

JULY 2017 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**

Ella and Miles Clark (collectively "the Clarks") purchased a single family home in Chance, Michigan for \$150,000. They made a \$20,000 cash down payment and financed the remaining sales price through Better Bank (the "Bank"). The Bank loaned the Clarks \$130,000 to be repaid in equal monthly installments over a 20-year period pursuant to the terms of a note that the Clarks signed in favor of the Bank. The loan was secured by a written mortgage to the Bank of the Clarks' interest in the home, which gave the Bank the right to sell the home if the Clarks defaulted on the loan terms. Both the loan note and the mortgage were promptly recorded with the county register of deeds. Five years later in 2016, when the Clarks began missing mortgage payments, they failed to timely cure their default on the note after having received proper default notices. The Bank now plans to foreclose by advertisement on the mortgage. There are no other liens on the home and the Bank never assigned its rights under the note or the mortgage.

Applying Michigan law:

1. Determine whether the Bank can proceed with foreclosing by advertisement on the mortgage of the Clarks' home, and describe the process for such a foreclosure, setting forth any rights the Clarks may have with respect to the process.

2. Identify at what point in the foreclosure process a summary proceedings action may be filed in court to recover possession of the home from the Clarks.

*******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

Paul claims back and neck injuries arising out of an automobile accident. Denise, the defendant, rear-ended Paul's Cadillac Escalade while driving her Mini-Cooper. The only eyewitness to the accident, Wilma, testified in her deposition that Paul was speeding and abruptly stopped, when Denise, driving slowly, swerved to avoid him. Wilma also testified that Denise, nevertheless, gently bumped Paul's Escalade, at which point Paul leapt from his vehicle, waving his arms and jumping around.

During trial in a Michigan state court, Denise is offering the expert testimony of a nationally recognized orthopedic surgeon. This expert will testify that Paul has back and neck conditions that are longstanding and in no way related to the accident. The expert bases his opinion on (1) Paul's certified hospital records containing his surgeon's diagnosis that the conditions are strictly congenital; (2) the expert's assessment that his experience, training, and education as applied to his physical examination of Paul confirmed the hospital diagnosis; and (3) Wilma's deposition testimony. The hospital record contains the regular entries of those hospital personnel, including the surgeon, who provided services to Paul during his stay, pursuant to the hospital's usual business practice. Denise timely informed Paul of her intent to use the record and offered the sworn certification and record for his review pretrial. Paul chose not to review it.

Paul moved pre-trial to exclude the expert's testimony altogether under MRE 702. The trial court denied the motion, finding the expert's experience, training, and education sufficient to be of assistance to the jury. With the expert now on the witness stand, Paul objects to the expert's testimony, arguing that the facts and data on which the expert is basing his opinion -- (i) his experience, training, and education; (ii) Wilma's deposition testimony; and (iii) the hospital record are not in evidence as required by MRE 703, Basis of Opinion Testimony By Experts. Paul also argues that the hospital record is hearsay and cannot be authenticated under MRE 901 because the hospital surgeon is deceased and cannot be cross-examined. Finally, he argues that, although either he or Denise could have called Wilma as a trial witness, he did not do so and Denise has not done so yet.

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

Explain your analysis and determine how the court should rule on each of Paul's objections that:

1. The expert's experience, training, and education are not in evidence.
2. Wilma's deposition testimony is not in evidence.
3. The hospital record is hearsay.
4. The hospital record cannot be authenticated.

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

Holly owns a home in a subdivision governed by several covenants that apply to all homeowners. One covenant requires homeowners to obtain the approval of the subdivision's homeowners association before making certain changes to their homes. The covenant provides that the association may deny approval for any changes it determines are inconsistent with the character of the subdivision.

Holly sought association approval to replace her roof and paint her house. Before receiving a reply from the association, Holly and a contractor signed an agreement in which Holly agreed to pay the contractor a specified price to do the work. The agreement stated that neither party was obligated to perform unless the association approved both the new roof and the painting, and that this condition could not be waived by either party.

