

## Evidence Mid-Term Examination

### 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. You may use any 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.
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!

Fact Pattern for Questions 1 and 2:

David Defendant, an inmate at the New Hampshire State Prison, is charged with the crime of perjury, a felony. Specifically, Defendant is accused of testifying falsely in a civil suit he filed in 2004 against the New Hampshire Department of Corrections, alleging mistreatment by prison guards. He was in prison from 2001 to 2003 as a result of a conviction for perjury in 2000. The prior perjury conviction was for testifying falsely as a defense witness in a criminal case in which Friend, a friend of Defendant's, was on trial for robbery, a felony. Friend was convicted of that charge in 2000 and sentenced to prison from 2000 to 2004.

1 (10 points). In its case-in-chief, the prosecution seeks to introduce Defendant's 2000 perjury conviction. The defense objects. The prosecutor responds as follows: "Judge, this conviction is admissible because the prior perjury conviction is relevant. That he committed perjury before makes it more likely that he committed perjury in this case. Also, the conviction is admissible under Rule 609." The judge should

A. sustain the objection

B. overrule the objection because the conviction is admissible under Rule 609.

C. overrule the objection because the conviction is admissible under Rule 404(a)(1).

D. overrule the objection because the conviction is admissible under Rule 404(b).

2 (15 points). After the prosecution rests, the defense calls Frank Friend as a witness. In her cross-examination of Frank, the prosecutor wants to ask Frank the following questions: (a) Isn't it true you were convicted of robbery in 2000? (b) Isn't it true Defendant testified as a witness for you in your robbery trial? (c) Isn't it true

Defendant lied for you at your robbery trial? (d) Isn't it true Defendant was convicted of perjury based on his testimony at your robbery trial? (e) Isn't it true you and Defendant were close friends in prison?

You are the judge. With respect to each of these questions explain whether you would rule that the evidence the prosecution is seeking to admit through these questions is admissible or inadmissible.

a)

b)

c)

d)

e)

Fact pattern for Questions 3 to 5:

Tom Tenant is renting an apartment from Larry Landlord. One day, Tom calls Larry and says, "The bath tub is very slippery. Please do something about it." Larry says, "I know. I was going to install anti-skid pads in the tub before you moved in, but I never got around to it. I will take care of it next week." The day after the telephone conversation, Tom slips in the tub and breaks his hip. The following day, Larry fixes the tub. Tom files suit against Larry, alleging that Larry was negligent in not fixing the tub before renting it to Tom.

3 (5 points). At trial, Tom's attorney asks Larry, "Isn't it true you knew the tub was slippery before you rented that apartment to Tom?" Larry's attorney objects. The judge should

- A. sustain the objection under Rule 407
- B. sustain the objection under Rule 408
- C. sustain the objection under Rule 404
- D. sustain the objection under Rule 613
- E. overrule the objection

4. (5 points) Assume the judge overrules the objection to the question posed by Tom's attorney. In response to the question, Larry testifies, "I had no idea that tub was slippery." Tom's attorney asks Larry, "Isn't it true you told Tom the day before he slipped in the tub that you knew the tub was slippery?" Larry's attorney objects. The judge should

- A. sustain the objection under Rule 407
- B. sustain the objection under Rule 408
- C. sustain the objection under Rule 404
- D. sustain the objection under Rule 613
- E. overrule the objection.

5. (5 points) Assume the judge overrules the objection and Larry testifies, "No. I never said that." Explain whether the judge should permit Tom's attorney to elicit testimony from Tom that Larry told him the day before Tom fell in the tub that Larry knew the tub was slippery.

Fact Pattern for Questions 6 and 7:

Patty Plaintiff is the plaintiff in a sexual harassment and wrongful termination suit against Bob Boss, Patty's boss. The suit alleges that Boss threatened to fire Patty unless she agreed to sleep with him. Patty reluctantly began a relationship with Boss, fearful of losing her job. Eventually, she decided to end the relationship and Boss fired her because she would no longer sleep with him. Boss maintains that he never threatened Patty, and that she willingly entered into a consensual relationship with him, which he ended when he caught her sleeping with another man. Boss claims that sometime after their relationship ended, he fired Patty because she was always late arriving for work.

6 (10 points). Analyze the admissibility of testimony by Boss that the reason the relationship between Patty and Boss ended was because he caught her sleeping with another man.

