

EXAM # _____

EVIDENCE EXAM

Professor Garvey

May 11, 2007

Instructions: This examination is three hours in length. It is fully “open book,” meaning you may refer to any written materials that you have brought with you. However, you may not work with or consult any other person about your answers. Answer the multiple choice and true/false questions on the Scantron sheet provided. You may give short clarifications to your multiple choice answers in the space provided below the particular question on the exam. I will only read answers provided to questions where your multiple choice selection is different from mine. Depending upon the written answer, you may receive anywhere from 0 credit to full credit for the question. I strongly encourage you to finish all of the exam questions before you attempt to write explanations on the multiple choice portion.

MULTIPLE CHOICE

(3 points per question)

Please assume the following facts for questions 1 through 5:

P sues D in negligence, for injuries arising out of an automobile accident involving two automobiles in an intersection. P claims that D ran a red light, and crashed broadside into P. D claims that D’s light was green.

1. P calls W, who was a passenger in P’s car, and is P’s sister. W is asked to state what she heard D’s passenger X say about the accident twenty minutes after the accident occurred. D objects. How should the court rule?
 - A. Sustain the objection because X’s comments were too long after the accident to be an excited utterance.
 - B. Overrule the objection because X is friendly with D, who is a party.
 - C. Sustain the objection because W is P’s sister, and is biased.
 - D. Overrule the objection if it finds that a reasonable jury could find that X was competent when she spoke.

2. P calls D to testify. P begins to examine D about a statement D made to the police. D denies that he made the statement, and P now shows D a copy of the statement, which appears to be signed by D. D objects on the ground that P is badgering the witness. How should the court rule?

- A. Overrule the objection as made.
 - B. Sustain the objection as made.
 - C. Sustain the objection, because P cannot impeach his own witness.
 - D. Overrule the objection because D's lawyer cannot interrupt the questioning of his own client.
3. P calls Doctor to testify about P's injuries. Doctor did not treat P, but was hired to examine P and testify in court. Doctor is qualified as an expert. Doctor testifies that P has told Doctor that P's back is now in constant pain since the accident. D objects. How should the court rule?
- A. Overrule the objection, because experts can rely upon hearsay in giving their opinions.
 - B. Sustain the objection, because P's statements to Doctor are hearsay.
 - C. Sustain the objection, because P's statements to Doctor are self-serving.
 - D. Overrule the objection if it finds, based upon a preponderance of the evidence, that the statement was made for the purposes of medical diagnosis or treatment.
4. In response to P's case, D calls F, to testify that he has known D for over 20 years, and that D has always been known as a careful driver. P objects; how should the court rule?
- A. Sustain the objection, because character evidence of this type is inadmissible in a civil case.
 - B. Overrule the objection, because D's careful driving is evidence of habit.
 - C. Overrule the objection because D's character for careful driving was attacked by P in the first instance.
 - D. Sustain the objection because P did not attack D's general character as a safe driver.
5. After P calls D to testify, he calls J, who is prepared to testify that he thinks D is an untruthful person. D objects. How should the court rule?
- A. Sustain the objection, because P is impeaching his own witness.
 - B. Sustain the objection, because opinion is not the same as reputation.
 - C. Overrule the objection, because opinion testimony regarding character for truthfulness is admissible against civil defendants.

- D. Overrule the objection, because opinion testimony regarding character for truthfulness is admissible against a witness.

Please assume the following facts for questions 6 through 10:

Gray is charged with the crime of assaulting Brown with a pool stick in a bar fight. Gray admits striking Brown but claims to have acted in self-defense when he was attacked by Brown, who was angry because Gray offered to buy Brown's girlfriend a drink. The two men did not previously know each other, nor did they have any prior contact.

