FEBRUARY 2009 MICHIGAN BAR EXAMINATION

ESSAY PORTION

MORNING SESSION

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

The Acme Party Store in Suburb City was recently burglarized. When police investigated, they discovered that the floor of the store was littered with Wally's Wintergreen chewing gum wrappers and that a case of beer was missing. The perpetrator left behind a note in very distinctive handwriting that said, "I admit that I did this, but I only did it because I needed beer." After conducting a thorough investigation, the police arrested Dennis Dwayne, the leader of a small religious sect that worships Sasquatch and strictly forbids the consumption of alcohol. Dwayne plans to testify that he was out of town at the time of the incident.

The prosecutor plans to offer four pieces of evidence against Dennis Dwayne. First, the prosecutor plans to offer the testimony of Gladys Gage, Dwayne's housekeeper of three years, who will testify that, whenever she cleans Dwayne's home, the floors of his home are routinely covered in Wally's Wintergreen chewing gum wrappers. Second, the prosecutor plans to offer the testimony of Carolyn Clark, Dwayne's administrative assistant at the Sasquatch Temple, who will identify the distinctive handwriting on the note left in the store as being Dwayne's. Third, the prosecutor plans to admit only the first portion of the note -- "I admit that I did this." Lastly, the prosecutor plans to offer the testimony of Dr. Hubert Hubris, a theologian who will testify that Dwayne's testimony is not credible because of his unusual doctrinal beliefs in the divinity of a fictional beast.

You are the defense attorney in the case of the People of the State of Michigan v Dennis Dwayne. Using the Michigan Rules of Evidence, assess the admissibility of the evidence against Dwayne. Explain your answer.

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

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

A barefoot Peter Piper picked a peck of pickled peppers, and he subsequently developed rashes on his hands and feet. His nearsighted dermatologist, Doctor Duck, did not have his contact lenses in place that day, and therefore could not see how severe the rashes on Peter's feet were. Instead, he thought all of Peter's rashes were minor and prescribed a cream to heal them. Unfortunately, the rashes on Peter's feet did not heal, but instead quickly turned gangrenous, requiring amputation of his feet.

Peter's attorney, Robert Reedem of Reedem & Weape, filed a notice of intent to file a medical malpractice claim against Duck and complied with all of the procedural requirements of the medical tort reform statute before filing his complaint for medical malpractice in circuit court. Along with service of process and a copy of the complaint, Reedem sent Duck a discovery request including interrogatories and requests for production of documents demanding the following information: (a) Duck's medical files pertaining to his diagnosis and treatment of Peter; (b) Duck's medical files pertaining to his diagnosis and treatment of the other patients he saw on the day he treated Peter; (c) any malpractice insurance agreement covering Duck's medical practice; (d) Duck's net worth, assets, and liabilities; and (e) whether Duck has been a defendant in other medical malpractice complaints.

Duck has retained you as his attorney. Which, if any, of the requested materials are discoverable under Michigan law? Explain your answer.

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

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

Diligent Developments, Inc. (D & D) is a non-profit organization that builds and donates public parks. D & D purchased a piece of property, Blackacre, in the City of York, Michigan for the purpose of constructing a park complete with a playground and athletic fields. D & D posted "No Trespassing" signs along the border of Blackacre and mailed a notice to abutting landowners informing them that Blackacre was not open to the public. Occasionally neighborhood children would enter the property to play in the fields, but each time they were discovered, a D & D employee escorted them off the property.

In order to develop the site, D & D had to install a drainage system which required a significant amount of digging and produced several large piles of dirt. Due to financing delays, D & D did not work on or visit the site for a four-day period beginning on a Thursday. On the Friday that D & D was not at the site, Curious Chris, a 12-year-old boy living in a house abutting Blackacre, noticed the large dirt piles and went out to play on them with two other boys from the neighborhood. Chris and the other boys decided to dig holes in the dirt piles large enough for them to sit inside. Chris' mother, Absent Amber, saw the boys playing on the dirt piles, but did not stop them because she did not believe that their digging was dangerous. The next day, Chris and the other boys continued playing on the dirt piles. Unfortunately, one of the holes collapsed while Chris was inside it. The other boys ran for help, and Amber called 911. Chris suffered several serious injuries due to the weight of the dirt collapsing on him.

