

**JULY 2014 MICHIGAN BAR EXAMINATION**

**ESSAY PORTION**

**MORNING SESSION**

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

Dan works at a convenience store. He knows when the "bank drop" of the week's receipts occurs and that the store manager keeps the money in a cloth bag in his office. Dan calls his friend, Jim, and they discuss stealing the bank drop money from the manager. Dan will go into the store, masked, and Jim will wait at the store door to watch for police. They agree to share the money.

However, neither has a car for the three-mile trip to the store. They agree to call their friend Mike for a ride to the store, and also agree not to tell Mike of their plan. Mike often gives Dan a ride to work, at Dan's request, to pick up his check, so he won't know any different.

On "bank drop" day, Mike picks up Dan and Jim and drives them to the store. During the drive the men talk, but there is no discussion of Dan's and Jim's plan. Mike parks the car about 75 feet from the store, in the closest spot he can find.

Dan and Jim get out while Mike waits in the car. Dan goes into the store, pulls on a gorilla mask, and heads for the manager's office. Jim waits at the store's door as planned. Dan sees the manager at his desk, grabs the moneybag, and heads for the door.

The manager shouts, "Stop him, he's stealing our money!" Dan bolts through the door with Jim right behind him. A patrol officer walking his beat sees Dan run out of the store with the gorilla mask on and carrying the moneybag with Jim right behind. The officer also sees the manager giving chase to the two men, hollering for someone to stop them.

Mike looks up from his cellphone to see gorilla-faced Dan carrying a bag that is losing money as he runs, a panic stricken Jim, and a uniformed officer all running towards his car. As they are feet from the car, Mike locks all the car's doors. All three men are arrested on the spot.

**Dan, Jim and Mike are all charged with (1) Larceny from the Person, and (2) Conspiracy to Commit Larceny from the Person. Evaluate the chances of conviction for each defendant. Explain your answers.**

**\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 1**

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

While riding the bus to work, John was injured when the bus driver lost control of the bus going around a corner. To recover for his significant injuries, John must prove in the civil suit against Clarence, the driver, and his employer that Clarence drove negligently. Discovery has revealed many witnesses. When defense counsel learns who John's witnesses are and what they will say, counsel seeks to have the court preclude certain parts of their testimony. The witnesses and testimony, as well as the arguments for and against preclusion, are summarized in defense counsel's motion as follows:

1. Witness Bobby, who was sitting behind the driver, heard Clarence say right before the crash, "I love cornering with this bad devil just to see what she can do when I push her." Defense counsel argues this statement of Clarence's is inadmissible hearsay; John's counsel responds that the statement is not precluded by the hearsay rule.

2. Witness Constable, a police officer who arrived on the scene 55 minutes after the accident, is to testify that he interviewed witness Sam who said, "About time someone questioned me. The bus lost control going around the corner." Defense counsel seeks preclusion of Sam's statement as inadmissible hearsay. John's counsel responds that the statement would be admissible as a present sense impression exception to the hearsay rule.

3. Witness Homer, despite being ready and willing to testify, will not be called by John because John wishes to have his deposition testimony read by an attractive staffer from his counsel's office rather than present the unsightly Homer. Defense counsel seeks preclusion of the deposition testimony, while John's counsel says use of deposition testimony "is perfectly proper" under the rules of evidence.

**Please evaluate defense counsel's requests and chances for success. Explain your answers.**

**\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 2**

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

Defendant Harris is on trial for the murder of his girlfriend, Anita, with whom he had a turbulent relationship. His trial defense is that he acted in self-defense. The prosecution seeks to introduce two statements made by Anita. The first statement was made to a police detective three weeks before the homicide describing a death threat made to her by Harris. A second statement was made by Anita to her friend, Chelsea, while the two women were having lunch a couple of weeks before the killing. In this statement, Anita told Chelsea she had seen Harris hiding in the bushes outside her house the night before. She also asked Chelsea not to tell anyone. Chelsea will be a prosecution witness because she was subpoenaed by the prosecutor to testify. The police detective is prepared to testify as well.

Harris's attorney objects to both statements being introduced, contending their introduction would violate his Sixth Amendment right to confrontation. He augments his position by contending 1) the statements made by Anita to the police detective and to Chelsea are testimonial hearsay, 2) Anita is unavailable for trial, and 3) Harris had no prior opportunity to cross examine Anita.