- 6. As a part of the prosecution's case in chief, the state's attorney seeks to introduce testimony that, on the same day, but prior to the altercation with Brown, Gray had said to a friend, "It's been too long since I cracked somebody's head." The trial judge should rule this testimony:
 - A. Inadmissible because proof of prior bad acts is not allowed on the issue of Gray's guilt on the assault charge.
 - B. Admissible evidence of aggressiveness, which is a pertinent character trait of Gray.
 - C. Admissible because the prior statement was so close in time and place to the act for which Gray was charged as to be relevant to Gray's motive and intent in striking Brown.
 - D. Inadmissible because the statement is hearsay.

- 7. After the prosecution puts in its case and rests, Gray seeks to introduce the testimony of Wilson, who says he knows Brown's reputation among those with whom he lives and works and that Brown has a reputation for provoking fights and rowdiness. The trial judge should rule this testimony:
 - A. Admissible, but only if the prosecution attacked Gray's reputation for peacefulness.
 - B. Admissible on the issue of peacefulness of the alleged victim.
 - C. Inadmissible because Brown is not on trial.
 - D. Inadmissible because this is character evidence.

- 8. Gray testifies in his own defense, and is impeached with evidence of a prior conviction for forgery which is 9 years old. Gray then offers the testimony of Employer, who is prepared to testify that he has known and employed Gray for 8

years, has observed him closely, and believes him to be an honest man. The trial judge should rule this testimony:

- A. Admissible because Gray is a criminal defendant and honesty is always an issue.
 - B. Admissible because Gray's truthfulness as a witness has been attacked.
 - C. Inadmissible because whether Gray is normally a person of honest character is irrelevant to the specific charge.
 - D. Inadmissible because there has been no showing that Employer knew how Gray behaved when he wasn't at work.
9. Gray offers the testimony of Tommy, who testifies that he has known Gray all his life, and that Gray is a peaceful person. On cross-examination of Tommy, the prosecutor asks if he knew that Gray beat up two fraternity brothers the week before he fought with Brown. The trial judge should rule the question:
- A. Objectionable, because these prior bad acts don't go to truthfulness.
 - B. Objectionable, because Gray did not intend to open the door.
 - C. Not objectionable, if the prosecutor has a good faith basis for the question, because it tests the basis for Buddy's opinion.
 - D. Not objectionable because evidence of Gray's previous fights and brawls may be used to prove his guilt.
10. After Gray rests, the prosecution offers the testimony of Jones, who will say that he has known Gray all his life and in his opinion Gray is a trouble making fight picker. The trial judge should rule this testimony:
- A. Admissible because Gray put his character for peacefulness into issue.
 - B. Admissible because Gray put Brown's character for peacefulness into issue.
 - C. Inadmissible because this is personal opinion evidence, not reputation.
 - D. A and B.
11. Criminal prosecution of D for burglary of an ice cream store. After D had been taken into custody and advised of his Miranda rights, D told the arresting officer that he would plead to the lesser offense of shoplifting. At the trial, this evidence is:
- A. Inadmissible because this was an offer during a protected plea discussion.
 - B. Admissible because this was not an offer during a protected plea discussion.

- C. Inadmissible because this evidence is prejudicial to D.
 - D. Admissible because the evidence is the best evidence of D's guilt.
12. Prosecution of D for burglarizing the home of X at 1:00 in the morning on a certain day. D claims that he was home in bed at the time. To prove that he was home at 1:00 a.m., D testifies that he works the 2:00 a.m. to 11:00 a.m. shift at the local plant and that on the day in question, as always, he set his alarm clock to wake him up at 1:00 a.m. He then offers to testify that he woke up to a ringing sound and his wife was shaking him saying, "Get up, it's 1 a.m." D's testimony is:
- A. Inadmissible hearsay.
 - B. Hearsay but admissible under the present sense impression exception.
 - C. Admissible and not hearsay.
 - D. Inadmissible evidence of habit or custom.
13. In a medical malpractice action, the defendant Doctor testifies that she does not personally know how many sponges she removed from the plaintiff's abdomen following surgery, but she remembers Nurse saying, "Sponge count 16" prior to closing the wound. On the issue of how many sponges were removed, the testimony about what the nurse said is:
- A. Evidence of habit or routine practice.
 - B. A present sense impression.
 - C. Inadmissible hearsay.
 - D. An excited utterance.

