

JULY 2010 MICHIGAN BAR EXAMINATION

ESSAY PORTION

MORNING SESSION

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

Plaintiff sued defendant in circuit court for injuries from a car accident. Plaintiff contended defendant ran a red light. Defendant did not answer plaintiff's complaint; however, within the time for answering, defendant instead filed a motion for summary disposition under MCR 2.116(C)(10). In his motion, defendant claimed plaintiff had run the red light and that, pursuant to the court rule, "except as to the amount of damages, there is no genuine issue as to any material fact" and, consequently, defendant was entitled to judgment as a matter of law. Attached to defendant's motion were (1) his own affidavit, (2) affidavits of two bystander witnesses, and (3) the deposition testimony of a shopkeeper standing outside at the corner in question. All indicated they had seen plaintiff run the red light, leading defendant to his conclusion that no factual issue existed as to who had run the light.

After service of defendant's motion, plaintiff responded with a motion to enter a default against defendant for failing to answer plaintiff's complaint. Plaintiff also filed a response to defendant's summary disposition motion. Plaintiff contended in his response that there was a genuine issue of material fact, i.e., who had run the red light. Attached to plaintiff's response were (1) a reference to the paragraph in his complaint repeating that defendant had run the red light, (2) a letter from a witness stating he had heard from someone the next day that defendant had run the red light, and (3) an unsworn "opinion letter" from a body shop owner opining that the damage was indicative of defendant running the red light.

What motions should be granted or denied and why?

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

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

Officer Stokes worked proudly for a municipal police department in the state of Michigan. On the evening of July 4, 2010, Officer Stokes initiated a traffic stop after he witnessed a vehicle fail to stop at a stop sign. Although the lights and siren on Officer Stokes's police vehicle were activated, the driver failed to stop. Officer Stokes was able to force him off the road and the driver eventually came to a complete stop. Officer Stokes immediately ordered the driver out of the vehicle. Once out of the vehicle, Officer Stokes pushed the driver up against the vehicle, slammed his face onto the hood, and proceeded to frisk him. The driver struggled and was momentarily able to break free from the officer's grasp. In an attempt to subdue him, Officer Stokes sprayed the driver in the face with pepper spray and again slammed him down on the hood of the vehicle. Every time the driver attempted to resist Officer Stokes's grasp, he was again slammed into the hood of the vehicle. Officer Stokes then handcuffed the driver and for good measure, pushed him face-first into the patrol car. On the way to the station, the driver kept complaining that the handcuffs were too tight. At this comment, Officer Stokes just laughed at him. By the time they got to the station, the driver's face was swollen and discolored but he did not require medical treatment. Additionally, there were purple bruises beginning to form around his wrists where the handcuffs were cutting into the skin.

The driver has threatened suit against Officer Stokes and the police department. Discuss any potential claims that could be made by the driver as well as the likelihood of their success, including any potential defenses.

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

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

After a lucrative medical career as an anesthesiologist, Bradford died from natural causes in 2010. Bradford's wife, as well as his only child, David, predeceased him. David's twin daughters, Erin and Morgan, survived Bradford.

Upon Bradford's death the following will was found:

"I, Bradford, intend this document to be my final will and testament. I hereby provide for the following dispositions of property upon my death:

"(1) I leave my beloved 1965 Aston Martin DB5 sports car to my dear childhood friend, Greg.

~~"(2) I leave \$200,000 to my alma mater, State College. (I no longer leave anything to the college /s/Bradford, 12/8/2004)~~

"(3) I leave one half of the remaining final value of my estate to my fellow members of the Caravaggio Club, who are equally as dedicated as I to the preservation of classical art, to be divided equally among them.

"(4) I leave the second half of the remaining final value of my estate to my son, David.

"/s/ Bradford 1/1/1999

"Witness 1/s/Caleb 1/1/1999 Witness 2/s/Michael 1/1/1999"

David's death in 2009 occurred as the result of a car crash while borrowing his father's Aston Martin. The crash wrecked the car completely. Bradford's insurance company paid \$195,000 to Bradford pursuant to his casualty policy. He did not replace the car.

After the death of Bradford in 2010, the following information is properly entered into evidence at probate:

- * Bradford's estate is worth \$2.0 million.
- * The Aston Martin, specifically bequeathed to Greg, originally sold for \$10,000 in 1965, was worth \$100,000 at the time the will was made, and had a fair market value at the time of Bradford's death of \$200,000.
- * The later-written note on item #2 on the will has been authenticated as Bradford's handwriting and signature.
- * At the time the will was signed, the Caravaggio Club had three members (none of whom were related to Bradford). However, upon Bradford's death, only one elderly member, Courtney, remained alive, although the other members left descendants.

