

**QUESTION 9 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III
OR IN SOFTEST ANSWER SCREEN 9**

Justine Tenant is getting ready for trial in a Michigan state court in her personal injury lawsuit against Larry Landlord. The dispute arose out of Justine's complaints to Larry over the stairwell banister in the townhouse Justine rents with her housemate Heidi. The banister had become detached near the top of the stairs, creating an unsafe condition that Larry had been resistant to repair.

Following another argument with Larry that ended with Justine threatening to withhold rent payments and vowing to report Larry to the housing authority, Justine was awakened at 3:00 a.m. by what sounded like someone trying to break in. As she grabbed the banister and started down the stairs, the banister gave way completely and down the stairs she fell. The commotion woke up Heidi, who ran downstairs to find Justine, still conscious and, from all appearances, entirely lucid. Grabbing her smart phone, Heidi hit the record function and asked Justine what had caused her fall. Justine explained, somewhat breathlessly, that she heard someone outside, grabbed the broken banister, fell, and then saw Larry peering in at her. After sharing this information with Heidi, Justine faded into unconsciousness. When Justine awoke in the hospital the following morning, she recalled nothing about the events that led to her hospitalization.

With the trial now imminent, Justine has not regained memory of the events, and so wants the transcript of Heidi's recording in evidence as an exhibit to prove her case against Larry. Larry's counsel stipulates that the transcript matches the audio recording, but challenges the transcript as hearsay and as lacking authenticity under MRE 901 on the theory the recording could have been made after the fact. Justine's counsel agrees the transcript fits the definition of hearsay but argues the transcript is admissible as a recorded recollection under MRE 803(5), or alternatively that, because Heidi shared the recording with the emergency room doctor that night, it is a statement made for purposes of medical treatment under MRE 803(4). Heidi is prepared to identify the voices on her recording and the accuracy of the transcription, to confirm when she recorded it, and to confirm that there have been no changes to it. Justine will testify she still does not recall the events described by her in the transcript, but she does recall

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speaking to Heidi while she had memory of the events, and that she also recognizes her voice on the recording.

Applying Michigan law, answer the following:

1. How should the court rule on the two hearsay exceptions offered by Justine and explain why.

2. What alternative hearsay exception(s) or exclusion(s) could Justine successfully rely on and explain why.

3. How should the court rule on Larry's challenge to the recording's authenticity and explain why.