

Exam #: _____

General Instructions:

1. Do not write your name anywhere on this exam. Write the number provided to you by the Registrar in the space provided above.
2. You may only use materials (books, hand-outs, notes, etc.) you already had in your possession (hard copy, saved on your computer, etc.) by the time you picked up the exam. You may not discuss the exam or any aspect of the law of evidence with anyone until all the exams have been turned in. Remember that some students are taking the exam later than others.
3. Assume the Federal Rules of Evidence fully apply.
4. Use a pen (any color but red), not a pencil.
5. On multiple choice questions, circle the letter next to what you think is the correct answer. Circle one and only one answer. Pick the one best answer, even if you think none is correct or if you think more than one is correct. There is no penalty for wrong answers as compared to blanks. No writings other than the circled responses will be considered in grading the multiple choice questions.
6. Where a question calls for a short written response, you must limit your response to the space provided on the exam. You should print or type your response. You should cite and discuss the appropriate Federal Rules of Evidence. The clarity and conciseness of the responses will be considered in grading them. Therefore, I strongly suggest you use another piece of paper first and copy of the final version of your response in the provided space.
7. This exam consists of 10 questions. The number of points assigned to each question (out of 100 points total) is indicated next to the question number.

Good luck!

1. (5 points) At an employment discrimination trial, the defendant employer John is cross-examined by the plaintiff's attorney. The plaintiff's attorney asks John, "Isn't true that you were convicted of perjury last year?" John responds, "I was not convicted of perjury last year." Later in the trial, the plaintiff's attorney seeks to introduce documentary evidence of John's conviction last year on the crime of perjury.

Which of the following is correct?

- A. This evidence is admissible because of Rule 609.
- B. This evidence is inadmissible because of Rule 608(b).
- C. This evidence is inadmissible because of Rule 609.
- D. This evidence is admissible because of Rule 613.

2. (5 points) Mark is charged with sexually assaulting, i.e., raping, a woman. He calls a witness W who is permitted to testify that Mark has a reputation for being completely disinterested in sexual contact of any kind with women.

Which of the following is correct?

- A. The prosecution should be permitted in rebuttal to call a witness Z who will testify that in Z's opinion, W is liar.
- B. The prosecution should be permitted in its case-in-chief to call a witness X who will testify to a specific incident last year in which Mark raped X under circumstances that were similar to the charged rape.
- C. Both Z and X should be permitted to testify as set forth in choices A and B.
- D. Neither Z nor X should be permitted to testify as set forth in choices A and B.

3. (5 points) D is charged with the crime of assault. D claims that he acted in self-defense. He maintains that the alleged victim V started to fight with him and, when D saw V reach inside his pocket, D was reminded of an incident a month earlier when another man X reached in his pocket, pulled out a knife, and tried to stab D. Which of the following is correct?

- A. D may call a witness W to testify that, in W's opinion, V is a violent man.
- B. D may call a witness Q to testify about an incident in which V reached in his pocket during an argument and pulled out a knife and tried to stab Q.
- C. Both W and Q may testify as set forth in choices A and B.
- D. Neither W nor Q may testify as set forth in choices A and B.

4. (5 points) Which of the following statements is FALSE?

A. A judge is unlikely to prohibit a witness from testifying on the grounds that the witness was under the influence of drugs at the time he observed the incident about which he is called to testify.

B. Evidence that a man charged with theft has 5 prior theft convictions is unlikely to be admitted as habit evidence under Rule 406.

C. Since the test for relevancy under Rule 401 is so easy to meet, evidence that the driver of a car involved in an accident had insurance may be admissible on the theory that having insurance might make the driver slightly less concerned about getting in an accident.

D. The Rules of Evidence do not apply to grand jury proceedings.

5. (5 points) In a robbery trial, evidence that the defendant committed an earlier robbery may be admissible to show that in the earlier robbery he obtained the gun used in the charged robbery as long as

A. The evidence concerning the earlier robbery is sufficient to permit the jury to find by a preponderance of the evidence that he committed the earlier robbery.

