

JULY 2012 MICHIGAN BAR EXAMINATION

ESSAY PORTION

MORNING SESSION

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

Millionaire Dwayne Dennison, age 45, and his three childhood friends, Scott Sampson, Ed Evers and Paul Peters, take a two-week vacation every year in northern Michigan. The vacation is spent hunting wild turkeys, fishing and playing \$5 poker in a rented lakefront cabin. Dwayne looks forward to this annual trip, although he realizes that the cost sometimes imposes a financial hardship on his friends.

On April 5, 2010, while having breakfast, Dwayne stands up and makes the following statement to all of the patrons and employees at the local diner:

"I really love these three guys. I've been a very fortunate man, and I own 500 shares of stock in the Acme Anvil Company. Starting today, I'm going to hold that stock in trust, with me as the trustee, and use it to fund our annual vacation. And when I say fund the vacation, I mean the whole thing--food, lodging, hunting and fishing gear, beer--*everything*. This way, Scott, Ed, Paul and I can continue to hunt, fish, gamble and enjoy each other's company until the last of us dies. The only thing we'll have to worry about is how to get all of those fish home!!"

True to his word, Dwayne completely funded the vacation for himself and his friends in 2011, paying for all of the vacation expenses with the Acme stock dividends. Unfortunately, Dwayne had a sudden heart attack and died two months before the 2012 trip.

Scott, Ed and Paul sought to take the vacation in 2012, but Dwayne's wife Ginger refused to turn over either the stock or the dividends, claiming that she owned the stock as the sole beneficiary of Dwayne's will.

**Applying Michigan law, fully discuss: (1) whether Dwayne created a valid trust in April 2010; (2) the standard of proof needed to establish whether a valid trust had been created; and, assuming that a valid trust had been created, (3) whether trust proceeds may be used to fund all costs of the annual vacation, including the lodging, hunting and fishing, poker, and food and beverages.**

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

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

Walter Weasel is the grandfather of Daniel and Gregory. In 2011, for Daniel's 18<sup>th</sup> birthday, Walter handed over the keys to his convertible and told Daniel, "The car is yours." Walter did not undertake any additional actions relating to the convertible. For Gregory's 15<sup>th</sup> birthday, Walter opened a special youth savings account on Gregory's behalf at the Acme Bank of Michigan in compliance with Michigan law, filled out the requisite paperwork to establish himself as custodian of the account on Gregory's behalf, deposited \$10,000 into the account, and told Gregory that the \$10,000 was "my gift to you."

Shortly thereafter, Walter thought twice about this largesse. He demanded the convertible back from Daniel and told Gregory that the \$10,000 was no longer Gregory's.

**Assess, under Michigan law: (1) whether Daniel has a right to the convertible, and (b) whether Gregory has a right to the \$10,000.**

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

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

Kerry bought a home in Caravaggio City, Michigan in 2003. Her purchase was financed by a loan provided by First Bank of Caravaggio, to whom Kerry granted a mortgage. The mortgage document included traditional information, including the loan amount, interest rate, repayment terms, and identities of the parties. First Bank was named as the lender on the mortgage, but the mortgage document also contained the following language:

"Mortgage Registration System (MRS) is the mortgagee under this security instrument. MRS is a separate corporation acting as a nominee for lender and lender's successors and assigns. This document secures to lender the repayment of the loan and the performance of borrower's covenants and agreements. Borrower understands and agrees that MRS holds legal title to the interests granted in this instrument, and if necessary, MRS has the right to exercise those interests, including the right to foreclose and sell the property."

Kerry signed the mortgage and it was properly recorded soon after closing. Subsequently, First Bank bundled Kerry's mortgage with similar mortgages and sold them to National Bank. The sale and assignment were properly recorded.

Unfortunately, Kerry lost her job in late 2011. Kerry stopped making her mortgage payments a few months later, and MRS moved to foreclose on the property.

MRS printed notice of the impending foreclosure by sale in the county newspaper for four weeks in April 2012, posted a copy of the foreclosure notice to the front door of Kerry's home, and served notice on Kerry personally. During this time, Kerry was trying to borrow money to keep her home, but she was unsuccessful in raising enough money in time. On May 15, 2012, a public foreclosure sale was held where MRS purchased the home for the outstanding balance of the loan. A deed was subsequently issued to MRS, which MRS immediately recorded. MRS then quitclaimed the deed to National Bank, which was properly recorded.