Please assume the following facts for questions 14 through 16.

P sued D for monetary damages for pain and suffering and medical expenses arising from a dog bite. In order to prevail, P must show that D was negligent. D responded to P's complaint by denying that P was ever bit; and alleged that if P was bit, it was not by a dog; that if P was bit by a dog, it was not D's dog, Fido; and that if P was bit by Fido, Fido bit because he was teased by P.

14. At trial P calls D as a hostile witness and asks, "Isn't it true that you are the owner of Fido? D objects. The trial judge should rule the testimony:

- A. Inadmissible as calling for a lay opinion.
 - B. Admissible as an admission.
 - C. Inadmissible as leading.
 - D. Admissible as a matter within D's personal knowledge.
15. P testifies that Fido bit him when P was delivering the mail. P's lawyer asks if Fido had ever tried to bite P before, but D objects. If allowed to answer, P will state that Fido had tried to bite him twice before, but D managed to get away. The trial judge should rule that this question is:
- A. Inadmissible because specific instances of prior conduct may not be used to show action in conformity therewith.
 - B. Conditionally relevant, if there is sufficient evidence to show that a reasonable jury could find that D had notice of the prior attempts and failed to take reasonable precautions.
 - C. Admissible because the bite may be proved by introducing evidence of Fido's habit.
 - D. Irrelevant.
16. D's own attorney asks him, "What, if anything, did P tell you about the dog that he says bit him?" If P objects, the trial judge should rule that the question:
- A. Is objectionable as calling for hearsay.
 - B. Lacks a proper foundation.
 - C. Is leading.
 - D. Is proper.
17. The State charges Bilko with arson. Bilko testifies in his own defense. On cross examination, the prosecutor asks Bilko if he was convicted 5 years ago of forgery. If there is an objection, the trial judge should:
- A. Allow the question if the prosecutor has a good faith basis to believe that it is true.
 - B. Sustain the objection if the crime is not punishable by death or imprisonment in excess of one year.
 - C. Allow the question if the prosecutor has a good faith basis to believe that it is true and the probative value of admitting this evidence outweighs its prejudicial effect.
 - D. Sustain the objection if the probative value of admitting the evidence is substantially outweighed by its prejudicial effect.

18. Which one of the following is not considered acceptable evidence to authenticate a document:
- A. Testimony by a policeman regarding the identity of a police report.
 - B. A handwriting comparison by the jury.
 - C. A comparison opinion by an expert witness that the questioned signature is the same as that contained in a properly authenticated and properly introduced exemplar.
 - D. All of the above are acceptable (none is unacceptable).
19. W, H's wife, is called to testify against H at his arson trial, in a jurisdiction where federal common law applies. W will testify that she saw her husband leave the house with a can of gas 30 minutes before a fire started at H's warehouse. H objects.
- A. The statement is inadmissible because of the husband-wife confidential communication privilege.
 - B. The statement is inadmissible because the spousal testimonial privilege.
 - C. The statement is admissible because the spousal testimonial privilege does not apply if the husband was engaged in a crime.
 - D. The statement is admissible because W is willing to testify.
20. Legal malpractice action by P against D, P's former attorney. D represented P in a personal injury action, but P lost the case. P claims that D acted negligently in representing him because he did not relay to P a settlement offer made by the defendant in that action. D's defense in the malpractice action is that he did discuss the offer with P in great detail and that P had decided to decline it, hoping that a better offer would be forthcoming after a while. D claims that he sent P a detailed letter confirming D's decision to reject the offer. Unfortunately, at the time he sent the letter he had an incompetent secretary who didn't like to file and intentionally failed to make copies of correspondence. He asked P for a copy in discovery, but P denies that it exists. At the trial of the malpractice action, D wishes to describe the contents of the letter to the jury. This testimony is:
- A. Admissible non-hearsay.
 - B. Inadmissible because of the attorney-client privilege.
 - C. Inadmissible because of the best evidence rule.
 - D. Admissible hearsay.