The prosecutor challenges Harris's claim that the statement to Chelsea would be testimonial hearsay and, as such, would be covered by the Sixth Amendment right to confrontation. The prosecutor concedes the statement to the police detective would be testimonial and subject to Harris's Sixth Amendment confrontation right. The prosecutor adds, however, that Harris has forfeited his Sixth Amendment right to confrontation. In support of her position, the prosecutor says simply, "Of course, Anita is unavailable. He killed her and now she can't be a witness. He forfeits his right."

**Please specifically answer these two questions: 1) is Anita's statement to Chelsea testimonial hearsay; and 2) based on the prosecutor's argument, has Harris forfeited his right to confrontation. Explain your answers.**

**\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 3**

GO TO BLUEBOOK II

**QUESTION 4 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II  
OR IN SOFTEST ANSWER SCREEN 4**

Higgins Pool offers swim lessons for \$25 for children 10 or older, to be paid in advance. Its contract states that if the instructor reasonably determines the child is uncooperative, she can terminate the lesson with no refund. The contract also contains a lengthy liability disclaimer, followed by a provision that if the pool is closed due to bad weather, no refund will be given but the lesson can be rescheduled.

Betty came to the pool seeking a lesson for her child. When she learned of the price, she began crying and said she couldn't afford it. Audrey, the pool manager and swim instructor, felt sorry for Betty, so she crossed out "\$25" and wrote "Free!" The lesson was scheduled for August 1. Audrey and Betty signed the contract. When she arrived with her child for the lesson on August 1, Betty was told no lesson would be provided because the contract was invalid. Betty claims a valid contract exists and that Higgins Pool breached it.

Daisy had scheduled a lesson for her son Evan. Evan was unhappy and complied only half-heartedly with Audrey's instructions. After five minutes, he yelled, "I hate swimming and I hate this lesson!" Audrey, sleep-deprived and tired of dealing with unpleasant children, terminated the lesson. Daisy demanded a refund.

Franny had scheduled her 15-year-old son for a lesson, but he was sick, so she asked Audrey if her 5-year-old daughter could have the lesson instead. Audrey agreed and gave the lesson. Franny did not know that Higgins Pool charges \$35 for children under 10. Higgins Pool billed Franny for \$10, claiming the parties had modified the contract.

**Assume that each of Audrey's actions bound Higgins Pool. How should a court respond to Betty's arguments? What should Daisy and Franny argue, and how should a court respond? Explain your answers.**

**\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 4**

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

Larry, a Michigan lawyer, recently represented Carrie in a lawsuit that settled on terms that paid Carrie \$50,000. This amount was wired directly to Larry's client trust account in accordance with the Michigan Rules of Professional Conduct. Larry's fee agreement provides for a reasonable hourly rate. Larry submitted a bill to Carrie for \$9,000 and asked that Carrie authorize Larry to take his fees out of the settlement proceeds (i.e., authorize Larry to transfer funds from the client trust account to the firm's account). Although the amount of the bill for the services rendered is not clearly excessive, Carrie strongly believes the bill should not be more than \$7,000 and has said so in an email to Larry stating: "I will not authorize you to take more than \$7,000 for your fees from the settlement proceeds."

The fee agreement also provides that Carrie will pay expert witness fees. Carrie, a sophisticated business client having regular experience with this type of litigation, had retained Ellen as an expert directly and negotiated the terms of the agreement. The agreement with Ellen included a provision that Ellen would be paid from any settlement proceeds coming into Larry's possession. A dispute arose between Carrie and Ellen under that agreement and Carrie took the position that Carrie owed Ellen only \$3,000, while Ellen argued that she was owed \$4,000 under the agreement. In the same email mentioned above, Carrie wrote to Larry, "and I won't allow payment of a penny more than \$3,000 to Ellen out of the settlement funds. Please disburse \$7,000 to your firm, \$3,000 to Ellen, and remit the balance of the settlement proceeds to me."

**How should Larry handle the settlement proceeds under the Michigan Rules of Professional Conduct? Explain your answer.**

**\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 5**

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

Gruetz Greengrocer Supply (GGS) is an Illinois produce wholesaler licensed to do business in the state of Michigan. About 70% of all cherries distributed to Michigan grocery stores are grown by farmers outside Michigan. After several harsh winters caused substantial freeze damage to cherry orchards, Michigan enacted a law that requires every cherry wholesaler doing business in the state of Michigan to pay an assessment of five cents per pound into the "Michigan Cherry Fund." The fund proceeds are distributed in their entirety to Michigan cherry farmers in order to offset the cost of the freeze damage and prevent the farmers from being forced out of business. Each Michigan cherry farmer receives a share of the total fund proceeds equal to his or her proportionate contribution to the state's total production of cherries.