National Bank brought an order of eviction against Kerry. Kerry immediately filed an action in the local circuit court challenging the eviction and seeking to quiet title in her favor. Kerry first argues that the method chosen to foreclose on the property was not valid and/or was deficient. Second, Kerry argues that the foreclosure is invalid because MRS was not a proper party to foreclose on the property and may not foreclose in a non-judicial setting. Finally, Kerry notes that since the foreclosure,

she was able to raise enough money to pay the balance of the mortgage, the outstanding mortgage payments and other interest and fees. Within two weeks of the foreclosure, she delivered a check for this amount to National Bank. National Bank, unsure what to do with Kerry's check, placed it in an escrow account and is defending the foreclosure action to the fullest extent provided by Michigan law.

**Assess the two arguments raised by Kerry against the validity of the foreclosure. Further, assuming that the foreclosure was valid, assess the legal effect, if any, of Kerry delivering the check to National Bank.**

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

In 2011, Dean Director decided to make a "post-apocalyptic romance" movie that would be set against both abandoned industrial sites and pristine shorelines. Knowing that both could be found in Michigan, Dean contacted Phil Filmbuff, whose Michigan-based business identified potential locations and performed other pre-production tasks for movie projects contemplating shooting in Michigan.

In late September 2011, Dean flew to Michigan, and Phil showed him several promising locations. As they drove around, Dean told Phil that he was on the verge of lining up financial backing from several private investors, and that this backing was essential to making the movie. Dean said that those investors should be locked in very soon because he had just signed box-office draw Laura Lovely to play the female lead. Ms. Lovely had recently completed rehab for prescription drug abuse and, according to Dean, thought his film would be the ideal vehicle to get her career back on track.

Shortly before Dean caught his departing flight, he told Phil that he wanted to retain Phil's company, Utopia Preparations (UP), to continue scouting filming locations and to perform other pre-production tasks. After Dean and Phil discussed possible terms, Dean wrote out an agreement on a legal pad and presented it to Phil. Both men then signed the paper, which purported to be an agreement between UP and Dreamers at Work (DAW), Dean's production company. After identifying the parties and "the Project," the document said:

"DAW hereby retains UP, beginning October 1, 2011, to perform pre-production services for the Project, including without limitation negotiating leases and options for Michigan filming locations and identifying Michigan-based crew members and extras. DAW will pay for this work at the rate of \$150 per hour, plus expenses, with a guaranteed minimum of \$15,000 per calendar quarter for at least two quarters."

The writing did not mention anything about financing for the Project or other contingencies. After they signed, Dean said to Phil, "I am excited to be working with you, and I personally guarantee that you will receive the amounts promised." Dean also gave Phil his specifications for other locations he wanted scouted soon.

UP began doing the requested scouting on October 2, 2011. On October 15, 2011, Dean called Phil to say that things had taken a

turn that Dean had not been expecting. Ms. Lovely had relapsed and would be unavailable to do the film. All of Dean's possible investors had backed away immediately except for one--who was willing to fund a lower-budget version, but only if it starred his niece and was shot in California. Dean told Phil to stop all work and he would send him a check for \$2,000 for his trouble. Phil said to Dean: "Wait a minute. I have spent 50 hours driving around the state this month, and you promised me much more pay and work than that. You will be hearing from my lawyer." Dean responded: "You should have known nothing was for certain until the money was there."