B. He was not acquitted of the earlier robbery.

C. The jury finds beyond a reasonable doubt that he committed the earlier robbery.

D. The judge finds by clear and convincing evidence that he committed the earlier robbery.

6. (5 points) Bob sues a contractor Q for failing to perform repairs on Bob's house in accordance with the terms of a contract between B and Q. Q has a three-year old criminal conviction for perjury, a felony. In Bob's case-in-chief, evidence of the prior conviction is

A. Inadmissible.

B. Admissible subject to Rule 403.

C. Admissible if the probative value of the conviction outweighs its prejudicial effect to Q.

D. Admissible without any balancing of probative value and prejudicial effect.

7. (30 points) In a “date rape” sexual assault trial, the alleged victim, who is Asian, testifies that Manuel, the defendant, who is Hispanic, assaulted her in his apartment as they were watching the movie “Saw 3,” a horror movie. Defense counsel intends to cross-examine the alleged victim by asking the following questions. With respect to each question, discuss whether the judge will sustain or overrule an objection by the prosecutor, citing any pertinent Rules of Evidence, and (if necessary) mentioning any significant facts or considerations beyond what you have been given here that may cause the judge to decide the issue one way or the other:

A. You told the police that you were assaulted as you were watching the movie “Saw 4,” didn’t you?

B. Isn’t it true that your parents don’t want you to date Hispanics?

C. You were convicted in 1997 of First Degree Assault, weren’t you?

D. Just a week before this incident, you went to another man’s apartment and had consensual sex with him there, didn’t you?

E. You hate horror movies, don’t you?

F. Last year, you falsely stated on your resume that you were on the Dean’s List in college, didn’t you?

8. (15 points) On September 8, 2008, Tom built two Adirondack chairs and offered them for sale to his neighbors. On January 15, 2009, Tom sold one of the chairs to Arnold. On February 13, 2009, the chair collapsed while Arnold was sitting on it, resulting in Arnold suffering a back injury. Arnold sued Tom claiming that he was negligent in constructing the chair. Tom claims that the collapse occurred because John exceeded the weight limit for the chair, indicated on a label underneath the chair, when he sat on the chair while holding heavy exercise weights.

In the course of discovery, Arnold learns that Tom had modified the other chair, which had remained unsold at the time of Arnold's injury. The modification is such that it would have prevented the kind of collapse that occurred with Arnold's chair.

The parties dispute the date on which Tom made the modification to the other chair. Tom claims that he made this modification on February 18, 2009. Arnold claims that Tom made the modification on February 8, 2009.

At trial, Arnold seeks to offer the modification made by Tom to the other chair as evidence of Tom's poor workmanship on the chair sold to Arnold.

You are the judge's clerk. Write a short memorandum discussing the admissibility at trial of evidence of modification to the other chair. Address in your memo whether admissibility depends on the date of the modification and, if so, how. Also discuss in your memo whether the dispute as to the date of modification should be left for the jury to decide, or whether the judge needs to resolve this dispute. In your memorandum, cite any applicable Rules of Evidence.

9. (15 points). Kim is charged with robbing a 7-11 convenience store. She allegedly went in the 7-11 holding a knife, wearing a ski mask, and demanded money. She was arrested after the store clerk identified her voice as the robber's from a selection of voice samples played for the clerk by the police. Kim's defense at trial is that she is not the person who entered the store and robbed it. She intends to present evidence that she was in another state at the time of the robbery.

At trial, the prosecution wants to introduce evidence of a Quick Mart robbery committed a year earlier. That robbery was committed by a woman who entered the store holding a knife and wearing a ski mask, and demanded money. On her way out of the Quick Mart, the robber started to take off her ski mask and the clerk got a brief look at her face. Kim was tried on the Quick Mart robbery, at which the clerk testified, and was found not guilty.

Your firm represents Kim on the 7-11 robbery. Write a short memorandum stating the objections and arguments that should be raised to the admissibility of testimony by the Quick Mart clerk describing the Quick Mart robbery and identifying Kim as the robber. Assess the likelihood of succeeding in excluding this evidence. To the extent that your answer may depend on additional facts, state in your memorandum what additional facts you need to know and how they might affect your analysis.

10. (10 points) In a products liability case, the plaintiff has sued defendant manufacturer for defective design of a tire that failed as plaintiff was driving his car, causing him to be seriously injured. At trial, the plaintiff calls a witness Peter as an expert on tire design. Peter testifies that the tire on plaintiff's car was designed defectively. The defendant manufacturer learns that Peter, who is married, has a mistress. The defendant also learns that, last year, Peter bought a car for his girlfriend and that the tires on that car when he bought the car were the same as the tire that failed on plaintiff's car. As the defendant's attorney, what arguments will you make for the admissibility of this evidence? As the plaintiff's attorney, what arguments will you make against the admissibility of this evidence?