

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. During the examination, you may use all course materials, including the three textbooks, materials previously downloaded from the course blog, notes, and other similar materials, but you are limited to using only one other book, such as a commercial outline.
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 throughout.
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 responses 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. While awaiting trial on drug charges, D ordered his associates to kill W, a prime witness against D, so that W could not testify against D. W survived the shooting, but is not present for D's trial because, unrelated to the shooting, he (W) died of cancer. D never examined W at any deposition or pre-trial hearing. At trial, the prosecutor seeks to introduce a statement W gave to the police during W's interrogation after W's arrest several months before the shooting, in which W told the police that D and W imported large quantities of drugs together. D objects to such testimony on grounds that it would violate his rights under the Confrontation Clause of the Sixth Amendment.

What is the correct ruling on this objection?

- A. The objection should be overruled under the doctrine of forfeiture by wrongdoing.
- B. The objection should be overruled because W's statement was against W's penal interest.
- C. The objection should be overruled because the statement was not testimonial.
- D. The objection should be sustained.

2. The prosecutor at a sexual assault trial was planning on introducing the diary of the alleged victim, in which she described the incident that gave rise to the instant charges. However, the night before the alleged victim testified, the prosecutor took the diary home in order to prepare for trial and her dog ate the diary. At trial, the prosecutor seeks to elicit from the alleged victim an account of what she (V) says happened between her and the defendant. While the account is consistent with what the alleged victim wrote in her diary, the prosecutor is not seeking to introduce any testimony referring to the diary, but only testimony about what the alleged victim says happened during the assault. The defendant objects to the alleged victim's testimony on hearsay and best evidence grounds.

What is the correct ruling on this objection?

- A. The objection should be sustained under the best evidence rule, but overruled on hearsay grounds under Rule 801(d)(1)(B).
- B. The best evidence objection should be overruled, but the hearsay objection should be sustained.

C. The objection should be sustained on both hearsay and best evidence grounds.

D. The objection should be overruled.

3. W, a witness for the defendant D in a personal injury case arising out of an accident where D's car hit P, testifies that the accident occurred when P suddenly jumped in front of W's car. On W's cross-examination, which one of the following items of evidence is most likely to be admissible? The information in parentheses is available to the judge in ruling on the issue, but assume that the cross-examination, if allowed, would only elicit what is outside the parentheses.

A. W was previously convicted of the misdemeanor offense of making a false written statement to the police. (W was convicted of this crime 7 years ago and received a fine of \$500 and a sentence of 10 days in jail, all suspended for 2 years on the condition of his good behavior.)

B. W was convicted of felony assault. (W was convicted of this crime 12 years ago and released from prison 11 years ago)

C. W was convicted of felony rape. (W was convicted of this crime 9 years ago and released from prison 8 years ago)

D. W was convicted of misdemeanor disorderly conduct (W was convicted of this crime last year and received a jail sentence of 30 days).

4. Which of the following is an INCORRECT statement?

A. The best evidence rule does not apply to sound recordings.

B. Evidence not excluded by Rule 409, may be excluded by Rule 408.

C. A document that the plaintiff claims the defendant wrote may be admissible, along with another document that plaintiff can prove the defendant wrote, so that the jury can compare the two documents and decide whether or not the first document was also written by the defendant, even if the plaintiff does not introduce any expert testimony that both documents were written by the same person.

D. The Confrontation Clause does not apply to the trial of civil cases.

5. In a car accident personal injury case, the plaintiff P seeks to introduce testimony that, in the opinion of a witness W who is quite familiar with D's driving, D is a careless driver. This testimony is offered for the purpose of proving that D, being a careless driver, is more likely to have been at fault for the accident with P.

Which of the following is correct?

A. This evidence is inadmissible because it is irrelevant.

- B. This evidence of inadmissible because it does not involve a pertinent trait of D's character.
- C. This evidence is inadmissible because character evidence offered for propensity purposes is inadmissible in civil cases.
- D. This evidence is admissible.