7 (10 points) In preparation for trial, Boss's attorney investigates Patty's background and learns the following: In May 2003, Patty was

accused by her then employer Stop & Shop of stealing money through a scheme that involved making false financial entries in certain work records. Based on these allegations, Patty was charged with the crime of embezzlement. Which of the following is correct?:

A. Patty may be asked on cross-examination, “Isn’t it true that you were charged with embezzlement?” and, if she denies the charge, documents establishing the charge are admissible.

B. Patty may be asked on cross-examination, “Isn’t it true that you were charged with embezzlement?” but, if she denies the charge, documents establishing the charge are inadmissible.

C. Patty may be asked on cross-examination, “Isn’t it true that you embezzled funds from Stop & Shop?” and, if she denies embezzling the funds, testimony by a Stop & Shop employee to prove the embezzlement is admissible.

D. Patty may be cross-examined by asking her, “Isn’t it true that you embezzled funds from Stop & Shop?” but, if she denies embezzling the funds, testimony by a Stop & Shop employee to prove the embezzlement is inadmissible.

E. Patty may not be asked on cross-examination about the embezzlement charge or the incident on which it was based.

8 (15 points). As a result of a car accident, Isaac Injured has filed suit against Driver Defendant, alleging that the accident resulted from Driver’s negligence. Isaac alleges that Driver’s car was driving in excess of the speed limit when it struck Isaac’s car. Investigation by Isaac’s attorney results in evidence of the following: a) Isaac has a reputation as a careful driver, b) Driver has a reputation as a excessively fast driver, c) Driver was involved in 2 other accidents during the past year in which he hit other cars while speeding, d) right after the accident, Driver told Isaac, “I was going a little fast only because I was in a rush to pick up my kids at school. Just send me the bill for your injuries and the damage to your car and I will pay it. But please don’t call the police. I don’t want them to be involved.” e)

Right after the accident, Driver told a bystander at the scene of the accident, "This was all my fault. I am thinking of paying Isaac \$1000 if he agrees not to sue me."

Discuss the admissibility of each of the above items of evidence:

a)

b)

c)

d)

e)

9 ( 5 points). Robert Recidivist is charged with rape of an acquaintance, Andrea. He admits having sex, but claims it was consensual. Five years earlier, Robert had been charged with raping another woman, Ann, who worked with Robert. Ann had been violently attacked and raped by a man while walking in a poorly lit park at night. Ann had testified at that trial that she recognized her assailant as Robert because of his distinctive voice. Robert's defense at that trial was that he was not the man who attacked Ann. The jury in that case had been unable to reach a unanimous verdict and the judge had declared a mistrial, after which the prosecution had decided not to retry Robert. At Robert's trial for raping Andrea, the prosecution seeks to introduce testimony by Ann that Robert raped her in the park. Which of the following is correct?

A. This testimony is inadmissible because Rule 404 prohibits the introduction of such character evidence.

B. This testimony is inadmissible because Robert was not convicted of raping Ann

C. This testimony is admissible unless the judge concludes that its probative value is substantially outweighed by the danger of unfair prejudice.

D. This testimony is admissible if the judge concludes that its probative value outweighs the danger of unfair prejudice.

10 (20 points). On February 12, 2005, around 1: 20 PM, a masked man wearing blue jeans and a white T-shirt entered a courthouse and shot and killed 2 court security officers with a 9 mm handgun. Around 1:30 P.M. that same day, Sam Suspect went to the house of his ex-girlfriend Glenda, several blocks from the courthouse. He was wearing blue jeans and a white T-shirt. According to Glenda, Sam pointed a handgun she recognized as his 9 mm at her and said, "Give me the keys to your car or I'll blow you away. I have nothing to lose." Glenda gave him the keys and Sam left the apartment. Sam was charged with murder for the courthouse shooting and with criminal threatening based on the incident with Glenda. The cases were severed and the criminal threatening case was tried first. Sam, who presented a defense that the allegations were the uncorroborated claims of a jealous ex-girlfriend, was acquitted of criminal threatening. On the murder charge, Sam's defense is that he is not the masked man who killed the two security officers. The prosecution wants to present testimony by Glenda about what happened at her house on February 12. You are an intern at the prosecutor's office. Explain what the prosecutor's best admissibility argument is, address any anticipated objections by the defense, and predict how the judge will rule on the issue.