

**QUESTION 1 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I
OR IN EXAMPLIFY ANSWER SCREEN 1**

Ellen Exterminator and Buggy Business just completed performance of a contract under which Ellen provided monthly treatments to the exterior of Buggy's premises to kill wasps and other outdoor insects. The price was \$25 per month, with no guarantee.

The parties desired to enter a new six-month contract under which Ellen would provide monthly treatments to the interior of Buggy's premises to kill indoor insects. Ellen sent Buggy a written contract with a price of \$50 per month. The contract provided that as part of the service, Ellen would call Buggy the day before each treatment so that Buggy could prepare. The contract included the following guarantee: "At any time after the first treatment, if Buggy spots more than 10 insects in one month that are covered by this service, Buggy will not be charged for that month's service." The contract stated that Buggy could accept by signing and returning the document.

Buggy crossed out the \$50 price and wrote "\$25," signed the document and returned it to Ellen. Ellen did not sign it at any time. The next day Ellen went to Buggy's Business without calling ahead. Buggy was prepared, however, and invited Ellen inside to perform the treatment.

Several months later, Ellen sent Buggy a bill for services rendered, at the price of \$50 per month. Buggy sent the following reply: "Because you failed to call ahead for the first treatment, you breached the contract and I am not paying for that month. In the second month, dozens of wasps swarmed our customers as they approached our front door, so under your guarantee I do not owe you payment for that month. As for the rest of the months, I will pay you at our agreed-upon price of \$25 per month."

Applying Michigan's common law, evaluate each of Buggy's arguments.

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