Amber, as next friend of Chris, has filed a lawsuit against D & D seeking recovery of damages on two theories: (1) premises liability and (2) creating and maintaining an attractive nuisance. **You are an associate at the law firm of Downs, Rivers & Diamond, which has been retained to defend D & D. Assess the merits of Amber's case. 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

Police Officers Smith and Jones were investigating drug trafficking among a gang of teenagers who were suspected of manufacturing methamphetamine and distributing it in local high schools. The police officers suspected that the gang was manufacturing the drugs in the home in which Paul Pusher lived with his parents. However, at this stage of their investigation they did not have enough evidence to obtain a warrant to search the home. One day, while Officer Smith was attending to paperwork at the station, Officer Jones observed a group of teenagers enter through the front door of the home of Paul Pusher. One of the teenagers appeared to be carrying a small propane tank. After approximately 30 minutes, Officer Jones knocked on the front door of the Pusher home to inquire about the contents of the tank. Officer Jones did not observe that the boys, accompanied by Paul Pusher, had left the home through the rear door shortly after their arrival.

When nobody answered the front door, Officer Jones went to the rear of the house and knocked on the rear door. Nobody answered. Officer Jones looked into a basement window located next to the rear door of the home. He observed a Bunsen burner with an extraordinarily high flame burning under a petri dish filled with liquid and solid substances. Based on his experience, Officer Jones believed this was a lab constructed for the manufacture of methamphetamine. Officer Jones knew that such labs often result in explosions that expose the public to hazardous chemicals. Officer Jones feared that the apparently unattended and excessively large flame burning under substances he suspected to be dangerous chemicals could result in an explosion. He again knocked loudly on the rear door, but nobody responded. Believing that the residents in neighboring homes were in peril and recognizing that evidence of a crime could be destroyed in an explosion, Officer Jones forced his way into the home and extinguished the flame. Once in the basement, Officer Jones observed a large quantity of suspected methamphetamine located under the table on which the Bunsen burner was placed.

Officer Jones then extensively searched through the entire premises and found several guns and $25,000 in cash in the attic of the home. Officer Jones seized the lab paraphernalia, the drugs, the guns and the cash and called Officer Smith to inform him of his find.

Officer Smith indicated that he was in the process of talking

to Paul's parents, Bob and Alice Pusher. The Pushers appeared at the police station to express concern over the gang of teenagers with whom their son Paul was associating. They feared that Paul was engaged in illegal drug activity. After learning of Officer Jones' discovery, Officer Smith informed the Pushers that the officer with whom he was speaking on the telephone observed through a basement window of the Pusher home activity that is consistent with the illegal manufacture of methamphetamine. Officer Smith then asked the Pushers, "may the police have permission to search your home?" The Pushers freely and voluntarily consented to a search of their home.

Paul Pusher, age 18, was charged with the manufacture and distribution of methamphetamine and possession of a firearm during the commission of a felony. His lawyer has filed a motion to suppress the guns, cash, drugs and paraphernalia found in the home.

Discuss the legal arguments that may be advanced for and against Paul's motion and how the trial court is likely to rule.

