

MASSACHUSETTS SCHOOL OF LAW
EVIDENCE
CLOSED BOOK FINAL EXAMINATION
DECEMBER 8, 2009
PROFESSOR ANTHONY A. COPANI

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

WRITE YOUR EXAM NUMBER: _____

This is a three-hour examination. Your success on 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 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 AT 5 POINTS EACH. THERE ARE A TOTAL OF TWENTY QUESTIONS ON THIS EXAM.

No materials of any type are to be used in this examination. Nor are you to discuss this examination with students from 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 EXAM NUMBER IS ON THIS TEST BOOKLET AND YOUR BLUE BOOK(S).

MAKE SURE YOU NUMBER EACH BLUE BOOK SEQUENTIALLY (EXAMPLE, BOOK 1 OF 2, BOOK 2 OF 2) AND INCLUDE WHETHER YOU ARE ENROLLED IN THE DAY OR EVENING CLASS.

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

BEST WISHES FOR A HAPPY HOLIDAY
AND FOR A PROFESSIONAL CAREER THAT IS FULFILLING AND REWARDING!

ESSAY QUESTIONS

ANSWER EACH QUESTION IN DETAIL APPLYING THE FEDERAL RULES OF EVIDENCE. BE SURE TO NUMBER YOUR ANSWERS IN YOUR BLUE BOOK TO CORRESPOND TO THE QUESTIONS AS SET FORTH IN THE EXAM

QUESTION ONE:

This is a civil action on a life insurance policy. The principal issue at trial is whether policy exclusion applies to prevent payment on the policy. The insurance company cannot find the original policy, which should have been in the policyholder's file. At a bench trial, the insurance company calls as a witness the manager of the claims department. The following then happens:

Q. (By defendant's lawyer) Ms. Walker, did you look for the executed original of the plaintiff's policy with your company?

A. I did, and the people in my department did. The executed original should be in the policyholder's file. We looked in all the places it might have been misfiled, but weren't able to locate it. I have no idea what happened to it.

[Defendant's lawyer has exhibit marked and shows it to opposing counsel.]

Q. I'm showing you Defendant's Exhibit No. 2. Please examine it for a moment. What kind of document is that?

A. It's one of our standard life insurance contracts.

Q. Was that the standard policy your company used at the time you insured the plaintiff?

A. Yes, that's our standard life insurance policy, which we've used for several years, including the year we insured the plaintiff.

Defendant: We offer Defendant's Exhibit No. 2.

Plaintiff: We object, Your Honor.

How should the Court rule? Explain your answer.

QUESTION TWO:

This is a robbery prosecution. The victim testifies on direct as follows:

Q. (By prosecutor) Ms. Adams, do you see the man who robbed you in court today?

A. Yes, I do.

Q. Please point to him and describe what he's wearing.

A. He's the man right over there (pointing to the defendant) wearing the brown pants and white shirt.

Prosecutor: May the record show that the witness has pointed to the defendant?

Judge: Yes.

Q. Ms. Adams, you also attended a lineup?

A. Yes.

Q. Did you identify anyone?

A. Yes.

Q. What did you tell the detective at the lineup?

Defendant: Objection, Your Honor. It's hearsay.

Judge: Overruled. The witness may answer.

A. I told the detective that the defendant, who was one of the people in the lineup, was the one who robbed me.

Was the Court's ruling correct? Explain your answer.

QUESTION THREE:

Same case as QUESTION TWO. The victim has no memory of the lineup and has been unable to identify anyone in court. The prosecution calls a detective as its next witness:

Q. (By prosecutor) Detective Peterson, you ran the lineup?

A. I did.

Q. The victim, Ms. Adams, was present?

A. She was.

Q. What did Ms. Adams tell you at the lineup?

Defendant: Objection, it's hearsay.

Judge: Sustained. Move on to another topic.

Was the Court's ruling correct? Explain your answer.

QUESTION FOUR:

This is a child molestation prosecution against the victim's stepfather. At trial, the prosecution calls the victim's treating physician. During the doctor's direct examination, the following happens:

Q. (By prosecutor) Dr. Williams, did you talk to Mary when you examined her?

A. Yes.

Q. Tell us what Mary said.

Defendant: Objection, Your Honor.

Judge: Overruled.

A. That her stepfather had fondled her.

Was the Court's ruling correct? Is this hearsay, non-hearsay, or an exception? Explain your answer.

