

**QUESTION 6 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK  
II OR IN SOFTEST ANSWER SCREEN 6**

Sam and Smitty were equal owners in the Double S Coffee Shop. The business began falling on hard times when a Starbricks opened nearby. Sam called Smitty and suggested they meet for a beer to discuss what to do.

At the meeting, they discussed adding pastries, two-for-one specials, and a drive through. At the end of the meeting, Sam said, "Don't know if anything is going to work." Smitty nodded glumly in agreement and they decided to meet again.

At the second meeting, more ideas surfaced - including selling the Double S's prime location to Starbricks. Neither man expressed any confidence Starbricks would be interested because their business was rolling with many Double S customers. When this meeting ended, Sam told Smitty to bring two copies of their business insurance policy and they would meet again the next night, same place.

The next night, policies in hand, the men were upbeat. Smitty asked, "Did you see our fire loss coverage?" "Sure did, partner," Sam responded with a smile. "Better call Sparky," the partners said in unison -- and with a laugh.

Unbeknownst to Sam and Smitty, waitress Tina, who had heard them talking all three times, was "working off" her own drug charges. Anxious to use what she had heard to benefit herself, she contacted police.

Based on what Tina reported to police, the men were arrested the next day and charged with conspiracy to commit arson of insured property.

Defense lawyers moved to dismiss the conspiracy charge based on the following arguments:

1. The charged conspiracy could not be proven because the Double S was not burned.
2. A conspiracy requires an overt act in addition to an agreement, such as in this case the purchase of gasoline or enlisting Sparky's help.

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3. Assuming Sam and Smitty's statements are admissible, their statements and actions do not establish the elements of conspiracy to commit arson of insured property.

**Applying Michigan law, evaluate each of the arguments made to determine whether dismissal is warranted. Explain your analysis.**

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