

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

John Jones has owned Sunshine Bakery for many years. In November, he had a "Grand Re-opening" to celebrate his new redesigned store. Many people, including local media, were on hand for the event. Ms. Grandy, an 85-year old woman, attended the event. After purchasing a few items, she went to exit the building. Seeing a golden opportunity, Jones held the door open for Ms. Grandy as she started down the steps while a local news photographer clicked away. Suddenly, Ms. Grandy fell from the top step. After her fall, Jones helped Ms. Grandy to her feet, and an off-duty nurse provided some bandages for Ms. Grandy's scraped knees. After about 30 minutes, and as Ms. Grandy was about to leave, Jones said "I'm sorry about this, and even though it was not my fault, would you accept \$100 and a month's worth of pie if we can forget about this unfortunate event?" Ms. Grandy refused, stating "It sure was your fault, and I'll see you in court." As she left the scene she heard Jones exclaim, "I knew I should have had that step repaired."

A week later, Ms. Grandy received in the mail a photograph of her at the time she started to fall. On her way to thank the news photographer, Ms. Grandy passed the bakery, where she saw to her amazement that the steps had been completely replaced. Angered, she went to see a lawyer, who filed a premises liability suit entitled *Grandy v John Jones and Sunshine Bakery*. At trial, Ms. Grandy's attorney sought to have his client testify on direct examination to the following:

1. That upon leaving the scene she heard Jones state, "I knew I should have had that step repaired."
2. That Jones knew he was negligent because he offered her \$100 and a month's worth of pie.
3. That within a week the faulty steps were replaced with new ones.

Finally, her lawyer also sought to have the photograph admitted through Ms. Grandy.

Defense counsel objected to the testimony, as well as to the attempt to admit the photograph.

Discuss whether the testimony and exhibit should be admitted. Explain your answer.

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