GGS complied with the assessment for a few months, paying almost \$200,000 into the Michigan Cherry Fund. Starting in August 2013, however, GGS refused to make the payments. Instead, GGS filed suit, seeking an injunction against enforcement of the assessment on the ground that it violated the Commerce Clause of the United States Constitution.

**Applying principles of constitutional law, discuss whether GGS is likely to prevail. For the purposes of this question, presume that no federal laws have been enacted regarding the subject.**

**\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 6**



GO TO BLUEBOOK III

**QUESTION 7 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III  
OR IN SOFTEST ANSWER SCREEN 7**

Jordan, a very rich man, was walking down the street contemplating the vastness of his wealth. As he walked, Jordan noticed a destitute man, Charlie, sitting on a bench on the sidewalk. Laura was standing nearby, admiring the picturesque weather.

Jordan suddenly had a crisis of conscience, coming to the realization that his wealth was not deserved. He stopped in front of Charlie, who seemed not to notice him. Jordan took a valuable pocket watch from his pocket, said, "I'm too rich, I don't want this anymore," dropped it onto the grass, and walked away.

Laura overheard Jordan's statement and saw the watch hit the grass. She began running toward it. Charlie looked up to see the shining watch within his arm's reach. Charlie reached for the watch, but Laura grabbed it before Charlie could touch it. Charlie said, "Hey, that's mine!" Laura responded, "finder's keepers!"

Jordan never returned and makes no claim for the watch. Charlie and Laura each lay claim to the watch.

**What are the arguments Charlie and Laura each can make for ownership of the watch? Explain your answer.**

**\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 7**

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

Investor, a high-profile real estate developer, found the perfect site for a new development in a small town and set out to purchase the site. Recognizing Investor's interest in the site, Seller decided to sell the site to Investor. Unfortunately, Seller's brother, not Seller, was the site's legal titleholder. Undeterred, Seller negotiated a deal with Investor and executed a warranty deed transferring the site to Investor on January 7, 2013. On January 18, 2013, Seller purchased the site from his brother for an agreeable price, netting Seller a handsome profit.

Investor, more concerned with publicity than details, focused on a public relations campaign to ensure everyone in the small town was aware of the new development and neglected to record the deed. Among Investor's more noticeable public relations efforts, Investor had several highly conspicuous signs installed on the site depicting the planned development. The signs stated in large print, "a new development brought to you by Investor." Unfortunately, Investor was unable to acquire the necessary permits and the development stalled.

Recognizing that he did not hold legal title at the time of the site's conveyance to Investor, Seller subsequently sold the site to Buyer, the small town's local developer. Seller executed a second warranty deed conveying the site to Buyer on June 19, 2013. Buyer recorded his interest the next day, June 20, 2013. Shortly after, on July 10, 2013, Investor recorded his interest.

**Applying principles of Michigan law, discuss whether Investor or Buyer would prevail in a quiet title action. Explain your answer.**

**\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 8**

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

In April 2012, Hope validly executed a will that would pour its residue into "My Trust, which is to be administered pursuant to the terms set forth in the trust instrument attached hereto." Hope died in July 2013, and was survived by both her adult children, Erin and April. A sheet of paper labeled "My Trust," bearing Hope's signature and dated May 2012, was stapled to the will.

The trust was not funded prior to Hope's death. The trust instrument named Erin as trustee, and both of Hope's children as the beneficiaries. It also stated that the trust was to be funded by Hope's will using the residue of her estate. According to the trust instrument, upon Hope's death, Erin was to deed to herself all of Hope's real estate holdings, and collect a reasonable fee for her services as trustee. The remaining assets were to be distributed equally between Erin and April.

The trust instrument also contained the following "terror" clause: "If any beneficiary under this Trust shall unsuccessfully challenge or contest any provision of this Trust, that beneficiary shall receive no portion of any benefits under this Trust."

April discovered receipts indicating that Erin had taken a large amount of the trust's personal property, either to sell or for her own use, following their mother's death. April initiated a proceeding to remove Erin as trustee, but was unsuccessful as the court denied the request for Erin's removal. Erin then petitioned the court to enforce the terror clause against April.

**Was the trust validly established? Was the trust properly funded by Hope's will? Assuming that the trust was validly established and funded, how will the court rule on Erin's petition? Explain your answers.**

**\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 9**

**JULY 2014 MICHIGAN BAR EXAMINATION**

**ESSAY PORTION**

**AFTERNOON SESSION**

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

Peter Plaintiff worked as a laborer in a mail distribution center. As part of his job, he was required to lift 50-pound mail bags onto a conveyer belt, and when necessary, repair the conveyer belt. Peter was married, and though he worked approximately 60 hours a week, he still found time to fish (particularly wading in Michigan's rivers), golf, and tend to his large garden. He and his wife also liked to travel the country in their motor home.