**Applying Michigan law, discuss whether there was an enforceable contract between Phil and Dean's respective companies and what defenses could reasonably be raised to argue that DAW is not liable to UP for breach. Also discuss whether Dean is personally liable for breach of his personal guarantee.**

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

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

You are the law clerk for plaintiff's counsel in a products liability action against a major toy manufacturer pending in a Michigan circuit court. There are three individuals plaintiff's counsel would like to interview, but the company's attorney has declined to make them available--a janitor currently employed by the defendant, an individual who was previously employed by the company as a janitor, and a current division manager at the company who was involved in decisions critical to issues in the case. One or more of these individuals likely has knowledge as to whether certain plastic parts that are relevant to the litigation and that the defendant claims were thrown out in the normal course of business, might not have been discarded after all. The lawyer for whom you work has asked you to answer the following questions:

**1. May plaintiff's counsel attempt to interview the currently employed janitor without the knowledge or consent of the defendant company's attorney? Why or why not?**

**2. May plaintiff's counsel attempt to interview the formerly employed janitor without the knowledge or consent of the defendant company's attorney? Why or why not?**

**3. May plaintiff's counsel attempt to interview the currently employed division manager without the knowledge or consent of the defendant company's attorney? Why or why not?**

**If you conclude that contact is appropriate with one or more of the individuals, are there any restrictions governing that contact?**

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

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

Bob claims his manager, Linda, discharged him from his sales job with Jack's Auto Supply because she is biased against older people like him. Linda asserts that she discharged Bob based on instructions from Jack's owners to discharge salespersons who had been the subject of customer complaints of surly or slow service and/or had been evaluated as "below average" performers on their most recent performance reviews. The critical issue at the age discrimination trial is whether Linda acted with a discriminatory bias or for legitimate, non-discriminatory reasons. When Linda takes the stand at the age discrimination trial, she begins to testify that she made her discharge decision based on (1) written complaints about Bob submitted by some of his customers; and (2) Bob's last two performance reviews prepared by Bob's former manager, Gloria. Before Linda is allowed to testify to the specific content of the complaints and reviews, however, Bob's attorney elicits the following information on voir dire:

- \* Linda did not try to verify the content of the customer complaints as it was not feasible to do so;
- \* Linda did not have an opportunity to discuss the prior reviews with Gloria, who had to leave abruptly to care for her mother in another state;
- \* The complaints and reviews were consistent with what Linda had observed in the relatively short time she managed Bob; and
- \* After Bob's discharge, Jack's developed a procedure for following up with customers who complain about Jack's salespersons, from which it learned that a small portion of complaints lodged against other salespersons (not Bob) had been fabricated.

Based on voir dire, Bob's attorney objected that Linda should not be allowed to testify concerning the content of the complaints or performance reviews because the content is hearsay. Bob's attorney also argued that if Linda is permitted to testify to content, he should be permitted to introduce evidence that at least some customer complaints had been fabricated.

**How should the court rule on Bob's attorney's objections? Explain your answer.**

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

After a night of drinking whiskey shots and beer chasers, Tony and Chucky came upon Vance standing at the bus stop in the early morning hours. Tony and Chucky circled the block and confronted Vance. Together they beat and kicked him until bloody, barely breathing and unconscious. Not satisfied with the damage inflicted, Tony tossed Chucky the keys to Tony's car. He told Chucky to back the car up and run over Vance to finish him off. Tony told Chucky he would pull Vance out into the road and did so. Chucky said, "No, I don't want to do it. Let's just go." Tony yelled at Chucky and said, "Do it or you die." Chucky was five years younger than Tony, 50 pounds lighter, and knew Tony carried a gun. Chucky got into Tony's car, backed it up and ran over Vance, killing him.

Apparently feeling no remorse, Tony and Chucky go to the neighborhood convenience store where both work to grab a soda. They told the manager, Mary, what they did. Mary, seeing blood on the store floor and their boots, grabbed a mop and started mopping. Noticing a police cruiser pulling into the store parking lot, Mary told Tony and Chucky to throw their bloody boots in the dumpster and hide in the walk-in cooler.

Tony and Chucky were eventually charged with Vance's murder. Together they claim a defense of intoxication. Tony claims he only beat Vance and Chucky alone killed him. Chucky claims Tony forced him, by his threats, to kill Vance.

**Evaluate the chances of success of Tony's and Chucky's defenses. Additionally, can Mary be charged with murder or any other crime? Explain your answers.**

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

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

Dr. Greg Glitter, a board certified plastic surgeon newly licensed by the State of Michigan, needed to increase his client base in order to pay off his substantial student loans. Dr. Glitter discovered a novel way of soliciting new clients that proved wildly successful. After performing his scheduled surgeries for the day, Dr. Glitter would enter the burn unit of the hospital and visit the patients, evaluating their condition and offering his cosmetic surgery services. Dr. Glitter explained to the patients that, in most cases, his services would not cost the patient anything because their health insurance or automobile insurance would cover it.