Reasonably anticipating that both projects would be approved, the contractor began replacing the roof.

Shortly afterward, Holly was notified that the association approved the new roof but rejected the painting project based on the proposed paint color. Holly had her heart set on the color, which was identical to many other houses in the subdivision that had recently been painted with association approval. Holly did not inform the contractor of the association's decision until the contractor finished replacing the roof.

The contractor sought payment from Holly for replacing the roof, but Holly refused to pay. The contractor sued Holly for breach of contract and breach of the covenant of good faith and fair dealing. Holly sued the association for breach of contract based on its denial of approval for the paint project.

Evaluate each of these claims under Michigan law. Does the contractor have any other remedy he can seek? If so, explain.

*******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**

Paul was stopped for speeding by Patrol Officer Meadows, who asked Paul for a valid license and current registration. Paul had neither, so Officer Meadows had him step out of the car and arrested Paul, but did not immediately handcuff him for the misdemeanor traffic violations.

Officer Meadows then patted Paul down and, when feeling a hard object in his jacket, reached into the jacket and removed a bright red smart phone. Officer Meadows handcuffed and locked Paul in the back seat of his cruiser. While waiting for backup and a tow truck outside his cruiser, Officer Meadows began to manipulate Paul's smart phone, first looking through pictures and then text messages.

Officer Meadows saw two pictures of a dead body with gunshot wounds. A notation under the pictures said "dead rat." A further search of the phone revealed text messages contemporaneous with the pictures. The text message of concern said, "Boss, rat is dead; payment needed."

The phone was eventually turned over to a homicide detective who, unbeknownst to Officer Meadows, was investigating Paul for the death of a police informant. On the strength of the phone and other evidence, Paul was charged with murder. Paul's attorney moved to suppress the phone and its contents, contending the seizure of the phone and the search of its contents violated Paul's Fourth Amendment rights because no search warrant had been issued.

The prosecutor responded no warrant was necessary because the seizure of the phone and the search of its contents were justified by the search incident to arrest exception to the warrant requirement. The prosecutor added that both the phone and its contents had independent significance to the murder prosecution.

1. Can the seizure of the phone be justified by the search incident to arrest exception?

2. Can the search of the phone's contents be justified under the same exception?

Fully 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**

Derek Driver ran a red light at a Lansing intersection, smashing his fully insured truck into a car driven by Polly with Kent her passenger. Derek and Polly took the brunt of the collision. Derek suffered a broken right hand, a concussion, and spent three days in the hospital. After his release, Derek was off work for six weeks, had to have a relative come cook his meals, clean his house, and drive him to physical therapy because he lived alone and could not drive. Derek's cousin, Ted, agreed with Derek that he would be paid. Polly suffered a broken leg, wrist, and clavicle, and was off work three months, spending one of those months in the hospital. Luckily, Kent wound up with only a two inch scar on top of his right shoulder.

Feeling better shortly after his hospital release, Derek called a friend's son, Larry, who was a brand new lawyer. Derek met with Lawyer Larry and told him he had already told his insurance carrier about the accident and that he had full coverage. Derek brought Lawyer Larry a copy of his insurance policy, a copy of the police report showing Derek was at fault, a letter from Polly and Kent's lawyer demanding compensation for their noneconomic injuries, and Derek's hospital bill for \$25,000 for surgery to his hand and other treatment and medications.

Lawyer Larry reviewed the documents and said, "Bad news! Because you were at fault, you will be lucky to recover even a week of your lost wages. Worse yet, you had no health insurance so, in addition to losing out because you were at fault, you will have to pay your hospital bill. Your cousin's work is gratis; your carrier won't pay him. After all, Derek, you were at fault. And he is your cousin!"

Regarding the demand for damages made by Polly and Kent's lawyer, Lawyer Larry added, "Well, typically, being at fault negates your carrier's requirement to defend you and/or pay the injured party's claim. So both Polly and Kent can collect -against you Derek."