QUESTION FIVE:

John was found murdered in the parking lot at WalMart. The police suspected his girlfriend, Stacey, as a suspect. When the police arrived at Stacey's apartment, they observed her lying on the family room floor, dead from a bullet wound to her head in an apparent suicide. Next to the body was Stacey's computer, which was still on at the time. The police observed a message on the screen, which read as follows:

"I cannot live with myself anymore because I killed my boyfriend John in WalMart's parking lot."

John's estate has brought a wrongful death claim against Stacey's estate. Is the above statement admissible at trial? EXPLAIN

QUESTION SIX:

This is an automobile negligence case. A witness, who observed the accident, testified on direct examination that the defendant's car ran the red light. The witness is now being cross-examined as follows:

- Q. (By defendant's lawyer) Mr. Wilbur, you say you saw the big black car run through that red light?
- A. Yes.
- Q. The day after the collision an investigator came to your home?
- A. That's right.
- Q. You talked to him about the accident?
- A. Right.
- Q. And you signed a one-page statement stating what you saw?
- A. Right.
- Q. Let me show you that statement, which has been marked Defendant's Exhibit No. 3. That's your signature on the bottom, isn't it?
- A. Yes.
- Q. Didn't you say in your signed statement: "I didn't really see the traffic light until afterwards, but I assumed the big black car must have run the red light."?
- A. That's what I said.

When the plaintiff rests, the defendant moves for a judgment as a matter of law.

Defendant: There is no evidence my client went through the red light. The only eyewitness to the accident, Mr. Wilbur, told the investigator he did not see the light until after the collision.

Should the Judge grant Defendant's motion for a judgment as a matter of law? Explain your answer.

QUESTION SEVEN:

After Paul and Angie are involved in an automobile accident, Angie approaches Paul and says, "You ran that red light." Paul remains silent.

At trial, Angie wants to introduce evidence of Paul's silence to prove he ran the red light.

Is this hearsay? Explain your answer.

QUESTION EIGHT:

In a Paternity action, the mother, Jennifer, seeks to introduce a letter from the defendant's attorney in which the attorney stated that his client, Pablo, had admitted that he was the child's father. This letter is offered to prove that the defendant is the father of the child.

Is this hearsay? Explain your answer.

QUESTION NINE:

Mark was driving his car and had stopped at a traffic light. After waiting for a period of time, the driver in the car behind him honked his horn. Immediately after this occurred, cars going in opposite directions collided in the intersection. Jessie, a passenger in the car with Mark, who did not see the color of the light, is asked to testify about what the driver behind Mark had done, for the purpose of proving that the light had turned green in the direction that Mark was traveling.

Is this hearsay? Explain your answer.

QUESTION TEN:

This is a rape case. Martha has alleged that her estranged husband forced her to have sexual intercourse against her wishes. Martha filed a complaint with the District Attorney's Office and her husband, Rob Blake, was arraigned in the Superior Court. One month later, Blake was so enraged that he drove to Martha's house and shot her in the chest. A next-door neighbor rushed to her house after hearing gunshots. The neighbor heard Martha say as she was dying, "Get me a priest. I know I am dying. I should have been a more understanding wife, but my husband didn't have to shoot me."

Is the above statement admissible by the defendant? Is it hearsay? Explain your answer.

QUESTION ELEVEN:

Mandy called 911 complaining that her ex-boyfriend just broke into her house and was beating her. The 911 operator asked Mandy a series of questions which led Mandy to identify her attacker as Mario Jones. Mario was later arrested and charged with violating a domestic no contact order.

At trial, Mandy did not appear as a witness. The prosecution sought to introduce that portion of the 911 tape in which Mandy identified Mario as her attacker.

The Court, over the Defendant's objection, and allowed the tapes into evidence.

Was the Court's ruling correct? Explain your answer in detail.

QUESTION TWELVE:

COMPARE AND CONTRAST "Admissions" with "Declarations Against Interest" setting forth the elements of each.

QUESTION THIRTEEN:

The police raid Katie's residence on a tip that it is a betting establishment. The local minister observes the raid and calls the telephone number listed for Katie. When an unfamiliar voice answers, the minister assumes it is the police and states, "I'm glad you people finally realized that Katie's place is a betting establishment. Good work!" The prosecution subsequently offers the minister's statement at Katie's trial to prove the residence is being used as a betting establishment.