21. You are trying a civil case and you want Witness A to testify that the light was red. You ask Witness A what color the light was. Before she can answer, there is an objection, which is sustained. What do you do now?
- A. If you have not already made it apparent during your argument, make an offer of proof as to what Witness A would have said if she had been allowed to answer.
 - B. Note your objection to the judge's ruling.
 - C. Ask the question again.
 - D. Act like it's not important to your case, so the jury won't know.
22. Personal injury action by P against D arising out of the crash of P's bicycle and D's motorcycle at an intersection. P offers testimony of X, a police officer who was on the scene within a few minutes after the accident. X is prepared to testify as follows: "I immediately interviewed Y, who was sobbing uncontrollably. Y said she was supposed to meet P at the corner, and that she had arrived immediately after the accident. When she saw P, she asked Z, who was standing on the corner, what happened. Z told her that D had just run a red light on his motorcycle and struck P who had the green." This proposed testimony is:
- A. Double hearsay.
 - B. Inadmissible because X, the officer, does not have personal knowledge of the facts reported by Y.
 - C. Probably admissible because both the excited utterance and present sense exceptions appear to be satisfied.
 - D. A and C.
23. Jones is charged with leaving the scene of an accident. In its case in chief, the prosecution wants to show that Jones has been convicted on two prior occasions for leaving the scene. The defense objects under 404(a). How should the court rule?
- A. Sustain the objection. This is just propensity evidence, in violation of 404(a).
 - B. Admit the evidence. It's propensity under 404(a), but it shows that the defendant has done this type of thing in the past, which makes it relevant.
 - C. Admit the evidence under 401 and 402.
 - D. Sustain the objection if Jones made an offer of proof.

24. P sued D for negligence causing injuries in an auto accident. P testified, then W testified for P. On cross-examination of W, assuming an objection, which of the following questions is the trial judge most likely to rule improper?
- A. "Isn't it a fact that you are P's wife, and will share if P gets a recovery?"
 - B. "Isn't it true that your husband was convicted 5 years ago of the misdemeanor crime of false swearing?"
 - C. Isn't it true that your husband gets abusive when he's been drinking?
 - D. "Isn't it true that your husband told you what to say at this trial?"
25. In the Jones trial for vehicular homicide, Jones testifies in his own defense. He says that he did not knowingly leave the scene and would not do such a thing, that he hit his head and was disoriented. On cross-examination, the prosecutor wants to offer his two prior misdemeanor convictions for leaving the scene. She asks to approach the bench and tells the judge what she wants to do. Defense objects. How should the judge rule?
- A. The court should sustain the objection because this is evidence of specific acts used in an attempt to prove bad character.
 - B. The court should overrule the objection because it goes to absence of mistake or accident.
 - C. The court should overrule the objection because Jones opened the door.
 - D. B and C.
26. Which would probably not be a proper subject of judicial notice?
- A. That water freezes at 32 degrees Fahrenheit.
 - B. That Gray's Anatomy is an authoritative source.
 - C. That German is harder to learn than Spanish.
 - D. That bears relieve themselves in the woods.
27. Defendant is on trial for murder. He was previously convicted of manslaughter 8 years ago. Prosecutor wants to introduce the previous conviction in her case in chief to show that Defendant is a violent person who could do something like this. Defense lawyer objects. What is the most likely outcome?

- A. The court will admit the evidence, because this is a pertinent trait in a murder trial.
- B. The court will admit the evidence because it's a felony conviction less than 10 years old.
- C. The court will admit the evidence, subject to the balancing test for an accused under Rule 609.
- D. The court will exclude the evidence because it violates Rule 404.

