

FEBRUARY 2015 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 Defendant was walking down a crowded sidewalk in Anytown, USA and saw Polly Plaintiff walking towards him. Dan had seriously disliked Polly since they were both in middle school, and in the many years since then he had always wanted to get back at her for the mean and embarrassing comments she made to others about him. Now was his chance. As she approached, he screamed out "Polly, you are a prostitute, is your husband still your pimp?" After that, he yelled a few more innocuous things at her as they walked further away from each other.

Polly was neither fazed nor traumatized by the event. Instead, she laughed it off as a prank by a still immature Dan. However, a few days later Polly ran into two friends, who had witnessed the event and heard Dan's comments. The friends said they were embarrassed for her, and thought his words made her look bad. Though she did not believe anyone would think she was actually a prostitute, Polly also did not want to appear weak. Polly therefore brought a slander claim against Dan, arguing that his statement caused her emotional distress and humiliation. She asked for an award of \$1,000,000, \$950,000 of which was for punitive damages.

Dan argues that: (1) Polly cannot succeed on the slander claim because she cannot establish a prima facie case, and (2) Polly is not entitled to punitive damages. Explain whether Dan's arguments are correct.

*******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**

In 1990, Spotless Subdivision, a new development in Muni City, Michigan, opened to the public. Just prior to the homes being occupied, Muni City planted silver maple trees on public easements between the sidewalk and street curb in front of residents' homes. By 1997, Muni City discontinued planting silver maples because the trees' roots began to outgrow the public easements and encroach on the private property of Muni City residents. That same year, Muni City created a cost-sharing plan for sidewalk replacement, which was due to expire in 1999.

John and Joan Mills purchased a home in Muni City in 2005. Shortly thereafter, the roots of the silver maples planted in front of their home invaded and obstructed the sewer pipes, causing raw sewage and water backup in their home. The roots also lifted the concrete sidewalk blocks in front of their home, causing an uneven and dangerous sidewalk and destroying their front lawn and other planted vegetation. The Mills paid \$14,000 to clean and repair the damage.

As the Mills began to address the damage to their home, they discovered that many of the 1,500 residents in their subdivision had similar complaints. Residents disclosed cleaning and repair costs to their homes and landscapes ranging between \$2,000 to \$30,000.

The Mills consulted an attorney, the newly licensed son of their former neighbors, to investigate, and after two years, the attorney concluded that since 1995, approximately 1,000 residents of the subdivision had suffered damaged lawns and sidewalks; approximately 300 of those residents also had sewage and/or water back up into their homes. In addition, a smaller number of residents who experienced sewage backups suffered respiratory illnesses in the months following the backups. The attorney advised the Mills that they had grounds to file a class action lawsuit based on there being a governmental taking. Thus, the Mills filed an action against Muni City in Muni County Circuit Court and moved for certification of a class action. Muni City opposed certification.

Without regard to the viability of the claim, analyze whether the prospective plaintiffs will succeed in being certified as a class.

*******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**

The Mighty Miter Company (MMC) is a Michigan corporation whose sole place of business is located in Montegan County, Michigan.

On November 10, 2014, Vicky Valon, a minority shareholder of MMC, sent a written demand to MMC demanding that her agent, Carl Corts, be allowed to inspect the corporation's stock ledger. Her written demand indicated that the purpose of the inspection was to buy additional shares of the company's stock by soliciting other shareholders. No additional information was provided.

Two days later, another MMC minority shareholder, Paul Pigeon, sent MMC a written demand seeking copies of certain MMC financial records. His demand letter indicated that in order to protect his interest as a shareholder, he sought information regarding discrepancies between actual expenditures and MMC's operating budget in order to determine why MMC has been losing money.

On November 14, 2014, MMC sent a response to both Vicky and Paul. MMC flatly refused to allow Carl Corts to inspect MMC's stock ledger. As for Paul, MMC indicated that it would provide the information, on condition that Paul first pay a "labor and material" charge of \$150. Infuriated, Paul and Vicky filed suit in Montegan County Circuit Court, asking that the court compel MMC to provide the information sought.

Applying Michigan law, fully explain whether (1) Vicky is likely to prevail in obtaining the corporate information she seeks, including whether Vicky or the corporation has the burden of proof, and (2) whether Paul is likely to obtain the copies of financial records without paying the charge.

