January.

Although Michael was forced to correct the mold issue, he decided that Nick was a problematic tenant and decided to seek Nick's eviction. Michael served eviction papers on Nick on February 15, citing Nick's failure to pay rent for one month and new allegations that Nick hosted loud parties that had resulted in "many" complaints from "anonymous" sources; Nick retorted that Michael was just being "spiteful." Michael also decided to sue Julie for breach of contract, seeking to collect rent for the balance of the term of the lease agreement. Both Julie and Nick defended the actions asserting their rights to the fullest extent under Michigan law.

**Discuss the rights and duties of the parties under Michigan law, and in particular address whether Michael may lawfully evict Nick and whether Julie is liable for breaking her lease.**

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

**JULY 2011 MICHIGAN BAR EXAMINATION**

**ESSAY PORTION**

**AFTERNOON SESSION**

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

On December 22, 2010, Dan Defendant made a withdrawal from an ATM machine from his own bank account. He put the money in his pocket and turned around. Ronald Graham was standing in line behind him, and was a much bigger man (in both height and weight) than Dan. Lynn Tracy was in line behind Ronald and was in an obvious hurry, so Ronald let Lynn use the machine ahead of him. Dan continued to count his money as Lynn made her withdrawal. After withdrawing her money, Lynn hurriedly walked away and unknowingly dropped two twenty dollar bills. Ronald quickly picked up the dropped money. After Ronald picked it up, Dan said, "I'll give it to her." Ronald said, "No, I'll give it." Dan then put his hand in his coat pocket and said, "I said I'll give it to her. I have a gun," and took the two twenty dollar bills from Ronald. Dan ran in the direction of Lynn, and once he caught up with her, handed her five dollars and said, "You dropped this." Dan then walked away quickly. In the meantime, Ronald called the police and walked toward Lynn. When he reached Lynn he said, "You dropped forty dollars. How much did he give you?" Lynn said, "Five dollars." Ronald then ran after Dan. Dan, seeing that Ronald was running at him, picked up a large tree branch and swung it at Ronald, stating "Get away from me." Ronald stepped back just quickly enough for Dan to miss him. Dan ran. The police arrived and arrested Dan.

The prosecution charged Dan Defendant with armed robbery and felonious assault. **Discuss whether the above facts introduced at trial support a conviction of the crimes charged beyond a reasonable doubt.**

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

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

"Neighbor-watchers," a local "crime-stoppers" organization in Bigville, Michigan, received an anonymous tip identifying four students at the Bigville public high school as drug dealers. The tipster claimed she had observed all four students selling drugs while on school grounds and was able to provide identifying information about each of these "big sellers" in varying detail.

The tipster identified one of the "big sellers" as her former friend, Buddy Weeden. According to the tipster, Weeden was a senior from whom the tipster and her boyfriend used to purchase the illegal drug Ecstasy in the school parking lot after school. Additionally, the tipster suspected Weeden of selling marijuana to a freshman and believed that Weeden kept a machete in the glove box of his blue Chevy Tahoe. The tipster identified the second "big seller" as John McCracken, a senior that the tipster had seen selling cocaine in the school parking lot out of his black Ford F-150. The third "big seller" was Mark Highland, a student the tipster described as a junior whom she had observed selling Ecstasy at school. The tipster never saw Highland with his own vehicle, however. The fourth "big seller" was Sean Grassmeyer. The tipster described Grassmeyer as a male Caucasian in the junior class. The tipster claimed to have seen Grassmeyer selling marijuana "from the school, his truck and the Bigville City Park."