28. Criminal action by State against D. During the direct examination of one of State's witnesses who claims to have seen the crucial event, D's attorney raises a timely, specific objection to a question asking the witness to relate what she saw. After extensive argument outside the presence of the jury on the evidentiary point, the court overrules the objection and allows the question. Which of the following best reflects what D's lawyer should do next?

- A. Make sure to note her exception in the presence of the jury.
- B. Ask the court to have the record reflect her disagreement with the court's ruling.
- C. Make an offer of proof.
- D. Respectfully return to her seat.

29. Slander action by P against D. P alleges that in a speech to the NH Trial Lawyers, D called P a "damned liar." D claims he said P was a "kind lawyer." At trial, P calls W, who attended D's speech. W testifies that D called P a "damned liar." On cross-examination, D's attorney asks W, "Isn't it true that you were fired from your last job for falsifying your resume?" Which of the following statements is most accurate?

- A. Assuming a good faith basis for asking, the question is unobjectionable.
- B. If P makes a relevance objection, the court will sustain the objection.
- C. If P objects to the question as leading, the court will sustain the objection.
- D. If P objects to the question on the ground that the question assumes a fact not in evidence, the court will sustain the objection.

Please assume the following facts for the questions 30-32:

30. Joint prosecution of D and Z for the murder of V. W was a close friend of V, and is the one who discovered the body. W made the 911 call to the dispatcher immediately after finding the body and blurted out what she saw in the room as she was calling. W

died before trial. Prosecutor calls Dispatcher as a witness and she is asked to repeat W's statements in court. D and Z object. How should the court rule?

- A. Sustain the objection on the ground that it calls for inadmissible hearsay.
 - B. Sustain the objection because D and Z are criminal defendants and Crawford applies.
 - C. Overrule the objection if the call is properly authenticated.
 - D. Overrule the objection if it finds by a preponderance of the evidence that the statement to the dispatcher was an excited utterance and/or a present sense impression which was not testimonial.
31. Prosecutor has a confession from Z, but Z claims that it was involuntary. Prosecutor offers the confession. If the court finds that a reasonable jury could find that the confession was voluntary, should she admit it over D and Z's objection?
- A. Yes, it's a matter of conditional relevancy for the jury to decide.
 - B. No, it violates Crawford.
 - C. No, it violates Bruton.
 - D. Yes, as long as Prosecutor first calls Z.
32. After Prosecutor rests, D tries to introduce evidence of his peaceful character through Q, but Prosecutor objects. If the objection is sustained, what should D do?
- A. Make sure an offer of proof has been made as to what Q's testimony would have been.
 - B. As a criminal defendant, D does not need to do anything.
 - C. Rephrase the question to ask about peaceful disposition instead of character.
 - D. Answers B and C.
33. After the verdict is announced in a murder trial, a juror approaches the judge and mentions several things which occurred during deliberations which she finds disturbing. If the court holds a hearing and allows the juror to testify, which matters can the juror mention?
- A. Several of the jurors announced at the beginning of deliberations that they made up their minds right at the end of the prosecution's case-in-chief that the defendant was guilty, and that they paid little attention to the defendant's case.
 - B. During deliberations one of the jurors fell asleep.
 - C. Neither A nor B.

D. Both A and B.

34. D is on trial for murder. He was previously convicted of manslaughter 8 years ago. D takes the stand in his own defense. Prosecutor wants to impeach D with the prior conviction. The defense objects. What analysis should the court make prior to ruling?

- A. 609(a)(2) and 403.
- B. 609(a)(1) and 403.
- C. 608(b).
- D. 609(a)(1).

35. Prosecution of D for first degree murder of V. D does not deny that V was murdered, but claims that she (D) was somewhere else on the night of the killing. At trial, the prosecution calls W, a forensic pathologist who conducted the autopsy on V. W testifies that she found only three entry wounds, which were on the back of V's head. The prosecution then shows W a series of photographs, which W states were taken of V's upper body and head during the autopsy. The photographs clearly show the bullet wounds to the back of V's head that W had testified about. The prosecution offers the photographs into evidence. D objects. Which of the following statements is most likely correct?

