

Exam Number: _____

General Instructions:

1. Do not write your name anywhere on this exam. Write the number provided to you by the Registrar on every page of the exam.
2. Use a pen, not a pencil.
3. This examination is “open-book.” You may use any books, notes, materials saved on your hard drive, etc. You may access the course blog online. You may not conduct online research. Keep in mind that the examination has not been designed to give you time to research the answer to the questions from scratch.
4. You may write your responses on the exam, on additional sheets attached to the exam, or in a blue book. Make sure everything you turn in has your exam number on it.
5. Assume the Federal Rules of Evidence apply.
6. This exam, which constitutes 60% of the course grade, will be graded out of 100 points. (Each of the 6 questions in Part A carries 5 points. Each of the 5 questions in part B carries 10 points. Each of the two parts of the question in Part C carries 10 points.)
7. Good luck!

PART A

Instructions: Circle one and only one answer. If you think no answer is exactly right, or if you think that more than one answer is right, pick the one answer you think is the best answer. No writings and markings other than the circled response will be considered in grading these questions. There is no penalty for wrong answers as compared to blanks, so you should answer all questions.

1. In 1996, Tom was convicted of sexual assault, a felony. Tom was sentenced to prison and released in 1999. As a result of this conviction, Tom was required to register as a sexual offender with the local police department. In 2008, Tom is arrested and charged with the crime of failure to register as a sexual offender. The law under which he is charged provides as follows: "Any person who has been previously convicted of a sexual assault and who thereafter knowingly fails to report his current address to his local police department on January 1 of each year is guilty of a felony." Which of the following is INCORRECT with respect to Tom's trial on the failure to register charge?

A. Tom's 1996 conviction is relevant even if he does not testify.

B. Tom's 1996 conviction is admissible to impeach Tom if Tom testifies as long as the probative value of the conviction outweighs its prejudicial effect.

C. Tom's 1996 conviction is admissible under Rule 413 as long as the probative value of the conviction is not substantially outweighed by the danger of unfair prejudice.

D. Rule 404(a) does not bar the prosecution from introducing evidence of Tom's 1996 conviction.

2. A convenience store is robbed. A few days later, Sylvia, the store clerk, is questioned about the robbery by a police officer and gives a description of the robber. John is arrested and charged with committing the robbery. At a pre-trial hearing conducted one month before the trial, Sylvia is called as a witness by the prosecution and is cross-examined by the defense. On the day of trial, Sylvia is at the courthouse, but the prosecution chooses not to call her as a witness. Instead, the prosecution seeks to introduce the statements Sylvia made to the police describing the robber by calling the police officer as a witness. The defense objects on hearsay and Confrontation Clause grounds. What is the correct ruling on this objection?

A. The objection should be sustained only on hearsay grounds.

B. The objection should be sustained only on Confrontation Clause grounds.

C. The objection should be sustained on both hearsay and Confrontation Clause grounds.

D. The objection should be overruled.

3. Sally claims to have received a letter from her ex-boyfriend, Phil. In the letter, Phil threatens to kill her. Sally takes the letter to the police station, where a copy is made. The original is put in the evidence locker and the copy is put in a police officer's locked drawer. Phil is charged with the crime of Criminal Threatening based on the statements in the letter. Shortly before Phil's trial, the original letter is destroyed in a fire at the police department. At trial, a police officer testifies to how he copied the letter and kept the copy in his drawer, and Sally and the police officer both testify that the copy is an accurate copy of the original letter. Sally testifies that she recognizes the handwriting as Phil's. The prosecution seeks to introduce the copy into evidence. The defendant objects, arguing that "the copy contains hearsay, Sally can't prove that the copy is really a copy of the letter the defendant wrote, and the original must be introduced because it is the best evidence." What is the correct ruling on the admissibility of the copy?

A. The copy is inadmissible because it contains hearsay.

B. The copy is inadmissible under Rule 901.

C. The copy is inadmissible under Rules 1000-1004.

D. The copy is admissible.

4. Linda's car is involved in a collision with Kim's car. At trial, Linda calls an accident reconstruction expert to testify that based on certain observations and measurements made by himself and police officers, such as the skid marks at the accident scene, it is his opinion that Kim's car crossed the double-yellow line, causing the accident. Accident reconstruction experts reasonably rely on scene observations and measurements made by police officers. What is a correct statement concerning the admissibility of this opinion testimony?

A. This testimony is inadmissible because it violates Rule 701.

B. This testimony is inadmissible because it violates Rule 703.

C. This testimony may be admissible under Rule 702.

D. This testimony is inadmissible because it refers to the ultimate question of who caused the accident.

5. Mary is charged with theft. Testifying at a pre-trial hearing, she states that she had never been arrested prior to her arrest on this theft charge. Investigation by the prosecution reveals that Mary had been arrested 5 years ago in California for forgery and had given a false name at the time of that arrest. She was not convicted of the forgery charge. Which of the following is correct?