"Neighbor-watchers" forwarded the tip to the school liaison-police officer, who verified that Weeden, McCracken, and Grassmeyer drove the vehicles described in the tip and also discovered that Highland did not have a vehicle registered with the school. The officer then forwarded this information to the high school principal. The principal was disturbed, but not surprised, since he had previously heard from a counselor at the local junior high school that Grassmeyer was associated with drug activity there. Also, the principal already knew that Grassmeyer drove a truck. Deciding to take action, the principal first searched Weeden's Tahoe, but much to his chagrin, no drugs were found. Undeterred, the principal decided to search Grassmeyer's truck and invited Grassmeyer and the liaison officer to accompany him during the search. Through the truck's passenger window, the principal noticed a plastic bag behind a seat, although he could not determine what was inside the bag. Without Grassmeyer's consent, and with the officer looking on, the principal proceeded to search the truck where he found marijuana and drug-trafficking supplies inside the plastic bag. Grassmeyer was promptly arrested and charged with possession with intent to deliver marijuana.

Grassmeyer's attorney has filed a motion to suppress the marijuana and drug trafficking supplies as "fruit of an unconstitutional search" under the United States and Michigan Constitutions.

How should the circuit court rule on the motion? Explain your answer. (For purposes of this question, you should assume the Bigville public schools do not have a contractual "implied consent" policy permitting school officials to search a student's property while that student's belongings are on school property.)

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

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

Northern High School's football team was in the state finals against their rival, Southern High School. Southern was led by their all-state fullback, Sammy McGuire, who it was rumored used illegal anabolic steroids to enhance his performance. The game was being played at Northern's field.

One Northern student in attendance at the game, John Smith, was upset that McGuire would cheat by using illegal drugs, so he brought a sign to the game protesting McGuire's alleged use of steroids. The large 4' x 5' picket sign stated the following in bright blue wording: "Sammy McGuire says: Steroids, breakfast of champions." Smith, worried that the sign might run afoul of the school policy prohibiting advocacy of drug use, decided to wait until McGuire ran for a touchdown before revealing the picket.

McGuire scored in the first quarter, and Smith quickly ran to the front of the stands and marched back and forth, showing the sign to the entire crowd. In that crowd was McGuire's father, who was greatly offended by the sign. He raced down to Smith and took the picket sign away. Smith reacted quickly, taking the sign back from Mr. McGuire and running away (while still showing the sign to the fans). Seeing this commotion, Northern's principal, Mrs. Lady, stopped Smith and snatched the picket sign away from him. In doing so, Lady informed Smith that he was a poor example for the student body, was acting in violation of school policy, and would be suspended for 5 days.

Smith subsequently sued both Mrs. Lady and Mr. McGuire for declaratory relief, alleging pursuant to the appropriate federal statute, that his First Amendment right to the freedom of speech had been violated when the picket sign was taken away and he was subsequently suspended. Both Mrs. Lady and Mr. McGuire have filed motions for summary disposition. Mr. McGuire asserts that the First Amendment claim fails to state a claim against him upon which relief can be granted. Mrs. Lady argues that there was no genuine issue of material fact that Smith cannot establish a violation of the First Amendment.

**Should the motions be granted? 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**

Stella Seller recently retired from a successful career as a business executive and moved to a lakeside cottage in Anytown, Michigan. To supplement her income, she used a small workshop to create decorative stone statues. She began selling her statues at art fairs, bazaars and popular roadside stands. Stella also took photos of her statues to offer them for sale through a website she created.

Brenda Buyer had recently graduated from college, purchased a home, and wanted to decorate her garden with a statue. Brenda saw the cement statues on Stella's website and saw a gargoyle she really liked. Brenda called the number to ask about availability and price of the statue. Stella answered and confirmed that she had two gargoyles available, and the price was \$1,400 each. Stella added that customers typically pick up the statues and that she would hold onto it for Brenda. She also mentioned that since Brenda lived in a nearby town, Stella could ask people that stopped by if anyone would kindly drop it off at Brenda's home. Brenda replied, that sounds great--I sure would appreciate it, if you could do that," and "I can't wait to see that statue in my garden." Stella filled out an invoice on her business' letterhead, noting the price as \$1,400, and mailed it to Brenda.