Outraged, family members of several patients filed a complaint with the State Board of Medicine. After an investigation, formal charges were brought, alleging that Dr. Glitter violated Board of Medicine rules prohibiting the solicitation of hospitalized clients. The Board claims that it has an interest in regulating the practice of the profession, maintaining the privacy of patients, and avoiding the inherent pressure of solicitation. If the allegations are proven, Dr. Glitter's medical license will be placed on probationary status for 180 days.

**Applying principles of constitutional law, what is the best argument Dr. Glitter can advance to contest the Board of Medicine rule? Fully 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**

Responding to a 911 call about someone lying in a gas station parking lot, two police officers found a man with multiple gunshot wounds. Though bleeding significantly, the man could respond to the officers' questions. After a question about the man's condition, the questions turned to "what happened?" The man asked in response if an ambulance had been called. The officers said one was on the way and asked again "what happened?" The man responded, "20 minutes ago, Bobby shot me." When the police asked "where he had been shot", he responded, "Bobby's house; he shot me through the door." One of the officers then asked "where's that?" The man said, "Parker Street by 5<sup>th</sup>." The man then said, "I need that ambulance now -- now! I'm bleeding bad and I'm getting foggy. Bobby killed me." When other officers arrived and began asking what happened, they received similar answers from the man. Paramedics arrived moments later, but it was too late. The man was pronounced dead from gunshot wounds.

Responding officers alerted homicide detectives who arrested Bobby the next day at a home on Parker Street, two blocks from the gas station. Eventually charged with murder, Bobby moved the court to exclude from admission at trial the man's statements made to responding officers. Bobby's lawyer based the request on constitutional grounds.

**Identify (1) the grounds on which defense counsel would base his request; (2) how the prosecutor should respond; and, (3) the analysis the court should make, including its conclusion. Explain your answers.**

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

**JULY 2012 MICHIGAN BAR EXAMINATION**

**ESSAY PORTION**

**AFTERNOON SESSION**

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

The Fantastic Pretzel Company (FPC), is a Michigan corporation formed in 2003. Its primary shareholders are Amanda Anders and Candy Coffman, who collectively own 45% of the company's stock. Five individuals own the remainder of FPC's stock, each possessing 11% of FPC stock. Amanda serves as the President and Chief Executive Officer of FPC, while Candy serves as the Vice-President and Chief Financial Officer.

In 2010, FPC entered into a 10-year contract with the Salty Salt Company (SSC), agreeing to purchase salt at prices significantly above current market value. Candy entered into the contract on FPC's behalf after reading several investment reports and trade articles predicting that there would be a tremendous salt shortage within a few years, and that salt prices would increase substantially.

Unhappy with the company's performance over the past two years, Greta Goulet, one of the five other shareholders, discovered that one of the principal reasons for FPC's dismal financial performance was the hyper-inflated prices FPC was paying for salt pursuant to the contract with SSC. Greta demanded a meeting of the shareholders in order to oust Amanda and Candy as directors. In anticipation of a shareholders' meeting, Greta placed a conference call with the four other minority shareholders. All five agreed to vote for Greta Goulet and Jaime Jenna as corporate directors in lieu of Amanda and Candy.

Amanda and Candy refused to hold a shareholders' meeting, claiming that the annual shareholders' meeting had already been held several months ago, and that the bylaws do not provide for any additional meetings. Additionally, Nancy Nome, one of the five minority shareholders, indicated that she changed her mind and would not be voting to oust Amanda and Candy.

Assume that the bylaws and articles of incorporation are completely silent on these issues. Applying Michigan law, fully discuss: (1) whether Candy Coffman may be held liable for FPC's losses; (2) whether Greta Goulet can compel a shareholders' meeting, and (3) whether it is possible for the shareholders to oust Amanda Anders and Candy Coffman as directors.