Has Lawyer Larry given Derek accurate legal advice under Michigan law? If so, please explain why. If not, state and explain what the advice should have been.

*******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**

Sam and Smitty were equal owners in the Double S Coffee Shop. The business began falling on hard times when a Starbricks opened nearby. Sam called Smitty and suggested they meet for a beer to discuss what to do.

At the meeting, they discussed adding pastries, two-for-one specials, and a drive through. At the end of the meeting, Sam said, "Don't know if anything is going to work." Smitty nodded glumly in agreement and they decided to meet again.

At the second meeting, more ideas surfaced - including selling the Double S's prime location to Starbricks. Neither man expressed any confidence Starbricks would be interested because their business was rolling with many Double S customers. When this meeting ended, Sam told Smitty to bring two copies of their business insurance policy and they would meet again the next night, same place.

The next night, policies in hand, the men were upbeat. Smitty asked, "Did you see our fire loss coverage?" "Sure did, partner," Sam responded with a smile. "Better call Sparky," the partners said in unison -- and with a laugh.

Unbeknownst to Sam and Smitty, waitress Tina, who had heard them talking all three times, was "working off" her own drug charges. Anxious to use what she had heard to benefit herself, she contacted police.

Based on what Tina reported to police, the men were arrested the next day and charged with conspiracy to commit arson of insured property.

Defense lawyers moved to dismiss the conspiracy charge based on the following arguments:

1. The charged conspiracy could not be proven because the Double S was not burned.
2. A conspiracy requires an overt act in addition to an agreement, such as in this case the purchase of gasoline or enlisting Sparky's help.

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

3. Assuming Sam and Smitty's statements are admissible, their statements and actions do not establish the elements of conspiracy to commit arson of insured property.

Applying Michigan law, evaluate each of the arguments made to determine whether dismissal is warranted. Explain your analysis.

*****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**

Melinda, a law school graduate and Michigan bar examinee, mistakenly brought her new latest model cellular telephone (which was of considerable monetary value) to the bar examination testing center where the exam was being administered. Because she was prohibited from taking the phone into the testing room and did not want to risk missing valuable test taking time, Melinda powered off the phone and placed it under a row of chairs that were positioned against a wall outside the testing room. She attempted to obscure the phone with a blank notepad and intended to retrieve the phone at the conclusion of the exam. In her exhilaration and haste after having completed the exam, however, Melinda forgot to recover her phone before leaving for home. A couple of hours later Roger, who performed after-hours maintenance in the building, discovered Melinda's phone and took it home with him.

Dillon, who like Melinda also completed the bar examination, removed all of her bar review course study materials from her car after the exam was completely over. She placed the materials next to a dumpster in the public parking lot outside of the testing center, very confident about her strong performance on the exam and that she would have no further need for the materials. Marcus, a third-year law student, happened upon the materials the following morning and happily retrieved them.

Applying Michigan law, discuss fully any legal rights Roger and Marcus may have to keep the property that they each found.

*******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

Elaine executed a valid formal typewritten will on June 1, 2000 devising her entire estate to her son Devin. At that time she was the single biological parent of both Devin and his only sister Amy. Amy was 10 years younger than Devin and a minor at the time. Seven years later, Elaine handwrote on the margin of the first page of her will, the following:

"Devin has been so confrontational with his younger sister Amy over the past couple of years that I might have to change this will to include her because he is not going to take care of her like I thought. 7-24-2007."

Subsequently, sometime in 2009, Elaine wrote in her own handwriting the following on a sheet of blank paper:

"I'm very disappointed with Devin. He is now 35 years old and should be more responsible. I do not want him to have any of my estate. Amy is mature enough now to handle any gift by will, and she is to have all that I leave."

Elaine signed this 2009 statement, but did not date it and it was not witnessed. In June 2010, Elaine married Sam and they remained happily so until Elaine's death in 2016. Elaine made no other statements or provisions regarding the distribution of the assets in her estate, which at the time of her death totaled \$500,000 in value. She had continued to enjoy sufficient mental capacity to execute a will, and was survived by no additional heirs.

