

**QUESTION 8 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK
III OR IN EXAMPLIFY ANSWER SCREEN 8**

Paul begged his friend Daniel to loan him \$5,000.00. Daniel reluctantly agreed but only if Paul repaid it in full in a week because Daniel needed it to pay another debt. Paul agreed. However, Paul did not repay Daniel. Daniel asked Paul repeatedly for the money. Paul avoided Daniel and Daniel felt increasing pressure of his debt deadline.

Daniel heard through others that Paul had the money. Daniel decided to confront Paul at Paul's house. Paul was much bigger and stronger than Daniel, so Daniel asked Tom and Jim to accompany him. All three went to Paul's house. Daniel knocked on the door and Paul answered. Daniel demanded Paul repay the loan. Paul stepped out of the house onto the cement porch and said he did not have the money. Daniel became enraged.

Paul laughed it off and said it was Daniel's "own fault" for making the loan and told Daniel to leave. Daniel pushed Paul with no effect. Paul said he did not have the money and that he did not know if he would ever have it. Daniel grew more agitated and pushed Paul again. Paul pushed Daniel back and Daniel fell down on top of a small chunk of cement. Daniel was furious. Paul again told Daniel to leave and turned to walk into the house. Daniel got up, picked up the piece of cement and hit Paul on the back of the shoulder. Paul fell, turned and looked up at Daniel and said, "You'll never get the money, I gambled it away and I'm glad." Daniel started to walk away, but then turned, walked back to Paul as Paul was getting up and hit Paul on top of the head with the cement still in his hand. Paul died that night of blunt force trauma to the head.

Under Michigan law, the prosecutor is considering charging Daniel with second degree murder or manslaughter.

- 1. What are the elements of each charge?**
- 2. What are the reasons one charge is more appropriate than the other?**

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