* Both of David's daughters, Erin and Morgan, are currently alive (several months after Bradford's death).

Assuming that Bradford's will is valid and applying Michigan law, account specifically for the four bequests that Bradford made in the will and determine how the estate should be distributed. 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

Debbie Defendant is charged with one count of assault with intent to do great bodily harm less than murder (GBH), a 10-year felony. At the arraignment on the information, the prosecutor informed Debbie and her counsel there would be no reduced plea offers extended in this case. Consequently, Debbie's counsel asked the trial judge whether she would offer any insight into how Debbie might be sentenced should she plead guilty to the GBH charge. The trial judge stated on the record that based on her limited knowledge of the case, she would consider sentencing Debbie to six months in the county jail should Debbie plead guilty to the GBH charge.

The prosecutor objected and indicated that Debbie's criminal history required that she be sentenced to the maximum term of incarceration permitted under law. Debbie stated on the record that she was pleased with the court's sentencing proposal and given the court's assessment, she would agree to plead guilty to the GBH charge. The trial court accepted the plea, referred Debbie to the probation department for preparation of a presentence investigation report (PSIR) and set a sentencing date. The prosecutor, disgruntled over the trial court's sentencing proposal, immediately filed a motion to set aside the plea and assign the case to another judge due to improper participation by the court in the sentence negotiation process. The prosecutor's motion was set to be heard on the sentencing date.

On the date set for sentencing, the trial judge, relying on information contained in the PSIR, refused to sentence Debbie to six months in the county jail. The judge stated she would, however, impose a sentence of 24 to 120 months imprisonment to be served in the state prison, such sentence falling within the low end of the applicable sentencing guideline range. The prosecutor continued to demand imposition of a tougher sentence and asked the court to rule on his motion.

How should the court rule on the prosecutor's motion? Explain your answer.

Describe and discuss Debbie's remedies, if any, to the trial court's refusal to sentence her to six months in the county jail.

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

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

Patti Police was working undercover at "The Bar," a lounge known for illegal drug activity. Dan Defendant encountered Patti at The Bar. Patti indicated she enjoyed smoking crack cocaine. Dan, eager to impress Patti, informed her that he would bring some crack cocaine for her the following evening. In fact, Dan knew nothing about crack cocaine.

Later that night, Dan informed his friend, Sam Salt, of his encounter with Patti. Sam had just purchased a 2001 BMW from a used car dealer. Sam indicated he was shocked when he discovered a bag filled with a substance Sam believed to be crack cocaine in the glove box of his BMW. Sam indicated the crack was in a brown bag inside his garage. Sam refused to give Dan any of the substance because he feared doing so would subject him to criminal liability. Sam intended to throw the substance out the next time trash was to be collected from his neighborhood.

Dan immediately went to Sam's home to take some crack from Sam's garage. The garage was attached to Sam's home. Sam and his girlfriend were inside Sam's home at the time. Dan pried open the locked garage door, and found the brown paper bag containing the substance in the corner of the garage. Dan placed in an envelope a small portion of a white rocky substance.

The next evening, Dan arrived at The Bar and handed Patti the envelope that contained the substance. Patti took possession of the envelope and Dan was immediately placed under arrest. When the substance was sent to a police lab for analysis, it was discovered that it was not crack cocaine at all but rather rock salt, which the previous owner of the BMW apparently kept in the car for snow and ice emergencies.

Discuss the charges, if any, which may be brought against Dan in relation to: (1) Dan's conduct at Sam's home; and, (2) Dan's conduct at The Bar. 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

In 2006, the United States Congress passed the Shrimp Industry Relief Act (SIRA), which the President signed into law. This act provided in part:

"The shrimp industry having been crippled by Hurricane Katrina, the United States shall subsidize this industry at a rate of fifty million dollars annually for up to 10 years. Congress shall annually appropriate the funds for such subsidy only to the extent needed. These funds shall be made available to entities engaged in the harvesting of shrimp from the Gulf of Mexico. Distribution of funds shall be administered through the Office of the Secretary of Agriculture."

Congress appropriated fifty million dollars pursuant to the act each year thereafter. The day after the 2010 appropriation became law, the President declared that the gulf coast shrimp industry was fully recovered from the effects of Hurricane Katrina. Consequently, the President signed the following Executive Order:

"The shrimp industry in the Gulf of Mexico having fully recovered from the devastation of Hurricane Katrina, the Agriculture Secretary shall cease allocating subsidies available under the Shrimp Industry Relief Act. In order to promote the consumption of healthier food, the Agriculture Secretary shall hereafter use the funds made available under said act to subsidize businesses engaged in the harvesting and sale of organic vegetables."

