

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

Artie and Bob are co-owners of an equipment rental business. Bob is suing Artie in a Michigan circuit court in a civil action to recover \$5 million in assets that Bob claims Artie converted to his personal use. Bob had planned to call as his star witness the company's former accountant, Charlie. According to Charlie, while he was still the company accountant, Artie said to him, "Look, Charlie, I know you know I've been stealing money from the business." Artie then presented Charlie with a proposal to pay Charlie \$500,000 in exchange for which Charlie would resign, move away, and stay silent. When Charlie declined the offer, Artie fired him. Suddenly out of work and without a paycheck, Charlie wrote to Artie, threatening to sue Artie for wrongful discharge. The two met and agreed to the terms Artie had earlier offered. Charlie took the \$500,000, moved away, and stayed silent until Bob discovered Artie's theft of assets, sued Artie, and wanted to take Charlie's deposition.

Charlie appeared for his deposition. While Charlie testified to the above-stated facts in response to questions from Bob's counsel, Artie's counsel objected to the deposition and walked out halfway through, without asking a single question. In response to subsequent physical threats by Artie, Charlie left the country and now, with the trial beginning, cannot be found despite diligent efforts by Bob to locate and serve him.

Artie's counsel is objecting to Charlie's testimony coming into evidence at trial through his deposition, arguing that the deposition cannot be used because it is not within the former testimony hearsay exception, and, in any event, Artie's underlying statements to Charlie are inadmissible because they (1) are hearsay not within any exception; and (2) were made in the context of an MRE 408 offer to compromise.

Should the court allow Charlie's deposition to be read into evidence at trial? Explain why or why not. Should any of Artie's three communications (underlined above) be excluded as either hearsay or statements protected by MRE 408? Analyze the reason for exclusion or admissibility of each underlined statement.

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