

EVIDENCE
MIDTERM FALL 2007
Professor Coyne

I have spent all my life under a Communist regime, and I will tell you that a society without any objective legal scale is a terrible one indeed. But a society with no other scale but the legal one is not quite worthy of man either.

Alexander Solzhenitsyn

Use your social security number on the exam and blue book. Write legibly and coherently.

Your knowledge of the law, analysis of the issues and your clear expression of that analysis contribute to your grade.

Do not write more than six (6) handwritten one-sided pages.

QUESTION ONE

Peter Peter's corvette careened off the road after he took the ADD drug Dexy. He suffered near fatal injuries. He had purchased the prescription at his local DRUGSRUS. The injury occurred on April 1st, 2006. His ex-wife, Paula Peters, was also injured in the crash. Peters contends that the injuries resulted from the negligent distribution, manufacture and prescribing of a drug that was far too powerful with serious adverse side effects. He sued DRUGSRUS, Johnson & Johnson Pharmaceuticals, the manufacturer of the drug and Dr. Cagle, his treating physician. The Defendants all maintain that the drug was improperly used by Mr. Peters.

You are the trial attorney for the Plaintiff. Please discuss what you would do about the following:

- A. Testimony from Sister Mary Rose, an eyewitness to the event, who was driving the orphans that she takes care for the convent she oversees. She proposes to testify that she saw the car speeding down the highway weaving in and out of traffic and then saw the accident. She says Mr. Peters driving caused the crash.
- B. Color photographs taken by his lawyer showing a very badly bruised Mr. Peters with one photo showing the stump from Mr. Peters amputated hand.
- C. Expert testimony prepared by the Defendants that they intend to offer that utilizes a video reenactment of the crash that shows Mr. Peters' corvette speeding and swerving into the other lane of traffic.
- D. Statements made by Peter Peters to hospital personnel that he knew he should not be driving that morning as he had been up all night partying at a strip club.
- E. Evidence that six years ago Mr. Peters was convicted of mail fraud in a scheme to defraud Blue Cross and Blue Shield, an insurance company.
- F. Testimony from Paula Peters that she saw Peter Peters ingest 6 pills early that morning and he confided to her at that time that he "just wanted to end it all."

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5. List Coyne's 5 part test for the admissibility of evidence.

4. Under what circumstances is the opinion testimony of a non-expert admissible?