*******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**

Attorney has been retained by a client, Craig, to handle criminal charges arising out of an incident involving alcohol. Craig, a nineteen-year-old college student, was stopped by the police and found to have consumed alcohol while underage. Attorney believes a motion in limine to exclude the breathalyzer evidence would be successful, which would likely result in the charges being dropped. Craig's parents are paying for the representation, and Craig's father called Attorney, suggesting it might be better for Craig to "take responsibility" and "learn his lesson." The father also wants to know the "true story," which he does not seem to have heard from Craig, so he can consider the right course of action.

Attorney's website offers a "free initial consultation." A new prospective client, Cindy, saw the website and made an appointment for a free consultation with Attorney. After meeting with Attorney for approximately 30 minutes, Cindy said she would like to retain Attorney and signed a fee agreement. Attorney and Cindy continued talking about Cindy's case for another 45 minutes. About three weeks later, Cindy discharged Attorney. One week thereafter, she received a bill for 45 minutes of Attorney's time at the hourly rate set forth in the fee agreement; the services rendered were described as "attorney conference." Cindy called Attorney for an explanation, and he told her that it was his policy to charge for time once the client had retained him. The policy is not disclosed on the website nor in the fee agreement, and the agreement makes no mention of the free consultation or when the charging of attorney time commences.

Under the Michigan Rules of Professional Conduct: (1) Discuss whether Attorney may take into consideration the concerns of Craig's parents, and whether he may answer Craig's father's questions about what really happened. (2) Discuss whether Attorney's website offer is proper and whether it was proper for Attorney to charge Cindy for the conference.

*******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**

Charles, a music critic, contracted with two magazines to provide music reviews. Under the first contract, which states that it "constitutes the entire agreement between the parties," Charles agreed to review several jazz releases for Jazzamatazz magazine. Jazzamatazz agreed to pay Charles \$1,000 plus two tickets (worth \$100 each) to an upcoming concert by The Roots.

Under the second contract, Charles agreed to write a review of The Roots concert for Yo magazine for \$1,000. The contract stated that Charles would be responsible for obtaining concert tickets and that if he failed to provide the review, he would pay Yo \$6,000 "as liquidated damages." At the time of contracting, and based on experience, Yo calculated that Charles' review would increase the magazine's profits by \$2,000.

Charles provided his review to Jazzamatazz, which paid him \$1,000. However, Jazzamatazz was unable to procure the concert tickets for Charles, who could not obtain them from any other source, and thus could not write his review for Yo. Having to breach the contract with Yo caused Charles significant mental distress.

Yo sued Charles for breach of contract, seeking \$6,000 in liquidated damages as specified in the contract.

Charles sued Jazzamatazz for breach of contract, seeking the following damages:

- \$200 as the value of the tickets to The Roots concert;
- \$1,000 for lost income from Yo, plus \$6,000 for the amount he owed Yo due to Jazzamatazz's breach;
- mental distress damages; and
- exemplary/punitive damages.

Jazzamatazz argues that just before the parties signed the contract, they verbally agreed that, if Jazzamatazz were unable to procure tickets for The Roots concert, Charles would accept instead two tickets (worth \$50 each) to an upcoming Justin Bieber concert.

Should a court award the damages Yo is requesting in its suit against Charles? What damages should Charles recover in his suit against Jazzamatazz? Explain your answers.

*******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**

Carl is scheduled for trial in a Michigan court for burglary. He is accused of entering the home of his former fiancée, Francine, on a Monday afternoon while Francine was at work. Francine, upon returning home, found \$20,000 missing from her bedroom safe along with the \$15,000 engagement ring Carl had given her prior to their recent break-up. She also found a pink Gerber daisy, which immediately led her to suspect Carl, who had delivered to her a pink Gerber daisy every Monday afternoon.

The prosecutor, in a pre-trial motion, seeks to introduce the following evidence:

(1) Carl's previous fiancée, Evelyn, plans to testify to her break-up with Carl a year prior to Francine's, and how Carl had confessed to Evelyn that he burglarized her home on a Monday while she was at work, stole money from her safe, stole her \$15,000 engagement ring, and left behind his weekly gift to her - a pink Gerber daisy - so she would know he had been there. Evelyn did not press charges because Carl confessed and returned the cash, but not the ring, which he had already fenced.

(2) The flower vendor from whom Carl regularly purchased the pink Gerber daisies plans to testify that Carl had purchased a single pink Gerber daisy from him every Monday for the past three years; although the vendor had been ill on the Monday of Francine's burglary and someone else had filled in for him.

Carl denied buying a Gerber daisy that Monday, denies he knew of or confessed to Evelyn's burglary, and claims to have an alibi for the time of Francine's burglary. The prosecutor argues that Evelyn's testimony is admissible to prove Carl's identity through Carl's scheme, plan or system in doing bad acts.

