

MIDTERM EXAM
Professor Garvey
Fall 2005

This exam is open book. You may consult any written materials, but you may not consult with other persons. Your answers must be submitted to the Registrar's Office before 8:30 a.m. on Tuesday, October 18, 2005. Submit ONLY YOUR ANSWERS to the questions. Do NOT submit a copy of this memo. Your answers must be limited to 5 single spaced pages of 12 point type with one inch margins. Your answers should be succinct. I am looking for your analytical thought process, not a polished brief. If any of your answers involve a hearsay analysis, assume that 803, 804, 806 and 807 do not exist. In other words, use only 801 and 802 and 805.

From: Old Partner (who never had Prof Daddy for Evidence)
To: Brilliant Associate (who did)

I have a civil trial coming up, and I could use some help on the evidence. Evidence wasn't a required course where I went to law school, and I never took it. I've done pretty well without it, except when the other side says, "Objection". Unfortunately, the trial is going to be against a Pierce Law graduate who had Professor Scherr for Evidence, so I'm afraid she'll know what she's doing. I would like you to read the facts, and then answer the questions which follow.

This case is in federal court in Concord. We represent the plaintiff; she is from New Hampshire and the defendant is from Rhode Island. The plaintiff is a very nice young woman named Pam. She is 26, and has lived in NH all her life. She was raised in Manchester, and graduated from Manchester High. She graduated from UNH four years ago, and works as a customer relations supervisor for Dude Computer in Nashua. Her mother and father are married, and live in Manchester. She has a brother and a sister who both live in Goffstown. She lives in Manchester with Bob, her significant other of 3 years. Everyone I have spoken with says that Pam has a reputation as being a great person and that she is always a safe driver.

About 2 years ago, Pam had been working late with a colleague named Jill. Jill had missed her normal carpool, and so Pam offered her a ride home. Pam was familiar with the road to Jill's home, but had not driven it at night before. There were no street lights, and it was lightly raining.

As Pam was heading north, a car owned by the defendant, Ralph, was heading south. Both cars were rounding a corner in opposite directions when they collided. The force of the impact sent both cars off the road. Pam's car came to rest after crashing into a tree. Pam was knocked unconscious, and received serious injuries. Miraculously, Jill received only minor injury when the air bag deployed.

Immediately after the crash, Jill became aware of smoke coming from the engine area. She was afraid that the car was on fire, and she began to scream. Someone appeared at her passenger door, and pried it open. Jill got out and continued to cry, because Pam was wedged in the car and they were afraid to pull on her. The car continued to smoke, and Jill was afraid that Pam would perish in a fire or explosion.

The person who came to Pam's car and helped Jill was a man named Bud. He lived in a house near the scene of the crash. In fact, Pam's car crashed into his tree. He heard the crash and came out to see what had happened. As he came out, he heard Jill screaming. He also heard noise coming from the other car. As he ran up to the scene, he heard a man in Ralph's car, saying, "Man, we must have been going too fast!" Bud looked over and saw what looked like 3 people in Ralph's car. It was hard to see because of the dark night, but he thought he got a good look. As he was standing by Pam's car, about 40 feet away from Ralph's car, he saw someone get out of the driver's door and begin to run away into the field on the side of the road. He saw that the person was weaving and stumbling. The person eventually disappeared from view.

Another neighbor who heard the crash had called the police, and an officer arrived shortly after Bud saw the person run away. Bud ran up to the policewoman, Officer Blue, and told her what he had just seen. Officer Blue called in a report, requested backup, ordered an ambulance, and gave chase; she did not find anyone.

When Officer Blue returned to the cars, the ambulance was already there. Pam was being removed from the car with the Jaws of Life. Officer Brown was now on the scene, and he was interviewing Jill. Officer Blue decided to go over to interview the people in the other car.

Officer Blue approached the other car and saw two men. One was lying on the front seat, and the other was lying on the back seat. Both were groggy, but conscious. As Officer Blue leaned into the still open front driver's door, she smelled the strong odor of alcohol. She asked the two men for their names. The one in the front said his name was Bob. The one in the back said his name was Frank. She asked them if they were injured, and both stated that they were not. She asked them to step out of the car, and they did. As Frank got out, she saw that he appeared to be unsteady on his feet, and his eyes were quite glassy. She could smell an odor of alcohol on his breath. As Bob got out, he appeared to be OK, and did not appear to be under the influence of anything.

Officer Blue separated the men, and asked them each to explain what happened. Frank told her that he was out "cruising" that night with Bob, and Bob was the duty driver. Frank fell asleep in the back on the way home, and didn't know what happened. Blue asked him who owned the car. Frank said that the car was owned by a friend named Ralph. (Officer Blue checked the vehicle registration, which confirmed that Ralph owned the car).

