

Ethics is knowing the difference between what you have a right to do and what is right to do. Potter Stewart

Use your student ID number on the blue book and examination. Write legibly and coherently. You have 80 minutes to complete this examination. Nothing other than a writing instrument is permitted at your desk or near your person. Cellphones are to be powered off and placed at the front of the room with the rest of your personal items. Violation of these rules constitutes misconduct and will be referred to the Disciplinary Committee.

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

PART ONE

Question One

Scott Ramires lives with his wife Kay in Providence Rhode Island. Ramires works as a bus driver for the MBTA in Attleboro, Massachusetts. Since 2016, Scott Ramires smoked e-cigarettes made by DIMI Labs Inc., which he regularly purchased at the Walgreens near his home. DIMI Labs Inc. is a Delaware corporation that is headquartered in Boston, Massachusetts. Walgreens is the nation's largest drug store chain.

Ramires was hospitalized in July with severe lung damage and has been unable to work since that time. His 22-year-old daughter Isabel began vaping as a high school sophomore and is now very sick from vaping the DIMI product. Nationwide, more than 450 people are known to be suffering from potentially fatal illnesses connected to using e-cigarettes or vaping.

DIMI – manufactured by DIMI Labs – is the popular USB-shaped smoking device that has recently captivated the e-cigarette market. Contrary to DIMI Labs' claims that DIMIing is a safer alternative to smoking cigarettes, recent studies by the National Institute of Health have found that DIMI and other e-cigarettes actually expose users to a number of dangerous health risks.

The most common injury associated with vapor exposure is "popcorn lung", a rare condition that damages the lungs small airways, making it difficult to breathe and if untreated, can quickly degenerate into total fatal respiratory collapse.

The Ramires have filed suit in Federal Court against DIMI and Walgreens for damages.

What arguments would you expect on the following evidentiary issues that will arise at trial next month?

- a. Testimony from defense witnesses that Isabel is a dangerous drug trafficker.

b. Security video taken at the Walgreens parking lot showing Scott Ramires purchasing illegal THC vaping products.

c. Text messages obtained from Scott's cell phone that he sent to his brother saying, "I think the pot vaping did this to me."

d. Testimony and an animation created by Dr. Sunny Ziobro head of the lung unit at Massachusetts General Hospital which depicts how popcorn lung begins and spreads to consume the lungs cutting off all airways. The testimony and animation explain and show in detail popcorn lung disease.

e. Testimony from the National Institute of Health's chief researcher that DIMI Chief Executive Officer Kelly told the chief researcher "we know it's a problem but there's billions to be made here."

f. The National Institute of Health report finding that DIMI exposes users to a number of dangerous health risks.

Discuss how you would rule on these issues.

PART TWO

Circle your ruling and briefly explain your rationale. Use the Federal rules.

QUESTION 1

U.S. Government charges Hugh, George and Daniel with possession of cocaine with the intent to distribute for trying to sell cocaine to undercover officer Jackie of A.T.F. Hugh told A.T.F. Agent Jackie that he, George and Daniel were selling cocaine and if Jackie wanted to buy the entire load it was \$50,000. When George was trying to complete the transaction with Agent Jackie, George was arrested. At the police station George told Agent Jackie that he, Hugh and Daniel had been selling cocaine for two years to pay for law school and Daniel had picked up the latest shipment in Canada and brought it to Hugh. Hugh and Daniel were then also arrested. George pled guilty. At their trial, A.T.F. Agent Jackie is called to testify regarding her conversation at the police station with George. Jackie's testimony is:

Admissible?

Inadmissible?

Reasoning _____

QUESTION 2

Christopher is arrested for assault and battery of a household member for

assaulting his wife Bella. Christopher left their home and went to his mother's house. The next day, Bella called 911 and told the police officer who arrived that she wanted Christopher arrested as "he tried to strangle me yesterday and he could rot in jail for all I care". Bella refuses to testify at Christopher's trial. Government calls police officer to testify to Bella's statements made to officer.

Admissible?

Inadmissible?

Reasoning _____

QUESTION 3

Government charges Jean with arson in Federal Court claiming that in 2012, while she was running Papa Pete's Pizza, Jean burned the store down. Government calls two witnesses who claim they were at Irving Gas that night and saw Jean purchase two gallons of gasoline. The testimony is...

Admissible?

Inadmissible?

Reasoning _____

QUESTION 4

Kiara is charged with bank fraud in connection with a loan she obtained. She testifies and denies she did it. The Government then seeks to ask Kiara about her conviction in December of 2013 for embezzlement for which she received probation. The judge denies the Government's inquiry. Judge's ruling was

Permissible?

Impermissible?

Reasoning _____

QUESTION 5

Pam sues Celine for damage to her motorcycle that was stolen and totaled. Pam

calls Thomas to testify. Thomas and Celine were lovers who were previously hospitalized on numerous occasions for substance abuse and mental health issues. Thomas is called to testify that he and Celine had been smoking crack all weekend and were as high as they've ever been when he thinks Celine took Pam's motorcycle on a joy ride and crashed it. Celine objects to the proposed testimony. The testimony is

Admissible?
Inadmissible?
Reasoning _____

PART THREE

When can the unavailability exceptions to the Hearsay rule be used?

What are the unavailability exceptions to the Hearsay Rule?

1. _____
2. _____
3. _____
4. _____
5. _____

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PART ONE

Question One

Former NFL star and convicted murderer Luis Brooks is on trial again — this time over accusations he murdered Imani Jeeves and Kathryn Hogan in a drive-by shooting outside of a Boston nightclub in 2017. The federal civil rights and murder trial against the former NFL player begins next month with a number of legal issues still needing to be resolved.

Brooks had a brief altercation inside Blackacre Cabaret with Jeeves and Hogan after one of them bumped into him and then gave him the finger. The Government contends that two hours later, Brooks opened fire on the women’s car as they waited at a traffic light a short distance away from the nightclub.

The prosecution’s case offers the testimony of their star witness, Alejandro Tristian, a former friend of Brooks. Tristian was in the same SUV as Brooks when the shooting occurred. Later, Brooks allegedly shot Tristian in the face after the incident. Although Tristian survived the attack, he lost his right eye. Brooks is not facing charges in that shooting.

You are the trial judge sitting in Federal District Court and must rule on the admissibility of the following pieces of evidence:

- a. Testimony from defense witnesses that Tristian is a dangerous drug trafficker who went to high school with the two women.
- b. Security video from Blackacre Cabaret showing the alleged exchange where the women bumped into Brooks and then gave him the finger.
- c. Text messages from Brooks’ cell phone minutes before the shooting to his live-in partner, Brian Stevens, saying, “I’m getting even with those bitches”.

d. Testimony and an animation by security expert, Dr. Courtney Franchesca, who previously worked as head of the FBI's Boston office. The testimony and animation explain and show the manner in which the murders were committed.

e. A document indicating that in 2014 Brooks was convicted of murdering Michael Christian.

f. Testimony from Police Detective Ardalan that he believes Brooks shot Tristian in the face after the incident in an effort to silence him.

g. Photographs of the badly bullet-riddled bodies of the two victims, Hogan and Jeeves, taken immediately after the shootings.

h. Tristian's earlier statements to the police that neither he nor Brooks had anything to do with the murders.

Discuss how you would rule on these issues.

PART TWO

Circle your ruling and briefly explain your rationale. Use the Federal rules.

QUESTION 1

U.S. Government charges Ben, Gary and Marvin with possession of cocaine with the intent to distribute for trying to sell cocaine to undercover officer Stacy Jenn of A.T.F. Gary told A.T.F. Agent Jenn that he, Ben and Marvin were selling cocaine and if Jenn wanted to buy the entire load it was \$50,000. When Gary was trying to complete the transaction with Agent Jenn, Gary was arrested. Kilos of cocaine were found in Ben's car. At the police station Ben told Agent Jenn that he, Gary and Marvin had been selling cocaine for two years to pay for law school and Marvin had picked up the latest shipment in Canada and brought it to Ben. Gary and Marvin were then also arrested. At their trial, A.T.F. Agent Jenn is called to testify regarding her conversation at the police station with Ben. Jenn's testimony is:

Admissible?
Inadmissible?
Reasoning_____

QUESTION 2

Ben and Shayla sue Car Leasing Inc. for negligence as a result of a car accident. They call an expert witness in accident reconstruction, Bo Pez. After testifying about his extensive qualifications, Pez proposes to testify and show a video reenactment of the accident that he prepared depicting the Defendant's truck crossing into the Plaintiff's lane of travel at an excessive speed. Car Leasing Inc. objects arguing that

the proposed reenactment was done in late September after the roadway had been repaired from the damage done from the accident and the crash under review took place in early July. The Plaintiff's proposed evidence is

Admissible?
Inadmissible?
Reasoning_____

QUESTION 3

Government charges Jean with arson in Federal Court claiming that in 2012, while she was running Papa Pete's Pizza, Jean burned the store down. Government calls two witnesses who saw Jean purchase gasoline that night and both testified to that fact. As part of its case in chief, the Government also calls Karen to testify that she resides in Newburyport--the same town as Jean—she knows Jean's reputation, and Jean is known in the community as an untruthful person.

Admissible?
Inadmissible?
Reasoning_____

QUESTION 4

Christin is charged with bank fraud in connection with a loan he obtained. He testifies and denies he did it. The Government then seeks to ask Christin about his conviction in December of 2013 for embezzlement for which he received probation. The judge denies the Government's inquiry. Judge's ruling was

Permissible?
Impermissible?
Reasoning_____

QUESTION 5

Alberto sues Christopher for damage to his motorcycle that was stolen and

totaled. Alberto calls Brandi to testify. Brandi and Christopher were lovers who were previously hospitalized on numerous occasions for substance abuse and mental health issues. Brandi is called to testify that she and Christopher had been smoking crack all weekend and were as high as they've ever been when she thinks Christopher took Alberto's motorcycle on a joy ride and crashed it. Christopher objects to the proposed testimony. The testimony is

Admissible?

Inadmissible?

Reasoning _____

PART THREE

When can the unavailability exceptions to the Hearsay rule be used?

What are the unavailability exceptions to the Hearsay Rule?

1. _____

2. _____

3. _____

4. _____

5. _____

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PART ONE

Question One

The Plaintiff, George Michael's SUV careened off the road after he took the Attention Deficit Disorder drug Dexy. He suffered near fatal injuries. He had purchased the prescription at his local URDRUGSTORE. The injury occurred on April 1, 2012. His ex-wife, Natalie Michaels, was also injured in the crash. Michaels 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 URDRUGSTORE, Johnson & Johnson Pharmaceuticals, the manufacturer of the drug and Dr. Tompkins, his treating physician. The Defendants all maintain that Mr. Michaels improperly used the drug. You are the trial attorney for the Plaintiff. Please discuss what you would do about the following:

A. Testimony from Sister Gabriela Fiori, 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. Michaels driving caused the crash.

B. Color photographs taken at the hospital by his lawyer showing a very badly bruised Mr. Michaels with one photo showing the stump from Mr. Michaels amputated hand.

C. Expert testimony prepared by the Defendants that they intend to offer that utilizes an animation as a reenactment of the crash showing Mr. Michaels' SUV speeding and swerving into the other lane of traffic.

D. Statements made by George Michaels to Holy Family 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. Michaels was convicted of mail fraud in a scheme to defraud Harvard Pilgrim Health Care.

F. Testimony from Natalie Michaels that she saw George Michaels ingest six pills early that morning and he confided to her at that time that he "just wanted to end it all."

PART TWO

Circle your ruling and briefly explain your rationale. Use the Federal rules.

QUESTION 1

Paul sues Wesley for damage to his motorboat. Paul calls Grace to testify. Grace and Wesley previously lived together and had a very bitter breakup. Grace is called to testify that she and Wesley had been smoking marijuana when Wesley tossed what was left of the joint towards the motorboat and the motorboat then exploded. Wesley objects to the proposed testimony. The testimony is

Admissible?
Inadmissible?
Reasoning_____

QUESTION 2

Nick is charged with bank fraud in connection with a mortgage loan he obtained. He testifies and denied he was the person responsible for the problem. The Government then seeks to ask Nick about his conviction in December of 2008 for mail fraud. The judge denies the Government's inquiry. Judge's ruling was

Permissible?

Impermissible?

Reasoning_____

QUESTION 3

Christina and Shawn sue Trucks Inc. for negligence as a result of a car accident. They call an expert witness in accident reconstruction, Obed Lovely. After testifying about his extensive qualifications, Lovely proposes to testify and show a video reenactment of the accident that he prepared depicting the Defendant's truck crossing into the Plaintiff's lane of travel at an excessive speed. Trucks Inc. objects arguing that the proposed reenactment was done in late September after the guardrail had been repaired and the accident under review took place in early July. The Plaintiff's proposed evidence is

Admissible?

Inadmissible?

Reasoning_____

QUESTION 4

Government charges Chris with Grand Larceny in Federal Court. In 2012, while he was working at Massachusetts Insurance Company, Chris forged three checks taking \$100,000 from the Massachusetts Insurance Company. Government

found two witnesses who saw Chris write out the checks and cash them as part of his scheme. As part of its case in Chief, the Government calls Jeanne to testify that she resides in Newburyport--the same town as Chris-- knows his reputation and he is known in the community as a dishonest person.

Admissible?

Inadmissible?

Reasoning_____

QUESTION 5

U.S. Government charges Josie, Catherine and Angelo with conspiracy to distribute cocaine and possession of cocaine. The three were found in a black Mercedes at Chili's in Andover by Officer David Kant of A.T.F. When the three were individually questioned outside Chili's, Angelo told A.T.F. Agent Kant that the three of them were selling cocaine to pay for law school, the drugs were in the trunk, and if he would let them all go, they'd split the drugs and the \$50,000 in cash in the trunk with him. During an inventory search, the trunk was opened and the drugs were found. At their trial, A.T.F. Agent Kant is called to testify regarding his conversation with Angelo. The Agent's testimony is:

Admissible?