Applying Michigan law:

1. Fully discuss the effect, if any, of (a) Elaine's 7-24-2007 notation and (b) Elaine's 2009 written statement.
2. Determine who would likely be entitled to any portion of Elaine's estate (without discussing any specific amounts).

*****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**

Lena was the sole owner of an acre of property (the "property") in Ladybug, Michigan, upon which was located a house (the "house") along with a beautiful private tree-lined cobblestoned pathway behind the back yard. Lena's neighbor Chad, whose own land was adjacent to Lena's pathway, had used the pathway consistently year-round for the past 20 years for walking and meditation. Lena was aware of Chad's use but was not bothered, and very often used the pathway herself.

In early 2016, Lena emptied the house of her personal belongings since she was relocating to another city. On August 30, 2016, Lena sold the property to Harold for \$100,000, giving Harold a deed. Harold did not plan to move into the house until a couple of months later in November. On September 30, 2016, after Lena realized that her niece Carmen needed a home for herself and her children, Lena gifted the property to Carmen, giving her a deed to the property as well. Prior to receiving the gift, Carmen was aware of the prior sale of the property to Harold because Lena told her of it saying that she would handle things with Harold. Carmen recorded her deed with the county register of deeds office on October 6, 2016. Harold recorded his deed on October 21st, shortly before his planned move-in date.

Applying Michigan law, fully discuss the following:

- 1. What is the likelihood of success of a claim by Chad, prior to the August sale, to an interest in the pathway on the property based upon a theory of adverse possession?**
- 2. As between Harold and Carmen, who would likely prevail in an action to quiet title to the property?**

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

JULY 2017 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

Delta Development owns property in Dakota City, Michigan, on which it plans to build a Burger Fool fast-food restaurant. At the time Delta bought the property, it had sat vacant for more than five years and was in poor condition.

Delta's property is in a C-3 zoning district, which allows fast-food restaurants provided that "[n]o freestanding fast-food restaurant shall be located within 500 feet of an existing fast-food restaurant."

Pax Enterprises owns a neighboring fast-food restaurant, Big Belly Burger, located just north of Delta's property on the same side of the street. Due to the size of Delta's lot, its proposed restaurant would be located only 280 feet from Pax's restaurant. Because it is not possible to move the building any further away without violating other setback requirements, Delta sought and obtained a zoning variance from the Dakota City Planning Commission. Under the Dakota City zoning ordinance, the planning commission is authorized to grant a variance whenever there are "practical difficulties" in complying with the "strict letter of the zoning ordinance," so long as "public safety is secured" and "substantial justice done."

In granting Delta's requested variance, the planning commission considered the fact that there were other instances in the city where fast-food restaurants were less than 500 feet apart, with no reported problems. The commission also observed that (1) the property had been unproductive for some time, (2) the proposed restaurant was located on a major thoroughfare designed for high-traffic volume, and (3) the building was set back as far as possible and situated to ensure efficient drive-through operations.

After receiving its variance, Delta cleared trees from the property, obtained a building permit, installed underground utilities, and began construction of the building. Delta also entered into various subcontracts, making deposits in excess of \$300,000, for such things as signage, drive-through menu boards, kitchen equipment, and interior finishing.

Two months after construction began, Pax filed suit in Michigan in the Fairfield County circuit court seeking a

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

preliminary injunction. Pax claims that the planning commission should have enforced the 500-foot requirement and that if Delta is allowed to open its restaurant, Pax's revenues will decline, its property will lose value, and it will eventually go out of business.

Discuss the requirements for obtaining preliminary injunctive relief under Michigan law and how the court should rule on Pax's motion in light of those requirements.

*******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**

JJ opened a small business selling T-shirts in the beach town where she lived near Lake Michigan. The T-shirts were made by her brother. Sales were slow at first, mainly because all purchases had to be made with cash.