Carl's attorney raises the following objections: (1) Evelyn's testimony is inadmissible character evidence under MRE 404(b)(1) and is prejudicial; (2) the flower vendor was not at work on the day in question.

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

1. What is the step-by-step analysis the trial court should apply in ruling on the admissibility of Evelyn's testimony? Address the reasons favoring and against the admission of the evidence and how the court should rule.

2. How should the prosecutor respond to the objection to the flower vendor's testimony? Will it be admitted?

*****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**

The city of Portertown, Michigan recently passed an ordinance prohibiting the possession of all handguns within its city limits, with the exception of law enforcement personnel. The city permits the possession of other firearms, such as rifles, but a separate ordinance requires that legally possessed weapons be "unloaded and disassembled or bound by a trigger lock or similar device" at all times unless being used for lawful recreational activities, such as hunting.

A resident of Portertown, Ben Barker, would like to keep handguns in his home for self-defense, but is prohibited from doing so by Portertown's ordinance. Moreover, Barker would like to keep his weapons (handguns and shotguns) in his home without the need to unload them or use a trigger lock. Barker filed a lawsuit in the local circuit court seeking to enjoin the city from enforcing the ban on handguns and the trigger-lock requirement regarding other firearms insofar as the ordinances prohibit the use of "functional firearms within the home."

First, applying principles of federal constitutional law, and assuming there are no justiciability issues, discuss whether Barker is likely to prevail regarding both the handgun ordinance and the trigger-lock requirement. Second, discuss the constitutionality of the handgun ordinance under the Michigan constitution. Explain your answers.

*******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**

Although not much of a drinker, RB went to a retirement party at a local bar to help celebrate a co-worker's 25 years on the job. While there he drank too much. When the party started to wind down, RB headed for the door and got into his oversized high-powered truck. His truck was observed traveling at speeds between 60 and 70 miles per hour in a zone with a posted speed limit of 35 miles per hour. Heading down the street he normally drove home, RB's vehicle passed other vehicles, which were ostensibly slowing down for an upcoming red light. RB failed to stop at the red light and collided with a much smaller vehicle, killing its driver instantly. RB's blood level was determined to be .18, well over the legal limit. Injured as well, RB could not remember any of the events of the evening, despite driving down a street in an area familiar to him.

Although he could have been charged with lesser offenses, RB was charged by the prosecutor with second-degree murder. Defense counsel moved the court to dismiss the second-degree murder charge, contending the facts presented could not establish the requisite intent for the charge.

Evaluate the defense motion and indicate how the court should rule.

*******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**

Dwight Defendant was charged with murder and demanded a jury trial. Dwight, an African American, hired counsel and the matter eventually proceeded to trial. During jury selection, the prosecutor made a number of peremptory challenges, but three of those challenges caused Dwight's counsel concern.

The prosecutor exercised a peremptory challenge against Alice White, a middle-aged African American woman. The prosecutor also exercised a peremptory challenge against Ellen Scott, an African American woman of 30. The prosecutor also peremptorily challenged Frank Fields, an African American roughly Dwight's age. The prosecutor made no challenge to two other African American jurors.

Before the challenges, questioning by the prosecutor yielded the following answers: Alice indicated that, although she could be fair and impartial, she previously served on a jury that could not reach a verdict on a murder charge. Alice said she was the lone holdout on that jury, arguing with the other 11 jurors that the defendant was not guilty.

Ellen had indicated she was a single mother with triplets at home. She was the primary caregiver of the children. To place the children in daycare would be well beyond her means. She would be glad to serve on the jury, thought she could be fair and impartial, but her mind would be with her children.

Frank had repeatedly said he could be fair to both sides, but added oddly while looking straight at the prosecutor, "You're going to have to bring your 'A-game' to convict my man."

Sensing something amiss, defense counsel said the prosecutor's challenges "violated my client's constitutional rights" and that the challenged jurors, who remained in the jury room on another floor, should be returned to the jury before the jury is sworn or the remaining jurors are dismissed.

More fully articulate the defense counsel's position. Also, delineate the procedure the court must follow in resolving defense counsel's request. Finally, based on the facts given, how should the prosecutor respond? Explain your answers.