Inadmissible?

Reasoning_____

USE BACK OF PAGE IF NECESSARY

PART THREE

Any, Any, Any_____

Unless_____

Or_____

Or _____

Or it's a prior _____

And it is

A. _____

B. _____

C. _____

Under what circumstances can one use the unavailability exceptions?

1. _____

2. _____

3. _____

4. _____

What are the unavailability exceptions to the hearsay rule?

1. _____

2. _____

3. _____

4. _____

5. _____

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PART ONE

Question One

Bill decided to paint the gutters on his two-story house, so he went to Home Depot and bought a twenty foot ladder manufactured by Best Ladder and a can of house paint manufactured by Best Paint Company. Bill then leaned the ladder against the side of his house, went up to the top of the ladder holding the can of paint and a paintbrush, and began to paint the gutters. A few minutes later, the handle to the can of paint broke, which resulted in Bill lurching to one side, causing one of the steps on the ladder to collapse. Bill then fell twenty feet to the ground, causing him to suffer serious bodily injuries and leaving his left arm paralyzed. Two and a half years later, Bill filed suit in Federal Court against Home Depot, Best Ladder, and Best Paint Company for his injuries. During the trial of this matter, the trial judge admitted the following evidence over objection:

a. Bill called an employee of the Consumer Products Safety Commission as a witness, who testified that the Commission had received a number of consumer complaints about injuries from using the same ladder.

b. Bill testified that Best Ladder's Chief Safety Officer Amy (a few months before her death in a car crash) told him at a meeting that the Best Ladder that Bill fell from was defective.

c. Bill introduced a letter to him from Best Ladder's President, sent shortly after the accident, which said that he was very sorry for Bill's injuries.

d. Best Paint Company impeached Bill on cross-examination by asking him about his conviction and sentencing, four years ago in Cambridge District Court, on a misdemeanor of uttering a forged instrument.

e. Best Paint Company offered the video from Bill's home surveillance system that shows how the accident happened.

f. Best Ladder called Bill's wife Priscilla to testify and introduced a text message from Bill to Priscilla in which he wrote: "I am so sorry baby. I was totally at fault for my accident as I drank a six-pack of beer just before I went up the ladder. Please

forgive me”

g. On cross examination, Best Ladder asked Priscilla if she had previously lied about how often she and Bill had sexual relations before the accident.

h. The judge admitted a video animation of the ladder collapsing and hurling Bill to the ground in a bloody heap during Bill’s testimony.

i. The judge admitted a day in the life film showing Bill needing a personal attendant to assist with his most basic needs while Bill’s doctor was testifying.

In each instance, was the trial judge’s ruling to admit the evidence correct?

PART TWO

Circle your ruling and briefly explain your rationale. Use the Federal rules.

QUESTION 1

Pete sues Gary for damage to his SUV that was stolen and burned. Pete calls Janelle to testify. Janelle and Gary were lovers who were previously hospitalized for substance abuse and mental health issues. Janelle is called to testify that she and Gary had been smoking crack and were high when she saw Gary take Pete’s SUV on a joy ride. Gary objects to the proposed testimony. The testimony is

Admissible?

Inadmissible?

Reasoning_____

QUESTION 2

Collin is charged with bank fraud in connection with a mortgage loan he obtained. He testifies and denied he did it. The Government then seeks to ask Collin about his conviction in December of 2008 for embezzlement for which he served 6 months in jail. The judge denies the Government’s inquiry. Judge’s ruling was

Permissible?

Impermissible?

Reasoning_____

QUESTION 3

Gifty and Ruben sue Kat Inc. for negligence as a result of a car accident. They call an expert witness in accident reconstruction, Dennis Andrew. After testifying about his extensive qualifications, Andrew proposes to testify and show a video reenactment of the accident that he prepared depicting the Defendant's truck crossing into the Plaintiffs' lane of travel at an excessive speed. Kat Inc. objects arguing that the proposed reenactment was done in late September after the roadway had been repaired from the damage done from the accident and the crash under review took place in early July. The Plaintiff's proposed evidence is

Admissible?

Inadmissible?

Reasoning_____

QUESTION 4

Government charges Tina with arson in Federal Court claiming that in 2012, while she was running Papa Pete's Pizza, Tina burned the store down for the insurance proceeds. Government calls two witnesses who saw Tina purchase gasoline that night and both testified to that fact. As part of its case in chief, the Government also calls Marline to testify that she resides in Newburyport--the same town as Tina--knows Tina's reputation and she is known in the community as a dishonest person.

Admissible?

Inadmissible?

Reasoning_____

QUESTION 5

U.S. Government charges Jen, Steven and Marvette with possession of heroin with the intent to distribute for trying to sell heroin to undercover officer Stacy Carson of A.T.F. Jen and Marvette were with Steven when Steven told A.T.F. Agent Carson that the three of them were selling heroin to pay for law school, heroin was in the trunk of Jen's car and if Carson wanted to buy the entire load it was \$50,000. At their trial, A.T.F. Agent Carson is called to testify regarding her conversation with Steven. Carson's testimony is:

Admissible?

Inadmissible?
Reasoning _____

USE BACK OF PAGE IF NECESSARY

PART THREE

Any, Any, Any _____

Unless _____

Or _____

Or _____

Or it's a prior _____

And it is

A. _____

B. _____

C. _____

Under what circumstances can one use the unavailability exceptions to the hearsay rule?

1. _____

2. _____

3. _____

4. _____

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PART ONE

Question One

Former NHL star and convicted murderer Cory Menendez is on trial again — this time over accusations he murdered Danni Jennings and Sally Sullivan in a drive-by shooting outside of a Boston nightclub in 2016. The federal civil rights and murder trial against the former NHL player begins next month with a number of legal issues still needing to be resolved.

Menendez had a brief altercation inside Blackacre Cabaret in Boston's theater district with Jennings and Sally Sullivan after one of them bumped into him and then spit at him. The Government contends that Menendez took that as insult and that two hours later, Menendez opened fire on the women's car as they waited at a traffic light a short distance away from the nightclub.

The prosecution's case seems to hinge on the testimony of their star witness, Alexander Bradley, a former friend of Menendez. Bradley was in the same silver SUV as Menendez when the shooting occurred and will testify for the Government. Later, Menendez allegedly shot Bradley in the face after the incident, in order to silence him. Although Bradley survived the attack, he lost his right eye. Menendez is not facing charges in that shooting.

You are the trial judge sitting in Federal District Court and must rule on the admissibility of the following pieces of evidence:

- a. Testimony from defense witnesses that Bradley is a dangerous drug trafficker who went to high school with the two women.
- b. Security video from Blackacre showing the alleged altercation in which the women bumped into Menendez and then spit at him.
- c. Text messages from Menendez's cell phone minutes before the shooting to his live-in partner, Shayanna Menendez, saying, "I'm getting even with those bitches".
- d. Testimony and an animation by security expert, Dr. Bill Bratton, who

previously worked as head of the FBI's Boston office. The testimony and animation explain and show how Menendez committed the murders.

e. A document indicating that in 2014 Menendez was convicted of murdering Chris Lloyd.

f. Testimony that Menendez shot Bradley in the face after the incident in an effort to silence him.

g. Testimony that there have been multiple consumer complaints that the arresting officer and chief investigator, Catania Rocklin, used excessive force in arresting people of color and after seeing the bullet riddled bodies of the two victims was overheard saying "we'll get this spic".

h. Photographs of the bullet riddled bodies of the two victims taken immediately after the shootings.

i. Bradley's earlier statements to the police that neither of them had anything to do with the murders.

Discuss how you would rule on these issues.

PART TWO

Circle your ruling and briefly explain your rationale. Use the Federal rules.

QUESTION 1

U.S. Government charges Jen, Gary and Marvin with possession of cocaine with the intent to distribute for trying to sell cocaine to undercover officer Stacy Carson of A.T.F. Gary told A.T.F. Agent Carson that he, Jen and Marvin were selling cocaine to pay for law school, and if Carson wanted to buy the entire load it was \$50,000. Gary, Jen and Marvin were all arrested. Two kilos of cocaine were found in Jen's car and at the police station Jen told Agent Carson that she, Gary and Marvin had been selling cocaine for two years to pay for law school and Marvin had picked up the latest shipment in Canada and brought it to Carson. At their trial, A.T.F. Agent Carson is called to testify regarding her conversation with Jen at the police station. Carson's testimony is:

Admissible?

Inadmissible?

Reasoning _____

QUESTION 2

Joe and Shayla sue Car Leasing Inc. for negligence as a result of a car accident.

They call an expert witness in accident reconstruction, Bo Didley. After testifying about his extensive qualifications, Didley proposes to testify and show a video reenactment of the accident that he prepared depicting the Defendant's truck crossing into the Plaintiff's lane of travel at an excessive speed. Car Leasing Inc. objects arguing that the proposed reenactment was done in late September after the roadway had been repaired from the damage done from the accident and the crash under review took place in early July. The Plaintiff's proposed evidence is

Admissible?
Inadmissible?
Reasoning_____

QUESTION 3

Government charges Fatima with arson in Federal Court claiming that in 2012, while she was running Papa Pete's Pizza, Fatima burned the store down for the insurance proceeds. Government calls two witnesses who saw Fatima purchase gasoline that night and both testified to that fact. As part of its case-in-chief, the Government also calls Karen to testify that she resides in Newburyport--the same town as Fatima--knows Fatima's reputation and she is known in the community as a dishonest person.

Admissible?
Inadmissible?
Reasoning_____

QUESTION 4

Christin is charged with bank fraud in connection with a loan he obtained. He testifies and denied he did it. The Government then seeks to ask Christin about his conviction in December of 2013 for embezzlement for which he received probation. The judge denies the Government's inquiry. Judge's ruling was

Permissible?
Impermissible?
Reasoning_____

QUESTION 5

Chaz sues Emmanuel for damage to his motorcycle that was stolen and totaled. Chaz calls Allana to testify. Allana and Emmanuel were lovers who were previously hospitalized on numerous occasions for substance abuse and mental health issues. Allana is called to testify that she and Emmanuel had been smoking crack all weekend and were as high as they've ever been when she thinks Emmanuel took Chaz's motorcycle on a joy ride and crashed. Emmanuel objects to the proposed testimony. The testimony is

Admissible?

Inadmissible?

Reasoning_____

USE BACK OF PAGE IF NECESSARY

PART THREE

Any, Any, Any _____

Unless _____

Or _____

Or _____

Or it's a prior _____

Or it is

A. _____

B. _____

C. _____

What are the unavailability exceptions to the Hearsay Rule?

1. _____

2. _____

3. _____

4. _____

5. _____

**EVIDENCE
FALL FINAL – 2017
Professors Coyne and Dimitriadis**

Student ID# _____

Justice will not be served until those who are unaffected are as outraged as those who are.

Benjamin Franklin

Use your student 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. **Cell phones must be powered off, and it is a disciplinary violation to have it on or near your person.**

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 law, but carefully apply it to the facts and clearly state what the ramifications of your conclusions are. Please write on only one side of each page of your blue book.

SECTION ONE

Question One

Paul Plaintiff is a 59-year old resident of Boston, Massachusetts and, until a few years ago, a very successful lawyer. He used to be very athletic and found great enjoyment in an active lifestyle with his wife Eve and pet poodle, Jeeves. Now, however, Plaintiff gets most of his exercise at Amanda's Rehab Center where he undergoes regular physical therapy.

Paul has had his left hip joint replaced three times in the last 12 years by Doctor George Doolittle at Providence General Hospital Corp. in Providence, Rhode Island. He has endured five separate operations to repair damage caused by what he now believes is a defective product (the Stryker Rejuvenate Gold hip joint), Dr. Doolittle's unfamiliarity with this product, and the unsanitary conditions at the

hospital.

At the age of 47, Plaintiff underwent hip replacement with a Stryker Rejuvenate Gold metal-on-metal hip manufactured by Stryker Inc. of Ontario, Canada and distributed throughout the United States by Best Medical Devices Inc. of New York, New York. He claims the hip never functioned properly. Paul suffered so much back and groin pain that he had Dr. Doolittle perform exploratory urology surgery to determine the source of his pain. This left him impotent. He also experienced severe headaches, tinnitus (ringing in the ears), and sinus problems preventing him from working for long stretches of time reducing his yearly income to \$50,000.

Paul recently discovered that the FDA, Consumer Reports, and 60 Minutes investigated numerous consumer complaints concerning the safety of the Stryker Rejuvenate Gold product. Each of them determined that the Stryker Rejuvenate Gold had a failure rate of over 75% -- nearly three times the rate of failure of similar products -- and was likely to cause metallosis, a form of blood poisoning caused by shards of metal rubbing off of the new hip and entering the patient's blood. Nationwide, individuals filed over 1,000 complaints with the Food and Drug Administration about the product and nearly 50 people died after receiving the Stryker Rejuvenate Gold product.

After a hearing, because of its failure to comply with federal safety standards, the FDA ordered an immediate recall of the product.

Over the years, Paul's infection ate away at surrounding muscles and soft tissues, and every time Paul underwent surgery to address the issues, more infections set in. Paul recently contacted Dr. Ted Luther who intends to replace the defective Stryker Rejuvenate Gold hip device with a product manufactured by a different company, Allynsey Hip Products of Nashville, Tennessee.

Plaintiff filed suit against Stryker, Dr. Doolittle and Providence General Hospital in Federal Court.

During the trial of this matter, the following evidence was admitted by the trial judge over objection:

1. Paul Plaintiff called Stryker's head of design and engineering as a witness.

She testified that six months before the trial began, in order to make the Stryker Gold product less likely to cause poisoning, Stryker Inc. had changed the design and composition of Stryker Gold and renamed it the Stryker Platinum model.

2. Paul Plaintiff testified that Stryker's Chief Safety Officer, Zelda, confided to him in person at Amanda's that she felt very guilty about "all those deaths" and that Stryker knew the product was defective but the "bean counters said it would be less expensive to pay the lawyers and any judgments that might occur than to recall 10,000 hip joints." Zelda died a few months later in a car crash.

