

July 2021
Michigan Bar Exam
Questions

QUESTION 1

Latoya died on June 1, 2020. Latoya had no will. Latoya's only living heirs at the time were her son, Scott, and daughter, Dawn. Four days later, unfortunately, Scott also passed away. Scott was survived by his spouse, Paige; biological daughter (whom he shared with his ex-wife), Ruth; adopted daughter, Rose; and step-daughter, Patty. Scott died with a will leaving his entire estate to Paige. At the time of Latoya's death, Latoya's estate was worth \$1,000,000, and Scott's estate was worth \$50,000.

In 2015, at the time of execution of Scott's will, Scott was deemed to have a valid will. Sometime in 2019, Scott wrote on his now crumbled will (he was not known to organize his paperwork properly) in his own handwriting on the margin of the first page of the will, the following:

"I'm very disappointed with Paige. She has no relationship with Ruth and treats Rose very harshly. I am afraid that Paige would not do right by Ruth or Rose if something happened to me. I will have to change my will to include all of my children (Ruth, Rose and Patty)."

Scott signed this 2019 statement but did not date it and it was not witnessed.

Applying Michigan law, fully discuss how each of the estates would be distributed, including whether the timing of the two deaths has an effect on the distribution and the effects of the crumbled will with the writing on the margin.

QUESTION 2

Defendant Dawson is on trial in a Michigan state court for the homicide of a rival gang member named Valerie. The charges arose out of a late-night driveway shooting outside Valerie's home. Because it was dark, no one could positively identify the shooter. A neighbor, however, will testify a late model dark colored SUV pulled into her driveway and a male figure of Dawson's approximate height and build emerged from the SUV before opening fire on Valerie. At the time of her death, Valerie was a member of the Sharks and Dawson was and is a member of a rival gang, the Jets.

The prosecutor plans to introduce a Facebook live video from Valerie's homepage, posted the night before her murder, in which Valerie "disrespects" Dawson by identifying him – in coarse and belittling terms – as the Jets' "wimp" and biggest coward. Comments to the video include one from Dawson: "On my way – I'll stop this Shark [expletive deleted] from disrespecting this or any other Jet ever again." The prosecutor also plans to introduce a Facebook post from the homepage of another Jet showing a group photo of the gang that includes a clearly identifiable Dawson. All of the Facebook evidence will be authenticated and admitted through a local law enforcement gang specialist who has had longstanding familiarity with Dawson, Valerie, and their respective gangs, including regular online scrutiny and verification of the Facebook accounts of the members of both gangs.

Dawson objects to the Facebook evidence of the live video, comments to the video, and the group photo as hearsay under MRE 801 and also as violative of MRE 403 (Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion and Waste of Time), claiming the evidence of rival gang affiliation is both irrelevant and inherently and unduly prejudicial. Dawson also objects to admissibility, claiming the Facebook evidence cannot be authenticated under MRE 901(a) (Requirement of Authentication or Identification), because Dawson does not recall viewing or commenting on Valerie's video.

1. How should the court rule on each of Dawson's MRE 801 and 403 objections to the Facebook evidence? Explain why.
2. How should the court rule on Dawson's MRE 901(a) objection to authentication of the Facebook evidence? Explain why.

QUESTION 3

Peter Plaintiff (PP) purchased a historical home in Sentimental, Michigan that needed substantial renovations. To that end, he contracted with Excellent Electrical Corp. (EE), an electrical contracting corporation that David Defendant (DD) recently formed, in order to completely re-wire the house and bring it up to code. DD signed the contract as the president of EE and held himself out to PP as the owner and person in charge of EE. Once signed, all parties proceeded under the contract as if EE were the electrical contractor for PP's building project. EE sent monthly invoices to PP, which were promptly paid by PP "to the order of" Excellent Electrical Corp.

EE performed the work, but not according to the time schedule specified in the contract. Failing to meet the deadlines substantially delayed all other aspects of the renovation project and caused scheduling conflicts and increased prices by the other renovation contractors. PP sued both DD and EE for breach of contract. PP later learned through discovery that the corporate paperwork of EE was not filed with the State of Michigan until two weeks after the contract was signed, due to a misunderstanding with David Defendant's attorney regarding the date that DD wanted the articles filed. The attorney had all the necessary paperwork but failed to file it by the date requested. Therefore, EE was not a valid corporation at the time the parties executed the contract.