A. At trial, the California arrest is admissible in the prosecution's case-in-chief under Rule 404(b).

B. If Mary testifies, she may be asked, "Didn't you give the police a false name when you were arrested 5 years ago in California?" and if she denies it, a California police officer can be called to prove that Mary did give a false name when she was arrested there.

C. If Mary testifies, she may be asked, "You lied at a pre-trial hearing in this case when you testified that you had never been arrested previous to your arrest on this theft charge, didn't you?"

D. If Mary testifies, she may be impeached with the forgery arrest under Rule 609.

6. In which of the following situations may evidence that Joe punched someone 3 years ago and broke his jaw be admissible? (Note: Joe was never charged with a crime for this punch. The "charged assault" or "assault case" referred to below is different from the incident in which Joe punched someone.)

A. Joe is the alleged victim in an assault case and this evidence is offered by the defense in support of a self-defense claim in order to show Joe's character for violence.

B. The evidence is offered by a newspaper defending against a libel suit brought by Joe based on an article published in the newspaper that stated that Joe is a violent man.

C. Joe is the defendant in an assault case and this evidence is offered through an eyewitness to the punch after the Joe offers testimony by a witness concerning Joe's peaceful character. The character witness was not cross-examined by the prosecutor.

D. Joe is the defendant in an assault case and the evidence is offered by the prosecution after Joe testifies that he did not commit the charged assault, his character for truthfulness is attacked on cross-examination, and Joe calls a witness to testify that Joe is an honest man.

PART B

Instructions: In part (a), state whether the offered testimony is (or includes any) hearsay, as that term is defined in Rule 801(c). You must give a yes or no answer, and then briefly explain your answer. If the offered testimony is (or includes any) hearsay, then in part (b) state whether the offered testimony falls within an 801(d) exemption or an 803 or 804 exception. Again, you must give a yes or no answer, and then briefly explain your answer. If the correct answer to part (a) is no, then part (b) will not be graded. (If you are not sure whether your response to (a) is correct, you may answer part (b) assuming the answer to (a) is yes, but I will read and grade your answer to (b) only if the correct answer to (a) is yes.)

1. To prove that Wally, a witness in a civil suit, was drunk, testimony by the bar tender that one of Wally's friend's David said to another friend as David was watching Wally come out of the bathroom, "This is how Wally is walking" and started stumbling around, pretending to be drunk.

(a)

(b)

2. At Donald's trial for the murder of his father Victor, to prove that Donald stabbed Victor, testimony for the prosecution by a nurse that in the last few moments of his life in the emergency room, Victor pointed to his chest wound and then to a photograph of Donald.

(a)

b)

3. In Tina's lawsuit against Ellen alleging Ellen's negligence caused a car accident, to prove that Ellen ran a red a light, testimony for Tina by Ellen's husband that, a few days after the accident, Ellen told him, "I bet that light turned green less than a second after I went through it."

(a)

(b)

4. To prove that Bill was faking an inability to speak after witnessing a horrible accident, testimony that he pointed to a red bird and said, "That's a cardinal."

(a)

(b)

5. At Mary's assault trial, to impeach the alleged victim Walter's testimony that he was kicked by his wife Mary, testimony by a person who was on the telephone with Walter during the incident with Mary, that Walter said on the phone, "Mary just punched me."

(a)

(b)

Part C

Instructions: While the responses in this Part will be graded primarily based on their substantive accuracy, the coherence and clarity of the responses will also be considered.

You are the judge at a criminal trial. The defendant Dennis is charged with assault as a result of a bar fight in 2007 with Valentino.

Dennis maintains that he acted in self-defense. Prior to trial, Dennis tells defense counsel that, believing that Valentino was reaching for a knife, Dennis punched Valentino, breaking his nose. He also tells defense counsel that, at the time of the assault, Dennis knew that the alleged victim Valentino had previously stabbed someone else during another bar fight in 2005. Dennis says he was present when that incident happened.

In preparing for trial, defense counsel learns that Valentino was never prosecuted for the 2005 incident because the police concluded that Valentino acted in self-defense. Defense counsel also learns that Valentino was convicted of First Degree Assault, a felony, in 2000 as a result of yet another bar fight. At the time of the 2007 incident, Dennis was unaware that Valentino had supposedly acted in self-defense in 2005 and he was unaware of Valentino's First Degree Assault conviction in 2000.

1. At trial, Valentino is called as the prosecution's first witness. Defense counsel wants to cross-examine him about his 2000 First Degree Assault conviction. Explain how you would rule on the prosecution's objection to this line of questioning, citing any rules of evidence that apply, and any additional considerations that may enter into your ruling on this issue. Include in your analysis a clear explanation of the possible purposes for which this evidence may be offered and of whether the evidence is admissible for each of these possible purposes.

2. Defense counsel wants to introduce testimony by Dennis concerning the 2005 incident. The prosecutor objects on the grounds that that assault was done in self-defense. Is the defendant allowed to testify to his knowledge about this incident? In your answer, include a precise and clear description of why this evidence may or may not be relevant.