3. Paul Plaintiff introduced an email to him from Stryker's President, Jen Christian, sent shortly after the first hip replacement, which said that he was very sorry for Paul Plaintiff's injuries and that her company would pay any of Paul Plaintiff's medical expenses that were not covered by health insurance.

4. Stryker Inc. impeached Paul Plaintiff on cross-examination by asking him about his conviction four years ago in Cambridge District Court, on a misdemeanor shoplifting charge.

5. Stryker Inc. called Dr. Zack Steves, the President of Doctors' Independent Medical Research, as a witness, who testified that his extensive investigation, research, and analysis has led him to conclude that metallosis can be caused by excessive cellphone use and because of Paul's career as a lawyer he is highly likely to have developed metallosis from the use of that device.

6. Stryker called Paul Plaintiff's personal physician to testify that after his second hip replacement surgery Paul Plaintiff said to his doctor "I'm sure going skydiving all those years and those many hard falls caused this."

7. Upon questioning by Stryker, Eve testified over Paul's objection that Paul Plaintiff had confessed to her, in private, that he just did not find her attractive anymore.

8. The recall of the product and findings of the FDA, the Consumer Reports study and the 60 Minutes piece that aired on television.

9. The promotional video posted on Facebook showing Plaintiff's first hip replacement surgery conducted by Dr. Doolittle.

10. Complaints concerning Plaintiff to the Board of Bar Overseers charging that Plaintiff was incompetent and inept in conducting their trials.

In each instance, was the trial judge's ruling to admit the evidence correct?

SECTION TWO

Circle your decision and explain in the space provided on this exam.

Question 1

On trial for assault and battery, Defendant testifies and offers evidence of the victim's prior violent conduct in support of his self-defense claim that the victim was the initial aggressor in the fight with Defendant. In response, the U.S. Attorney offers evidence of Defendant's prior violent acts and the Defendant's conviction three years ago for a misdemeanor convicting the Defendant of larceny by trick. Judge admits the testimony and evidence of conviction.

Judge's ruling was?

Permissible

Reasoning

Impermissible

Question 2

In a trial over a contested will, Plaintiff calls as a witness the testator's nephew who frequently visited his uncle and witnessed the will signing. The nephew plans to testify that in his opinion, the testator was often not aware of what was going on and was frequently "not right in the head" over the last few years. Judge allows the nephew to provide such testimony.

Judge's ruling was?

Permissible

Reasoning

Impermissible

Question 3

At trial, while Client is testifying, Attorney refreshes Client's recollection by showing Client her journal describing her day-to-day activities following the accident. The journal was kept by Client at Attorney's request in order to convey confidential information from the Client to Attorney regarding Client's progress. Adversary demands to review the journal. Client claims Attorney-Client Privilege and judge refuses adversary's request to examine the journal.

Judge's ruling was?

Permissible

Reasoning

Impermissible

Question 4

Defendant is charged with civil rights violations against his former wife. At trial, the U.S. Attorney calls her as a witness as she is expected to testify that Defendant hit her with a bat after she went out with her friends. Wife refuses to testify claiming marital privilege and judge instructs the witness that she must answer or will be held in contempt. Witness continues to refuse to testify and judge finds her in contempt and places her in custody.

Judge's ruling was?

Permissible

Reasoning

Impermissible

Question 5

On trial for conspiracy and murder, Defendant claims that his severe mental illness

and hallucinations prevented him from having the requisite intent. Defendant calls his counselor as a witness to testify as to his mental illness and counseling sessions.

On cross-examination, the U.S. Attorney seeks to elicit testimony that in Defendant's last session before the murder, he told his counselor that he felt much better, was in control of his actions, and that his hallucinations had stopped. Defendant objects and judge admits testimony over Defendant's objection.

Judge's ruling was?

Permissible Reasoning

Impermissible

Question 6

In a civil trial over damage to Plaintiff's property, Plaintiff calls Witness to testify that Defendant's neighbor told Witness that he saw Defendant cause the damage. The neighbor was subsequently shot and killed by Defendant. The court admits the testimony.

Judge's ruling was?

Permissible Reasoning

Impermissible

Question 7

In a slip and fall case, Defendant denies that it was his responsibility to maintain the sidewalk in front of his house, claiming that it is the city's property. At trial, Plaintiff seeks to introduce evidence that, two weeks after she was injured on the sidewalk, Defendant repaired the sidewalk area where Plaintiff fell by filling in the hole and leveling it. Defendant objects. Judge refuses to allow the information into evidence.

Judge's ruling was?

Permissible Reasoning

Impermissible

Question 8

Prosecution of Defendant for RICO violations. Defendant testifies that she did not do any of the acts claimed. On cross-examination, U. S. Attorney vigorously attacks Defendant's credibility. Defendant calls Witness, a long-time friend who lives in the town, who proposes to testify that Defendant is known in their community as a truthful person. Judge refuses to admit such testimony.

Judge's ruling was?

Permissible Reasoning

Impermissible

Question 9

Plaintiff sues employer for sexual harassment alleging that a hostile work environment had caused her to develop a stomach ulcer. At trial, the Plaintiff's medical expert testified to the history and origin of the Plaintiff's ulcer and stated that his opinion was based in part on information in a letter the Plaintiff's personal physician had written to the Plaintiff's employer, explaining why the Plaintiff had missed work. Plaintiff then offers the letter from Plaintiff's doctor into evidence to prove the origin of the Plaintiff's condition. Judge admits the letter.

Judge's ruling was?

Permissible Reasoning

Impermissible

Question 10

Defendant was charged with selling a controlled substance in a school zone. At trial, the Commonwealth introduced evidence that the Defendant was arrested in the basement of the Wellington School of High Achievement while engaged in a drug transaction with another student. A large amount of cocaine and three ounces of marijuana were taken from the Defendant at the time of his arrest. The Defendant denies the charges but offered no contrary evidence.

After taking Judicial Notice that the local high school is named the Wellington School of High Achievement, the judge instructed the jury that in accordance with the law on Judicial Notice that “If you find that the defendant sold the drugs at the Wellington School, then I instruct you to find that the substance was sold in a school zone.”

Judge’s ruling was?

Permissible

Reasoning

Impermissible

SECTION THREE

USE BACK OF PAGE IF NECESSARY

What standard is used to determine if an expert may testify concerning scientific information:

What is the only exception to the hearsay rule that requires the witness to be available to testify?

What is the best evidence rule?

**EVIDENCE
FINAL – FALL 2015
Professor Coyne**

Identification Number _____

Justice will not be served until those who are unaffected are as outraged as those who are.

Benjamin Franklin

Use your exam 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. **Cell phones must be powered off, and it is a disciplinary violation to have it on or near your person.**

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 essay answer to six pages and write on only one side of each page of your blue book.

SECTION ONE

Question 1

Plymouth was celebrating the 350th anniversary of its incorporation as a town in Massachusetts. The celebratory festivities included a parade around Plymouth's downtown area. Jose and his family lived in Plymouth and went to watch the parade. While standing on the sidewalk, Jose noticed a drone with a video camera attached to it flying above the parade route. The drone was owned by Ryan. Ryan had recently purchased the drone from Hi Fly Drone Company. Ryan's eight-year old son was operating the drone when it suddenly veered out of control, spiraling toward the crowd and hitting Jose. Jose has sued Ryan and Hi Fly Drone Company in Federal District Court.

The following evidence was offered at trial over objection:

- a. Jose's counsel asked the Judge to take judicial notice that operating a drone in the presence of people was a dangerous activity.
- b. Jose's counsel sought admission of a note, sent by Ryan to Jose, apologizing for the accident and offering to settle the matter for \$5,000.
- c. Jose's counsel sought admission of the video taken by the drone when it veered out of control and struck Jose.
- d. Ryan's counsel sought admission of a newspaper article published shortly after the incident in which Jose was quoted as saying: "Accidents happen. I'm just glad no one was hurt."
- e. Ryan's counsel called Ryan's elderly neighbor to the stand to testify that Ryan frequently mowed her lawn and made household repairs for her, and that she had always observed him to be very careful and diligent in ensuring that the work he performed was done safely.
- f. In anticipation of cross-examination by Jose's counsel, Ryan's counsel sought, on direct examination, to elicit testimony from Ryan concerning a statement Ryan made to police shortly after the accident. Ryan had told the police that he, not his son, had been operating the drone.
- g. Hi Fly Drone Company offered testimony that the instruction booklet that came with the drone contained a warning that the drone "should not be operated by young children." In response, Ryan testified that there was no instruction booklet in the box when the drone was delivered. Hi Fly Drone Company seeks to call one of its executives, who will testify concerning Hi Fly Drone Company's regular practice of inserting instruction booklets in its boxes.
- h. On cross-examination Jose's counsel asks Ryan about his conviction three years ago for misdemeanor larceny by trick.

How should the Court rule with respect to the admissibility of the evidence?

SECTION TWO

Circle your answer and briefly respond in the space provided.

QUESTION 1

Christine sues Geneva's Gateway Pub for injuries suffered in an automobile accident caused by Jess, a patron of Geneva's Gateway Pub. Christine, who was a bit drunk herself at the time, claims that Jess drank too much alcohol at the pub before the accident.

Christine calls her friend Devin to testify that she was in the pub that night and saw Jess drinking and Jenna looked "wicked drunk". Devin's testimony is...

Admissible

Inadmissible

Why?

QUESTION 2

Martha is charged with possession of cocaine with the intent to distribute. After the arresting officer testifies, the Government offers into evidence a properly authenticated notarized drug certificate from the State Police Crime Lab. The certificate shows that an analysis of the contents of the bag proved that it was 18 grams of cocaine. Martha objects. The certificate is:

Admissible

Inadmissible

Why?

QUESTION 3

Chris sues White Horse Tavern for injuries suffered in car crash that happened on route 495 in Andover near the Massachusetts School of Law. Chris alleges that Connie, a patron of White Horse Tavern, caused the crash after consuming too much alcohol. Chris claims that Connie, while drowning her sorrows after grading her constitutional law examinations, drank too much liquor at the Tavern before the accident.

Chris offers evidence that the owner of White Horse Tavern visited him the next night at Lahey Clinic and said, “don’t worry about these bills as we’ll pick up your medical expenses. I fired that bartender.”

The statement that “I fired that bartender” is...

Admissible

Inadmissible

Why?

QUESTION 4

Bill is charged with Grand Larceny in Federal Court. The Government offers evidence that in 2009, Bill forged checks and took \$50,000 from the New England Home for Little Wanderers and then used that money to purchase a lakefront home in New Hampshire. Bill testifies denying he did it. In rebuttal the Government calls Nicole to testify that she lives in the same town as Bill, knows his reputation and he is known in the community as an untruthful person.

Admissible

Inadmissible

Why?

QUESTION 5

Christian is charged with the murder of his girlfriend, Karen. Christian denies he committed the crime and claims he was in Las Vegas at the time the crime was committed. Christian takes the stand when called by his own attorney and proposes to testify that on the night the murder took place he told his buddies at their card game, "I'm leaving right from here to go to the airport as I'm taking the red eye to Vegas." Christian's testimony is...

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's negligence caused the accident. The testimony is...

Admissible

Inadmissible

Why?

QUESTION 7

The Defendant is charged in Federal Court with conspiracy to commit robbery and robbery. The Government calls Defendant's ex-wife to testify that just after they were married the Defendant confided to her that 3 years ago he and his friend robbed his employer. Defendant objects. Wife's testimony is...

Admissible

Inadmissible

Why?

QUESTION 8

Government charges Defendant with arson and Defendant denies committing the crime. The government then seeks to ask Defendant about his 2004 criminal conviction for insurance fraud for which he received probation. The judge denies the Government's inquiry. Judge's ruling was...

Permissible

Impermissible

Why?

QUESTION 9

Elizabeth was slightly injured in a routine car accident with a red SUV. Officers Kelsey and Chris were assigned the call and went there after serving a domestic abuse order at the other end of town. When they got to where the accident took place, Rob, an eyewitness, told them that Katherine was driving the red SUV and ran the red light and smashed into Elizabeth's car. This information was recorded in their police report. Elizabeth sues Katherine. Elizabeth calls Officer Kelsey and asks Kelsey what Rob told her at the scene. That testimony is...

Admissible

Inadmissible

Why?

QUESTION 10

Doctors at the Free Clinic treated victim for injuries received in a shooting. Later that week, Police Officer took a detailed written description of the person who shot victim from victim. Police Officer had victim sign it and date it. Victim appears at trial and identifies the Defendant as the shooter. Subsequently Police officer testifies and Government then seeks to offer the Victim's written description into evidence. The document is...

Admissible

Inadmissible

Why?

SECTION THREE

USE BACK OF PAGE IF NECESSARY

A present sense impression is:

An excited utterance is:

What test is used to determine if an expert may testify concerning scientific information:

What are the unavailability exceptions?

What is the test to determine if a witness is competent to testify?

EvidenceFINALFall2015/Coyne/Evidence

**EVIDENCE
PROFESSOR COYNE**

FINAL EXAM FALL 2014

ID# _____

Justice denied anywhere diminishes Justice everywhere.

Martin Luther King Jr.

Use your exam 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. Cell phones must be powered off, and it is a disciplinary violation to have it on or near your person.

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 essay answer to six pages and write on only one side of each page of your blue book.

SECTION ONE

Evidence Essay Question

Question 1

Steven Smith was driving down Tremont Street in Boston, Massachusetts in a brand new Arak manufactured by Arak Electric Cars Inc. of Delaware and Detroit Michigan The Arak Steven Smith was driving was provided by his employer and owned by Devin Computers Inc.. The Arak collided with another car, driven by Jean Jones. Jean Jones died because of the injuries she sustained from the impact. At the time of her death, Jean was separated from Michael Jones, her spouse. Attorney was appointed the Personal Representative (Executor) of Jean Jones's estate.