DD argued that he was not personally liable for PP's damages. He asserted that, although EE was not a valid corporation at the time the contract was executed, EE was nevertheless liable to PP under the doctrine of de facto corporation. He further asserted that the doctrine of corporation by estoppel barred PP from seeking damages against DD in his individual capacity.

Applying principles of Michigan corporation law, discuss:

- 1. The elements of the doctrine of defacto corporation;**
- 2. The doctrine of corporation by estoppel; and**
- 3. Based on your analysis of either doctrine, whether DD can be held personally liable for PP's damages.**

QUESTION 4

Sally is a college student in Michigan and plays on her school's soccer team. She also works at Campus Outfitters, a clothing store in town.

Sally suffered a right knee injury in a soccer game in June 2021. The team doctor examined and x-rayed her knee. Although Sally had ongoing knee pain, her injury did not prevent her from continuing to play soccer or to work at her clothing store job.

In addition to her busy schedule, Sally's life recently become more complicated because she was in the process of breaking up with her boyfriend. Trying to juggle school, work, soccer, and her romantic life was causing Sally too much stress.

One day in July following an argument with her boyfriend, Sally rushed to get to work on time. Before she arrived, Campus Outfitters' janitor had washed and waxed a portion of the store's floor and - as was his custom - prominently placed a large warning sign for all to see stating: "caution - wet floor -slippery when wet." Distracted, tired, and rushed, Sally failed to notice the sign when she began work and slipped and fell on the wet floor.

Sally immediately complained of right knee pain as a result of the fall. She admitted she was at fault in the fall but said her injury should be covered by workers' compensation. Campus Outfitters disagreed. It said the fall was entirely Sally's fault and, regardless, it was well known that Sally had ongoing knee pain from her soccer injury the month before. Sally responded saying the fall has made the knee pain from the soccer injury worse.

Applying Michigan workers' compensation law, address each of the store's two reasons for rejecting Sally's claim:

1. **What effect, if any, will Sally's fault have on her workers' compensation claim?**
2. **Given Sally's prior soccer injury, discuss the legal inquiry necessary to determine whether Sally's current knee problems could be considered an injury covered by workers' compensation.**

QUESTION 5

Billy and Belinda met at ages 36 and 24. He was a successful businessman; she was finishing law school. Thereafter, Billy's business went international, taking him away from Belinda frequently. Belinda joined a large Michigan firm that paid her well. After several years of dating, Billy proposed. His proposal was accompanied by a ring, Belinda's acceptance, a selected wedding date, and Billy's insistence on a prenuptial agreement. The prenuptial agreement was in writing and signed by both parties. After five years of marriage, Belinda filed for divorce. Billy insisted on the enforcement of the signed prenuptial agreement, which contained the following provisions:

Article Two - Separate Property

A. Billy has owned since one year before the marriage \$1.9 million in the form of stocks, bonds and cash from the sale of his business.

B. Belinda has owned since graduating from law school 50,000 shares of her father's company, given as a gift, and valued at \$250,000 at the time of the marriage.

C. Billy and Belinda have fully discussed these assets. Each will retain sole ownership and control of their respective assets, including any appreciation throughout the marriage. In the event of a divorce, Billy will retain the \$1.9 million in investments and any appreciation thereon. Belinda will retain the family business stock and any appreciation thereon. Those assets, nor any appreciation thereon, will be included in the marital estate but will remain separate property.

Article Three - Marital Property and Claims

This prenuptial agreement applies only to the property listed above and not property acquired during the marriage, which will be distributed according to applicable Michigan law. Any other claims by a party arising by virtue of the marriage will be determined by Michigan law.

Although Billy sold his company, he remained its CEO at a salary of \$500,000 per year throughout the marriage. Belinda's salary at her firm is \$195,000 per year. Marital assets included two paid-for homes, each valued at \$300,000; equivalent and paid-for upscale cars; and significant luxury items, all to be split evenly. Both have excellent health.