The Shrimp Association filed suit against the Agriculture Secretary, demanding that the funds allocated under the SIRA continue to benefit its members.

Assume the plaintiff has standing and the doctrine of sovereign immunity does not bar this suit.

Describe and discuss the legal arguments relating to the President's authority to order the Agriculture Secretary to cease allocating subsidies available under the SIRA.

Describe and discuss the legal arguments relating to the President's authority to order that funds appropriated under the SIRA be used to subsidize the organic vegetable industry.

*******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

Abel and Betty married in 1970, after which they purchased for cash a quaint farmhouse. The property was deeded to Abel and Betty, jointly as husband and wife. There was a cottage on the south end of the property, which Abel and Betty rented to tenants to supplement their income. Abel and Betty used a bi-monthly lease agreement that allowed either party to terminate the lease with 60 days notice.

In 2009, Betty discovered that Abel was having an affair with the current tenant, Lolita. Betty filed for divorce, but Abel died before the divorce became final. Following Abel's death, Betty demanded that Lolita vacate the cottage within 60 days. Lolita refused. Instead, Lolita showed Betty a quitclaim deed from Abel transferring the cottage to her in exchange for "love and affection."

Shortly thereafter, Carl sought repayment of a mortgage that Abel had executed on the cottage as security for a personal loan made by Carl to Abel. Abel had falsely informed Carl that he owned the cottage free and clear as his separate property.

Applying Michigan law, discuss Betty's (a) ownership interest in the cottage; (b) ability to eject Lolita; and (c) liability to Carl.

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

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

The W.E.C. Supergenius Company (WECS) is a Michigan corporation located in Bedbug County, Michigan. WECS produces dynamite-based explosives.

Dennis is an employee of the Acme Explosive Company. He also owns three percent of WECS stock. He made a proper written demand in February 2010 for a list of WECS's major accounts. Dennis claimed that the purpose for the request to inspect was to ensure that WECS was maximizing profitability.

Ed, through his attorney, made a proper written demand in April 2010 to inspect a list of the WECS shareholders. Ed, owner of a single share of WECS stock, indicated that the purpose for demanding the list of shareholders was to get himself placed on the board of directors.

WECS refused to comply with either request. WECS claimed that Dennis had no right to review corporate documents because he was employed by WECS's competitor, and that Ed had no right to the documents because he only owned one share of stock, and because he made his demand through an attorney.

Subsequently, both Ed and Dennis filed suit in Bedbug County circuit court, demanding the corporate records sought as well as attorney fees.

Applying Michigan law, discuss Dennis and Ed's likelihood of obtaining the corporate documents, as well as obtaining the other relief sought. Explain your answer.

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

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

Tammy's Taxidermy is located in a low-crime area in suburban Michigan. On July 1, Carolyn brought her deceased pet muskrat, Gregggy, to Tammy's Taxidermy because she wanted to display Gregggy in her home. After reviewing the details of the project, Tammy indicated that the muskrat would be ready on July 15. The next day, Jimbob brought in a muskrat for taxidermy work. Because Jimbob's muskrat was smaller and the job slightly easier, Tammy told Jimbob that he could pick up the muskrat on July 13.

Tammy worked diligently and finished both muskrats early. On July 13, Jimbob returned to the store and paid for the taxidermy work. Tammy accidentally gave Jimbob the wrong muskrat, giving him Carolyn's beloved Gregggy. On July 14, an arsonist set fire to the business next door, and the fire spread to Tammy's store before either the fire department or Tammy's state-of-the-art sprinkler system could contain it. The muskrat that Jimbob brought to the store was completely consumed in the fire, with the exception of its tail, which had a distinctive white stripe on it. When Carolyn arrived at Tammy's store on July 15, Tammy presented Carolyn with the bad news and the charred remains. Carolyn immediately recognized that the muskrat was not the one she brought to the store and shrieked, "This isn't Gregggy! Where's my Gregggy?" Carolyn pulled out a picture she carried in her purse, noting Gregggy's solid brown tail.

Carolyn has sued Tammy for negligence. She has also sued Jimbob to recover Gregggy after Jimbob refused to return Gregggy to her. Jimbob followed up with a suit of his own, asserting a claim against Tammy for negligence.