To increase sales, on April 1, 2016, JJ purchased a sophisticated credit card processing machine from Small Biz Supplies (SBS) that enabled her to accept and process debit and credit card purchases. The machine cost \$3,000. SBS extended JJ credit to buy the machine with JJ's monthly payments being \$150. SBS took a security interest in the machine. The purchase agreement was committed to a writing describing the machine, and the contract was signed by both parties. SBS filed no financing statement with any governmental agency. JJ took possession of the machine and immediately began using it. Her sales increased immediately.

By July 1, 2016, JJ's business was booming. Her brother could not keep pace with the increased demand and quit. Consequently, JJ quickly sought a loan from Business Finance (BF) for \$20,000 to purchase T-shirts manufactured elsewhere. JJ offered to repay BF the loan at \$300 per month and offered as collateral the new T-shirts she would be buying. BF agreed and a contract reciting these terms was committed to writing and signed by both parties. BF immediately filed a financing statement with the appropriate government agency.

On October 1, 2016, as a result of a court case unrelated to JJ's business, a creditor of JJ obtained a judgment lien against her and a sheriff levied against JJ's property, including the credit card machine and the unsold T-shirts in JJ's store. SBS and BF claimed superior interests in the credit card machine and T-shirts, respectively. The judgment lien creditor countered saying: (1) SBS did not have a superior interest in the machine because it did not file a financing statement; and (2) BF could not have a security interest in property JJ did not have at the time of the loan.

Applying Michigan law, answer the following questions posed by this controversy:

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

1. What kind of security interest does SBS have in the credit card machine? Explain.

2. Did BF obtain a security interest in goods JJ did not possess at the time of the loan? Why or why not?

3. Who has the superior claim to the credit card machine and the T-shirts for sale in *JJ's* store? Why?

*****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

Thomas was 47 and Connie 34 when they married. Thomas had taken over his father's company, TT and Son, five years before he met Connie, who was previously married. A first marriage for Thomas, he wanted a family and Connie gave birth to twins shortly after their marriage.

Nine years after marriage and learning of Thomas's repeated affairs, Connie filed for divorce. Only property distribution is contested. During a settlement conference, a joint statement of assets was created for the assets they could not agree upon and lists the following:

1. The business, TT and Son, valued at \$4 million at settlement conference.

2. Relatedly, the increase in value of the company from \$2.5 million when the parties married to \$4 million at the time of the settlement conference, which is \$1.5 million.

3. The marital home, purchased right after the marriage for \$200,000 with no money down during the mortgage melt-down crisis. Now worth \$400,000, both parties remain in the mortgage-free residence.

Livid about the affairs, Connie's anger impacted her position on property distribution. She wants half of the business's value of \$4 million and the house, free and clear from any claim by Thomas. As she puts it: "He cheated on me and that is all that matters."

Unrepentant, Thomas blames the affairs on Connie, adding for good measure, "While you were at home doing nothing, I was working, nearly doubling the size of my company!" Thomas claims the business is "all his" because "he built that business" without her help. Regarding the house, Thomas maintains Connie should only get some of the increased value because, he says, "I paid for it with my salary, she didn't." As to the affairs, he contends, "this is business; affairs have nothing to do with business!"

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

Connie responds, "If creating and maintaining a home and raising our children is nothing, someone other than you will have to tell me that."

Applying Michigan law, discuss the relevant property distribution principles that apply to the parties' positions and determine the validity of each of the parties' positions. Also explain what bearing, if any, Thomas's affairs have on property distribution.

*****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**

At trial, plaintiff testified that she was paddling a kayak on a calm Saturday morning in Michigan. According to plaintiff, a motor boat driven by defendant approached her location and was traveling at a reasonable speed, when it suddenly veered to the right and slammed into her kayak. Plaintiff suffered serious injuries. Defendant testified that he was driving a motor boat on the lake, and was traveling at what he thought was a reasonable speed, when another motor boat that was cruising toward him (driven by John Smith) suddenly turned towards his boat at a rapidly increasing speed. Defendant testified that he had only seconds to react and quickly turned his boat to avoid a collision. Defendant hit plaintiff on her kayak after just narrowly avoiding a collision with the other boat.

