

MASSACHUSETTS SCHOOL OF LAW
EVIDENCE
CLOSED BOOK FINAL EXAMINATION
DECEMBER 17, 2002
PROFESSOR TIMOTHY CAGLE

DO NOT OPEN THE TEST BOOKLET UNTIL TOLD TO DO SO.

WRITE YOUR SOCIAL SECURITY NUMBER _____

This is a three hour examination. Your success on the essay part of this examination will depend on your careful analysis of the questions and the structure of your answers. There will be no credit given for extended "treatises" on the areas of the law presented by these questions, and you should, therefore, avoid any rambling discourses. However, you should discuss with adequate particularity the issues and the applicable law for each question.

Questions will be weighed as follows:

ESSAY

| | |
|------------------------------------|-------------|
| QUESTION ONE | 50 % |
| QUESTION TWO | 25 % |
| SHORT ESSAY QUESTIONS (1-5) | 25 % |

No materials of any type are to be used in this examination. Nor are you to discuss this examination with students from the other sections unless all examinations have been completed by all sections. Nor should you discuss this examination with a student who has not taken this exam during its regularly scheduled time because of an excused absence. Infractions of the above will subject any students involved to disciplinary action which shall include expulsion from MSL.

WHEN FINISHED, CHECK TO MAKE SURE YOUR SOCIAL SECURITY NUMBER IS ON THIS TEST BOOKLET AND YOUR BLUE BOOK.

PLACE THE EXAM INSIDE YOUR BLUE BOOK AND HAND IN BOTH.

ESSAY QUESTION ONE

Instead of staying home alone, Pesci and his girlfriend, Lisa, went to see the film, "My Cousin Vinny", which was playing at the Goodfellas Theater. After arriving at the theater, Pesci tripped and fell on a worn carpet located on the stairway leading to the balcony. Pesci brought suit against the Goodfellas Theater, alleging that they were negligent in not properly maintaining the premises. Goodfellas has defended this action by denying that Pesci fell or injured himself at the theater, or, if he did, it was not the result of the negligence of the theater.

At trial held on December 17, 2002, the following occurred:

1. Pesci testified on direct that the rug at the Goodfellas Theater was defective at the time he tripped.
2. The exact time of Pesci's fall was a key issue at trial. Pesci was wearing a gold Rolex watch that kept accurate time to the millisecond. During the fall, Pesci claims that the Rolex was damaged. As a result, the hands of the watch were imbedded in a position which indicated a time of 8:25 P.M. Pesci's attorney introduced the watch as evidence of the time that the fall occurred.
3. On cross-examination, Pesci was asked: "Isn't it true that you were convicted of insurance fraud in 1994?"
4. Lisa testified that after Pesci fell, she helped him get into his car and then drove him to the hospital. On cross-examination, Lisa was asked, "Haven't you been having sexual relations with Pesci during recent months?"
5. Dr. Kevorkian testified as a witness for the theater. Kevorkian testified on direct examination that a day before the alleged occurrence, Pesci had called him at his house and reported that he had fallen in his bathtub and that later that day, upon physical examination by Kevorkian, the doctor had found that Pesci had sustained a broken arm, and that it was the same arm that Pesci was now alleging that he had broken in his fall at the theater.
6. Spielberg, the manager of the theater, testified that over 20,000 persons used the stairway in question during the six months before and after the alleged date of Pesci's injuries, and that except for Pesci's complaint, no one had either complained about the condition of the stairway or reported falling thereon.
7. Two weeks prior to the fall, Goodfellas had placed an order for new carpeting to be installed in its theater. The new carpeting was installed one week after Pesci claims he was injured in the fall.

8. Counsel for the theater introduced a series of photographs depicting the area in which the alleged fall occurred. These photographs were taken by a professional photographer approximately one month after the incident.

9. Counsel for the theater then called DeNiro as a witness. DeNiro testified that he was a plastic surgeon who had psychic powers that allowed him to accurately predict the future. The Court accepted DeNiro as an expert witness in his field and so instructed the jury.