Assess (a) whether Carolyn can recover damages from Tammy; (b) whether Jimbob can recover damages from Tammy; and (c) whether Carolyn can recover Gregggy from Jimbob.

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

JULY 2010 MICHIGAN BAR EXAMINATION

ESSAY PORTION

AFTERNOON SESSION

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

ABC is a company that markets athletic footwear. It owns a two-story building from which it operates its business. In an effort to maintain good employee relations and foster a healthy work environment, ABC provides a lounge and exercise area for employees to use, if they wish, on the first floor of the building. The area has a high definition television and exercise equipment, including a treadmill. ABC strictly insists that the area is to be used only when the employee is on his or her scheduled lunch time.

Craig and Jessica are employees of ABC. They each have different scheduled lunch times. Because Craig is romantically interested in Jessica, he would occasionally leave his work area during Jessica's lunch time to join her in the lounge and exercise area. While joining Jessica there during her lunch time one day, Craig tried to impress Jessica with how fast he could run on the treadmill. While running on the treadmill, he unfortunately fell and injured his knee.

Craig believes his injury should be considered an injury covered by Michigan's Worker's Disability Compensation Act.

What are Craig's best arguments that the injury is covered by workers' compensation? What are the employer's best arguments that the injury is not covered? What is the likely outcome if the issue is litigated? Explain your answer.

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

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

Abe and Betsy were married in 2004, and lived in Ypsilanti, Michigan. At the time, Betsy was studying education at Eastern Michigan University. Abe worked as a bartender at a local restaurant. In 2006, Abe and Betsy had a son, Sam. Both parents provided care for Sam after he was born, with Abe watching him during the day and Betsy watching him most evenings. Abe's parents in Detroit helped out quite a bit and Betsy's parents in Columbus, Ohio, made occasional visits.

Betsy obtained her Master's Degree in Education in the spring of 2008 and began looking for work in Michigan. By that time, she and Abe were frequently arguing over everything from money to Betsy's career plans. Betsy decided that she could no longer stay with Abe and filed for divorce in Michigan.

After Betsy filed for divorce in late 2008, she moved into a separate apartment. Sam stayed with Abe during the day and with Betsy in the evenings and most nights. In January 2009, on Betsy's motion, the family court entered a temporary order granting the parties joint legal and physical custody. The order provided for parenting time to be divided "as agreed" by the parties. After the order was entered, Betsy frequently asked Abe to take Sam for longer hours so she could interview for jobs in Michigan and elsewhere.

Before a final judgment was entered, Betsy called Abe and told him that she was taking Sam and moving to Columbus, Ohio because she had been offered a teaching position there. She informed Abe that she intended to move in with her parents until she could find her own home and suitable daycare. The new job would provide her and Sam with better health care benefits and a higher standard of living than they had in Ypsilanti.

Abe complained that Columbus was a three hour drive, and nearly 200 miles from Ypsilanti, but Betsy would not relent. She stated that if Abe did not consent to the move, she would hire an attorney and file a motion with the family court to change the custody order.

Betsy filed a motion to change domicile. Abe filed an answer opposing any change in Sam's domicile, asserting that such a change would be tantamount to granting Betsy physical custody.

**Discuss the arguments for and against each party's position.
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

Larry is engaged in the general practice of law. Larry has just had a conversation with a new potential client, Camilla, who wants to divorce her husband Dennis.

Larry represented Dennis several years ago in an action brought by creditors of Dennis's closely held corporation. The creditors sued Dennis in his personal capacity and attempted to reach his personal assets. Larry successfully defended Dennis against claims that the corporation fraudulently conveyed assets to him and that the corporate entity should be disregarded (piercing the corporate veil). Larry's representation of Dennis included handling extensive discovery regarding Dennis's personal assets and negotiations regarding possible satisfaction of corporate debts by Dennis's personal assets.

Larry would like to enter into a fee agreement in which Camilla agrees to pay, in addition to Larry's usual reasonable hourly rate, an additional sum based upon the amount involved, results obtained by Larry, and value added to the representation by Larry's expertise, reputation and ability. Larry ordinarily enters into oral fee agreements.

Camilla has told Larry that she is not sure how Dennis will react to the news that she wants a divorce. He may retain counsel and fight. But, there is a chance that he may be cooperative, amicably divide up their assets, and negotiate in good faith regarding Camilla's requests for spousal and child support. Camilla can afford a lawyer and is willing to pay to get what she is entitled to. However, she is also cost conscious and does not want to pay more than is necessary. She has asked Larry if he can just work "as needed" on the case, and in the background, at least initially. Specifically, Camilla asked whether Larry could simply draft the complaint for divorce, a motion and brief for a temporary restraining order regarding the transfer of assets, and related documents, without putting his name on the pleadings or filing an appearance.