The Federal Highway Safety Commission investigated complaints from Arak owners around the country that the Arak at low speeds would lose all battery power causing the loss of power steering and braking making it likely that the driver of the vehicle would be unable to control the vehicle. After an eight day hearing in Washington, D.C., in which testimony was provided by numerous lay and expert witness, the Commission ordered a recall of the vehicle until Arak installed a backup battery and low power alarm on the vehicle. A key piece of evidence offered at the hearing was a video prepared by a Physics expert from MIT, Dr. Doolittle, showing mechanically how the failure would occur at low speeds.

Attorney filed an action for wrongful death in Federal Court on behalf of Jean's estate against Steven for negligence, against Devin Computers Inc. for negligent entrustment of its car to Steven and Arak for negligent design and manufacturing. Steven Smith, Devin Computers Inc. and Arak's answers raised various defenses.

The parties offered following evidence at trial over objections:

- a. A certified copy of Steven's conviction, two years prior to the accident, for Driving Under the Influence Causing Serious Bodily Injury that resulted in Steven being incarcerated for 9 months and his driver's license being suspended for 5 years.
- b. A certified copy of a deed to Devin Computers Inc.'s manufacturing plant, their major asset, signed over by Devin Computers Inc. to a nominee trust for \$1 the week before Jean's estate filed its action against Devin Computers Inc.
- c. Testimony of Police Officer, who arrived at the scene of the accident, that Jean had been moaning and sobbing before crying out "Why God did he have to run that red light. I'm dying, tell Michael he's the best", just before she died.
- d. Testimony of Michael that several days before the accident, Michael and Jean had a conversation in which Jean told Michael that she always loved him and intended to return to him, and that Michael agreed to reunite. At that time, they made plans to go to Hawaii to reconcile the following month.
- e. A certified copy of Michael's complaint for divorce in an action brought against Jean shortly before the accident, signed by Lawyer, Michael's attorney. Among other things, the complaint alleged that Michael and Jean had last lived together over a year prior to the date of the filing of the complaint, that Jean had deserted and failed to support Michael and was unfaithful to him throughout their marriage.
- f. Testimony of Witness, who had been standing on the sidewalk on Tremont Street at the time of the accident, that Witness had seen Jean behind the steering wheel of the car before the collision, and that in Witness's opinion, Jean was drunk and under the influence of drugs.
- g. A certified copy of a prior conviction of Jean for negligent operation of a motor vehicle.
- h. A video prepared by the Physics expert from MIT, Dr. Doolittle, showing mechanically how the failure would occur at low speeds.
- i. Josie Marta's testimony at the Federal Highway Safety Commission hearing. Marta has since died but she testified that she investigated complaints from Arak owners around the country who all complained that the Arak at low speeds would lose all battery power causing the loss of power steering and braking and were unable to control the vehicle.

j. A request that the Court take Judicial Notice that Tremont Street in Boston where the accident occurred is a major roadway adjacent to the Boston Common.

What rulings should the court make with respect to the admissibility of the above evidence?

SECTION TWO

Circle your Ruling (Admissible or Inadmissible) and briefly explain it in the space provided.

QUESTION 1

Doctors at The Free Clinic treated Alex Courtney for injuries received in a shooting. Later that week, Officer Matt spoke to Alex who provided a detailed written description of the person who shot him. Officer Matt wrote his description down and then had Alex sign it and date it under the pains and penalty of perjury. In that statement, Alex identifies the Defendant, John, as his assailant. Alex testifies at John's trial and Government seeks to offer Alex's original written description into evidence while Alex testifies and describes how it came about. The description is...

Admissible

Inadmissible

Why?

QUESTION 2

Elizabeth was slightly injured in a routine car accident with a red SUV. Officers Kelsey and Chris were assigned the call and went there after serving a domestic abuse order at the other end of town. When they got to where the accident took place, Rob, an eyewitness, told them that Katherine was driving the red SUV and ran the red light and smashed into Elizabeth's car. This information was in their police report. Elizabeth sues Katherine. Elizabeth calls Officer Kelsey and asks Kelsey what Rob told her at the scene. That testimony is...

Admissible

Inadmissible

Why?

QUESTION 3

Doug is charged with Grand Larceny in Federal Court. The Government offers evidence that in 2009, Doug forged checks totaling \$50,000 from the YMCA and then used that money to purchase a retreat in the White Mountains. Doug testifies, denying he did it and was then extensively cross-examined. He then calls his friend Beth who testified that Doug is known as a trustworthy

accountant and a truthful person. In rebuttal the Government calls Karla to testify that she lives in the same town as Doug, knows his reputation and he is known in the community as a scammer, dishonest and untruthful person.

Admissible

Inadmissible

Why?

QUESTION 4

Jason calls an expert witness who is an accident reconstruction expert to testify in a civil motor vehicle collision case seeking damages from Erin. After a foundation is established regarding the expert's qualifications, the expert proposes to testify that Erin's speeding caused the accident. The testimony is...

Admissible

Inadmissible

Why?

QUESTION 5

The police charge Larry with the murder of his wife, Pat. Larry denies he committed the crime and claims he was in Las Vegas at the time the crime was committed. When called by his attorney, Larry takes the stand and proposes to testify that on the night the murder took place he told his buddies at their card game, "I'm leaving right from here to go to the airport as I'm taking the red eye to Vegas." Larry's testimony is...

Admissible

Inadmissible

Why?

QUESTION 6

Natalie sues the 99 restaurant for injuries suffered in car crash that happened on route 495 in Andover near the Massachusetts School of Law. Natalie alleges that Chris, a patron of the 99, caused the crash after consuming too much alcohol at the 99. Natalie claims that Chris, while drowning his sorrows after reviewing his law examinations, drank too much liquor at the 99 before the accident.

Natalie offers evidence that Maurice, the owner of the 99, visited her the next night at Mass. General Hospital and said, “Don’t worry about anything. I’ll pay all your medical bills and give you \$50,000 if you promise not to sue me.” Maurice’s statement is....

Admissible

Inadmissible

Why

QUESTION 7

The Defendant, Greg, is charged in State Court with conspiracy to commit arson. The Government calls Greg’s new wife, Catherine, to testify that before they were married, Greg confided to her that he and his friend, Mike, burned the building down. He told her that they did this because his boss was trying to get the insurance proceeds to save the business. Greg objects. Her testimony is...

Admissible

Inadmissible

Why?

QUESTION 8

David is charged with rape and testifies denying he committed the crime. The government then seeks to ask David about his 2005 criminal conviction for kidnapping. The judge denies the Government’s inquiry. Judge’s ruling was...

Permissible

Impermissible

Why?

QUESTION 9

George is charged with possession of cocaine with the intent to distribute. After the arresting officer testifies establishing the chain of a study, the Government offers into evidence a properly authenticated notarized drug certificate from the State Police Crime Lab that was made in the ordinary course of the Crime Lab’s business. The certificate shows that an analysis of the contents of the bag showed that it was 18 grams of cocaine. George objects. The certificate is:

Admissible

Inadmissible

Why?

QUESTION 10

Nick sues Joanne's Pub for injuries suffered in an automobile accident caused by Sarah, a patron of Joanne's Pub. Nick, who was a bit drunk at the time, claims that Sarah drank too much alcohol at the pub before the accident.

Nick calls Bob to testify that he knows Sara very well and she drinks like a fish and frequently is drunk. Bob's testimony is...

Admissible

Inadmissible

Why?

USE BACK OF PAGE IF NECESSARY

PART THREE

A present sense impression is:

An excited utterance is:

What test is used to determine if an expert may testify on scientific information:

What are the unavailability exceptions?

What is the test to determine if a witness is competent to testify?

**EVIDENCE
PROFESSOR COYNE**

FINAL EXAM FALL 2013

ID# _____

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

Robert F. Kennedy

Use your exam 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. Cell phones must be powered off, and it is a disciplinary violation to have it on or near your person.

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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 essay answer to six pages and write on only one side of each page of your blue book.

SECTION ONE

Evidence Essay Question

Question 1

Tim and Tony were neighbors in Boston for many years. Tim had long admired a famous Monet oil painting hanging in Tony's living room and had offered to purchase it on several occasions. However, Tony declined the offers because he had inherited the painting from his father. One evening, Tony and his wife, Donna, invited Tim and his wife, Connie, to their home in Boston for dinner.

While Donna and Connie chatted in the living room, Tim and Tony watched the Patriot's game in the downstairs den. Tim said to Tony, "I've been asking you about that Monet painting for years. What will it take for you to sell it to me?" Tony responded by saying, "I actually could use some cash right now. I might be persuaded for the right price." Tim immediately offered \$500,000. Tony told Tim to draw up a contract for their mutual signature in the morning.

On the way home from dinner, Tim told Connie that Tony had finally agreed to sell the painting for \$500,000. Connie was happy to hear the news, and called Donna to share the good

news. Donna said to Connie, “Frankly, I am surprised to hear this and will be very sorry to see it go. It was his Dad’s painting, you know”.

Later that night when they were alone, Tony told Donna that he had agreed to sell the painting to Tim. Donna confided to Tony that years ago when they were short of cash, she sold the real Monet painting and had a copy made.

The next morning, Tim presented the draft contract for Tony’s review and signature. Tony quickly reviewed the contract, made a notation on his signature line and handed the contract back to Tim. He then told Tim, “Let’s finish this up over dinner tonight.” Tim showed up for dinner that evening with a certified check for \$500,000. However, Tony told him that, after further consideration, he could not sell the painting to Tim because it was a “priceless family heirloom.” Tim was irate. He claimed that Tony had signed a contract to sell the painting and was obligated to do so. Tony claimed that he never agreed to sell the painting in addition, he never signed the contract. After an intense argument, Tony kicked Tim out of his house.

Months later, Tim filed suit in Federal Court seeking damages for fraud, breach of contract, violations of Massachusetts General Laws chapter 93A (the consumer protection statute that prohibits fraudulent and deceptive trade practices) as well as violations of numerous federal statutes. The following occurred at trial:

- a. Tim called his wife, Connie, and she testified that Tony had agreed to sell the painting. Tony objected to Connie’s testimony.
- b. Tim also called Tony’s wife, Donna, to testify that Tony had told Donna that he agreed to sell the painting to Tim. Tony objected to Donna’s testimony.
- c. Tim also sought to ask Donna about her conversation with Tony that night in which she told him she had sold the Monet painting years before and the one Tim agreed to buy was a forgery.
- d. Tim called noted art expert, Elmyr de Hory, to testify that he did a scientific analysis of the art in question using state of the art equipment and principles. Using these new methods and his expertise, he has no doubt that the artwork in question is not a real Monet painting but is a forged artwork likely produced in 2010 by someone with limited artistic ability.
- e. Tim testified that the notation on the contract was in fact Tony’s signature because he had seen Tony’s handwriting many times over the years and received several holiday cards from Tony bearing his signature. Tim sought to testify and to introduce the holiday cards into evidence. Tony objected.
- f. Tony sought to have admitted into evidence an email from Tim in which Tim offered to resolve the lawsuit out of court in exchange for a payment of \$100,000. Tim objected.

- g. Tony sought to have the trial court take judicial notice of a City of Boston ordinance requiring a certified appraisal to accompany all contracts for more than \$10,000.00 involving the sale of personal property, including artwork. Tim objected.
 - h. After Tim testified, Tony called Tim's former business partner, Amy, to testify that Tim had a reputation in the Boston community for being dishonest. Tim objected.
-

How should the Court rule on each of these objections?

SECTION TWO

Circle your Ruling (Admissible or Inadmissible) and briefly explain it in the space provided.

QUESTION 1

Doctors at The Free Clinic treated Alex Courtney for injuries received in a shooting. Later that week, Officer Matt spoke to Alex who provided a detailed written description of the person who shot her. Officer Matt wrote her description down and then had Alex sign it and date it under the pains and penalty of perjury. In that statement, Alex identifies the Defendant, John, as her assailant. Alex dies before trial. Officer Matt testifies at John's trial and Government seeks to offer Alex's original written description into evidence while Matt testifies and lays the foundation. The description is...

Admissible

Inadmissible

Why?

QUESTION 2

Michelle was slightly injured in a routine car accident. Officers Deb and Mark were next door having lunch when they heard the crash and rushed over. As they approached the cars, Rob, an eyewitness, told them that Catherine just ran the red light and smashed into Michelle's car. Michelle sues Catherine. Michelle calls Officer Deb and asks Deb what Rob told her at the scene. Rob's testimony is...

Admissible

Inadmissible

Why?

QUESTION 3

Ali is charged with Grand Larceny in Federal Court. The Government offers evidence that in 2009, Ali forged checks taking \$50,000 from the Girl Scouts and then used that money to purchase a mountain retreat in the Berkshires. Ali testifies, denying he did it. In rebuttal the Government calls Arianna to testify that she lives in the same town as Ali, knows his reputation and he is known in the community as a violent person.

Admissible

Inadmissible

Why?

QUESTION 4

Charles calls an expert witness who is an accident reconstruction expert to testify in a civil case seeking damages from Kateen. The expert proposes to testify that Kateen's negligence caused the accident. The testimony is...

Admissible

Inadmissible

Why?

QUESTION 5

The police charge Patty with the murder of his wife, Kat. Patty denies he committed the crime and claims he was in Las Vegas at the time the crime was committed. When called by his attorney, Patty takes the stand and proposes to testify that on the night the murder took place he told his buddies at their card game, "I'm leaving right from here to go to the airport as I'm taking the red eye to Vegas." Patty's testimony is...

Admissible

Inadmissible

Why?

QUESTION 6

Colleen sues the 99 restaurant for injuries suffered in car crash that happened on route 495 in Andover near the Massachusetts School of Law. Colleen alleges that Andy, a patron of the 99, caused the crash after consuming too much alcohol at the 99. Colleen claims that Andy, while

drowning his sorrows after reviewing his law examinations, drank too much liquor at the 99 before the accident.