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

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

The Hawks were playing the Wings in an adult soccer championship game. John Smith was the league leader in goals and played for the Hawks, while Ron Johnson was a renowned "enforcer" on the Wings. The game was tied when Smith, who was dribbling the ball and being closely chased by Johnson, was breaking away from Johnson, bearing in on the Wings goal. Not sure whether he could keep up with Smith, Johnson started bumping into Smith and hitting him with his arm. He was also using his foot to get the ball away from Smith. Smith was getting frustrated with these tactics, but realized he needed to score so kept going. According to some spectators (mostly Hawks fans), Smith quickly turned around towards Johnson, and in doing so, elbowed Johnson in the face. Other spectators (mostly Wings fans) said that Smith yelled an obscenity and then blatantly elbowed Johnson in the face. Either way, Johnson suffered a broken nose and orbital bone.

According to the owner of the soccer complex, We are Soccer, Inc. (WASI), tickets to the game were sold out. The stands were very crowded and held fans for both teams. One of the ticket-holding fans in the stands was Lilith Jones. As the fracas between Smith and Johnson was occurring on the field, Jones (an enthusiastic Hawks fan) leaped out of her seat in a rage, as did John Doe, a fan for the Wings. As the crowd became more restless, the complex manager called the police, hoping they would be present when the unruly crowd dispersed. Before police arrived, Doe could not control his anger anymore and punched Jones in the face. Jones received a concussion, and after the police arrived a few minutes later, she was taken to the hospital.

Johnson wants to sue Smith, and Jones wants to sue the property owner, WASI, both bringing claims for negligence. **Discuss what standard each party must establish, and whether either plaintiff can successfully establish all the elements of their respective claim. Explain your answer.**

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

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

Sara Sibling remembered that as a little girl she played in the empty lots in her hometown located in Happy Heights County. Sara Sibling's hometown and the lots she played on are situated next to a smelter company which had been in operation since at least 1970. Sara recently read blogs that made her believe that her current health issues, particularly her high blood pressure and forgetfulness, may be related to exposure to lead while playing in the lots. She also recalled that when her parents sold their home, there had been concerns regarding contaminated soil. The home, purchased before the smelter company plant was built, sold for pennies.

Sara Sibling held community meetings about the possibility of lead and other contamination in Happy Heights County. She also submitted editorials to the local newspaper claiming that the owner of the smelter operation, Smelly Smelter, had intentionally allowed lead to be released from the smelter location for years while knowing that lead was dangerous to humans.

As a result of Sara Sibling's efforts, hundreds of people who had lived in her hometown at different times from 1970 through the present, came forward with a large variety of health complaints, as well as complaints about the devaluation of their homes. Specifically, people came forward with health issues including high blood pressure, joint pain, cognitive impairment, memory and concentration problems, anemia, and kidney disease.

Sara and others hire an attorney, who had already successfully handled a class action involving asbestos exposure, to assess whether they can sue Smelly Smelter Company. The attorney investigates and concluded that there were potentially 2,000 residents who had lived in Sara Sibling's hometown in Happy Heights County from 1970 to the present.

The attorney believes that a lawsuit alleging negligence, nuisance and trespass should be filed in state court against Smelly Smelter.

**Please answer the following questions:**

- 1. In what state court would venue lie?**
- 2. Can the plaintiffs be certified as a class? Analyze what prerequisites must be shown to the court to have the class certified.**

3. If the class is certified, what is the next step the attorney would have to take?

4. Whether or not the class was certified, would a counterclaim by defendant against Sara Sibling for libel and slander be allowed procedurally?

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

Desmond Jones was in his last year at the University of Michigan Medical School when he met Molly, a sophomore who had told all of her sorority sisters that she had "always planned to marry a doctor." The two dated through the time of Desmond's graduation. After his graduation, Molly told Desmond that she was pregnant, although she was not. The two married.

Immediately following their marriage, the couple moved to Marquette, Michigan, where Desmond was an intern at a hospital that paid just enough to cover the rent, food, utilities, and Desmond's loans from medical school of more than \$75,000.00. Arguments began between the couple over money issues. Molly also complained about Desmond's devotion to his work and his lack of attention to her. Desmond, in turn, began accusing Molly of "trapping" him into marriage by lying that she was pregnant.