A week later, Stella's younger brother and his friend stopped at her house. Since her younger brother had arrived in his pickup truck, Stella suggested that it shouldn't be a problem for him and his friend to deliver the statue. She mentioned that Brenda had just graduated from college and may tip them for their trouble. The statue was easily loaded into the bed of the pickup. Unfortunately, the statue was destroyed when the pickup truck swerved to avoid a deer that leapt in the truck's path causing the truck to strike a guardrail. Police determined that Stella's younger brother had acted properly under the circumstances. Two weeks later, Brenda called Stella demanding her gargoyle statue. Stella refused, and demanded \$1,400.

**Analyze and discuss whether there is an enforceable contract between Stella and Brenda. Assuming there is an enforceable contract, are Stella and Brenda in breach of contract? 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**

Mary and Tom were married in 2000, after graduating from college together. Using money from their wedding, they put \$10,000 down on a house. Tom began his career as a grade school teacher and Mary found an entry level management position in a renewable energy company. They did not have children.

In 2002, Tom's father died, leaving him a \$75,000 inheritance. Tom used \$5,000 to pay off the loan on his car and put the rest of the money into a certificate of deposit (CD) titled in both his and Mary's names. Mary quickly moved up the corporate ladder as her employer's business grew.

In June 2010, Mary and Tom decided to separate. Unbeknownst to Tom, Mary was having an affair with a business associate. She wrote out a short agreement providing that she would stay in the marital home and be solely responsible for the mortgage payments. At that time, the fair market value of the home had decreased to the point that it was roughly equal to the remaining amount owed on the mortgage. Mary noted in the agreement that Tom was willing to give up any interest he had in the home if his name could be removed from the mortgage. Both Mary and Tom signed the agreement and Tom moved into an apartment. Mary refinanced the mortgage on the home with a loan in her name alone.

Mary confessed her infidelity to Tom in January 2011, and filed for divorce. The significant assets of the parties were their retirement accounts, the CD, the home, the home furnishings, and joint savings and checking accounts to which both had contributed. By that time, Mary earned significantly more than Tom.

When the parties met to discuss the division of their assets, Tom claimed that the agreement he signed was invalid and that he was entitled to at least \$5,000 from Mary for his half of the down payment on the home. He also argued that Mary's affair was the reason their marriage failed, and because of her fault in causing the divorce and the fact that she earned far more than him, he would receive more than half of the parties' marital assets should the case go to trial. Mary claimed that the CD was marital property, or that at a minimum, the interest earned on the CD during the marriage was marital property.

**Analyze: (1) Tom's claims regarding the parties' written agreement and his alleged entitlement to more than half of the parties' marital assets; and (2) Mary's claims regarding the CD.**

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

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

ABC is a small but growing company that sells "green" carpet cleaning products. It anticipates an upsurge in business and plans to clear debris from a section of its warehouse to increase the warehouse's capacity to store products.

Joe, a college graduate, is one of ABC's ten employees. His job is to negotiate with sales agents and oversee the condition and operation of the warehouse. His job requires him to be on his feet eight hours per day. After learning that ABC will be clearing debris from the warehouse, Joe suggests to ABC that his son, Brandon, help in the debris clearing job in exchange for pizza, soft drinks, and the company's tickets to a Detroit Tiger's baseball game. The owner likes this cost-saving idea and agrees to this arrangement with Brandon.

The day arrived to clear the debris. Brandon and Joe during the normal workday were clearing the debris in the warehouse when an accident occurred. While lifting a heavy beam with Joe's help, Brandon hurt his back and dropped the beam on Joe's foot, crushing it. Brandon required medical attention for his back injury, but it was otherwise a minor problem. Joe's injury was more serious. His doctor told him he would never be able to work again at a job requiring him to be on his feet eight hours per day.

Joe and Brandon approach ABC seeking workers' compensation benefits. ABC says it has no liability to Brandon. ABC says it will pay for the medical treatment of Joe's injury, but not for any time lost from work.

**Apply Michigan law to answer the following questions posed by the above facts:**

**1. Does ABC have any workers' compensation liability to Brandon? Explain your analysis.**

**2. Does ABC have any workers' compensation liability for weekly wage loss benefits to Joe? Explain your analysis.**

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