

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

Plaintiff Paul Perry and Defendant Donald Dolen are friends who met at Stockton Nightclub for a drink. When they left the club, Perry's vehicle would not start. Dolen, who was intoxicated, offered to let Perry drive him home and then would allow Perry to drive his (Dolen's) vehicle home. After dropping Dolen off at his home, Perry lost control of Dolen's vehicle on a curve, rolled over and crashed into an embankment. Perry received substantial injuries for which he was hospitalized. Dolen's vehicle was totaled, and Dolen's auto insurer had the vehicle towed to a public junk yard for storage.

Within a few days of the accident, Perry hired a lawyer. Perry told his lawyer that the tires on Dolen's vehicle were bald, and that this was the reason he lost control of the vehicle. However, neither Perry nor his lawyer said anything about the tires to Dolen or Dolen's insurance company. Three months after the accident, Dolen's insurance company directed that Dolen's vehicle be scrapped. As part of the scrapping process, the vehicle's tires were sent to a recycling plant, where they were shredded into crumb rubber and intermingled with thousands of other shredded tires.

Six months after the accident, Perry sued Dolen for negligence, arguing that Dolen's failure to properly maintain his tires in good condition was a proximate cause of the accident. Dolen answered and filed a motion to dismiss, arguing that because his vehicle had been scrapped, Perry would be unable to prove his negligence, and thus, as a matter of law, the negligence claim against Dolen should be dismissed.

Applying Michigan law:

- (1) Discuss the merits of Dolen's motion.**
- (2) Assuming Dolen is entitled to relief, is dismissal or any other relief warranted – why or why not?**