A year into their marriage, Molly began a fashion business with a sorority alumna to combat her loneliness and the couple's financial difficulties. Her fashion business quickly became profitable and she was soon earning \$85,000.00 within a year. After two years of marriage, Molly decided to leave Desmond because she loved the excitement of her business and saw no reason to continue with their financial challenges. Desmond agreed to the divorce that Molly wanted and to the division of the few things the two had. But, Desmond wanted spousal support from Molly.

**Can Desmond obtain spousal support? What factors can Molly present to oppose such a claim by Desmond?**

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

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

ABC Company (ABC) is a landscaping company that primarily cares for and fertilizes city parks for different municipalities. It also does the same type of work for two large privately-owned estates. It has historically purchased its fertilizer from LCS Supply Company (LCS). Most recently, ABC and LCS entered again into their usual contract where LCS is to provide ABC with 500 lbs. of fertilizer semi-annually for the next three years at a specified cost.

Unfortunately, LCS's financial situation began to deteriorate as larger supply companies increasingly have come to dominate the supply market. Unbeknownst to ABC, LCS reached the point where it had to assign its contract with ABC to one such large supply company--Maximum Supply. LCS did not seek ABC's consent to the assignment.

Shortly thereafter, Maximum Supply advised ABC it had assumed the shipments and, pursuant to the contract, sent ABC the next scheduled supply of fertilizer. ABC accepted it, but came to dislike the brusque manner of the people at Maximum Supply and preferred its prior relationships with LCS personnel. ABC used the fertilizer it received from Maximum Supply and fertilized the city parks and private estates, just as it had done in the past.

Approximately one month later, one of ABC's private customers complained to ABC that his lawn did not look as green and vibrant as it had in past years. ABC checked Maximum Supply's fertilizer composition and found it was not the same mix as ABC had received from LCS.

ABC seeks your legal counsel and wants to end its relationship with Maximum Supply. **Answer both of ABC's two questions based on the above facts:**

(1) Can ABC consider LCS's assignment or delegation of its contractual obligations to Maximum Supply a breach of contract permitting ABC to now discontinue dealing with Maximum Supply?

(2) Can ABC revoke the contract on the basis that the fertilizer supplied by Maximum Supply did not conform to the original contract?

Explain your answers.

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

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

Following his high school graduation, Jason procured a job at the major company in his hometown, MCA Manufacturing Company (MCA). Jason's first job for MCA was in the shipping and receiving department loading and unloading trucks that delivered materials to MCA. After a few years, Jason impressed his supervisors and soon became a "working supervisor" in the shipping and receiving department earning an annual salary of \$50,000.00. A "working supervisor" helps at some manual aspects of the job in addition to overseeing the operation.

While MCA's headquarters are in Jason's Michigan hometown, MCA also maintains a satellite shipping and receiving site in Ohio. At MCA's request, Jason was dispatched for three days to the Ohio site to oversee an incoming shipment there of fiberglass material. MCA had previously received such fiberglass shipments and many of its employees had experienced medical problems, such as breathing difficulties and skin irritations, after unloading the material. Despite this, MCA did not warn or take any special precautions to protect Jason and its other employees regarding the Ohio shipment.

Jason oversaw the delivery of the material in Ohio, and during the process began to experience breathing difficulties after inhaling fiberglass residue. Upon his return to Michigan, Jason found that his breathing difficulties did not subside and he no longer had the stamina to continue performing his working supervisor job for MCA. Jason informed MCA of his problem. Although Jason was capable of doing non-strenuous supervisory work, MCA had no such work and Jason has not returned to work.

Jason is not inclined to search elsewhere for a job, particularly for any job paying less than he had earned at MCA. Instead, Jason wants you -- his attorney -- to determine what legal remedies he has, if any, against MCA.

**Answer the three following questions exclusively on the basis of Michigan's workers' compensation statute:**

(1) Can Jason sue MCA for an intentional tort under Michigan law? Why or why not?

(2) Given the occurrence of Jason's injury in Ohio, can Jason bring a workers' compensation action in Michigan? Why or why not?

(3) What effect, if any, will Jason's reluctance to seek work elsewhere have on a Michigan claim for weekly workers' compensation disability benefits?

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