Also testifying at trial was John Smith. Smith testified that he suffered a heart attack while he was driving a motor boat that Saturday morning on the same lake. He did not remember what occurred after, as he was unconscious until reaching the hospital. Smith testified that this was his first heart attack, though a year ago he had surgery for clogged arteries.

According to Michigan statutory law, a boat owner "is liable for any injury occasioned by the negligent operation of the vessel," and must act with due regard for the safety of others using the waters while operating the boat. Plaintiff filed suit and claimed that defendant negligently caused her severe physical injuries. Defendant argued that it was not his fault, as he had no choice but to take action to avoid a collision.

Explain what **elements plaintiff must prove, how defendant's argument impacts that analysis, and whether she can prevail under these facts.**

*******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**

Davy is a long-time shareholder in the Acme Widget Company (AWC), a Michigan corporation. After reviewing the corporation's 2015 annual financial report, Davy is shocked to discover that one of the members of the Board of Directors, Bernie, spent over one million dollars of the corporation's money attending numerous conferences in exotic tropical locations. On March 8, 2016, Davy wrote a letter to the corporation, demanding that Bernie reimburse the corporation for the costs of his "frivolous freebie vacations."

After receiving no response from AWC, Davy filed a shareholder derivative suit against AWC and Bernie on June 30, 2016, seeking to recover damages for Bernie's alleged breach of fiduciary duty. Davy also asked that AWC pay his reasonable expenses, including reasonable attorney fees.

AWC filed a motion to dismiss, claiming that Davy had not satisfied the requirements for filing a shareholder derivative suit, and that Davy was not legally authorized to recover expenses and attorney fees.

Applying principles of Michigan corporate law, discuss:

- 1. Whether Davy satisfied the procedural requirements necessary for filing a shareholder derivative suit.**
- 2. Whether the court may order AWC to pay the reasonable expenses and attorney fees of Davy.**

*******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**

The Delusory Institute of Technology (DIT), is a Delaware corporation domiciled in North Dakota. In marketing materials distributed throughout Michigan, DIT represents itself as "a nationwide online university." However, although DIT offers numerous degree programs, it has no classes. Instead, upon review of an applicant's resume and the payment of a nonrefundable application fee of \$495, a DIT representative makes a unilateral decision whether to award the requested degree. When a degree is awarded, a diploma is mailed from DIT's North Dakota headquarters to the applicant's home address. DIT awards an average of 10,000 degrees each year, 900 of which are, on average, awarded to Michigan residents.

In December 2015, Michigan resident Paul Pierrot attended a job fair in Detroit Michigan, hosted by DIT. Pierrot spoke with a sales representative employed by DIT, Don Dirk, who is an Indiana resident. Dirk represented that Pierrot would be eligible for a master's degree in finance from DIT, so Pierrot applied for such a degree. DIT accepted Pierrot's application fee and promptly mailed him a diploma indicating that he had earned a bachelor's degree in art history. DIT subsequently refused to supply a finance diploma unless Pierrot paid another application fee, and DIT refused to refund Pierrot's original fee.

Pierrot then filed a complaint against DIT and Dirk in a Michigan circuit court, alleging tort claims. In lieu of an answer, DIT filed a motion for summary disposition under MCR 2.116(C)(1), contending that the circuit court lacked in personam jurisdiction over DIT on both general and limited personal jurisdiction grounds. Dirk initially filed a general appearance and an answer denying the complaint's allegations. He asserted, as his sole defense, that Pierrot had failed to state a claim upon which relief could be granted. However, Dirk subsequently filed his own motion for summary disposition under MCR 2.116(C)(1), arguing that the circuit court also lacked in personam jurisdiction over him.

Analyze all issues raised in both defendants' respective motions for summary disposition based on lack of in personam jurisdiction, and state the proper disposition of both motions.

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