Colleen offers evidence that Marco, the owner of the 99, visited her the next night at Mass. General Hospital and said, "Don't worry about anything. I spoke to my lawyer and he told me to fire that bartender." Marco's statement is....

Admissible

Inadmissible

Why

QUESTION 7

The Defendant, William, is charged in Federal Court with conspiracy to commit arson. The Government calls William's ex-wife, Amy, to testify that just after they were married, William confided to her that he and his friend, Mike, burned the building down before they were married. He told her that they did this because his boss was trying to get the insurance proceeds to save the business. William objects. Her testimony is...

Admissible

Inadmissible

Why?

QUESTION 8

David is charged with rape and denies he committed the crime. The government then seeks to ask David about his 2005 criminal conviction for misdemeanor larceny by trick. The judge denies the Government's inquiry. Judge's ruling was...

Permissible

Impermissible

Why?

QUESTION 9

Ayesha is charged with possession of cocaine with the intent to distribute. After the arresting officer testifies, the Government offers into evidence a properly authenticated notarized drug certificate from the State Police Crime Lab that was made in the ordinary course of the Crime Lab's business.

The certificate shows that an analysis of the contents of the bag showed that it was 18 grams of cocaine. Ayesha objects. The certificate is:

Admissible

Inadmissible

Why?

QUESTION 10

Everald sues Joanne's Pub for injuries suffered in an automobile accident caused by Leah, a patron of Joanne's Pub. Everald, who was a bit drunk at the time, claims that Leah drank too much alcohol at the pub before the accident.

Everald calls his best friend, Bob, to testify that he was in the pub that night and saw Leah drinking and Leah looked drunk. Bob's testimony is...

Admissible

Inadmissible

Why?

USE BACK OF PAGE IF NECESSARY

PART THREE

Any, Any, Any_____

Unless_____

Or_____

Or_____

Or it's a prior _____

And it is

A. _____

B. _____

C. _____

A present sense impression is:

An excited utterance is:

What test is used to determine if an expert may testify on scientific information:

MASSACHUSETTS SCHOOL OF LAW

**EVIDENCE
FINAL – FALL 2011
Professor Coyne**

Identification Number: _____

I have always found that mercy bears richer fruits than strict justice.

Abraham 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 Identification Number on this examination and blue book. (Your Identification Number consists of the last 6 digits of your social security number plus the numbers “59,” unless you have been told otherwise.) Please write your answer to the essay problem in the bluebook. Put your answers to section 2 directly on 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

Michael and Amy Nick and their 7-year-old twins Jay and Kate went to visit Amy's parents at their home in Worcester, Massachusetts for the 4th of July to celebrate the holiday. Amy's parents, Sam and Lauren Joseph were also enjoying their 30th anniversary and had invited their family and friends to help them celebrate at a pool party.

Sometime that afternoon, Sara Anthony who flew in from Sante Fe for the festivities, organized a father/son slide/splash contest. The contest required all the dads and their sons to go down the recently installed Ginormous Pool Waterslide head first in pairs in an effort to make the biggest splash. The winning dad would get a bottle of fine Kentucky Bullet Bourbon. Michael loved Bourbon and had commented throughout the day that the Bourbon they were serving was particularly good.

When Michael and Jay were going down the inflatable waterslide there was a horrible accident. As they reached the end of the slide, the slide bottomed out against the lip of concrete pool, causing Jay's head to hit the pool deck as he entered the water. Neck fractures left him a quadriplegic, and after many months of hospitalization, his doctors removed him from life support due to the severity of his injuries. He died from injuries sustained in the accident.

Michael also hit his head when the slide bottomed out against the lip of the concrete pool and was unconscious as he entered the water. Unfortunately, horrified guests stood by leaving Michael underwater for over 4 minutes. A few guests tried to help Jay. Some of the guests screamed and vomited as they watched what was taking place. At least 4 of them collapsed and were rushed by ambulance to the local hospital.

Michael has had a very difficult recovery. He spent a month in the Massachusetts General Hospital incurring over \$52,000 in hospital bills and has lost the use of his left arm.

Worcester police filed a police report of the accident that found a number of things. The Josephs purchased the Ginormous Pool Waterslide from the local Toys "R" Us. The Ginormous Pool Waterslide was made by Toyquest Banzai Ginormous Pool Waterslides Corporation of Beijing, China and imported by ChinaUsimports Inc. of New York. It did not comply with federal standards regulating swimming pool slides. Over 10,000 of those slides had been sold in the United States through Toys R Us and Toyquest's website, GinormousPoolWaterslides.com.

The Nicks are not the first people to have been injured or even paralyzed by an incident involving the Ginormous Pool Waterslide. According to the findings of the Federal Trade Commission, which ordered a recall of the product, more than 10,000 of the slides were sold nationwide, without having been tested to see if the

inflatable slide met federal safety standards. The FTC also found that there were 3 prior reports of paralysis and two deaths caused when the slide bottomed out against the pool.

You represent the Nicks who are suing all the party's involved for their damages.
How would you handle the following items:

1. An iPhone video in HD taken by one of the guests showing Michael hitting his head when the slide bottomed out against the lip of the concrete pool and falling unconscious in the water with the horrified guests standing by for over 4 minutes as some of the guests helped Jay. The video also shows the guests screaming and vomiting.
2. Michael's prior Driving Under the Influence convictions from 2008, 2010 and early 2011 before he started attending AA.
3. Michael's acknowledgement to his AA group that he had consumed way too much alcohol and feels that he alone is responsible for Jay's death.
4. A video showing a day in Jay's life prior to the feeding tube and life support being removed. The video shows the care Jay needed while Doctors were hoping he would recover from his injuries.
5. An animation created by Pixar Legal Support 4U that shows how the accident occurred and illustrating the mechanical and design failures with the slide. Pixar Legal Support 4U is new software jointly developed by the Oscar winning Pixar studios, the makers of such award winning movies as Toy Story and The Incredibles, and MIT Mechanical Studies Professor Joe Jess. Professor Jess will testify at trial to offer the animation and his opinion on the cause of the accident.
6. The Worcester police report of the incident and the FTC report with the recall that was issued.
7. A promotional video taken from Toys R Us website showing the slide in use with coolers of beer and people laughing and drinking from red solo cups poolside. There is also, what appears to be a bong shown in one of the scenes on the video.
8. Jay's medical bills from the Massachusetts General hospital and a report from Jay's treating physician's describing the cause of Jay's death.
9. Deposition testimony given by Sara Anthony who was deposed in Sante Fe regarding this matter.
10. Records from the Department of Children and Families that show that during the last 2 years there have been three prior reports of neglect or abuse against

the Nicks regarding their care of Kate.

SECTION TWO

Circle your answer and briefly respond in the space provided.

QUESTION 1

Christine sues Geneva's Gateway Pub for injuries suffered in an automobile accident caused by Jenna, a patron of Geneva's Gateway Pub. Christine, who was a bit drunk herself at the time, claims that Jenna drank too much alcohol at the Pub before the accident.

Christine calls her friend Erin to testify that she was in the pub that night and saw Jenna drinking and Jenna looked "wicked drunk". Erin's testimony is...

Admissible

Inadmissible

Why?

QUESTION 2

Angelica is charged with possession of cocaine with the intent to distribute. After the arresting officer testifies, the Government offers into evidence a properly authenticated notarized drug certificate from the State Police Crime Lab. The certificate shows that an analysis of the contents of the bag proved that it was 18 grams of cocaine. Angelica objects. The certificate is:

Admissible

Inadmissible

Why?

QUESTION 3

Chris sues White Horse Tavern for injuries suffered in car crash that happened on route 495 in Andover near the Massachusetts School of Law. Chris alleges that Connie, a patron of White Horse Tavern, caused the crash after consuming too much alcohol. Chris claims that Connie, while drowning her sorrows after grading her constitutional law examinations, drank too much liquor at the Tavern before the accident.

Chris offers evidence that the owner of White Horse Tavern visited him the next night at Lahey Clinic and said, "don't worry about these bills as we'll pick up your medical expenses. I fired that bartender."

The statement that "I fired that bartender" is...

Admissible

Inadmissible

Why?

QUESTION 4

Bill is charged with Grand Larceny in Federal Court. The Government offers evidence that in 2009, Bill forged checks taking \$50,000 from the New England Home for Little Wanderers and then used that money to purchase a lakefront home in New Hampshire. Bill testifies denying he did it. In rebuttal the Government calls Nicole to testify that she lives in the same town as Bill, knows his reputation and he is known in the community as a dishonest person.

Admissible

Inadmissible

Why?

QUESTION 5

Frank is charged with the murder of his girlfriend, Kate. Frank denies he committed the crime and claims he was in Las Vegas at the time the crime was committed. When called by his own attorney, Frank takes the stand and proposes to testify that on the night the murder took place he told his buddies at their card game, "I'm leaving right from here to go to the airport as I'm taking the red eye to Vegas." Frank's testimony is...

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's negligence caused the accident. The testimony is...

Admissible

Inadmissible

Why?

QUESTION 7

The Defendant, Marc Daniels, is charged in Federal Court with conspiracy to commit robbery and robbery. The Government calls Marc's ex-wife, Elizabeth, to testify that just after they were married, Marc confided to her that, before they were married, he

and his friend Nick robbed his employer. He told her that they did the crime at his supervisor's insistence because his supervisor was trying to cover up \$10,000 worth of missing merchandise. Marc objects. Her testimony is...

Admissible

Inadmissible

Why?

QUESTION 8

Joe is charged with Arson and denies he committed the crime. The government then seeks to ask Joe about his 2003 criminal conviction for misdemeanor larceny by trick. The judge denies the Government's inquiry. Judge's ruling was...

Permissible

Impermissible

Why?

QUESTION 9

Sandy, the Plaintiff, was slightly injured in a routine car accident. Officers Ben and Armand were next door having lunch when they heard the crash and rushed over. As they approached the cars, Timon, an eyewitness, told them that Dan just ran the red light and smashed into Sandy's driver's side door. Sandy sues Dan. Sandy calls Officer Ben and asks him what Timon told him at the scene. Ben's testimony is...

Admissible

Inadmissible

Why?

QUESTION 10

Doctors at the Free Clinic treated Judy Jones for injuries received in a shooting. Later that week, Officer Sam spoke to Judy and took a detailed written description of the person who shot her from Jones. Sam wrote Jones's description down and then had her sign it and date it. Jones appears at trial and identifies the Defendant as the shooter. Subsequently Sam testifies and Government then seeks to offer the written description into evidence. The document is...

Admissible

Inadmissible

Why?

**EVIDENCE
FINAL – FALL 2010
Professor Coyne**

ID # _____

The foundation of justice is good faith.

Cicero

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 Identification Number on this examination and blue book. Please answer the essay problem in no more than six handwritten pages. Put your answers to section 2 and the bonus questions 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

Jetta was a customer of Lux Hardware Store ("Lux"). In 2008, while shopping at one of Lux's stores, Jetta tripped over a display case in one of the aisles fracturing her ankle and suffering other severe injuries. Jetta sued Lux seeking to recover for the injuries she suffered in the accident.

Prior to trial, the following occurred:

a. Jetta filed a motion in limine seeking to exclude Lux from offering any evidence concerning the design of the display case because Lux had accidentally discarded the display case after the accident.

During the trial, the following occurred:

b. Jetta sought to testify that Matt, a high-school student who worked part-time at Lux, told her that Lux's employees were always leaving things in the aisle and that Lux should have been more careful.

c. Jetta sought to introduce evidence that Lux offered to settle the case for \$200,000

at mediation, session held one month before trial.

d. Jetta sought to testify that shortly after the incident, Lux re-designed the area where she had fallen.

e. Lux sought to introduce evidence through Jetta's ex-husband, Joshua, that Jetta had sued a store for a prior trip and fall accident two years earlier and had once been convicted of larceny.

f. Lux sought to introduce evidence that, after the accident while Jetta was out of work, she received disability insurance payments from a policy Jetta had previously purchased.

g. Lux called Scott as a witness at trial. Scott saw Jetta's accident and a few days after the accident prepared a written memorandum of his observations. This memorandum stated that at the time of the accident Jetta was texting on her cell phone and not looking where she was walking. At trial, Scott could not remember exactly what had happened. Lux offered Scott's memorandum of his observations of Jetta's accident into evidence.

h. Jetta sought to call Dr. Mark an MIT professor of Physics and Kinesthiology, the medical and therapeutic study of the movement of muscles and joints, who reviewed the documents and evidence in the case to create a computer animation showing how Jetta's injuries came about which he intends to show to the jury during his testimony.

How should the Court rule?

SECTION TWO

QUESTION 1

After being treated at the Lahey Clinic for injuries received in a car accident, Jamal Jones gives a detailed written description identifying the person driving the other vehicle to Officer Harayda who came to Jones's house later that evening. Later, when Jones got ill, Harayda took Jones's description to him at his home and had him sign it under oath. Jones dies before the civil trial. Jones's estate seeks to offer the written description into evidence while Harayda is testifying. The document is...

Admissible

Inadmissible

Why?

QUESTION 2

Paul, the Plaintiff, was slightly injured in a routine car accident. Officers Perry and Adam were next door having lunch when they heard the crash and rushed over. As they approached the cars, Jade, an eyewitness, told them that Dan ran the red light and smashed into Paul's driver's side door. Paul sues Dan the driver. Paul calls Officer Perry and asks him what Jade told him at the scene.

Admissible

Inadmissible

Why?

QUESTION 3

The defendant, Seth Summers, is charged in State Court with conspiracy to commit arson. The Government calls Seth's ex-wife Lorna to testify that she saw Seth and his friend Sam leave their house that night with a 5 gallon can of gasoline and matches. Her testimony is...

Admissible

Inadmissible

Why?

QUESTION 4

Norm is charged with Grand Larceny in Federal Court. The Government offers evidence that in 2006, while he was working in Massachusetts, Norm forged checks and took \$10,000 from the Bay State Insurance Company. Norm testifies denying he did it. In rebuttal the Government calls Natalia to testify that she lives in the same town as Norm, knows his reputation and he is known in the community as a dishonest person.

