

Only those who dare to fail greatly can ever achieve greatly.

Robert F. Kennedy

Use your social security number on the exam and blue book. Write legibly and coherently. Nothing other than a writing instrument is allowed on your person or at or near your desk.

You will be graded on your knowledge of the law, ability to analyze the issues and your treatment of the issues.

Please take the time to think about and organize your answer. Please do not just define the issue of law, but carefully apply it to the facts and clearly state what the ramifications of your conclusion are. Please limit your answer to six pages and write on only one side of each page.

SECTION I

QUESTION 1

The Plaintiff, Jack Jones, was seriously injured when the Electric razor he purchased at SHARPIMAGE caused him to suffer severe burns and a loss of his left eye. Mr. Jones and his wife both claim significant damages because of the accident. Mr. Jones contends that the injuries resulted both from the negligent design, development, labeling and manufacturing of the product. The Defendants, SHARPIMAGE and IMAGEPRODUCTS, the manufacturer of the product both blame Mr. Jones for being drunk and using the product in ways other than its intended purpose. IMAGEPRODUCTS claims to have specifically warned against the use of the product to shave your head.

You are the trial attorney for Mr. Jones and are concerned about how the judge will rule on the following disputed items of evidence:

a.

Evidence showing that 10 other users of the Electric razor suffered similar injuries after use of the product. The company settled five of those claims for payments of less than \$100,000 and apologized to those victims,

Admissible
Inadmissible
Why?

After being treated at hospital, the Victim gives a detailed written description of his assailant to the FBI. The FBI officer takes the victim's statement by videotape and also has him write it done and sign it under oath. Victim dies before the court hearing. After the government lays the foundation for their admission through the FBI officer, the government seeks to offer the videotape and written statement into evidence at the hearing while the FBI officer is testifying.

QUESTION 1

SECTION 2

Mr. Jones prior convictions in 1999 for misdemeanor battery and in 2003 for tax fraud as well as Mrs. Jones 1993 conviction for prostitution and a civil judgment obtained against her last year for insurance fraud.

Expert testimony from Dr. Theodore Francois, an electrical engineer and psychologist, employed by IMAGEPRODUCTS. The expert is prepared to opine that Mr. Jones suffers from a mental illness he discovered through his research that is called Electric Gratification Syndrome or EGS. Individuals with EGS misuse electrical products in order to obtain sexual gratification. Patients with EGS often suffer crippling injuries because of their deliberate misuse of various products.

The videotape also shows Mr. Jones screaming out "what's wrong with me, why did I have to do this?" and "Oh God the razor just ripped my eye out of its socket". He is also shown on the tape whispering to his wife "honey don't tell them what we were doing".

A videotape of Mr. Jones in the intensive care burn unit taken immediately upon his arrival at the hospital. The tape shows the doctors and nurses working feverishly to save his life.

received three defense verdicts and lost two of the cases by jury verdicts for the plaintiffs for \$28,000 and \$425,000.

QUESTION 2

Paul, the Plaintiff, was seriously injured in a car accident. The jaws of life were used to extract him from the vehicle. He tells the police who arrived at the hospital the next day that the Defendant, Dan, ran the red light and smashed into his door crushing the front of the car and trapping his legs under the dash. Paul sues Dan for his injuries. The Plaintiff calls the police officer and asks him what Plaintiff said to him.

Admissible
Inadmissible
Why?

QUESTION 3

The defendant, Seth Summers, is charged with civil RICO violations. Kathy Tanyer, the defendant's ex-wife, is called to testify that Seth told her on their honeymoon that he decided to work with the mob to extort goods from the company because he had to get money to pay the mortgage.

Admissible
Inadmissible
Why?

QUESTION 4

Paul P. Plaintiff sues for injuries to his left foot. He claims his foot is now permanently disfigured and weakened because of being hit by the Defendant's cement truck. Shortly before trial, defendant's insurance company had a private investigator follow Paul P. Plaintiff and video tape his daily activities. The tape shows Paul walking downtown to the local men's club, dancing at the club and playing a round of golf in the afternoon. The jurisdiction recognizes the doctor/patient privilege. The insurance Company seeks to introduce the videotape during the private investigator's testimony at trial.

Admissible
Inadmissible
Why?

QUESTION 5

Defendant is charged with the murder of his girlfriend, Sally in Vermont. Defendant, called by his own attorney, takes the stand, and proposes to testify that at 6pm on the night the murder took place he told the people at his poker game in Andover that,

"When I'm done playing cards with you guys I'm going to the theater in Boston with my wife."

Admissible
Inadmissible
Why?

QUESTION 6

Plaintiff calls an expert witness who is an accident reconstruction expert to testify in a civil case seeking damages from the Defendant. The expert proposes to testify that the Defendant was negligent by driving so fast under the road conditions.

Admissible
Inadmissible
Why?

QUESTION 7

Government charges the Defendant with killing a prized bull, Bessie, in State Court. Government calls the wife of the Defendant to the stand, who is voluntarily appearing as she's an animal lover herself. She plans to say that she saw the Defendant kill Bessie. Defendant objects to the proposed testimony. The testimony is

Admissible
Inadmissible
Why?

QUESTION 8

Kirby is charged with rape and he testifies denying he committed the acts. The Government then seeks to ask Kirby about his misdemeanor conviction in 2004 for electronic fraud. The judge denies the Government's inquiry. Judge's ruling was

Permissible
Impermissible
Why?

QUESTION 9

Peter Prevett is charged with the murder of Mike. Arn proposes to testify that as Mike lay in the street bloodied and beaten badly, Mike told her, "I'm dying; Joe Devlin beat me with a bat because he owed me money." Prevett calls Arn who is prepared to testify as to what Mike said. The testimony is

2. Under what circumstance is character evidence admissible?

1. Define Hearsay including all of what 801 defines as non Hearsay:

QUESTION THREE

Admissible
Inadmissible

Why?

Jillian sues White Horse Tavern for injuries suffered in an automobile accident caused by Starkis, a patron of White Horse Tavern. Jillian, who was a bit drunk herself at the time, claims that Starkis drank too much liquor at the Tavern before the accident. Jillian offers evidence that Starkis, the owner of White Horse Tavern, visited her the next night in the hospital when she was with her attorney discussing the matter and said "don't worry about a thing, we'll pick up your medical expenses. We never should have let Starkis get that drunk." That evidence is

QUESTION 10

Admissible
Inadmissible

Why?

4. Describe and explain the Crawford analysis and its use.

3. What allows for the use of the unavailability exceptions to the Hearsay Rule and what are they?