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

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

Vickie Victim owned a duplex in Hillsdale, Michigan, in which she lived in one unit and rented the other unit to Peter Perp. In the early morning hours of July 1, 2008, Peter found himself craving crack cocaine, but he had no money with which to purchase the drug. Peter broke into Vickie's unit to search for cash. Vickie confronted Peter. Peter overpowered Vickie and eventually strangled her to death. Peter took $500 from Vickie's bedroom and purchased drugs with the money. The next day Peter was arrested and charged with first-degree premeditated murder. Peter was declared indigent and the court appointed trial counsel to represent Peter in the circuit court. After waiving a preliminary examination in the district court and being arraigned on the information in the circuit court, Peter, overtaken with guilt, announced to the circuit court and his lawyer that he did not want or need the assistance of trial counsel and he demanded that the court accept his plea of guilty as charged. The circuit court accommodated Peter and accepted his guilty plea. Peter was sentenced to life in prison with no possibility of parole and the trial court entered the judgment of conviction and sentence. The following day, Peter arrived at prison and had a change of heart. Peter immediately wrote a letter to the trial court and the clerk of the circuit court in which Peter expressed his desire to exercise his right to an appeal. Peter also asked for the appointment of counsel to represent him on appeal. The clerk of the court and the trial court received the correspondence a few days after the trial court entered Peter's judgment of conviction and sentence, and filed the correspondence in the official court file.

1. Describe and discuss defendant's right to appellate review in the state court. Limit your answer to a discussion of appellate review in state court. Do not discuss possible claims that defendant may assert on appeal.

2. Discuss whether the trial court is obligated to honor Peter's request for the appointment of appellate counsel.

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

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

Late one night, Dan Defendant was enjoying a beer at his neighborhood pub, when Andy Aggressor entered the bar and accused Dan of having an affair with Andy's spouse. Andy punched Dan several times in the head and face. Then, Andy pulled a hunting knife out of his coat and told Dan he intended to slit Dan's throat. Dan ran out of the pub and Andy followed. Andy got into his car and drove toward Dan at a high rate of speed. Dan ran behind the bar, into an alley and jumped over a fence and into his neighbor's yard. Dan went into his home, where he lived with his brother Dave. Dan possessed two unregistered handguns that were hidden in his home. Dan loaded the guns and went into his garage where he placed one gun underneath the driver seat and one gun underneath the passenger seat of Dave's car. Dan then went back into his home to inform Dave that they had to leave their home immediately because Andy Aggressor had beat him, pulled a knife on him and threatened to kill him. Dan informed Dave that an enraged Andy would be coming to their home at any moment to carry out his threat to kill Dan.

Dan had placed the two loaded guns in Dave's car so that both Dan and Dave would have a weapon with which to defend themselves should Andy confront them. However, Dan did not tell Dave that he had placed the guns in his car because Dan knew that Dave, who was on probation at the time, would not allow Dan to possess any weapon in his car. Neither Dan nor Dave had a permit to carry a concealed weapon. Dave started his car and, with Dan in the passenger seat, drove at an excessively high speed out of his garage and down his residential street. Within seconds, a car parked on the street turned on its headlights and pulled out behind Dave. Dan, fearful that Andy was operating the car following them, reached under the passenger seat, pulled out his gun and told Dave, "I hope we won't need to use this." The car trailing Dave turned out to be a police car. Almost immediately after Dan pulled his gun out from under his seat, the police car activated its overhead flashers and pulled Dave over. Dan stuffed his gun back underneath his seat as Dave pulled to the side of the road. Upon checking Dave's identification, the officer making the stop discovered that Dave had an outstanding arrest warrant issued for Dave's failure to appear in court on a traffic violation. The officer then checked Dan's identification and discovered that Dan had an outstanding arrest warrant arising from Dan's failure to pay child support. Upon arresting both Dan and Dave, the officer conducted a lawful search of Dave's car incidental to the arrest of its occupants and

the two guns were discovered and seized. Dan and Dave were each charged with carrying a concealed weapon.

Discuss the charges and any defenses each defendant may assert.

*******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

George and Jane dated while attending the University of Michigan and married just after graduation. The two decided that Jane would go on to the U of M Dental School where she had been admitted, while George would work to pay the tuition and costs, the living expenses, and save to attend the U of M Business School after Jane graduated. George worked full-time and all of the overtime offered at Spacely Sprockets, a factory job that he took because he could find no other work with his B.A. in Music History.

