

At his best man is the noblest of all animals; separated from law and justice, he is the worst.

Aristotle

Use your social security number on the examination. Write legibly and coherently.

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

1 point for right ruling; 1 point for right reasoning; total 20 points for Part I.

PART ONE

QUESTION 1

After being treated at the hospital, the Victim gives a detailed written description of his assailant to the police. The police take the victim's statement and have him sign it. Victim testifies at the court hearing. The government then seeks to offer the written statement into evidence at the hearing while the witness is testifying. The statement is

Admissible?
Inadmissible?
Reasoning

QUESTION 2

The defendant, Seth Summers, is charged with civil rights violations. Carol is the defendant's lover and is prepared to testify that Seth told her that he threw the firebomb because he was "sick of them taking the best jobs." The testimony is

Admissible?
Inadmissible?
Reasoning

QUESTION 3

Plaintiff sues the Defendant for damage to his prized bull, Bessie, in Federal Court. Plaintiff calls the wife of the Defendant to the stand, who is voluntarily appearing as she is an animal lover herself. She plans to say that while they were on their honeymoon the Defendant confided to her that he killed Bessie because of her incessant mooing. Defendant objects to the proposed testimony. The testimony is

Admissible?
Inadmissible?
Reasoning

QUESTION 4

Kirby is charged with rape and he testifies denying he committed the acts. The Government then seeks to ask Kirby about his criminal conviction in December of 2000 for larceny by trick. The judge denies the Government's inquiry. Judge's ruling was

Permissible?
Impermissible?
Reasoning

QUESTION 5

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 motor vehicle crossing into Plaintiff's lane of travel. Defendant objects arguing that the proposed reenactment was done in the early morning and the accident under review took place late in the afternoon. Plaintiff's proposed evidence is

Admissible?
Inadmissible?
Reasoning

QUESTION 6

Susan sues White Horse Tavern for injuries suffered in an automobile accident caused by Starkis, who was a patron of White Horse Tavern. Susan claims that Starkis was permitted to drink when he should not have been and drank too much liquor at the Tavern before the accident.

Susan offers evidence that the Tavern's license was only recently restored as both the bar owner and manager were seriously delinquent on their state ordered child support payments.

Admissible?
Inadmissible?
Reasoning

QUESTION 7

Plaintiff sues for injuries to his back. Defendant proposes to show videotape. Plaintiff is shown waterskiing and engaging in a pie-eating contest at the annual Smallville 4th of July party on the videotape. Smallville's resident busybody, Aurora Borealis, filmed the Plaintiff's activities that day because she hates the Plaintiff and has a long-running feud with him and his family. Borealis is called by the Defendant to testify. Defendant offers the tape as Borealis is testifying about videotaping the Plaintiff. The tape is

Admissible?
Inadmissible?
Reasoning

QUESTION 8

The Defendant is on trial for an assault and battery at the Quickmart that took place on May 15, 2006. On direct examination, a forgetful eyewitness is asked, "What, if anything might help refresh your recollection regarding the color of the robber's sweatshirt?" He answers, "My daily diary might." The attorney then gives the witness his daily diary and witness reviews it. After the witness reads the daily entry from May 15, 2006 quietly to himself, the attorney takes the diary from witness and asks him, "So what color was the robber's sweatshirt on May 15, 2006 at the Quickmart?" His testimony will be

Admissible?
Inadmissible?
Reasoning

QUESTION 9

George is charged with insurance fraud by the U.S. Government. In 2006, while he was travelling in Massachusetts, George claimed that he was in a serious rear-end collision and recovered \$10,000 from the Commerce Insurance Company. Commerce later found two witnesses who claim George manufactured the accident. The U.S. Marshalls investigated this matter and found that George made claims for similar rear end collisions on three previous occasions in the last 2 years in Maine and New Hampshire. On each occasion George recovered more than \$8,000. An FBI Agent proposes to testify to this. The evidence is

Admissible?
Inadmissible?
Reasoning

QUESTION 10

Defendant is charged with perjury from a prior civil case. The transcript and tape-recording of the testimony are available from that trial. The Government calls one of the attorneys who conducted the prior civil case to tell the court what the Defendant said at the trial. This testimony is:

Admissible?
Inadmissible?
Reasoning

4. Under what circumstances can a lay witness testify and when is it permissible for a lay witness to provide opinion testimony?

5. List and briefly describe each part of Coyne's 5-part test for the admissibility of evidence.

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