Belinda contends as follows:

1. The written prenuptial agreement is not enforceable because (a) Belinda was not represented by counsel when she signed the agreement, and (b) the prenuptial agreement was created in contemplation of divorce;
2. She should be awarded spousal support because (a) it is not precluded by the prenuptial agreement; and (b) under Michigan law, the spousal support factors warrant such an award. When addressing spousal support, limit your answer to the applicable factors.

Evaluate Belinda's positions under Michigan law. Fully explain your answer.

QUESTION 6

The following facts were presented at a bench trial. Mark was an experienced fisherman, and asked his friend John, an inexperienced fisherman, to go shore fishing at a local Michigan pond. Mark gave John a pole, and showed him how to cast. John had difficulty casting, and was fairly erratic in his casting. Mark gave some encouraging words, and moved around the pond to fish on his own.

A half hour later, Mark started on his way back to John. As he got closer to him, he could see that John looked frustrated and was still having trouble casting. As Mark moved closer towards John, he looked into the shallows and saw some big bass swimming. He continued to watch the fish as he walked along the bank and approached John. For his part, John continued trying to cast the lure as far into the lake as possible, but was failing. To that end, John decided to make one last cast. Without looking, he swung the rod backwards and, as he swung the rod forward with all his might, the lure caught Mark's ear, badly tearing it. Mark, who was still watching the fish as he walked behind John, felt the sting of the hook, and yelled at John for not looking behind him as he casted. Mark had to have plastic surgery to repair the ear. His insurance did not cover \$10,000 of the medical cost, which Mark paid out-of-pocket.

Mark sued John in negligence for causing damage to his ear. John argued that it wasn't his fault. John asserted the defense that Mark should have watched where he was walking, and thus should not be able to recover anything, or not the full amount of any damages.

You are the trial judge's clerk. The judge requests that you set forth your legal conclusions on the claim and issues raised by Mark and John. Do not discuss any actual amounts that could be awarded.

QUESTION 7

Paradise City, Michigan, owned a parcel of land divided into several lots. Paradise contracted to sell one lot to Buyer for the market price of \$20,000. The contract stated:

Each lot in Paradise's parcel may be used for strictly residential purposes only, and nothing may be erected on any lot other than a single dwelling house and necessary out-buildings (such as garages). Because it is difficult to calculate Buyer's damages if Paradise breaches this provision, the parties agree that in the event of such breach, Paradise will pay Buyer \$10,000 for economic damages.

Buyer built a home on her lot and moved in. Shortly afterward, land prices unexpectedly rose throughout Paradise, increasing the value of Buyer's lot (excluding her home) to \$40,000.

But trouble came to Paradise when the city turned the lot next to Buyer's lot into a dog park, where dogs could roam unleashed. Although Paradise built a fence on its lot along the border with Buyer's lot, Buyer – who was unusually afraid of dogs – experienced great distress being close to so many dogs. The frequent barking and unpleasant dog-waste odors exacerbated Buyer's mental distress.

Buyer sued Paradise for breach of contract, claiming Paradise violated the provision limiting lots to strictly residential use. In support, Buyer quoted standard dictionaries defining "residential" as "pertaining to the place, especially the house, in which a person lives." Buyer seeks \$10,000 for economic damages as stipulated in the contract, as well as mental distress damages caused by having to live next to a dog park.

Paradise argues that it did not breach the contract because the residential-use provision was simply intended to prevent commercial use of the lots, and the dog park did not constitute a commercial use. Paradise also argues that the economic damages provision constitutes an unlawful penalty, especially given that the value of Buyer's lot has greatly increased and Buyer could mitigate her damages – and indeed make a profit – by selling her lot. Finally, Paradise argues that Buyer cannot recover mental distress damages because they are primarily based on Buyer's unusual fear of dogs.

Applying Michigan law, evaluate how the court should respond to each of Paradise's arguments.

QUESTION 8

Eric was planning to "pop the question" to his girlfriend Amy. While practicing his proposal, Eric took the \$5,000 ring out of its box and got down on one knee. At that time, Amy suddenly knocked on the front door. He stood up, shoved the box in a drawer and placed the ring in his jacket's interior pocket before walking off with Amy for a night out. When Eric returned home that night, completely forgetting about the ring in his jacket pocket, he took off his jacket and threw it in the pile of dirty clothes.