Officer Blue interviewed Bob. At first, he said he couldn't remember what happened. Officer Blue told him that she had already talked to Frank, and she "knew the whole

story". At this point, Bob said that Ralph was driving, and had been going too fast around the corner. Bob said that they had all been out drinking, and Ralph got pretty loaded. Bob said that after the crash happened, Ralph said, "Man, we must have been going too fast", and he got out of the car and ran away.

Officer Blue put out an all points bulletin on Ralph. Officer Blue eventually found him 7 hours later, at his house. When she knocked on his door, he came to the door in his pajamas. He said he had been sleeping. He appeared groggy, but there was no smell of alcohol. Officer Blue noticed that his face had been badly scratched. She asked him how it happened, and he said his cat attacked him. She asked him if he knew where his car was, and he said he had loaned it to Bob and Frank, and that it was fully insured. She asked him if he had been drinking last night, and he said that he stayed at home and drank "a couple of six packs" while watching T.V. He said he had watched football, but I have learned that there weren't any games on that night.

Ralph was charged by the police with leaving the scene of the accident. Unfortunately, he was acquitted about 12 months ago. However, before he was acquitted, his lawyer offered to plead him to negligent operation. The prosecutor declined the offer.

Since the acquittal, I have done quite a bit of discovery in the civil case. We took the deposition of Ralph, Bob, and Frank, and I have a signed statement from Officer Blue and from Bud.

In his deposition, Frank again said that Bob was the duty driver, and that the car had been borrowed from Ralph. He also said he was passed out in the back seat, and has no memory of the accident.

When Bob was deposed, he stated that he was driving, and that he had borrowed the car from Ralph. I confronted him with his statement to Officer Blue, but he wouldn't budge. He insisted that he (Bob) was driving, that he was careful, and that the rain and darkness caused the accident. He denied that Ralph was the driver, that Ralph had anything to drink, that he was going too fast, or that he was even there.

Officer Blue gave me a written statement confirming what I have already related to you about her investigation.

Bud gave me a written statement confirming that he heard a male voice in Ralph's car say, "Man, we must have been going too fast".

I have learned that Ralph has a felony conviction from 1993 for forgery, and a 1996 felony conviction for vehicular homicide. He served 3 years for the forgery conviction, and had been out only a month when he was arrested for the vehicular homicide. He served 3 years for the vehicular homicide. Also, he has a reputation in his community for being a reckless driver. I found several witnesses who would testify to this.

Bob has a 2000 misdemeanor conviction for false swearing on a governmental application for employment.

Frank doesn't seem to have any convictions, but he has been arrested twice on statutory rape charges - for having sex with a female under the age of 16. Both times the charges were dropped because the girl refused to testify.

Ralph doesn't have a cat, and is allergic to them.

Ralph's insurance company has paid all of Pam's medical bills.

I think we have a good circumstantial case, but I anticipate that the defense may object to some of our evidence. Here are the questions that I have for you. If there is a rule number that I should refer to, please give me the number so I can have it handy to look up when I'm in court:

1. When the defense objects, what am I supposed to do? If the judge sustains the objection, am I supposed to do anything to preserve the record for appeal?
2. I want to show that Pam has a reputation for being a good person. Is that OK?
3. I want to show that Pam is always a safe driver. Is that OK?
4. I want Bud to testify to the statement he heard, "Man, we must have been going too fast". Will I have any problems getting it in? If there is a problem, how will the judge go about handling it?
5. I want Bud to testify to the fact that he saw someone running from the car. Any problem with that?
6. I want to Bud to testify that he heard Jill screaming. Any problem with that?
7. Can I introduce Officer Blue's written report of what Bob, Ralph, and Bud told her?
8. Can Officer Blue testify in court to what Bob told her?
9. Can I examine Bob about what he told Officer Blue?
10. Can I use Bob's statement to Officer Blue to prove that Ralph was driving?
11. Can I use Ralph's statement that he drank 2 six packs to prove that he drank 2 six packs?
12. Assuming no Miranda problems, are there any evidence rules that will prevent me from using any of Ralph's statements to Officer Blue?

13. Can Officer Blue describe the scratches she saw on Ralph's face?
14. If I call Bob to the stand, can I still impeach him?
15. What evidence is available to impeach Bob? Is there anything I can't use? Please describe the process that the judge will follow.
16. What evidence is available to impeach Frank? Is there anything I can't use? Please describe the process that the judge will follow.
17. What evidence is available to impeach Ralph? Is there anything I can't use? Please describe the process that the judge will follow.
18. Can I introduce the statement that Officer Blue gave to me?
19. I hate to spend a lot of money bringing in an expert. Can Pam testify to what her doctor told her about her injuries? If that is a problem, is there anything else she can say about her injuries?
20. Can I introduce the fact that Ralph's insurance paid Pam's medical bills?
21. Are there any issues I have overlooked that I should be aware of?