10. DeNiro testified that he has developed a new technique for determining whether or not a person is telling the truth. The technique consists of a laser-enabled sensor pointed toward a person, and activated while the person is speaking. The sensor converts the voice level of the person speaking to a ratio of red blood cells to white blood cells. An elevated white cell count during speech indicates that the person is not being truthful.

The Court allowed DeNiro to testify that in his opinion, Pesci had not told the truth when he testified. The Court then ruled that DeNiro's truth determination technique was a proper and acceptable scientific test that was admissible.

ASSUME THAT ALL APPROPRIATE OBJECTIONS WERE MADE IN EACH INSTANCE.

DISCUSS IN COMPLETE DETAIL WHETHER EACH OF THE FOREGOING SHOULD BE ADMITTED INTO EVIDENCE, GIVING YOUR REASONS FOR AND AGAINST.

ESSAY QUESTION TWO

Plaintiff was a passenger in an automobile that collided with a vehicle driven by Defendant. The police were called to the scene and the police officer administered several field sobriety tests to Defendant. After completion of the tests, Defendant was cited for speeding but was not cited for driving while under the influence of alcohol.

Plaintiff brought suit for damages and alleged that Defendant was drunk at the time of the collision. At trial, Plaintiff's counsel called Defendant as a witness and asked him the following questions:

"Isn't it true that one year prior to this collision, you were convicted of drunk driving?"

"You were drunk when you collided with the vehicle in which Plaintiff was riding, on the day of this collision, weren't you?"

"You were fired from your last job for cheating on your expense account, weren't you?"

"Isn't it true that after the collision, Plaintiff said to you, 'This was all your fault because you ran the red light,' and that you looked down and the ground and remained silent?"

"Didn't you tell your friend, Able, on the afternoon of the collision, that you were going out to "hit all the bars and get really blitzed", because you were depressed about losing your job?"

ASSUME THAT THE APPROPRIATE OBJECTIONS WERE MADE TO EACH QUESTION. HOW SHOULD THE COURT RULE ON EACH OBJECTION?

SHORT ESSAY QUESTIONS

1. This is an automobile negligence case. A witness testifies during his deposition that he was in a bar with the defendant a few days after the collision and the defendant told him: "I can't believe I fell asleep behind the wheel during the accident." At trial, defense counsel moves to bar the admission of this testimony on the grounds of hearsay.

HOW SHOULD THE COURT RULE? EXPLAIN YOUR ANSWER.

2. This is a kidnapping case. At a preliminary hearing, a witness testifies that a woman ran out of the apartment where the kidnapping occurred yelling: "X has a gun and he grabbed Y. He's been threatening to do this for weeks now." Defense counsel moves to preclude this statement at trial on the grounds of hearsay.

HOW SHOULD THE COURT RULE? EXPLAIN YOUR ANSWER.

3. This is a civil battery case. Plaintiff claims that her boyfriend drugged her and that she had to be treated for a drug overdose at the hospital. The emergency room record contain plaintiff's statement: "I drank some LSD. My boyfriend put the LSD in my drink." The defendant moves to exclude this statement on the grounds of hearsay.

HOW SHOULD THE COURT RULE? EXPLAIN YOUR ANSWER.

4. This is a criminal trial for murder. Defense claims self-defense and introduces a witness who will testify that before the killing, Defendant said to him: "I am afraid of the victim." The prosecution objects to the admission of this statement on the grounds of hearsay.

HOW SHOULD THE COURT RULE? EXPLAIN YOUR ANSWER.

5. This is a negligence action against an airline manufacturer after a fatal plane crash. On the issue of survivorship, evidenced is offered that at the crash site, investigator heard the victim (plaintiff who was dead on arrival at the hospital) cry out, "Help me, I think my leg's broken!" Defense counsel objects to this evidence on the grounds of hearsay.

HOW SHOULD THE COURT RULE? EXPLAIN YOUR ANSWER.