Admissible

Why?

Inadmissible

QUESTION 5

Shane is charged with the murder of his former girlfriend, April. Shane, called by his own attorney, takes the stand, and proposes to testify that on the night the murder took place he told his buddies at their card game, "I broke up with April last week 'cause she started seeing some convict named Doug". The testimony is...

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 the Defendant's negligence caused the accident. The testimony is...

Admissible

Inadmissible

Why?

QUESTION 7

Andy is on trial for the murder of his wife, Ginny. Andy is accused of poisoning her. Andy disputes the charges. Ginny had her suspicions of Andy's true desires and placed a webcam in their kitchen. The webcam shows Andy pouring antifreeze into the Gatorade that Ginny often drank. Andy claims the recording is highly prejudicial. The judge should rule this testimony...

Admissible

Inadmissible

Why?

QUESTION 8

Kathy is charged with rape and she testifies denying she committed rape. The Government then seeks to ask Kathy about her 2002 criminal conviction for mail fraud. The judge denies the Government's inquiry. Judge's ruling was...

Permissible

Impermissible

Why?

QUESTION 9

Caroline is charged with possession of cocaine with the intent to distribute. After the arresting officer testifies, the Government offers into evidence a properly authenticated notarized drug certificate from the State Police Crime Lab showing that an analysis of the contents of the bag proved that it was 18 grams of cocaine. Caroline objects. The certificate is:

Admissible

Inadmissible

Why?

QUESTION 10

Felicea sues Allen's Tavern for injuries suffered in an automobile accident caused by Daryl, a patron of Allen's Tavern. Felicea, who was a bit drunk herself at the time, claims that Daryl drank too much alcohol at the Tavern before the accident.

Felicea calls her friend Tradia to testify that she was in the bar that night and saw Daryl drinking and in her opinion, he looked drunk. Tradia's testimony is...

Admissible

Inadmissible

Why?

EVIDENCE -FINAL – FALL 2010 – BONUS QUESTIONS

Professor Coyne

ID# _____

1. What constitutes the declarant being unavailable so that the 804 unavailability exceptions can be used?

2. What are the unavailability exceptions to the hearsay rule?

3. What is the only hearsay exception that requires the declarant to be available?

evidencfinalFall2010/coyne/evidence

**EVIDENCE
FINAL – FALL 2009
Professor Coyne**

Number _____

Extraordinary claims require extraordinary evidence.

Dr. Carl Sagan

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 Identification Number on this examination and blue book. Please answer the essay problem in no more than six handwritten pages. Put your answers to section 2 and the bonus questions 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

Jamal Sweet was charged with vehicular homicide of Dorian Gray that occurred at the Charlestown Navy Yard in Boston, Massachusetts. Dorian had been out walking with his wife, Gina-Ann, and their poodle, Fluffy, when he was struck and killed by a motor vehicle allegedly driven by Jamal. At Jamal's trial in Federal Court, the following occurred:

- (a) On direct examination by the Government, Gina-Ann testified over Jamal's objection that she observed the white van which struck and killed Dorian traveling at a rate of speed in excess of 80 miles per hour.
- (b) On direct examination by the Government of Officer Shane, a Federal Marshall, the Government offered Officer Shane's investigative report, which was admitted in evidence over Jamal's objection. The report included the following statements:
 - (1) Upon arriving at the crime scene only minutes after the incident, I encountered Gina-Ann, who came over to me and stated: "Oh my God, my

husband was just struck by a white van. It was Jamal's van; I'd know it anywhere. On the side of the truck it said JamalJams.com".

(2) As a result of my detailed investigation, I determined that Jamal was the driver of the white van which struck Dorian.

(c) On direct examination by the Government, Latia, Jamal's ten-year-old daughter who lived with Jamal, testified over Jamal's objection that Jamal had told her that he had been driving his white van when it struck and killed Dorian.

(d) On direct examination by the Government, Olivia, Jamal's sister who is an attorney in Canada, testified over Jamal's objection that Jamal had visited her at her home a week after the incident and told her: "I did something terribly wrong. I just don't see a way out of this."

(e) On direct examination by Jamal, Albie, a friend of Jamal, testified that at the time of the incident, Jamal was at his house playing poker. Thereafter, on cross-examination, the Government offered certified copies of the following documents, which were admitted in evidence over Jamal's objections:

(1) The record of Albie's conviction for attempted arson eleven years earlier for which he had received probation.

(2) The record of Albie's conviction for disturbing the peace six years earlier for which he received a suspended sentence.

(3) The record of Albie's conviction for Larceny by trick 3 years earlier for which he served 6 months in the House of Correction.

(f) On further cross-examination, Albie was shown a check for \$1,000 written to him by Jamal just before trial and then was asked whether Jamal had paid him to testify about Jamal playing poker at his house. Thereafter, on redirect examination, Jamal offered Albie's written statement given to the police two weeks after the incident, which substantiated the testimony he had given on direct examination. The statement was admitted over the Government's objection.

(g) Over the Government's objection, the Judge admitted expert testimony and a 3D animation of the accident created by Dr. Peters, the head of the Emerging Science Lab at MIT recreating how the accident took place through the use of MIT's new *3D Imaging Graftix Program*.

In each instance, were the trial judge's rulings correct?

SECTION THREE

QUESTION 1

After being treated at the Lahey Clinic for life threatening wounds, Peter Janine gives a detailed written description of his attacker to Officer Harayda. Later when he becomes ill, the police take Janine's description to him at his home and have him sign it under oath. Peter Janine appears at trial and testifies. During his testimony the government seeks to offer the written description into evidence. The document is.....

Admissible

Inadmissible

Why?

QUESTION 2

Paul, the Plaintiff, was slightly injured in a routine car accident. He sues Dan the driver. Officers Marks and Grouch, arrived on the scene after the cars were towed away and the DPW crews had arrived to clean up the debris. As they were trying to figure out what happened, Sasha, an eyewitness and Officer Marks' confidential informant in an unrelated matter, told them that Dan ran the red light and smashed into Paul's driver's side door. Paul calls Officer Marks and asks him what Sasha told him shortly after he arrived at the scene.

Admissible

Inadmissible

Why?

QUESTION 3

The defendant, Seth Summers, is charged in Federal Court with conspiracy to commit arson. The Government calls Seth's ex-wife Lorna to testify that Seth confided to her on their honeymoon that "Laura, Jean and I burned up that house real bad." Her testimony is.....

Admissible

Inadmissible

Why?

QUESTION 4

Andre is charged with Grand Larceny in Federal Court. The Government offers evidence that

in 2006, while he was working in Massachusetts, Andre forged checks and took \$10,000 from the Bay State Insurance Company. Andre testifies denying he did it. In rebuttal the Government calls Candace to testify that she lives in the same town as Andre, knows his reputation and he is known in the community as a dishonest person.

Admissible

Inadmissible

Why?

QUESTION 5

Jim is charged with the murder of his lover, Chantelle. Jim, called by his own attorney, takes the stand, and proposes to testify that on the evening when the murder took place he told his buddies at his dart tournament that, "After I leave here tonight with you losers' money, I'm going right to the Airport on a trip to see my Mom." The testimony is...

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 and show a video reenactment of the accident that he prepared depicting the Defendant's 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 turn as the reenactment demonstrates. The testimony is.....

Admissible

Inadmissible

Why?

QUESTION 7

Adam is on trial for the murder of his wife. Adam is accused of poisoning her with rat poison. Adam claims his wife committed suicide. Adam's friend, Mike, was called to testify that Adam had told him that he poisoned his wife by putting rat poison in her orange juice. The judge should rule

this testimony...

Admissible

Why?

Inadmissible

QUESTION 8

Megg is charged with robbery and she testifies denying she committed the acts. The Government then seeks to ask Megg about her 2004 criminal conviction for burglary. The judge denies the Government's inquiry. Judge's ruling was....

Permissible

Impermissible

Why?

QUESTION 9

Defendant is charged with perjury from a prior civil case in which he testified. The transcript is available from that trial. A court officer who was present at the prior case is called as a witness by the prosecution and asked to tell the court what the defendant said at that trial. The testimony is:

Admissible

Why?

Inadmissible

QUESTION 10

Rashida sues White Horse Tavern for injuries suffered in an automobile accident caused by James, a patron of White Horse Tavern. Rashida, who was a bit drunk herself at the time, claims that James drank too much liquor at the Tavern before the accident.

Rashida offers evidence that the owner of White Horse Tavern, Maude, 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 James get that drunk."

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

Admissible

Inadmissible

Why?

EVIDENCE -FINAL – FALL 2009 – BONUS QUESTIONS
Professor Coyne

Number _____

1. What constitutes the declarant being unavailable so that the 804 unavailability exceptions can be used?

2. What are the unavailability exceptions to the hearsay rule?

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

4. What is the only hearsay exception that requires the declarant to be available?

**EVIDENCE
FINAL – FALL 2008
Professor Coyne**

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 there 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.

- f. A certified drug certificate from the Massachusetts Office of Drug Testing in Boston showing that Mrs. Jones had one ounce of cocaine in her possession at the hospital.

~~Please describe what you would do concerning each piece of evidence while properly supporting your argument and how you would expect the judge to rule.~~

SECTION TWO

Please take an item of evidence from Question 1, call the witness, lay the proper foundation and offer the item in evidence.

_____ calls _____

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

SECTION THREE

QUESTION 1

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 Parson'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.....

Admissible

Inadmissible

Why?

QUESTION 2

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.

Admissible

Inadmissible

Why?

QUESTION 3

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.....

Admissible

Inadmissible

Why?

QUESTION 4

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.

Admissible

Inadmissible

Why?

QUESTION 5

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"

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

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?

EVIDENCE
PROFESSOR COYNE
FINAL EXAM FALL 2007

SS# _____

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 1

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,

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

- b. 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.
- c. 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".
- d. 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.
- e. 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.

SECTION 2

QUESTION 1

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 down 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.

Admissible
Inadmissible
Why?

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. Ann 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 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 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

Admissible
Inadmissible

Why?

QUESTION THREE

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

2. Under what circumstance is character evidence admissible?

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

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

5. Under what circumstances is it permissible to lead a witness and what is the scope of cross examination and redirect examination?

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**EVIDENCE
PROFESSOR COYNE
FINAL EXAM FALL 2006**

SS# _____

The secret of success in life is to be ready for the opportunity when it comes.

Benjamin Disraeli

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

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SECTION 1

QUESTION 1

On September 11, 2006, Mike Peters, a Federal officer on guard at the U.S. Terrorist Center in Boston, Massachusetts stopped a vehicle driven by Alicia Apple which had just entered the Center by crashing through the main gate. After being stopped, officer Peters detected an odor of drugs coming from Apple. Apple's husband, who was a passenger in the car, told the officer that his wife confided to him that she was born in the Middle East, hated most Americans and had always wanted to help the Iraqi people.

When taken inside, federal officer Harayda videotaped the booking proceedings while Alicia chanted "death to the infidels" over and over again. Harayda died before trial while rescuing a dozen nuns and a litter of kittens from a building that had been bombed in New Haven, Connecticut. Testing of Apple's clothes with the new DataMaster drug detection device detected the presence of explosives on Apple's undergarments. Peters charged Apple with violation of 28 U.S. Code 2007 in that she was driving on federal land while making terrorist threats and engaging in espionage.

Apple moved to suppress the results of the DataMaster test, asserting multiple grounds. In addition to claiming that the officer had no basis to question her or her husband, that the machine is not sufficiently reliable and she also claimed that her arrest was from racial profiling and thus impermissible.

You are her trial attorney and are specifically concerned about the following items of evidence:

1. The court receiving a photocopy of a certificate of approval from the U.S. Official Testing Lab Inc. attesting to the accuracy of the DataMaster.
2. Officer Peter's report containing statements from Mr. and Mrs. Apple regarding the events of that night as well as the statements of Frankie Flyer, a busboy in a nearby restaurant, to officer Peters that he saw the car come speeding down the street and screamed out "that nut is running the gate". Officer Peter's is also prepared to testify to the statements made by Mr. and Mrs. Apple regarding the events of that night
3. The DataMaster determination that Apple's undergarments contained traces of explosives to a 2.5% degree, a level capable of destroying a small building. Apple has an expert who is prepared to testify that because of the magnetic interference from the core of the earth these devices frequently give erroneous readings.
4. Officer Peter's testimony concerning his finding based upon his training at the U.S. Terrorist Center in Quantico Virginia that Apple fits the outlined suspected terrorist criteria.
5. Alicia Apple's prior convictions in 1999 for trespass and 2003 for tax fraud.
6. The computer DVD recording made by the automatic surveillance camera showing Apple crashing through the gate and the subsequent activity at the gate.
7. Officer Peter's stop and arrest records for the last 2 years which Alicia claims shows racial profiling in that 98% of the stops were of people with the same national origin as her.
8. Harayda's videotape of the booking proceedings showing Alicia chanting "death to the infidels" over and over again.
9. Testimony from his supervisor that Harayda died before trial while rescuing a dozen nuns and a liter of kittens from a building that had been bombed in New Haven, Connecticut.
10. Testimony from undercover operative, Jeff Kirby, that a week before this incident he was approached at a meeting by Larry Urist who said that he and Alicia were planning to blow up a federal facility and wanted to know if he was willing to help them gain access to the facility.

SECTION 2

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 under oath. 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..

Admissible
Inadmissible
Why?

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 rights violations. Billy Bob is the defendant's lover and is prepared to testify that Seth told him that he threw the firebomb because he was "sick of them taking the best jobs".

Admissible
Inadmissible
Why?

QUESTION 4

Plaintiff sues for injuries to his back. Defendant proposes to show videotape. Plaintiff is shown waterskiing and shoveling snow on the videotape. Insurance company had a private investigator follow Plaintiff and video tape these activities. Insurance company believed Plaintiff was faking the extent of his injuries so he could receive more compensation. The jurisdiction recognizes the doctor/patient privilege. The private investigator filmed the Plaintiff's activities and is prepared to testify at trial. The

Insurance Company seeks to introduce the videotape during the private investigator's testimony.