After they had their first child, Judy, George quit work so Jane could finish Dental School. George also remained home after Jane graduated and began practicing at an established dental office following the birth of their son, Elroy.

Over the next fifteen years, the family lived in a 3,500 square foot home in a "gated" community, went on vacations to foreign countries, and the children attended private schools as Jane's practice expanded to where she was earning $325,000 annually. Then, Jane decided to divorce George to marry an orthodontist with whom she had been having an affair.

George agreed to the divorce, agreed to accept half of the existing marital property, and agreed to have physical custody of the two children. After child support payments under the Michigan Child Support Formula, Jane was left with $175,000 annually and George had $40,000 annual income from some investments.

George wants spousal support from Jane. Can George receive spousal support? What are the factors that favor a claim for spousal support? What arguments can Jane present to deny a claim for spousal support by George? Explain your answer.

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

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

Big Bobs has been in the business of selling big screen televisions for many years. In 2008, Big Bobs undertook an expansion of the business by obtaining a loan from Bounty Bank. As a condition to providing the loan, Bounty Bank insisted on a security interest against Big Bobs' inventory, including other collateral. Big Bobs and Bounty Bank agreed to the loan and a security interest with Big Bobs' inventory as collateral. Bounty Bank timely filed an appropriate financing statement on September 20, 2008 regarding its security interest in Big Bobs' inventory.

After obtaining the loan, Big Bobs expanded its inventory by purchasing big screen televisions which were delivered by the manufacturer on November 8, 2008. Joe Spartan, an avid college football fan, was interested in purchasing a big screen television for his family from Big Bobs, but was strapped for cash. Therefore, he obtained a loan from City Bank. City Bank paid the loan proceeds directly to Big Bobs on November 22, 2008 so Joe Spartan could purchase a big screen television. The television was delivered on November 26, 2008. As collateral for the loan, Joe Spartan granted City Bank a security interest in the big screen television. City Bank never filed a financing statement pertaining to its security interest.

On December 5, 2008, Joe Spartan obtained a loan from National Bank to purchase presents for the holiday season. As collateral for the loan, Joe Spartan used the big screen television purchased from Big Bobs on November 22, 2008. An appropriate security agreement was executed in connection with the loan. National Bank timely filed an appropriate financing statement on December 6, 2008 regarding its security interest in the big screen television.

Joe Spartan defaulted on the loans with City Bank and National Bank on January 22, 2009 after he lost his job at the end of December 2008.

Even though Big Bobs had high expectations regarding the sale of big screen televisions, on January 5, 2009, Big Bobs discovered it did not have enough money to pay its employees and, as a result, immediately closed its business and defaulted on its loan with Bounty Bank.

After the defaults, the various parties attempted to gain possession of the big screen television purchased by Joe Spartan

from Big Bobs.

Answer the following: What are the respective legal rights (if any) of Bounty Bank, Joe Spartan, City Bank, National Bank and Big Bobs to the big screen television? List the order of priority (from highest to lowest) to Joe Spartan's big screen television with your reasoning.

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

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

John is 55 years old and is a high school graduate. He worked for an automobile company for 15 years on the assembly line. Prior to that time, he held other manual jobs.

John found that the bending necessary to perform his tasks on the assembly line at the automobile company aggravated his arthritic back condition, a condition that pre-existed his tenure at the automobile company. John stopped working saying he could no longer perform any of the assembly line tasks due to his back pain.

John seeks your legal advice on the merits of a workers' compensation claim for weekly wage loss benefits.

Identify and discuss the issue(s) presented in John's case under Michigan law. Address what type of information you, as his attorney, will need to elicit and develop in order to properly evaluate John's chances of prevailing on a claim for weekly wage loss benefits.

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

FEBRUARY 2009 MICHIGAN BAR EXAMINATION

ESSAY PORTION

AFTERNOON SESSION

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

Patrick Potter and Dorothy Devine became engaged in June 2008, after living together in Dorothy's home for several years. However, after Patrick's tenth high school reunion in September, he began having an affair with his married high school sweetheart, who became pregnant with his child. After Dorothy learned of the betrayal in January, she ended the engagement, the couple broke up, and Patrick moved out of Dorothy's home.

