

Number

As a peacemaker the lawyer has a superior opportunity of becoming a good man.

Lincoln

Please review this question, reflect on it and consider solutions to the problem. Please address the issues and propose a solution to this problem.

Use only your social security number on this examination and blue book. Please answer the essay problem in no more than six handwritten pages. Put your answers to questions 2 and 3 directly in this examination. I will evaluate your answer on your knowledge of the law, ability to recognize issues and your analysis of these issues.

SECTION ONE

Question 1

The Plaintiff, Malcom Jones is a 62 year old insurance company executive who lives in Andover with his second wife, Celeste Jones. Celeste Jones is a lawyer in Boston. Mr. Jones was seriously injured when he purchased the Cialis he purchased at WALGREENS to enhance his sexual activities. The Cialis caused him to suffer a heart attack and subsequent loss of some brain function. The injury occurred on the evening of January 1st after a family party where they toasted the New Year. An ambulance came and took Mr.

and Mrs Jones to the hospital.

Security guards approached Mrs Jones at the hospital and she told them she felt terrible because of what happened to Mr. Jones. She then showed them what she had in her pocket. Mrs. Jones had one ounce of cocaine in her possession at the hospital. The police came and arrested Mrs. Jones.

While in college, Mr. Jones and his first wife, Jenny, would import various banned sexual substances into the United States and use them to make amateur porn videos. Some of these videos have since found their way onto the internet.

Mr. Jones and his wife claim significant injuries as a result of Mr. Jones use of the drug. Mr. Jones contends that the injuries resulted both from the negligent development, labeling and manufacturing of the product. The Defendants, WALGREENS and Merck Pharmaceuticals, the manufacturer of the medicine both blame Mr. Jones and his wife for being drunk and using the medicine too often for extended periods of time which was not the occasional use recommended by the company. Merck says it specifically warned against such overuse.

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

- a. A videotape of one of the amateur porn videos Mr. Jones made with his first wife while in college. The videotape appears to show Mr. Jones dressed up as a gladiator in black leather, ingesting a large amount of pills and having sex with Mrs. Jones and others.
- b. Expert testimony from a doctor employed by Merck who is prepared to opine

that Mr. Jones has what he calls "SAD". SAD is a term he coined for an illness he discovered in older men that means Sexually Addicted Deadman. His research and clinical work in the last decade has shown that as some men age they become addicted to the high received from the combination of recently developed sex enhancing drugs like Viagra and Cialis and dangerous sex. These men then self prescribe these pills in such quantities that their overuse is akin to suicide.

c. Evidence indicating that in 1980 while in college in Indiana, Mr. Jones was convicted of feloniously importing banned sexual substances into the United States, evidence of Mr. Jones' convictions in 1978 and 1999 of driving while under the influence of alcohol, and the potential conviction of Mrs. Jones for possession of cocaine.

d. Evidence indicating that 10 other users of the drug Cialis, who were otherwise healthy, suffered massive heart attacks after beginning the use of the drug.

e. The admissibility of statements Mr. Jones made to his first wife on their

honeymoon that someday he would hit it big with a lawsuit and "never have to work again", statements Mr. Jones gave to the EMTs, who arrived on the scene within minutes of the call that he used only 2 pills that evening which was well within accepted limits, and statements in the hospital record by Mr. Jones' treating physician that there was no odor of alcohol on Mr. Jones or any evidence of alcohol use by Mr. Jones in the tests performed on Mr. Jones that night.

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Q.

_____ calls _____

foundation and offer the item in evidence.

Please take an item of evidence from Question 1, call the witness, lay the proper

SECTION TWO

properly supporting your argument and how you would expect the judge to rule.

Please describe what you would do concerning each piece of evidence while

at the hospital.

Boston showing that Mrs. Jones had one ounce of cocaine in her possession

f. A certified drug certificate from the Massachusetts Office of Drug Testing in

The defendant, Seth Summers, is charged in Federal Court with conspiracy to commit murder. Seth's first wife Lorna is prepared to testify that Seth confided to her on their honeymoon that "Alex and I killed those skinheads in the neighborhood". Her testimony is.....

QUESTION 3

Why?

Inadmissible

Admissible

Paul, the Plaintiff, was seriously injured in a car accident. The jaws of life were used to extract him from the vehicle. The police arrived on the scene within minutes and were trying to extract him from the vehicle when Paul told them that 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. Paul the Plaintiff calls the police officer and asks him what Paul had told him at the scene.

QUESTION 2

Why?

Inadmissible

Admissible

After being treated at the hospital for non life threatening wounds, Peter Parsons gives a detailed written description of his attacker to Officer Trueblood. Later when he becomes ill, the police take Parsons's statement to him at his home and have him sign it under oath before a notary public. Peter Parsons dies before the trial takes place some years later. The government seeks to offer the written notarized statement into evidence at the hearing while the Office Trueblood is testifying. The document is.....

QUESTION 1

SECTION THREE

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 and show a video reenactment of the accident that he prepared depicting the Defendant's

QUESTION 6

Why?

Inadmissible

Admissible

Jamie is charged with the murder of his girlfriend, Sally. Jamie, called by his own attorney, takes the stand, and proposes to testify that on the evening when the murder took place he told the players at his poker game that, "I broke up with Sally last week, she's going out now with some convict loser guy"

QUESTION 5

Why?

Inadmissible

Admissible

Andre is charged with Grand Larceny in Federal Court. In 2006, while he was working in Massachusetts, Andre forged checks and took \$10,000 from the Commerce Insurance Company. Commerce later found two witnesses who saw Andre take the checks and cash them. As part of its case in Chief, the Government calls Cheri to testify that she resides in the same town as Andre, knows his reputation and he is known in the community as a dishonest person.

QUESTION 4

Why?

Inadmissible

Admissible

motor vehicle crossing into Plaintiff's lane of travel. He will also testify that the accident happened because the Defendant was going too fast to control the vehicle around the turns as the reenactment shows and this was negligent to be driving so fast under such conditions. The testimony is.....

Admissible

Inadmissible

Why?

QUESTION 7

Government charges Defendant in State Court with animal cruelty for killing his neighbor's prized bull, Shane. Government calls the wife of the Defendant to the stand, who is voluntarily appearing as she an animal lover herself. She plans to say that while they were engaged to be married the Defendant confided to her that he killed Shane and ate the steaks. Defendant objects to the proposed testimony. The testimony is

Admissible

Inadmissible

Why?

QUESTION 8

Mercy is charged with robbery and she testifies denying she committed the acts. The Government then seeks to ask Mercy about her 1999 criminal conviction for arson. The judge allows the Government's inquiry over Defendant's objection. Judge's ruling was

Permissible

Impermissible

Why?

QUESTION 9

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

Admissible

Inadmissible

Why?

QUESTION 10

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 the owner of White Horse Tavern visited her the next night in the hospital when she was talking with her attorney and said "don't worry about a thing, we'll pick up your medical expenses. We never should have let Starkis get that drunk."

The statement that "we never should have let Starkis get that drunk" is...

Admissible

Inadmissible

Why?