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, or other materials, but keep in mind that the examination has not been designed to give you time to research the answers 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 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. After an accident in which a pedestrian P is seriously injured, a police officer arrives and questions the driver D about the incident. In a calm and collected tone, D tells the police officer that he (D) went through a red light and struck P because he was distracted by a conversation he was having on his phone. P files a lawsuit against D for driving negligently. At trial, P calls the police officer who spoke to D and seeks to introduce the statement D made to the police officer. D 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.

2. D is charged with threatening to kill his ex-girlfriend V. The relevant statute makes it crime to utter a threat to commit a crime. At trial, V is called by the prosecution to testify that on the date in question, she arrived home to find that there was a message for her on the telephone and, when she listened to the message, she recognized D’s voice saying, “I am going to kill you.” The charge is based on this threatening message. Assuming that the message is still saved on V’s answering machine at home, which of the following is a correct statement of law concerning V’s proposed testimony.

A. The testimony is inadmissible because it violates the best evidence rule.
B. The testimony is inadmissible because it violates the hearsay rule.
C. The testimony is inadmissible because it violates Rule 901.
D. The testimony is admissible.
3. Which of the following is INCORRECT?

A. The admissibility of any piece of evidence is always subject to Rule 403.

B. The Federal Rules of Evidence sometimes make the admissibility of a piece of evidence in a federal court trial dependent on a state rule.

C. The Rules of Evidence relating to hearsay sometimes do not apply to testimony offered in a federal court proceeding.

D. At a jury trial, if the relevancy of an item of evidence E depends on the truth of a fact F, then a judge should admit E only if the judge finds sufficient evidence permits the jury to find that F is true.

4. A witness testifies at trial that the man who robbed her had black hair. At a pre-trial deposition, the witness had testified under oath that the man had blonde hair. Which of the following is correct?

A. On cross-examination of the witness, she may be questioned about her deposition testimony only to impeach her trial testimony that the robber had black hair.

B. On cross-examination of the witness, she may be questioned about her deposition testimony only to prove substantively that the robber in fact had blonde hair.

C. On cross-examination of the witness, she may be questioned about her deposition testimony both to impeach her testimony that the robber had black hair and to prove substantively that the robber had blonde hair.

D. On cross-examination of the witness, she may not be questioned about her deposition testimony about the color of the robber's hair.

5. Which of the following is definitely inadmissible opinion testimony?

A. Testimony in a driving under the influence case that, shortly before his arrest, the defendant appeared quite sober to his friends that were at a bar with him.

B. Testimony in a murder case that, in the opinion of a psychiatrist, the defendant was insane.

C. Testimony by a witness U in a civil case that a witness W called to testify to the truthful character of the plaintiff P was herself not a truthful person.

D. Testimony by a witness in a fraud case that the defendant, who has not testified as a witness, is an honest person.

6. Adam, who owes $10,000 to a credit card company, calls the company and tells a customer service representative, “I’m willing to pay you $5000 to settle the $10,000 debt that I owe you.” The company turns down his offer and files suit against him to collect on the debt. At trial, the
company seeks to introduce testimony by the customers service representative about the quoted statement by Adam. Which of the following is correct?

A. This testimony is inadmissible under Rule 408.

B. This testimony is inadmissible under Rule 802.

C. This testimony is inadmissible under Rule 403.

D. This testimony is admissible.
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 David was running a drug dealing business out of his house, testimony by a police officer that, during the execution of a search warrant at D’s house, the telephone rang and, when the officer answered it, the caller said, “I want to buy an ounce.”

(a)

(b)

2. To prove that Tom was a drug dealer, testimony by a police officer that Joe, who validly invoked his privilege against self-incrimination when called as a witness at trial, had told the officer when arrested for money laundering, “Tom would sell drugs and give me his profits, and I would use the money to buy various businesses.”

(a)

b)
3. To prove that Acme, a tobacco company, was making false claims that its cigarettes were safe, testimony that a company scientist had said, “Acme cigarettes are safe.”

(a)

(b)

4. To prove that Bill’s leg was injured in a biking accident, testimony that he was seen limping away from the scene of the accident.

(a)

(b)

5. To prove that Bill’s leg was injured in a biking accident, testimony that several weeks after the accident, he was asked what happened to him as a result of the accident, and he demonstrated how he was limping after the accident.

(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.

Tom, who is 65, files suit alleging that he was laid off by Joe, the owner of a store that employs approximately 30 workers, because of his age. Joe maintains that he laid off Tom not because of his age but because, in his final months on the job, Tom was often late arriving at work.

1. In discovery, Tom obtains the employment records for all of Joe’s employees. One of these records shows that Tom was late for work on 7 of the 60 days preceding the date of his termination. Another one of these records shows that a twenty-year-old employee was late for work on 15 of the preceding 60 days, but was not terminated. At trial, Tom intends to introduce xerox copies of these two records. As the judge’s clerk, objectively discuss the rules of evidence that are implicated here and analyze the potential admissibility of the evidence in question under these rules, pointing out any barriers to admissibility and any foundational requirements.
2. Tom wishes to introduce testimony by Nancy another ex-employee of Joe. Nancy claims that seven years before Tom was terminated, when Nancy was 70 years old, she was laid off by Joe, who told her, “I can’t have you working here anymore. You’re old enough to be my mother.” Nancy would testify (a) to the statement made to her by Joe; (b) to the fact that she filed an age discrimination law suit against Joe, and (c) to the fact Joe and Nancy settled this lawsuit for $25,000. As the judge, how would you rule on the admissibility of each of these items of evidence. With respect to each item, state the applicable Rule(s) of Evidence and explain your reasoning.