Patrick wants several items of property currently in Dorothy's possession. First, Patrick seeks Hammer, an English white retriever puppy that Dorothy presented to Patrick at his surprise birthday party in October. Second, Patrick seeks a pair of antique diamond cufflinks that belonged to Dorothy's father. Dorothy showed Patrick a picture of her father wearing the cufflinks in a family album and said that the cufflinks were Patrick's, although they have remained in Dorothy's safe since her father's death several years ago. Third, Patrick wants returned to him the three-carat engagement ring that he gave Dorothy.

You are an attorney at the law firm of Cook, Adkins and Tykoski. Patrick, your client, is contemplating bringing a lawsuit against Dorothy to compel the return of the items. Utilizing Michigan law, assess Patrick's likelihood of success on the merits. 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**

Joe and Trina Murphy purchased their house and lot, Lot 27 of Happy Land Subdivision in 2001, and moved in immediately. Lot 27 was bounded on the north by Briggs Ave. The other three sides of the lot were completely fenced in by a continuous chain link fence. Before they signed the purchase agreement, the Murphys walked the property with the seller, Dominico Brown, who told them that the lot included everything within the fence.

Brown had owned Lot 27 since 1973 and erected the fence in 1974. Since that time, he had maintained all of Lot 27 within the fence, planted a hedge along the fence on the east side of Lot 27, and installed a lawn sprinkler system that ran within six inches of the fence around the entire perimeter of the yard. When Brown erected the fence, he did so without any regard for where the actual surveyed boundary line was located. In 1984, Brown also built a large storage shed for his lawn tractor that literally hugged the fence on the east side of his property.

After the Murphys had purchased Lot 27 and lived there for seven years, their neighbor to the east, Alfred Zehnder, had a survey performed on his property, known as Lot 26, in connection with a refinancing of his home mortgage. The survey, which was accurate, showed that the Murphys' fence encroached on Zehnder's lot by about three feet, and that the Murphys' sprinkler system, hedge, and shed were located within that three feet encroachment.

Zehnder's attorney wrote the Murphys a letter in October 2008, stating that they were trespassing on Lot 26 and demanding that they remove the fence, hedge, sprinkler system, and shed. The Murphys have sought your advice on this controversy.

Do not decide the case, but please advise them of their possible rights and potential liabilities in a written memo.

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

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

You are a law clerk for a probate judge who has heard evidence for several days in adversary proceedings involving the estate of Jason Walker. The following summarizes the evidence:

Jason, a wealthy bachelor who lived a happy and healthy life, suffered a devastating stroke at 84 causing him to be partially paralyzed, unable to care for himself. Jason hated the idea of living in a nursing home and hired Carlee Caregiver, a registered nurse, to move into his home and provide 24-hour care. She was to assist Jason in continuing to live in his home, doing such things as managing his home health care, helping him with his personal needs, and domestic duties like housework. Carlee knew about Jason's wealth. He was by far her most lucrative client.

Soon after the stroke, Jason began to suffer from extreme depression over his loss of independence. His depression was so severe Carlee described it as his "black hole." In his "black hole," Jason would not talk for days, refused to see his family and friends, and made no effort to manage his personal affairs and finances.

Jason then worsened to his deepest depression. He refused to speak for weeks, was not compliant in his treatment and generally hated the world. He was especially rude and nasty to his family for seemingly no reason at all.

One day, in the midst of this "black hole," Jason asked Carlee to take dictation as he often did when he wanted to write something but could not because of the paralysis. The letter, to his attorney, stated that he knew his family and had come to despise them. It stated further that he knew he was quite wealthy and he thought his wealth would be wasted on his family members. Finally, it asked the attorney to draft a codicil to his will changing the beneficiaries of his entire estate from his family to Carlee. Surprised by this, Carlee nevertheless dutifully drafted and mailed the letter.