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

FEBRUARY 2015 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**

Paul Perry died suddenly at the age of 55. He was not married and had one adult daughter named Laine. Discovered among his possessions was the following document, written in Paul's handwriting in a spiral notebook:

I, Paul Perry, being of sound mind, wish to distribute my assets in the following manner upon my death. I direct that all of my debts be paid. I give my house, 1414 Mockingbird Lane, to my friend Wesley Wuma. I give my shares of Acme Corporation stock to my friend Carey Smith. Everything else goes to my daughter Laine.

/s/ Paul Perry
June 16, 2010

At the time of Paul's death, 1414 Mockingbird Lane had an outstanding mortgage balance of \$75,000. Also, at the time Paul drafted the document, he owned 100 shares of Acme stock. However, at the time of his death, Paul's original purchase of 100 shares had grown by 150 shares (250 shares total) because Paul had all of his dividends reinvested into additional shares of Acme stock.

Carey claimed that he should receive all of the Acme stock and should not be limited to 100 shares that Paul owned at the time the will was drafted. Wesley asked that the estate pay the remainder of the mortgage, as Wesley would be unable to afford the house otherwise. Laine challenged the validity of the will, claiming that all of the assets should be given to her. Even if a valid will were established, Laine argues that Carey should only get 100 shares of Acme stock, and that the estate should not discharge the mortgage on the house.

Applying Michigan law, discuss the following:

1. Whether the will is valid;
2. Whether Carey receives 100 or 250 shares of Acme stock under a valid will, and
3. Whether Paul's estate can pay the \$75,000 mortgage pursuant to Wesley's request under a valid will.

*******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**

Jerry and Ella were engaged in July 2014. As Jerry sat in the driver's seat of his car, which was parked overlooking a beautiful vista where they also had shared their first kiss, he asked Ella to marry him and gave her an engagement ring. Ella said "yes," and the wedding planning began.

A few months before the wedding, Ella discovered text messages on Jerry's phone which clearly indicated that Jerry had been unfaithful. Ella ended the engagement. Jerry recognized the error of his ways and pleaded with Ella to take him back, but Ella refused.

Heartbroken, Jerry could not bring himself to even be near the car. Instead, he loaned it to his friend Phil, who already had a car of the same make and model. As Jerry handed the keys to Phil, Jerry told Phil, "Do me a favor: Keep this car for a while until I can get over Ella. With all the memories tied up in this car, I can't even see it without becoming distraught."

The next day, Phil was rummaging in his garage for his golf clubs, which were high up on a shelf near where Jerry's car was parked. Without paying much attention to the contents of the shelf, Phil accidentally knocked down some heavy weights that fell and damaged the windshield of Jerry's car.

Jerry sues for the return of the engagement ring and Ella defends, saying a completed gift was made to her. Jerry is also contemplating a suit against Phil.

Applying Michigan law: (1) Will Jerry succeed in his suit to get the ring back from Ella? (2) Without regard to insurance, will Jerry succeed in a suit against Phil for damage to the car? Explain your answers.

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

Yonder Development Company ("YDC") owns a large plot of land in downtown Peaceful, Michigan (the "property"), the site of two worn old houses it rents out to college students. YDC is on the verge of going bankrupt, and decides to sell the property to a buyer, Peggy Porter, who desires to tear down the houses and build a luxury high-rise on the property.

For at least 20 years, Billy Smith, owner of the house behind the property, has been consistently cutting a path between the two old houses on the property to attend approximately seven college home football games each year. The ground along the path has been worn down and the path is visible from the street. College students and other Peaceful residents have also used the path, nicknaming it the "Appalachian Trail." One year ago, YDC erected a fence, but left a gap where the path cut through the property. Peggy wants to remove the path by building over it.

Gordon Ferry is a student tenant in one of the two YDC houses on the property. He has complained repeatedly to YDC about a gaping hole in the center of his kitchen floor, and filed a complaint with the city's housing commission one week before the sale of the property to Peggy was finalized. Immediately after the sale was finalized, Peggy told all of the tenants that she wanted to take possession of the houses on the property. Gordon, who at that time was behind in monthly rent payments, complained to Peggy about the hole in the floor and told her that he had already filed a complaint with the city's housing commission. Peggy told him "it's not my problem." Peggy immediately and properly served written demands for possession on all the tenants of the property. When Gordon, who was still behind on the rent, did not vacate the apartment within one month as directed in the demand, Peggy properly filed an action in district court for summary proceedings seeking both to recover possession by evicting him, and for money damages for back rent.

Applying Michigan law, discuss: (1) whether Billy has a legal basis for preventing Peggy from building over the "Appalachian Trail," and the likelihood of success of that claim; and (2) whether Gordon has any defense to the money claim for back rent and the claim for possession. Explain your answers.