One day in June, Peter was legally walking across the street when he was struck by a vehicle travelling between 10 and 15 miles per hour. Peter was tossed in the air, landed on the pavement and broke his ankle. He also complained that his pre-existing lower back pain was aggravated. His ankle needed surgical repair which included placing a metal rod into the ankle for support. An MRI showed that discs in Peter's lower back were aggravated and bulging. As a result of these injuries, Peter's physician restricted him from carrying or lifting any weight in excess of 10 pounds and limited him to standing/walking for no more than 10 continuous minutes. Peter was placed into physical therapy and was given pain medication for his back.

Peter's restrictions precluded him from working in his laborer position. He was also initially unable to golf, fish, or tend to his garden. Additionally, his wife had to drive him around during the summer because his ankle precluded him from driving. These restrictions lasted for three months, or until mid-September. By that point, Peter's ankle had healed and his back pain was at a tolerable, pre-accident level. As a result of his injuries, Peter lost the entire summer's opportunity to play golf, fish, and tend to his garden (as well as work). A summer road trip across the continent was also cancelled. Peter returned to part-time restricted work in September and to full-time work in October.

**Peter sued the driver, seeking to recover in tort for his pain and suffering and emotional injuries arising from the ankle and back injuries. The driver has challenged Peter's ability to prove his claim. Can Peter succeed, and should the judge or jury decide the issue? Explain your answer.**

**\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 10**

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

Melvin Peters, a resident of Leelanau County, Michigan, was driving when his car was broadsided by a vehicle driven by John David, a Grand Traverse County, Michigan resident. The accident occurred in Grand Traverse County. Thereafter, Peters filed a complaint against David in Leelanau County, alleging David negligently caused him serious injuries.

David simultaneously filed an answer and a motion seeking to transfer the case to Grand Traverse County. Peters opposed the motion to transfer the case. The trial court denied the motion, finding that the complaint was properly filed in Leelanau County. David did not appeal the trial court's ruling. Discovery was undertaken, and on the eve of trial, the parties agreed to dismiss the case to pursue an alternative dispute resolution. The order granting the parties' motion for voluntary dismissal provided that the dismissal was without prejudice, and that if the case was not resolved, Peters could re-file his action.

The parties did not resolve the case, and Peters re-filed his complaint against David, once again in Leelanau County. David again moved to transfer the case to Grand Traverse County. Peters opposed the motion, arguing that under collateral estoppel David was bound by the trial court's previous order denying David's first motion to transfer the case to Grand Traverse County, because David had not appealed that order. The trial court agreed that David was bound by its previous order, and denied David's second motion to transfer the case to Grand Traverse County. David then filed an interlocutory appeal of the trial court's order denying his second motion.

- (1) Did the trial court correctly rule that Peters' complaint was properly filed in Leelanau County? Explain your answer.**
  
- (2) Did the trial court correctly conclude that, because David failed to appeal its first order refusing to transfer the case to Grand Traverse County, that order was binding on David? Explain your answer.**

**\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 11**

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

Demara Corp is a Michigan corporation specializing in custom automotive interiors. Pursuant to the bylaws of the corporation, the shareholders elected Dennis Dwayne as President of Demara Corp in 2013, with an annual compensation package in excess of \$1.5 million dollars.

It is uncontested that Dennis Dwayne has been an unmitigated failure as President. Rude and pompous, Dwayne has been responsible for losing several important accounts and was the cause of several key employees resigning. Under Dwayne's leadership, corporate profits have evaporated.

The Board of Directors met and unanimously voted to immediately remove Dwayne as President. However, Dwayne hired an attorney and filed suit, contesting the board's actions.

**Applying Michigan law, discuss (1) the board's responsibility to Demara Corp, (2) whether Dwayne can be removed as President of Demara Corp by the board and (3) if not, what other steps can be taken by the board to address Dwayne holding the position. Explain your answer.**

**\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 12**



GO TO BLUEBOOK V

**QUESTION 13 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V  
OR IN SOFTEST ANSWER SCREEN 13**

Carol and Henry Conway were married for 15 years before they grew apart and divorced in 2013. Their consent judgment of divorce contained all the required provisions under Michigan law but made no special provision for change of children's legal residence. Although Carol was awarded sole legal and physical custody of the parties' three minor children, Henry received every other weekend parenting time and an even split of holidays and summer vacations. Carol remained in the marital residence with the children. Henry bought a home two miles away.