The next morning, Eric took the jacket to his regular cleaners, Lucy's Cleaners, to be dry cleaned. Lucy took Eric's jacket, tagged it and informed him that it would be ready for pick up in three days, at which time the \$40 balance would be due. The next day, Lucy's two-year old cousin, Tina, who was known to be a mischievous child, was in the shop. Lucy allowed Tina to run around the shop. While Lucy was not looking, Tina pulled down some of the clothes off the hangers, including Eric's jacket. Lucy picked up all the clothes from the floor and hung them back up in the first open spot she found. Unbeknownst to Lucy, she hung up Eric's jacket in the wrong spot and mixed it in with another customer's items. This customer accidentally received the jacket (with the ring still in the interior pocket) when he picked up his items. The jacket was still tagged with Eric's name on it. The customer kept Eric's jacket (and the ring) and never advised Lucy of the mistake.

When Eric went to pick up his dry cleaning, Lucy could not find his jacket and after searching the entire day had to admit to Eric that she had lost or misplaced the jacket. She apologized and offered him \$100, but Eric declined informing her that he had just purchased the jacket for \$900. Eric then remembered that the ring was in the chest pocket of the jacket and demanded that Lucy also reimburse him \$5,000 for the ring.

Applying principles of Michigan personal property law, fully explain:

- 1. Whether Lucy's Cleaners could be legally responsible for Eric's lost designer jacket; and**
- 2. Whether Lucy's Cleaners could be legally responsible for the missing ring.**

QUESTION 9

Pat was a commuting college student but did not have a car. He decided to enter into a ride share. Pat answered an ad from the board in the student union posted by a student he did not know, David. David lived in the same city as Pat. David agreed to drive Pat to and from school for a small charge. David drove Pat for several weeks and it worked well.

One day, Pat was running late. Pat invited David into his house and said he was alone. Pat invited David to sit in the kitchen and gave David a cup of coffee. Pat removed his Rolex watch, opened the hall closet door and put his watch on a shelf. Pat closed the closet door tightly and went upstairs. David saw Pat do this and could hear Pat walking around upstairs from his seat in the kitchen. David got up, went to the hall closet, opened the door, took Pat's watch, put it in his pocket, closed the closet door and returned to his seat in the kitchen. Pat came downstairs and they went to school.

When Pat returned home from school he discovered his Rolex watch was gone. The watch was an expensive heirloom. Pat reported the theft to the police and said David was the only one in the house.

The police spoke to David and he admitted he took the watch because he is impulsive. Pat was furious and demanded the police charge David with home invasion because he broke into the closet of his home to steal his expensive watch.

1. **Applying Michigan law, name the elements of Home Invasion.**
2. **Do the facts of this case support the charge of home invasion?**
3. **Is Pat correct that opening the closet door is sufficient to constitute a breaking?**
4. **Discuss the reasons for your position and state your conclusion.**

QUESTION 10

Pamela was seriously injured in 1984, suffering a traumatic brain injury. Since then, Pamela has been receiving extensive treatment as prescribed by her treating physician, Dr. Paul Peters. Pamela continues to suffer from impaired speech, compromised attention, concentration and memory, and has ongoing psychological issues, including anxiety, depression, and a personality disorder. Pamela receives various services as part of her ongoing care, including attendant home care, physical therapy, occupational therapy, and twice-weekly counseling.

Pamela's homeowner's insurer, D-Lux Insurance Company, has been paying for these services. In April 2021, D-Lux hired another physician, Dr. Ron Dudley, to perform an independent medical examination (IME). Dr. Dudley opined that most of the services being provided to Pamela are no longer "reasonably necessary" under the terms of her policy.

Pamela's doctor disagrees, opining that Pamela's condition has already been deteriorating, that the services she is receiving are "reasonably necessary", and that any reduction in those services "will most likely cause [Pamela] great harm" and cause her to suffer additional health problems. Relying on Dr. Dudley's IME, D-Lux nevertheless decided to reduce Pamela's benefits. As a result, Pamela's guardian is unable to obtain necessary services for her continued care.

Pamela's guardian subsequently filed a lawsuit against D-Lux on Pamela's behalf, seeking to have Pamela's benefits restored to their previous levels. Pamela's guardian also sought a preliminary injunction to keep services at their preexisting levels pending the outcome of the litigation.