(1) May Larry represent Camilla? (2) Is the proposed fee arrangement permissible? (3) May Larry agree to draft various papers for Camilla to file with the court with only her signature on them? Explain your answers.

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

QUESTION 14 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V

Dirk, a one-time karate instructor who has worked only sporadically in recent years, has gained a reputation as a "tough guy" in his Michigan hometown. A large, bearded man, Dirk is often seen hanging out at various bars and street corners in his omnipresent Detroit Tigers cap. Dirk has been suspected, but never charged, in several incidents in which individuals who were behind in their payments to Lloyd, a local loan shark, received anonymous telephone calls threatening them with bodily harm. Now, however, Dirk is charged with felonious assault in the beating of Victor, who was surprised from behind in his own back yard and beaten unconscious with a flurry of punches to the chest, jaw and neck. Victor never saw his attacker and could offer no information to identify him. Asked if he knew who might have a motive to harm him, Victor admitted that he owed money to Lloyd and had recently received a call warning him to pay up or he would get hurt. Dirk denies the charge and claims he was home alone playing solitaire at the time of the attack. It appears Dirk will also defend on the basis that he and Victor are drinking buddies and he would have no reason to hurt Victor.

Victor's initial shout of surprise and the sound of punches and groans attracted the attention of his next door neighbors, Harry and Wilma. Harry looked out the upstairs window and became agitated. He shouted to Wilma: "Someone is beating up our neighbor Victor! It's a big guy with a beard and a baseball cap! He's hitting him in the head...and the chest... and again...and again! It looks like that no-good Dirk!" At the time, Wilma was across the room talking on a wall phone to their daughter Donna. Wilma also became very excited; she breathlessly repeated to Donna exactly what Harry was telling her he saw, but she did not cross the room. This continued for approximately thirty seconds until Harry said the attack was over and Wilma ended her call with Donna.

A few weeks later, Harry and Wilma's car was hit by a drunk driver. Harry was killed and Wilma received injuries that wiped out portions of her memory, including any recollection of the beating incident. The prosecutor intends to have Donna testify about what Wilma told her on the phone the day of the incident to establish that Dirk was the attacker.

The prosecutor also wants to introduce the testimony of John, another borrower who was late in repaying Lloyd, and who came forward to volunteer information. Two weeks before the incident involving Victor, John was attacked by someone who jumped him from behind in his apartment entryway and tried to stun him with a blow to the head. But John was more fortunate. He used his three years

of karate training to dodge the attacker and parry the blows aimed at his head and chest. John recognized the attacker as his former karate instructor, Dirk, who turned and ran. Although at first John did not report this experience because he feared something worse might happen to him, John is now prepared to testify about it at Dirk's trial.

Evaluate the probable admissibility of the above evidence. What issues and outcomes do you see? Explain your answer.

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

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

Joe is a former major league baseball player who made millions of dollars during his career, and who was now toiling in the minors as manager of the Hens, a minor league team in Montana. Joe dreamed of managing a major league team, but as a cigarette smoker, he was very concerned about Major League Baseball's unwritten policy of no smoking on the field or in the dugouts, even though all dugouts are open-air dugouts. In 2009, Joe was asked to meet with Al (a wealthy businessman who made his fortune in hot dog franchises), owner of the Roosters, a major league baseball team in Michigan. At the meeting, Al asked Joe if he would manage the Roosters, to which Joe instantly agreed. However, much to Al's surprise, Joe did not want to be paid. Instead, he asked that Al give a free hot dog franchise to his brother Steve. Additionally, and not knowing that Michigan law required employers to permit employees to smoke in any open air area, Joe also asked that Al agree to allow him to smoke in the dugout and when on the field. Al quickly agreed, thinking he had struck the bargain of a lifetime. Al then wrote out on a napkin "manage Roosters for 2 years, free franchise for brother Steve and Joe freely smokes in dugout/field", signed his name to it, and left. After Al signed the napkin, Joe put it in his pocket and left.

Joe's first year as manager was a disaster. Al was furious about his hiring decision. After a 15-0 loss, Al confronted Joe in the dugout and angrily stated, "I never should have hired you, and our 'napkin agreement' is as worthless as the paper it was written on. You never signed the agreement, and I didn't give you anything you did not already have. You're done! And, by the way, from now on your brother will have to pay for his franchise."

Can Joe and/or his brother successfully enforce the contract against Al? Explain your answer.

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