Is the statement hearsay? Explain your answer.

QUESTION FOURTEEN:

Defendant is charged with theft of the owner's car. Defendant's defense is that he had the owner's consent. At trial, defendant calls a witness who testifies as follows:

Q. (By defendant's lawyer) Mr. Avery, were you at the party?

A. Yes.

Q. Did you see my client, Chris Johnson, and the owner, Bobby Franklin, talking that evening?

A. Yes.

Q. Where and when was that?

A. It was around 11:00 p.m. in the kitchen. There was just me and the two of them.

Q. What did Bobby Franklin say at the time?

Prosecutor: Objection, Your Honor.

Judge: What's the basis for your objection?

Prosecutor: It's hearsay, Your Honor.

Judge: Overruled. The witness may answer.

A. Bobby said to Chris, "You can take my car to pick up the beer."

Was the Judge's ruling correct? Is this hearsay? Explain your answer.

QUESTION FIFTEEN:

James Kelly, a state senator, was indicted for extortion induced under color of authority. To establish that the victims of Kelly's alleged extortion scheme feared official retribution should they have failed to comply with Kelly's requests, an essential element of the crime charged, the Government seeks to introduce a letter that one of the victims had written to his business associate in which the victim explained: "Kelly seems to have us over a barrel on this one. If we don't give his nephew a job, we may have several of our contracts with the state canceled, or worse. You know these politicians, they don't get mad, they just get even."

Is the above statement admissible at trial. Explain your answer.

QUESTION SIXTEEN:

Shawn is prosecuted for allegedly battering Bobbi on a Colorado ski slope. The only eyewitness is Shawn's sister, Sandy. The prosecutor calls Sandy as a witness. On direct examination, the prosecutor questions Sandy.

Q. (By prosecutor) Sandy, you are the sister of the defendant, Shawn, correct?
Defense counsel: Objection. The question is misleading and therefore improper.

a. **How should the Court rule? Explain.**

Q. Sandy, are you currently facing a criminal charge of attempted murder?
Defense counsel: Objection.

b. **How should the Court rule? Explain.**

Prosecutor: Have any deals been made in return for your testimony?

Defense Counsel: Objection!

c. **How should the Court rule? Explain.**

QUESTION SEVENTEEN:

A University School of Law student was recently raped while studying late at night in the library. The University hired an outside consulting firm to prepare a report on what steps, if any, the school could take to avoid future such incidents. The consultant recommended that the library be locked during night hours; that only students, faculty and staff have keys; that locks be changed each semester; and that video cameras and emergency alarm buttons be installed on every floor. However, none of these changes have been implemented. The rape victim sues the University for damages and seeks to offer the report into evidence.

Ignoring hearsay issues, should the University's objection be sustained or overruled?

QUESTION EIGHTEEN:

Dan is charged with murdering Anna. Consider the following two potential items of evidence:

1. The prosecution calls Anna's friend, Ellen, to testify that "I talked to Anna on the morning of the day that she was killed. During that conversation, Anna told me that Dan had visited her the day before and said that he was going to kill her."

Is Ellen's testimony admissible? Explain.

2. The prosecution calls Anna's friend Ellen to testify that "I talked to Anna on the morning of the day that she was killed. During that conversation, Anna told me that after I left she was going to pay a visit to Dan."

Is Ellen's testimony hearsay? Explain.

QUESTION NINETEEN:

Oriana attends a dinner party and sees an old friend, Dr. Hurley. Oriana has never been a patient of Dr. Hurley, an internist. However, from time to time when they have been together on social occasions, Oriana has talked to Dr. Hurley about personal medical concerns. At the dinner party, Oriana tells Dr. Hurley that "I've been getting really bad headaches for a few weeks now, they started when that auto paint shop opened up next to where I live. Do you think I should wait to see if they go away, or should I make an appointment with my doctor?" Sometime later, Oriana files suit against the auto paint shop.

Is Oriana's statement to Dr. Hurley admissible?

QUESTION TWENTY:

In a complex commercial litigation case, the plaintiff offers various items in evidence. **What would the plaintiff have to do, if anything, to authenticate the following evidence? Explain.**

- a. A telephone conversation.
- b. A business associate's handwriting.
- c. A *Newsweek* magazine.
- d. A Diet Coke label.
- e. A photograph of the defendant.