D-Lux responds that it should not be required to pay contested benefits because Pamela will likely not be able to reimburse D-Lux if it ultimately prevails. D-Lux further argues that a preliminary injunction would be improper because of Pamela's ability to get her benefits reinstated if she prevails in the litigation is an adequate legal remedy.

Discuss the requirements for obtaining a preliminary injunction under Michigan law and how the court should rule on Pamela's guardian's motion in light of those requirements.

QUESTION 11

Jane was a sophomore at a Michigan university during the 2019-2020 academic year. In March 2020, half-way through the second semester, the school switched all classes from in-person to remote due to the COVID-19 pandemic. All 5,000 students were thereafter instructed in this format for the remainder of the academic year. Jane and some of her fellow students thought that the level of education diminished significantly when done remotely and that the school should refund part of the tuition paid for the second semester (tuition for one semester was \$8,000). Curious as to what others thought, Jane created a Facebook page to see if other students at the university felt the same way. They did, to the tune of just over 500 students responding that they too felt cheated.

Excited by the interest, Jane contacted her uncle Joe, a solo practitioner who employed one law clerk and one paralegal, who seemed interested in her arguments. He set up a meeting with Jane and 10 other students. During the meeting it became clear that some students had paid their own tuition, others' parents paid the tuition, while still others had taken out loans. But all of them felt they were cheated out of that money.

Joe spoke to his two-person staff about handling the case, as they had significant experience handling complex cases, but had never handled a class action. In the end, however, they decided to proceed because the case seemed strong and they felt they had the resources and know-how to handle it. Accordingly, the following week, Joe filed a complaint alleging breach of contract with Jane as the named plaintiff, but asserting the necessity of a class action.

Once an answer was filed, and limited discovery took place, Joe filed a motion for class certification.

Under these facts and the relevant rules, explain whether a class should be certified.

QUESTION 12

Sam owned a wine bar and cigar shop in Gallery, Michigan called the Den. Since starting up the wine down Wednesday specials and the sultry music Saturdays featuring live music from local performers, business has been booming for Sam.

Sam credits his recent success to certain improvements he made to the property, which he leases from his landlord, Laura, pursuant to a written five-year lease agreement. The lease provides a right for Sam to remove any property belonging to him after the end of the lease term within a reasonable time. All property renovations were allowed under the terms of the lease. Sam made the following modifications to the property.

1. Sam mounted high-performance speakers on the walls to use during the live music performances (with the intent to use the same speakers for the live music performances at the Den's annual outdoor event held at the local park).
2. He installed a new see-through glass bar that looks like a huge slab of ice, as the previous bar was too small and outdated for his growing business.
3. He installed a high-efficiency A/C unit on the roof, which was in response to some of the complaints regarding it being too hot in the building at times.
4. And for his own pleasure, because he spent most days at the Den, he updated his office suite by installing a massive heavy mahogany desk in the office and a barber/salon chair in the corner of his bathroom, which was bolted to the floor, so that he could easily get a shave or haircut by his personal barber at his convenience.

The lease agreement between Sam and Laura is coming to an end, and Sam communicated with Laura that he will let the agreement expire so that he can relocate his business to a larger location to accommodate his growing business.

The day prior to the end of the term of the lease, Sam spent the day moving items from his current location to the new location two miles down the road.

The day after the lease terminated, Laura changed the locks on all of the doors. Sam informed Laura that he still had the following property in the building that he wanted to remove: (i) the speakers, (ii) glass bar, (iii) A/C unit; (iv) desk, and (v) the barber/salon chair. Laura refused to permit Sam to remove the items.

Applying Michigan law, fully discuss whether Sam is entitled to remove the speakers, glass bar, A/C unit, desk, and barber/salon chair.

QUESTION 13

Dan was in his apartment with his roommate, Walter. They decided to go out to eat. Dan had no money. Walter drove them.

On the way to the diner, Dan asked Walter to stop at the house of his former girlfriend, Patricia, where Dan used to live. Dan recently moved out of her house and in with Walter. Walter pulled into Patricia's driveway and Dan got out of the car. Dan walked up the driveway into the backyard out of Walter's sight. Walter waited in his car.