*******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**

Sampson Shovel, Inc. entered into a valid, written contract with Bailey Landscape Supply and agreed to sell 1,500 shovels for \$10 per shovel. One hundred twenty-five (125) shovels were to be delivered each month for twelve (12) months.

After three months, the price of materials had risen so that Sampson Shovel, Inc. was losing \$2.00 per shovel. The increased costs in no way affect Sampson's ability to perform the contract. Robert Sampson, the owner of Sampson Shovel, Inc., phoned Leah Bailey, the owner of Bailey Landscape Supply, and informed her of the increased cost of materials. Mr. Sampson asked Ms. Bailey to agree to pay \$12.00 per shovel for the remaining nine (9) deliveries. This modification would increase the contract price by \$2,250. Ms. Bailey agreed. The next delivery date was 3 weeks away.

1. Is the contract modification enforceable without consideration? Why or why not?
2. Does the contract modification need to be in writing for it to be enforceable? Why or why not?
3. Assuming the contract modification is enforceable, would Ms. Bailey be able to retract her assent to the new terms and enforce the contract as written?

*******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**

After a divorce trial, the circuit judge made the following factual findings and awards:

"Mr. and Mrs. Baker have been married 32 years and their marital estate is being divided evenly by the court. Mrs. Baker has taught school for 12 years, and is earning \$57,000 per year with excellent benefits. Mr. Baker has operated his own thriving newspaper business, earning approximately \$150,000 annually. The court awards him the business in its entirety, while Mrs. Baker is to receive the parties' newly remodeled home. The Bakers are in their late 50's, and they both enjoy good health. The court orders Mr. Baker to pay Mrs. Baker \$3,000 per month in spousal support for 15 years."

After the judgment was entered, things changed quickly. Mr. Baker did not anticipate how technology would impact demand for his print daily newspaper. With readers turning to online publications, circulation and readership dropped and advertisers followed suit. As a result, Mr. Baker's annual income went from \$150,000 to \$100,000 within 18 months after the judgment was entered, and then to \$75,000 a year later. He had already emptied his 401k retirement fund and had to sell his newspaper company. The proceeds from the sale only covered the outstanding debts, but the new owner of the paper allowed him to stay with the paper for only three years at an annual salary of \$75,000. At 66, he would begin receiving monthly social security benefits in the amount of \$2,300. He received no health care benefits so he had to buy health insurance himself, which was unfortunate because his once robust health was deteriorating.

Mrs. Baker was going in the opposite direction. She had retired and was receiving nearly \$30,000 per year in pension benefits and her 401k account produced an additional \$6,000 annually. Mrs. Baker was in superb health and led a Yoga class which generated \$4,000 annually. She was also lecturing for which she was receiving approximately \$12,000 per year. All told, Mrs. Baker was earning approximately \$52,000 per year (not counting spousal support) from post-retirement activities. Her health care benefits package was exceptional, at no cost.

Based on the foregoing, Mr. Baker has filed a motion to amend the divorce judgment to eliminate his spousal support obligations. What should the court consider and how should the court rule in deciding Mr. Baker's motion? Explain your answers.

*****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**

Patrick is an employee of a large Michigan manufacturer, ABC Company. ABC owns a parking lot across the street from its main place of business. ABC permits its employees to park free in the lot when they are going to and coming from work.

On February 24, 2015, Patrick parked his car in ABC's parking lot shortly before his starting time. While legally crossing the public street on a direct route to the workplace, Patrick neglected to notice an oncoming car. The car struck Patrick injuring his ribs and hip.

Patrick recovered somewhat from his injury within two months, but he had ongoing restrictions precluding repetitive bending and twisting. Patrick's regular job for ABC required repetitive bending and twisting, so ABC offered to return Patrick to work at a sit-down job within his physical restrictions.

Patrick accepted the offer, but after performing the sit-down job for three weeks, found it unchallenging and boring. Reflecting his disinterest in the job, Patrick repeatedly arrived late for work and accumulated many unexcused absences over the next two months. Following several warnings to Patrick about his tardiness and absenteeism, ABC terminated him in accord with regular company policy, a policy that was known to Patrick.

Patrick now seeks workers' compensation benefits for his injury. Answer only the following two questions applying Michigan workers' compensation law:

1. Is Patrick's injury crossing the street an injury covered by Michigan's workers' compensation statute? Why or why not? Explain your answer.

2. Would Patrick's post-injury conduct impact his workers' compensation claim? If so, why? If not, why not?

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