- A. Because the charge is murder, the location of the entry wounds is critical, and this will be a significant factor when the judge decides how to rule.
- B. Although the photographs are relevant, the fact that they merely corroborate W's undisputed testimony makes them less significant than they otherwise would be.
- C. Although the photographs are relevant, the court must exclude them unless it finds that they are the best evidence of the condition of V's body at the time of the autopsy.
- D. Because they are being offered against the accused, the court cannot admit them unless it finds that their probative value outweighs their prejudicial effect.

36. In a civil suit for wrongful death, in order to prove negligence by excessive speed, Estate of P seeks to show that D had received 6 speeding tickets in the six months before the fatal crash. D objects. What is the most likely outcome?

- A. The court allows the evidence to show a pertinent trait for speeding.

- B. The court excludes the evidence because it violates Rule 404(a).
 - C. The court excludes the evidence because it's irrelevant.
 - D. The court allows the evidence to show absence of mistake.
37. Wife (W) call 911, "Please help, my husband (H) is trying to kill me!" In a trial against H for domestic violence, W testifies that she was just kidding when she made the call. Prosecutor wants to play the tape of the call, and Defense objects on Crawford grounds. The judge should:
- A. Exclude the tape based upon spousal testimonial privilege.
 - B. Exclude the tape based upon Crawford.
 - C. Exclude the tape because the Prosecutor is impeaching his own witness.
 - D. None of the above.
38. Witness W to traffic accident tells Cop that the light was red when Driver D (Defendant) entered the intersection. Cop enters this statement in his police report. Accident Reconstruction Expert reviews the report, and relies upon the statement in forming her conclusions regarding the cause of the accident. Witness dies before deposition or trial. Can Expert use the statement of W as a basis for her opinion?
- A. Yes, if police reports are reasonably relied upon by accident reconstructionists.
 - B. No, because the statement is double hearsay.
 - C. Yes, because W is unavailable.
 - D. Yes, as long as she explains the source of her information on direct examination.

Please assume the following facts for the questions 39 and 40:

39. Negligence action by third-grader P against classmate D arising from a playground collision. To prove that she suffered an arm injury, P seeks to introduce the admission form filled out by the admitting nurse, which records that P's father told the admitting nurse, "my daughter's arm really hurts and she can't move it." Which of the following statements is correct?
- A. P's father's statement to the nurse is hearsay within hearsay.
 - B. P's father's statement to the nurse is admissible.
 - C. P's father's statement is not hearsay because it is not offered to prove the truth of the matter asserted.

D. A and B.

40. As evidence that she suffered an arm injury from the collision, P calls W, the hospital's records clerk. W authenticates P's hospital record and testifies that the record was prepared by hospital personnel based on information they knew first-hand or which was provided by people with knowledge, that it was kept in the ordinary course of business, and that hospital procedure requires such records to be kept. P offers into evidence a portion of the record in which the attending physician wrote, "P says felt significant arm pain after having a collision with another person." Which of the following statements is most likely correct?

- A. P's statement to the doctor is hearsay but admissible as a statement made for purposes of medical diagnosis or treatment. The hospital record containing the statement is likely admissible under the business records exception.
- B. The records clerk can authenticate the record even though she has no personal knowledge of the comments contained in the record.
- C. P's statement to the doctor is inadmissible hearsay and must be excluded because it is self-serving.
- D. A and B.

TRUE OR FALSE
(2 points per question)

The following questions should be answered as "true" ("A") or "false" ("B"). If any part of the question is false or misstates a rule of evidence, then the answer is "false."

- 41. When evidence is admissible for one purpose but not admissible for another purpose, the court must admit it as long as there is a limiting instruction.
- 42. A court would take judicial notice that ice floats.
- 43. Leading questions are generally permissible only on direct exam.
- 44. A lay witness may be permitted to testify that an individual appeared to be dead.
- 45. An expert witness may generally testify to opinions regarding the ultimate issue in the case.