Patricia's car was in the backyard. The driver's door was wide open and her purse was on the front seat. Dan reached into the car, grabbed the purse, removed twenty dollars, went to Walter's car and they left. Dan did not tell Walter what he did. The next-door neighbor watched Dan and recognized him. Patricia came out of the house, discovered her open purse and realized money was missing. The neighbor told Patricia she saw Dan with her purse. Patricia called the police and made a report. Dan was charged with larceny.

Dan demanded his attorney present a DNA expert at trial on the sole basis that Dan believed jurors like scientific evidence. Dan also told his attorney that Walter, a minister, would be a good witness even though Walter was in the car and didn't see anything. The attorney rejected the idea and responded there was no DNA evidence in the case now and Walter's testimony would only put Dan at the scene. Dan's attorney did not talk to Walter before trial.

The defense at trial was that Dan did not commit any theft. Dan's attorney said the trial strategy was to destroy the prosecution witnesses on cross examination.

Patricia and the neighbor testified at trial. The defense did not call any witnesses. Dan was convicted by a jury of larceny.

Dan claims he was not properly represented at trial by his trial attorney and filed a motion for a new trial. Dan filed an affidavit which attests to the above discussion with his attorney. That is the record of Dan's claims that his attorney should have called both a DNA expert witness and Walter at trial. Dan also

claims it was wrong that the attorney did not even talk to Walter before trial.

What is the legal standard that applies to Dan's claims that the failure to call a DNA expert witness and Walter at trial was not effective trial performance? On the record presented, apply the facts to that standard and state what the result should be. Explain the reasons for your answer.

QUESTION 14

Olivia Luna established a solo legal practice in Smalltown, Michigan. Eager to make a difference in her community, Olivia quickly gained a reputation of "going the extra mile" for her clients. Olivia currently represents Maddie Myers in a lawsuit against Company Y. At age 75, Maddie allegedly became the target of a fraudulent scheme by Company Y in which she lost much of her retirement savings. The litigation in court has been pending for quite some time and Maddie is struggling financially. Olivia, who is very generous and confident of achieving a successful litigation outcome for Maddie, wants to loan Maddie several thousand dollars to help with living expenses during the remaining pendency of the case.

Additionally, Olivia recently learned through Maddie about another retiree, Norman Norris, who like Maddie also apparently lost significant money through his contractual association with Company Y. However, according to Maddie, Norman does not trust the legal system and is hesitant to seek legal advice or recourse. Olivia is considering sending a personal letter to Norman, who she doesn't know and with whom she has never had contact, to ease his mind about addressing his experience with Company Y through legal channels, and to explain the legal representation she could offer him in that regard. The proposed letter is admittedly truthful and not deceptive.

Applying the Michigan Rules of Professional Conduct for lawyers, fully discuss both whether Olivia can ethically:

- 1. Loan the money to Maddie, and**
- 2. Send the letter to Norman.**

QUESTION 15

Dale had been dating Debbie for about five years. Dale was not an ambitious person and they frequently argued about his unambitious career aspirations. One evening, Dale and Debbie went out to dinner. Their dinner conversation soon turned to Dale's career. Dale got defensive and they argued. Debbie took an Uber home. Dale sat at the bar and drank alcohol and watched a basketball game on television. Dale left and, not realizing how much he drank, drove home. About a half mile from the bar, Dale was pulled over by the police for weaving on the road. Dale flunked the sobriety tests and was arrested for Operating Under the Influence of Alcohol.

Dale's trial was set for March. The arresting officer was on medical leave on the day of trial and could not appear in court. The case proceeded to trial. When it came time to call the arresting officer, the prosecutor offered to call the officer by internet conferencing and said the officer was unavailable to testify in person and it would save money. The defendant objected.

The judge concluded the testimony of the officer could proceed by internet video and the camera could focus on the officer close-up, so he could be clearly seen as he testified. The court also said it would save the court a great deal of money to allow the testimony to proceed in this manner and it happens in other cases.

Dale was convicted. Dale complains that the court should not have allowed the officer to testify by internet video.

State the law that controls this issue. Should the officer have been allowed to testify by video? Apply the law to the facts and give the conclusion and the reasons for it.