Admissible
Inadmissible
Why?

QUESTION 5

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

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 and show a video reenactment of the accident that he prepared depicting the Defendant's 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 that turn as the reenactment shows and that she was negligent by driving so fast under such conditions.

Admissible
Inadmissible

Why?

QUESTION 7

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 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

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 1998 criminal conviction for shoplifting. 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 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." That evidence is

Admissible
Inadmissible

Why?

A:

Q:

A:

Q:

A:

Q:

A:

Q:

A:

Q:

A:

Q:

A:

Q:

A:

Q:

A:

Q:

A:

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Fairness is what justice really is.

Potter Stewart

Use your examination number on the blue book and examination. Write legibly and coherently. You have 80 minutes to complete this examination. Nothing other than a writing instrument is permitted at your desk or near your person. Cellphones are to be powered off and placed at the front of the room with the rest of your personal items. Violation of these rules constitutes misconduct and will be referred to the Disciplinary Committee.

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

PART ONE

Question One

Pierre Plainti of Boston, Massachusetts has been the leading goal scorer in the National Hockey League for the last ten years. At 39, he is among the oldest players in the NHL and he credits his incredible physical shape and productivity to his lifestyle, the work he has done with his trainer, Doc Vader of Phoenix, Arizona, and their development of their products called NeuroSafeBodyBetter or “NSBB”.

NeuroSafeBodyBetter is a nutritional supplement that Plainti and Vader say prevents concussions, brain injuries, and some cancers while promoting overall health. The advertisements claim the use of NSBB along with PP1’s recommended “Cancer Cures” diet on a regular basis will allow others to perform as Plainti has and heal the body and mind. Over the last five years, the product has seen phenomenal growth especially at the high school and college level.

Plainti believes in Vader's holistic and nutritional approach so completely that he entrusts his diet, training and lifestyle regimen to Vader. The two have also worked together to establish the PP1 Therapy Center — a so-called athletic preparation, health, recovery, nutrition and mental fitness facility located outside Healthy Choices Arena in Portland, Maine. PP1 Therapy Center is a subsidiary of PP1, Inc.

PP1, Inc. of Delaware and Portland, Maine manufactures and markets NSSB. Pierre Plainti and Doc Vader are the President and Treasurer of PP1, Inc.

Ward and William Winger, twin brothers from New London, Connecticut who played hockey at Boston College in Newton, Massachusetts purchased NSBB from their local GNC after seeing advertisements for NSBB on YouTube, as they were concerned about the effects of concussions from the many years of playing hockey. They used NSBB for two years buying it online and at GNC stores. Prior to the use of NSBB, they were both projected to be early round draft picks of NHL teams when they graduated from college in 2016, which would guarantee them significant income.

In their senior year of college tragedy struck. Ward developed what his

doctor at Massachusetts General Hospital called a highly treatable form of brain cancer but Ward decided to forgo traditional chemotherapy and radiation treatment at MGH believing that NSBB would cure him. He died before graduating college. William continued to play hockey even after suffering multiple concussions while increasing his intake of NSBB. Playing with yet another concussion William, suffered a traumatic brain injury impairing his speech and motor skills. He is now unable to care for himself needing regular nursing assistance and help with his basic needs.

When ESPN —the world’s television sports network-- recently asked Plainti to address Vader’s prior consent decree with the Food and Drug Administration and issues surrounding the Ward brothers he responded, “So we’re trying to provide people a different way of thinking, a different way than western medicine’s approach to treating the disease. We focus on eliminating the causes and curing disease and illness. I’m sorry but what’s past is past. We’re all gonna die sometime.”

The estate of Ward Winger and William Winger sue Pierre Plainti, Doc Vader, and PP1, Inc. in United States District Court in Boston for fraud, breach of contract, products liability, and violations of various federal statutes dealing with the improper distribution of medicines, drugs, and fraud.

What are the arguments each side should make concerning the admission or exclusion of the following items of evidence? How would you expect the Court to rule?

1. Testimony that Pierre Plainti has been the leading goal scorer in the National Hockey League for the last ten years and at 39 he is among the oldest players in the NHL. He uses NeuroSafeBodyBetter every day in accordance with the recommended guidelines.
2. Print advertisements and the YouTube video for NeuroSafeBodyBetter, which say that use of the products prevent concussions, brain injuries, and some cancers while promoting overall health.
3. Video from the annual CancerCures rally at the PP1 Therapy Center at the Healthy Choices Arena in Portland, Maine, which 10,000 people attended showing numerous PP1 clients praising NSBB as having cured them of cancer, brain injuries, and sexual dysfunction problems.
4. Deposition testimony from Ward Winger’s esteemed doctor at Massachusetts General Hospital, Devin Allis, saying that Ward Winger’s cancer was highly treatable through traditional chemotherapy and radiation treatment. She further testified that had Ward pursued traditional treatment, he had an 85% chance of a complete recovery and playing hockey again.
5. Still photographs and a day in the life video showing what William Winger’s typical day is now like and the assistance he needs to attend to his basic needs.
6. A felony and two misdemeanor convictions evidencing that Doc Vader was convicted of Felony Fraud in 2002, Driving Under the Influence in 2010 and Larceny by Trick in 2012.
7. Numerous statements made by Ward to William Winger throughout high school and college saying he was deeply depressed, that he didn’t want to live, and asking William to assist him with his plans for suicide.

8. Pierre Plainti's statements to ESPN.
-

PART TWO

Circle your ruling and briefly explain your rationale. Use the Federal rules.

QUESTION 1

Ryan sues Gary for damage to his SUV that was stolen and burned. Ryan calls Mirna to testify. Mirna and Gary were lovers who were previously hospitalized on numerous occasions for substance abuse and mental health issues. Mirna is called to testify that she and Gary had been smoking crack all weekend and were as high as they've ever been when she saw Gary take Ryan's SUV on a joy ride. Gary objects to the proposed testimony. The testimony is

Admissible?

Inadmissible?

Reasoning_____

QUESTION 2

Angel is charged with bank fraud in connection with a mortgage loan he obtained. He testifies and denied he did it. The Government then seeks to ask Angel about his conviction in December of 2003 for embezzlement for which he served a year in jail. The judge denies the Government's inquiry. Judge's ruling was

Permissible?

Impermissible?

Reasoning_____

QUESTION 3

Joann and Samson sue Kat Inc. for negligence as a result of a car accident. They call an expert witness in accident reconstruction, Dennis Julian. After testifying about his extensive qualifications, Julian proposes to testify and show a video reenactment of the accident that he prepared depicting the Defendant's truck crossing into the Plaintiff's lane of travel at an excessive speed. Kat Inc. objects

arguing that the proposed reenactment was done in late September after the roadway had been repaired from the damage done from the accident and the crash under review took place in early July. The Plaintiff's proposed evidence is

Admissible?

Inadmissible?

Reasoning_____

QUESTION 4

Government charges Jess with arson in Federal Court claiming that in 2012, while she was running Papa Pete's Pizza, Jess burned the store down for the insurance proceeds. Government calls two witnesses who saw Jess purchase gasoline that night and both testified to that fact. As part of its case in chief, the Government also calls Karen to testify that she resides in Newburyport--the same town as Jess-- knows Jess' reputation and she is known in the community as a dishonest person.

Admissible?

Inadmissible?

Reasoning_____

QUESTION 5

U.S. Government charges Jen, Steven and Audrey with possession of heroin with the intent to distribute for trying to sell heroin to undercover officer Corina Carson of A.T.F. Jen and Audrey were with Steven when Steven told A.T.F. Agent Carson that the three of them were selling heroin to pay for law school, heroin was in the trunk of Jen's car and if she wanted to buy the entire load it was \$50,000. At their trial, A.T.F. Agent Carson is called to testify regarding her conversation with Steven. Carson's testimony is:

Admissible?

Inadmissible?

Reasoning_____

USE BACK OF PAGE IF NECESSARY

PART THREE

Any, Any, Any _____

Unless _____

Or _____

Or _____

Or it's a prior _____

And it is

A. _____

B. _____

C. _____

Under what circumstances can one use the unavailability exceptions to the hearsay rule?

1. _____

2. _____

3. _____

4. _____

Fairness is what justice really is.

Potter Stewart

Use your examination number on the examination. Write legibly and coherently. You have 80 minutes to complete this examination. Nothing other than a writing instrument is permitted at your desk or near your person. Cellphones are to be powered off and placed at the front of the room with the rest of your personal items. Violation of these rules constitutes misconduct and will be referred to the Disciplinary Committee.

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

PART ONE

Question One

The Plaintiff, George Michael's SUV careened off the road after he took the Attention Deficit Disorder drug Dexy. He suffered near fatal injuries. He had purchased the prescription at his local URDRUGSTORE. The injury occurred on April 1, 2012. His ex-wife, Natalie Michaels, was also injured in the crash. Michaels 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 URDRUGSTORE, Johnson & Johnson Pharmaceuticals, the manufacturer of the drug and Dr. Tompkins, his treating physician. The Defendants all maintain that Mr. Michaels improperly used the drug. You are the trial attorney for the Plaintiff. Please discuss what you would do about the following:

A. Testimony from Sister Gabriela Fiori, 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. Michaels driving caused the crash.

B. Color photographs taken at the hospital by his lawyer showing a very badly bruised Mr. Michaels with one photo showing the stump from Mr. Michaels amputated hand.

C. Expert testimony prepared by the Defendants that they intend to offer that utilizes an animation as a reenactment of the crash showing Mr. Michaels' SUV speeding and swerving into the other lane of traffic.

D. Statements made by George Michaels to Holy Family 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. Michaels was convicted of mail fraud in a scheme to defraud Harvard Pilgrim Health Care.

F. Testimony from Natalie Michaels that she saw George Michaels ingest six pills early that morning and he confided to her at that time that he "just wanted to end it all."

PART TWO

Circle your ruling and briefly explain your rationale. Use the Federal rules.

QUESTION 1

Paul sues Wesley for damage to his motorboat. Paul calls Grace to testify. Grace and Wesley previously lived together and had a very bitter breakup. Grace is called to testify that she and Wesley had been smoking marijuana when Wesley tossed what was left of the joint towards the motorboat and the motorboat then exploded. Wesley objects to the proposed testimony. The testimony is

Admissible?
Inadmissible?
Reasoning_____

QUESTION 2

Nick is charged with bank fraud in connection with a mortgage loan he obtained. He testifies and denied he was the person responsible for the problem. The Government then seeks to ask Nick about his conviction in December of 2008 for mail fraud. The judge denies the Government's inquiry. Judge's ruling was

Permissible?

Impermissible?

Reasoning_____

QUESTION 3

Christina and Shawn sue Trucks Inc. for negligence as a result of a car accident. They call an expert witness in accident reconstruction, Obed Lovely. After testifying about his extensive qualifications, Lovely proposes to testify and show a video reenactment of the accident that he prepared depicting the Defendant's truck crossing into the Plaintiff's lane of travel at an excessive speed. Trucks Inc. objects arguing that the proposed reenactment was done in late September after the guardrail had been repaired and the accident under review took place in early July. The Plaintiff's proposed evidence is

Admissible?

Inadmissible?

Reasoning_____

QUESTION 4

Government charges Chris with Grand Larceny in Federal Court. In 2012, while he was working at Massachusetts Insurance Company, Chris forged three checks taking \$100,000 from the Massachusetts Insurance Company. Government

found two witnesses who saw Chris write out the checks and cash them as part of his scheme. As part of its case in Chief, the Government calls Jeanne to testify that she resides in Newburyport--the same town as Chris-- knows his reputation and he is known in the community as a dishonest person.

Admissible?

Inadmissible?

Reasoning_____

QUESTION 5

U.S. Government charges Josie, Catherine and Angelo with conspiracy to distribute cocaine and possession of cocaine. The three were found in a black Mercedes at Chili's in Andover by Officer David Kant of A.T.F. When the three were individually questioned outside Chili's, Angelo told A.T.F. Agent Kant that the three of them were selling cocaine to pay for law school, the drugs were in the trunk, and if he would let them all go, they'd split the drugs and the \$50,000 in cash in the trunk with him. During an inventory search, the trunk was opened and the drugs were found. At their trial, A.T.F. Agent Kant is called to testify regarding his conversation with Angelo. The Agent's testimony is:

Admissible?

Inadmissible?

Reasoning_____

USE BACK OF PAGE IF NECESSARY

PART THREE

Any, Any, Any_____

Unless_____

Or_____

Or _____

Or it's a prior _____

And it is

A. _____

B. _____

C. _____

Under what circumstances can one use the unavailability exceptions?

1. _____

2. _____

3. _____

4. _____

What are the unavailability exceptions to the hearsay rule?

1. _____

2. _____

3. _____

4. _____

5. _____

**EVIDENCE
PROFESSOR COYNE**

FINAL EXAM FALL 2014

ID# _____

Justice denied anywhere diminishes Justice everywhere.

Martin Luther King Jr.

Use your exam 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. Cell phones must be powered off, and it is a disciplinary violation to have it on or near your person.

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SECTION ONE

Evidence Essay Question

Question 1

Steven Smith was driving down Tremont Street in Boston, Massachusetts in a brand new Arak manufactured by Arak Electric Cars Inc. of Delaware and Detroit Michigan The Arak Steven Smith was driving was provided by his employer and owned by Devin Computers Inc.. The Arak collided with another car, driven by Jean Jones. Jean Jones died because of the injuries she sustained from the impact. At the time of her death, Jean was separated from Michael Jones, her spouse. Attorney was appointed the Personal Representative (Executor) of Jean Jones's estate.