46. A witness may be asked on cross-examination about a prior statement, but only if she is first given a chance to explain or deny it.
47. Defendant is charged with assault. During its case in chief, the prosecution will be permitted to introduce a witness who will testify that defendant has a reputation in the community for violence.
48. In the case referred to in Question 47, if the defendant takes the stand, the prosecution can introduce evidence of Defendant's prior conviction for perjury, unless the matter is pending on appeal.
49. The hearsay rule provides for the exclusion of statements made out of court if they are offered for the truth of the matter asserted, unless the person who made the statement is in court and available for cross examination.
50. A lay witness can testify that his wife appeared to be in a great deal of pain.
51. The client generally has a privilege to prevent the attorney from disclosing the fact of the representation.
52. Evidence of liability insurance is not admissible to show bias.
53. Proof that the defendant offered to pay to fix plaintiff's damaged car is admissible to prove liability for the accident.
54. A statement against interest is admissible as long as the person who made it is subject to cross examination.
55. In an attempted murder case, the victim's out of court statement concerning the cause of his wounds is admissible, as long as he believed death was imminent when he made the statement.
56. A statement by a party opponent is admissible provided they had personal knowledge.
57. The gatekeeper function of the judge applies to all expert testimony.
58. Leading questions are allowed only on cross-examination.
59. Statements made by Plaintiff to Expert Doctor during an examination for trial may be considered by the expert, but are inadmissible hearsay.
60. An expert doctor may only rely upon facts, data, and opinions that have been or will be admitted into evidence.

61. A police officer records in his report the statement of a witness concerning an accident. This statement can be admitted into evidence under the business records exception.
62. Someone other than the photographer may lay the foundation for the admission of photographs, as long as they were present when the photo was taken.
63. In order to admit a document as a business record, the entries must have been made in the regular course of business, unless made by a person with actual knowledge.
64. After being told that he is dying from his wounds, Guard said, "Frank shot me." In Frank's trial for felony murder, the statement is probably admissible against Frank as a dying declaration.
65. Testimony by Plaintiff passenger that his car went through the red light is inadmissible, since it is self-serving and biased.

For Questions 66-69, please answer "true" if the question is hearsay and "false" if the question is not hearsay. Base your answers on the classic definition of hearsay, whether or not there may be an exception under 801, 803, 804, or 807.

66. To prove that it rained on April 3, 2005, a certified copy of a report from the National Weather Service.
67. To prove that the Plaintiff was afraid during an assault, the statement by Defendant, "I'm going to kill you."
68. To prove that he received notice of eviction, a Notice of Eviction served on the tenant.
69. To prove that Tom needs to be involuntarily committed, testimony from Dr. Shrink that he has interviewed Tom and feels that he should be committed.
70. The lawyer-client privilege lasts until the death of the client.
71. Extrinsic evidence of bias is normally allowed.
72. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.
73. Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

74. Plaintiff sues on a breach of a written contract, but does not have a copy of it. He claims that the Defendant destroyed the original and all copies. This is a situation that is covered by Rule 1004.
75. The patient-physician privilege would probably apply in a federal case involving state claims.
76. If a spoken statement is relied upon to prove notice to X, it is not relevant unless X heard it.
77. A person less than 8 years of age is incompetent to testify.
78. On an appeal, error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected.
79. On an appeal, most issues will be decided based upon an abuse of discretion standard.
80. In a criminal case involving alleged sexual misconduct, evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused is admissible if offered to prove consent.

EXTRA CREDIT:

81. The contents of voluminous writings which cannot be conveniently examined in court may be presented in the form of a chart or summary.
82. An objection is timely as long as it is made before the witness has been excused.
83. If a witness testifies that his view was unobstructed, you cannot impeach him by calling another witness who was there and who will testify that the view was obstructed because it's a collateral matter.