Jason's attorney, also surprised by the letter, drafted the codicil as requested. Knowing Jason was homebound he met Jason at his home to execute the codicil. Carlee let him in and led him to Jason, then left them alone. The attorney showed the letter to Jason and described how he had implemented Jason's requests into

the codicil. When he expressed concern about Jason disinheriting his family and leaving his entire estate to Carlee, Jason said "screw my family and let me sign the damn thing."

The attorney gave Jason a pen and placed the codicil in front of him, but Jason could not sign his name without help because of the partial paralysis. Carlee often helped Jason sign his name when necessary, and the attorney had her come back into the room to help. As she usually did, Carlee put scrap paper in front of Jason, placed the pen in his hand, and gently helped him practice signing until he had a neat signature. She then put the codicil in front of Jason, placed the pen in his hand, and helped him sign the codicil. The attorney and Carlee signed the codicil as witnesses because they were the only people in the room.

Two months later Jason died of complications related to the stroke having never emerged from his deep depression. His family found out about the codicil shortly after his death and was shocked that they had been disinherited in favor of Jason's caregiver.

The probate judge has asked you to prepare a memo discussing the issues raised in the case and how they should be resolved.

*******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**

Sandy Smith established a charter fishing company to pursue his lifelong dream of being a fishing guide. Sandy purchased a boat, and then created and filed the articles of incorporation for his new Michigan corporation, "Fish-On Charters, Inc."

In order to have complete control over the company, Sandy decided that Fish-On's board of directors would consist of himself, his wife Betty, his mother-in-law Barbara, and his stepson Bobby. Each had an equal vote on the board, and each was granted one share in the corporation. Sandy believed that since he was the only fisherman of the four, the others would defer to him and that he would basically run the business on his own. Betty, Barbara and Bobby attended the annual board meetings at Sandy and Betty's house, and at the first meeting they approved the purchase of liability insurance for the directors of the company. Sandy was the only corporate employee and the only one to receive a salary. Sandy and Betty also convinced Barbara and Bobby to allow Sandy to have complete control over the financial books, including the checking account, for convenience sake.

The first few years of business were profitable for Fish-On, and Sandy received the total net profits -- $75,000.00 -- as his salary. This salary was approved by the board, as was the decision to not invest any money back into the company. This same pattern was repeated for each of the next four years. Record keeping was not a priority for anyone involved, so only corporate tax returns were filed each year. Additionally, to save a few dollars, Sandy decided after the second year, and without the knowledge of the other directors, to cancel the corporate and director liability insurance. By the fifth year, however, the customer base had dwindled, and the boat was worn, outdated, and leaky. Sandy, however, chose not to make repairs, and unilaterally decided to start pocketing the revenue from every third guided trip, hoping to lift his salary back up to the $75,000.00 range. Sandy also began to put the boat to personal use.

A customer, Jane Doe, sued Fish-On Charters, Inc. and its shareholders/directors for a personal injury she suffered as a result of falling on the wet floor of the dilapidated boat. However, Jane also discovered that, because of decisions made over the years, Fish-On Charters had no insurance and no assets except the old worn-out boat worth a paltry $5,000. Jane, therefore, also seeks to hold Sandy, Betty, Barbara and Bobby liable individually

for her damages. All defendants filed motions for summary disposition, arguing that Jane's efforts to hold the four shareholders individually liable should be rejected.

You are the law clerk to the local circuit judge. Prepare a bench memorandum on the issues raised, and discuss their proper resolution.