6. At her deposition in a sexual harassment case, a witness W testified that she was convicted 15 years ago of theft and served 10 days in jail. At a pre-trial hearing W testified instead that she was convicted 13 years ago and served a week in jail. W is called at trial as a witness for P. The defense seeks to elicit testimony about the two statements made by W about her theft conviction for the purpose of impeaching her credibility by showing that she has previously made statements under oath that are inconsistent with each other. P objects.

Which of the following is a correct statement?

- A. The objection must be sustained because the testimony is irrelevant.
- B. The judge has discretion to sustain the objection.
- C. The objection must be sustained because the testimony is barred by the hearsay rule.
- D. The objection must be overruled and the testimony admitted because of Rule 801(d)(1)(A).

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.) In answering the questions in this part (B) of the exam, do not consider the Confrontation Clause or Rule 807.

1. To prove that Tom robbed a bank, testimony by a police officer that Dick, who had validly invoked his privilege against self-incrimination when called as a witness at trial, had told the officer after he (Dick) and Tom were arrested while running away from the bank, "I pointed a gun at the teller and told her I would shoot her unless she filled up with cash the bag Tom was carrying."

(a)

(b)

2. To prove that the roads were slippery in the area of a roadway oil spill, testimony that a driver really slowed down when driving through the area, but still skidded and spun around.

(a)

b)

3. To prove that a man's injuries were caused by his girlfriend Linda who is on trial for domestic assault, and not by falling down the stairs, testimony that he told the police when they arrived at his house, "I am so angry at Linda right now."

(a)

(b)

4. In a lawsuit filed by P against D, to prove that D's car collided with P's, testimony by a witness W that D told W two hours after the accident, "I was just involved in a car accident."

(a)

(b)

5. To prove that a hotel guest drove a Toyota, introducing into evidence a hotel check-in form he filled out, on which he wrote "Toyota Camry," next to "make and model of car," along with an affidavit from the hotel's keeper of records complying with Rule 902(11).

(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.

Peter and Pam, parents who appear distraught, bring their two-year old daughter Diana to the hospital. Dr. Oliver, a pediatric ophthalmologist determines that the child has experienced retinal hemorrhaging (RH). Ultimately, Peter is charged with assaulting his daughter by violently shaking her, causing serious bodily injury. The prosecution retains Dr. Elliot, an expert in child abuse. The statute under which Peter is charged makes it a crime to recklessly cause serious bodily injury to a person under the age of 13. "Recklessly" is defined as "being aware of and disregarding a substantial risk of serious injury."

A. At trial, the prosecution intends to call Dr. Elliot to testify that, in her opinion, the child is the victim of child abuse. The prosecution intends to elicit testimony from Dr. Elliot that the basis of her opinion is that the child experienced shaken baby syndrome (SBS) because the pediatric literature shows that RH is diagnostic of SBS, which results from someone violently shakes an infant or small child. The defense objects, citing Rules 702, 703, 704, and 802.

You are the judge's clerk. Write a short memo addressing these objections, informing the judge of any further fact finding or legal analysis that the judge may need to undertake in order to rule on these objections.

B. Investigation reveals that when Diana was two months old, her pediatrician Dr. Parker observed during a routine visit that Peter got frustrated with Diana during the visit and shook her. Diana did not suffer any injury as a result of that incident, but Dr. Parker gave Peter a stern lecture to Peter, telling him that shaking a baby can cause very serious injuries. At trial, the prosecution seeks to introduce testimony by Dr. Parker about what happened during that visit and what she (Dr. Parker) told Peter. Peter objects, citing Rules 401, 403, 404, 405, and 802. As the judge, explain how you should rule on these objections and why. If a definitive ruling is not possible based on these facts on one or more of these objections, you should say that and explain what further considerations might influence your ruling. However, if a definitive ruling is possible, you should just state your ruling and explain it.