Seeking to better the life of her children and herself, Carol accepted a job in Ohio, 150 miles from the residence she and the children shared. Pursuant to the applicable court rule included in her divorce judgment, Carol sought permission of the court to relocate the children's residence 150 miles away in Ohio. She filed a written motion, had it served on Henry, and scheduled a motion hearing.

At the motion hearing, Henry challenged Carol's request to relocate the children. He maintained he was entitled to a full evidentiary hearing under the applicable Michigan statute and that, after such a hearing, Carol would not prevail.

**Must the judge conduct a full evidentiary hearing before ruling on Carol's request? Explain your answer. Would your answer be different if Carol and Henry shared legal custody by the terms of the divorce judgment? If so, how would the process for resolving Carol's request differ? Explain your answer.**

**\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 13**

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

Over the past several years, Jane Dexter has purchased an exorbitant amount of computer and electronic equipment for her own personal use. On February 1, 2013, she purchased a Sharp 70 inch Smart HDTV from TV, Inc. to use in her home. Her mother, Sally Dexter, specifically lent Jane money for the purchase of the television. To evidence this loan, Jane signed a security agreement which stated:

**Security Agreement**

Sally Dexter loans \$2,500 to Jane Dexter for the purpose of purchasing a Sharp 70 inch Smart HDTV.

Jane Dexter agrees to make monthly payments of \$100 for the next 25 months.

Jane Dexter grants Sally Dexter a secured interest in the television.

If Jane Dexter fails to make payments, Sally Dexter has the right to take possession of the television.

Date: 2/1/13    Signed: *Jane Dexter*

Sally Dexter did not file a financing statement. Jane failed to make the February and March 2014 payments on the television.

On April 3, 2014, Neighborhood Bank took a valid security interest in all of Jane Dexter's computer equipment pursuant to a written security agreement, signed by Jane, and loaned her \$50,000.

Unrelated to the above transactions, on April 10, 2014, a judgment lien creditor had the sheriff levy on all of Jane's computer equipment and the television.

On April 18, 2014, Neighborhood Bank filed a financing statement pertaining to its interest in the computer equipment in the appropriate government office.

Sally Dexter and Neighborhood Bank dispute the right of the judgment lien creditor to take possession of the television and the computer equipment claiming that their security interests had priority.

1. Did Sally Dexter have a security interest in the television and, if so, was it perfected? Explain your answer.

2. Did Neighborhood Bank have a security interest in the computer equipment and, if so, was it perfected? Explain your answer.

3. As between the parties, who has the superior claim with regard to the television and the computer equipment? Explain your answer.

\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 14

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

Derek is a 55-year-old truck driver. He has his own truck, which has a ramp and lifting device for cargo. Over the years, he has worked for various trucking companies, sometimes as an employee and sometimes as an independent contractor. This year, Derek has been working exclusively for Overland Trucking Company hauling automotive parts throughout Michigan.

One snowy day in February 2014, Derek was delivering cargo to one of Overland's customers when he slipped on the ice as he was descending from the cab of his truck at the loading dock. He severely twisted his knee and an ambulance was called to take him to the hospital. There, Derek was told the fall caused a torn meniscus (torn cartilage) in his knee, for which surgery was necessary. Derek recalled that years earlier his family doctor had told him he had degenerative arthritis in this knee, which would become progressively worse over time.

Derek seeks worker's compensation benefits from Overland. He wants Overland to pay for the knee surgery and pay weekly wage loss benefits covering the time he will lose from work. Overland rejects Derek's requests asserting that: (1) Derek is an independent contractor, not its "employee"; and (2) regardless, given Derek's preexisting degenerative knee condition, Derek's knee problem is not a work-related problem. Overland has begun paying Derek weekly benefits under a non-worker's compensation disability insurance policy it wholly funds.

**Answer the following three questions with reference to Michigan worker's compensation law:**

**1. What test does Michigan's worker's compensation statute refer to for determining whether Derek is an employee of Overland or an independent contractor? (Do not describe the test, just identify it.)**

**2. Assuming Derek is an employee of Overland, is Derek's injury a compensable worker's compensation injury? Why or why not? What legal criteria resolve this issue? Explain your answer.**

**3. Assuming Derek can receive weekly worker's compensation benefits, will Overland's payments from its**

insurance policy have any effect on Derek's weekly worker's compensation benefits? Explain your answer.

\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V\*\*\*\*\*  
OR IN SOFTEST ANSWER SCREEN 15