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

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

In late 2007, Mighty Machines, a manufacturer of industrial machinery, and Plush Resorts, an exclusive resort chain, signed a contract in which Mighty Machines reserved all of the rooms and connected venues (spa and golf facilities, etc.) at Plush Resorts' Traverse City, Michigan conference center for its annual executive strategic planning retreat during the last week of February 2009. Mighty Machines budgeted $1,000,000 for the retreat. The contract called for the pre-payment of a non-refundable deposit of $100,000 on signing (which was paid), an additional $400,000 payment on February 1, 2009, and $500,000 at the conclusion of the event. It also included a sentence stating that the parties' execution of the contract constituted "a merger of all previous proposals, negotiations and representations with reference to the reservation described in this contract." The contract further stated that any disputes would be resolved by applying Michigan contract law.

Mighty Machines had a policy of holding executive retreats at locations that had received a four-star rating from the Mobil Travel Guide. In the late 2007 discussions, Mighty Machines told Plush Resorts that the four-star rating was a condition of its willingness to book and hold the event at its facility. Plush Resorts assured Mighty Machines: "This resort has consistently had Mobil four-star ratings for the past twenty years. [This was true.] You don't need to worry about that." Relying on this statement, Mighty Machines did not ask to put language in the contract to provide that it could cancel without penalty if Plush Resorts lost its four-star rating.

Both companies had a tough year in 2008. The rating of Plush Resorts' Traverse City conference center was dropped from four to three stars, effective August 1, 2008. Also, the national economy entered a severe slowdown in 2008. Because of steep sales declines, Mighty Machines started its strategic planning in August 2008 (it could not wait for the 2009 retreat) and slashed many forms of discretionary spending, including executive retreats. On September 1, 2008, it sent Plush Resorts a letter announcing it was canceling the contract because (1) Plush Resorts no longer had the four-star rating that it had promised; (2) Mighty Machines no longer had a business need for a February 2009 strategic planning session since this work was already complete; and (3) "other current conditions" made it "financially infeasible" to hold the retreat. Mighty Machines did not offer to pay Plush Resorts anything on account of the cancellation.

Plush Resorts comes to you on October 1, 2008, alarmed by this news and concerned that new reservations are drying up because of the economic slowdown. You are told that despite diligent efforts (calls to convention brokers, ads in travel magazines and the Wall Street Journal, etc.), Plush Resorts has been unable to find another taker for the week Mighty Machines had reserved, and doubts it will be able to. Plush Resorts wants to discourage other corporate customers from canceling. At this point, it is well known that Mighty Machines is having a negative cash flow because of declining sales; however, there is no suggestion that it is in danger of running out of cash or filing for bankruptcy.

Plush Resorts requests your advice on the following: (1) can it file suit against Mighty Machines immediately or must it wait until February 2009; (2) will Mighty Machines have valid defenses if Plush Resorts sues for breach of contract; and (3) what damages can Plush Resorts expect to recover if it is successful. What advice do you give? 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**

Caroline, an associate in Jackson Law Firm, is defending Sharik in an auto negligence matter brought by Max, who was a passenger in the car Sharik was driving when the accident occurred. Caroline hears that Max may not be as injured as he has claimed. Max lives in Caroline's neighborhood, and when she scouts his house she sees Max engaged in activity that he would not be able to perform if he had the injuries he claims. Caroline gives this information to Parker, an investigator hired by Sharik's insurance company, but because Max is a neighbor, Caroline tells Parker she does not want to be identified in his investigative report. Parker includes the information in his investigative report as from "an anonymous source." Parker does not, independent of Caroline's report, verify this information.

During discovery, Max's counsel seeks a copy of Parker's investigative file and to depose Parker. At Parker's deposition, which Caroline is defending, Parker testifies that the information about Max's capacity came from a third-party source, but Caroline asserts that he cannot reveal the name of the "informant" because it is covered by the attorney-client privilege. After the deposition, and in anticipation of Max's challenge to the claim of privilege, Caroline and Parker decide they will have Parker's son Matt sign a sworn statement that Matt was the "anonymous source" who discovered Max's condition.

In a regular review of the status of cases in the office, Caroline's boss, Jackson, discovers what Caroline has done. **Under the Michigan Rules of Professional Conduct, what ethical issues are raised by Caroline's conduct, and what corrective steps, if any, should Jackson take?**

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