The Federal Highway Safety Commission investigated complaints from Arak owners around the country that the Arak at low speeds would lose all battery power causing the loss of power steering and braking making it likely that the driver of the vehicle would be unable to control the vehicle. After an eight day hearing in Washington, D.C., in which testimony was provided by numerous lay and expert witness, the Commission ordered a recall of the vehicle until Arak installed a backup battery and low power alarm on the vehicle. A key piece of evidence offered at the hearing was a video prepared by a Physics expert from MIT, Dr. Doolittle, showing mechanically how the failure would occur at low speeds.

Attorney filed an action for wrongful death in Federal Court on behalf of Jean's estate against Steven for negligence, against Devin Computers Inc. for negligent entrustment of its car to Steven and Arak for negligent design and manufacturing. Steven Smith, Devin Computers Inc. and Arak's answers raised various defenses.

The parties offered following evidence at trial over objections:

- a. A certified copy of Steven's conviction, two years prior to the accident, for Driving Under the Influence Causing Serious Bodily Injury that resulted in Steven being incarcerated for 9 months and his driver's license being suspended for 5 years.
- b. A certified copy of a deed to Devin Computers Inc.'s manufacturing plant, their major asset, signed over by Devin Computers Inc. to a nominee trust for \$1 the week before Jean's estate filed its action against Devin Computers Inc.
- c. Testimony of Police Officer, who arrived at the scene of the accident, that Jean had been moaning and sobbing before crying out "Why God did he have to run that red light. I'm dying, tell Michael he's the best", just before she died.
- d. Testimony of Michael that several days before the accident, Michael and Jean had a conversation in which Jean told Michael that she always loved him and intended to return to him, and that Michael agreed to reunite. At that time, they made plans to go to Hawaii to reconcile the following month.
- e. A certified copy of Michael's complaint for divorce in an action brought against Jean shortly before the accident, signed by Lawyer, Michael's attorney. Among other things, the complaint alleged that Michael and Jean had last lived together over a year prior to the date of the filing of the complaint, that Jean had deserted and failed to support Michael and was unfaithful to him throughout their marriage.
- f. Testimony of Witness, who had been standing on the sidewalk on Tremont Street at the time of the accident, that Witness had seen Jean behind the steering wheel of the car before the collision, and that in Witness's opinion, Jean was drunk and under the influence of drugs.
- g. A certified copy of a prior conviction of Jean for negligent operation of a motor vehicle.
- h. A video prepared by the Physics expert from MIT, Dr. Doolittle, showing mechanically how the failure would occur at low speeds.
- i. Josie Marta's testimony at the Federal Highway Safety Commission hearing. Marta has since died but she testified that she investigated complaints from Arak owners around the country who all complained that the Arak at low speeds would lose all battery power causing the loss of power steering and braking and were unable to control the vehicle.

j. A request that the Court take Judicial Notice that Tremont Street in Boston where the accident occurred is a major roadway adjacent to the Boston Common.

What rulings should the court make with respect to the admissibility of the above evidence?

SECTION TWO

Circle your Ruling (Admissible or Inadmissible) and briefly explain it in the space provided.

QUESTION 1

Doctors at The Free Clinic treated Alex Courtney for injuries received in a shooting. Later that week, Officer Matt spoke to Alex who provided a detailed written description of the person who shot him. Officer Matt wrote his description down and then had Alex sign it and date it under the pains and penalty of perjury. In that statement, Alex identifies the Defendant, John, as his assailant. Alex testifies at John's trial and Government seeks to offer Alex's original written description into evidence while Alex testifies and describes how it came about. The description is...

Admissible

Inadmissible

Why?

QUESTION 2

Elizabeth was slightly injured in a routine car accident with a red SUV. Officers Kelsey and Chris were assigned the call and went there after serving a domestic abuse order at the other end of town. When they got to where the accident took place, Rob, an eyewitness, told them that Katherine was driving the red SUV and ran the red light and smashed into Elizabeth's car. This information was in their police report. Elizabeth sues Katherine. Elizabeth calls Officer Kelsey and asks Kelsey what Rob told her at the scene. That testimony is...

Admissible

Inadmissible

Why?

QUESTION 3

Doug is charged with Grand Larceny in Federal Court. The Government offers evidence that in 2009, Doug forged checks totaling \$50,000 from the YMCA and then used that money to purchase a retreat in the White Mountains. Doug testifies, denying he did it and was then extensively cross-examined. He then calls his friend Beth who testified that Doug is known as a trustworthy

accountant and a truthful person. In rebuttal the Government calls Karla to testify that she lives in the same town as Doug, knows his reputation and he is known in the community as a scammer, dishonest and untruthful person.

Admissible

Inadmissible

Why?

QUESTION 4

Jason calls an expert witness who is an accident reconstruction expert to testify in a civil motor vehicle collision case seeking damages from Erin. After a foundation is established regarding the expert's qualifications, the expert proposes to testify that Erin's speeding caused the accident. The testimony is...

Admissible

Inadmissible

Why?

QUESTION 5

The police charge Larry with the murder of his wife, Pat. Larry denies he committed the crime and claims he was in Las Vegas at the time the crime was committed. When called by his attorney, Larry takes the stand and proposes to testify that on the night the murder took place he told his buddies at their card game, "I'm leaving right from here to go to the airport as I'm taking the red eye to Vegas." Larry's testimony is...

Admissible

Inadmissible

Why?

QUESTION 6

Natalie sues the 99 restaurant for injuries suffered in car crash that happened on route 495 in Andover near the Massachusetts School of Law. Natalie alleges that Chris, a patron of the 99, caused the crash after consuming too much alcohol at the 99. Natalie claims that Chris, while drowning his sorrows after reviewing his law examinations, drank too much liquor at the 99 before the accident.

Natalie offers evidence that Maurice, the owner of the 99, visited her the next night at Mass. General Hospital and said, “Don’t worry about anything. I’ll pay all your medical bills and give you \$50,000 if you promise not to sue me.” Maurice’s statement is....

Admissible

Inadmissible

Why

QUESTION 7

The Defendant, Greg, is charged in State Court with conspiracy to commit arson. The Government calls Greg’s new wife, Catherine, to testify that before they were married, Greg confided to her that he and his friend, Mike, burned the building down. He told her that they did this because his boss was trying to get the insurance proceeds to save the business. Greg objects. Her testimony is...

Admissible

Inadmissible

Why?

QUESTION 8

David is charged with rape and testifies denying he committed the crime. The government then seeks to ask David about his 2005 criminal conviction for kidnapping. The judge denies the Government’s inquiry. Judge’s ruling was...

Permissible

Impermissible

Why?

QUESTION 9

George is charged with possession of cocaine with the intent to distribute. After the arresting officer testifies establishing the chain of a study, the Government offers into evidence a properly authenticated notarized drug certificate from the State Police Crime Lab that was made in the ordinary course of the Crime Lab’s business. The certificate shows that an analysis of the contents of the bag showed that it was 18 grams of cocaine. George objects. The certificate is:

Admissible

Inadmissible

Why?

QUESTION 10

Nick sues Joanne's Pub for injuries suffered in an automobile accident caused by Sarah, a patron of Joanne's Pub. Nick, who was a bit drunk at the time, claims that Sarah drank too much alcohol at the pub before the accident.

Nick calls Bob to testify that he knows Sara very well and she drinks like a fish and frequently is drunk. Bob's testimony is...

Admissible

Inadmissible

Why?

USE BACK OF PAGE IF NECESSARY

PART THREE

A present sense impression is:

An excited utterance is:

What test is used to determine if an expert may testify on scientific information:

What are the unavailability exceptions?

What is the test to determine if a witness is competent to testify?

**EVIDENCE
MIDTERM FALL 2013
Professor Coyne**

ID Number _____

*Do not follow where the path may lead. Go instead where there is no path and
leave a trail.*

Ralph Waldo Emerson

Use your examination number on the examination. Write legibly and coherently. You have 90 minutes to complete this examination. Nothing other than a writing instrument is permitted at your desk or near your person. Cellphones are to be powered off and placed at the front of the room with the rest of your personal items. Violation of these rules constitutes misconduct and will be referred to the Disciplinary Committee.

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

PART ONE

Question One

Major League Baseball recently suspended Armando Fraudulo, a professional baseball player with the New York Yankees whose contract pays him \$22,000,000 per year, from playing baseball for one full year as a result of failing a drug test. The Yankees have stopped paying Mr. Fraudulo. This was the second time he has been suspended as a result of a failed drug test. He is appealing the suspension. In 2009, he was suspended for 30 games, did not appeal that suspension, served the full suspension and returned to lead his team to win the World Series. For many years, A-Fraud, as his fans call him, was considered by many to be one of the best baseball players in the world while playing for one of the greatest sports organizations ever. In recent years, however, both the team and A-Fraud have fallen on rough times.

A-Fraud has brought a lawsuit against Major League Baseball Corp ("MLB"), a Delaware Corporation., its baseball Commissioner Bud Selig of Milwaukee, Wisconsin, Biogenesis of America, LLC ("Biogenesis"), a clinic in

Coral Gables, Florida that allegedly supplied a number of professional ballplayers with steroid and other banned performance enhancing substances ("PES") and the New York Yankee's team doctor Chris Ahmad of New York, New York who as A-Fraud sees it have conspired against him to make him a scapegoat for baseball's

steroid scandal and used his personal medical record and information impermissibly in order to deflect attention from Major League Baseball's encouraging ballplayers to use performance enhancing drugs for decades. As A-Fraud sees it, this was done to encourage more fans to come to the ball park and to increase television revenues that during the steroid era amounted to billions of dollars in revenue to MLB and its teams. A-Fraud claims that MLB only adopted an anti-PES stance after increasing pressure from fans and Congress in 2006. A-Fraud claims that the conspirators decided to make him a scapegoat and improperly marshal evidence in an effort to destroy his reputation, career and income.

At the core of this steroid scandal is Biogenesis of America, LLC a clinic in Coral Gables, Florida, that allegedly supplied a number of professional ballplayers with banned PES. A-Fraud claims that from the start of their investigation, the conspirators have pursued vigilante justice, conspired with each other to fabricate false evidence against him and engaged in character assassination. They have ignored the procedures set forth in baseball's federally authorized collectively-bargained labor agreements; violated the strict confidentiality imposed by these agreements; paid individuals millions of dollars in bribes in order to obtain false testimony; made promises of future employment to individuals to obtain testimony on MLB's behalf; and singled out A-Fraud for an unprecedented year-long suspension--the longest non-permanent ban in baseball history. Moreover, when he sought to defend himself against conspirators' scorched earth investigation,

conspirators falsely accused him of interfering with their investigation by attempting to tamper with witnesses and evidence.

Please discuss the issues with the following items of evidence:

1. Documents showing that MLB entered into an agreement with Biogenesis and its owner, Anthony Bosch, to drop its civil action in exchange for their cooperation. Documents showing MLB is paying \$5 million to Anthony Bosch, the proprietor of Biogenesis anti-aging clinic for his cooperation in the league's case against Fraudulo. Documents showing Bosch is also currently under arrest on multiple charges for dispensing PES to minors.
2. Newspaper articles concerning Mr. Fraudulo's steroid use in college and minor league baseball in which his college roommate, Billy Martin, is quoted as saying "I shot A-Fraud in the ass with steroids all the time. Before that he was 160 pound scrawny kid who couldn't hit for beans".
3. The deposition testimony of Dr. Babe Aaron, a renowned sports physician from the world famous Mayo Clinic, in which Dr. Aaron discusses the long term effects of steroid use and the physical changes that occur to the body during that use. The testimony also contains a video animation that Dr. Aaron prepared which shows a young man weighing 160 pounds standing roughly as tall as Mr. Fraudulo who over the next 10-20 years grows substantially and adds significant muscle to his frame. The character displayed in the animation looks a great deal like A-Fraud.
4. An electronic recording of David Letterman's national show where Commissioner Selig appeared three weeks before A-Frauds suspension was officially announced to discuss the investigation and the financial consequences to Mr. Fraudulo of the punishment. Commissioner Selig said that Mr. Fraudulo is "the

lowest form of life and a disgrace to the great game of baseball. No company should have him as their spokesperson”.

5. Eyewitness testimony that Dan Mullin, baseball’s senior vice president for investigations, had engaged in an inappropriate sexual relationship with Dr. Ahmad whom he himself interviewed about the matter.

6. New York Yankees team doctor Chris Ahmad had been sued on 4 previous occasions for malpractice for misdiagnosing sports injuries and releasing confidential patient information. Also, three years ago, Ahmad was convicted of a misdemeanor in that he fraudulently billed New York Blue Cross Blue Shield for services not performed.

7. Recent text messages from A-Fraud’s iPhone to his girlfriend, Cameron Diaz, saying he is badly in need of money, that “that bastard Selig and MLB finally have me cold” and asks to play “naughty batboy” again.

PART TWO

Circle your ruling and briefly explain your rationale. Use the Federal rules.

QUESTION 1

Mike sues Robert for damage to his motorboat. Mike calls Amy to testify. Amy and Robert previously lived together and had a very bitter breakup. Amy is called to testify that she and Robert had been smoking marijuana when Robert tossed what was left of the joint towards the motorboat and the motorboat then exploded. Robert objects to the proposed testimony. The testimony is

Admissible?

Inadmissible?

Reasoning _____

QUESTION 2

Brian is charged with bank fraud in connection with a mortgage loan he obtained. He testifies and denied he was the person responsible for the problem. The Government then seeks to ask Brian about his conviction in December of 2008 for mail fraud. The judge denies the Government's inquiry. Judge's ruling was

Permissible?
Impermissible?
Reasoning

QUESTION 3

Joanne and Everald sue Trucks Inc. for negligence as a result of a car accident. They call an expert witness in accident reconstruction, Dermot Marco. After testifying about his extensive qualifications, Marco proposes to testify and show a video reenactment of the accident that he prepared depicting the Defendant's truck crossing into the Plaintiff's lane of travel at an excessive speed. Trucks Inc. objects arguing that the proposed reenactment was done in late September after the guardrail had been repaired and the accident under review took place in early July. The Plaintiff's proposed evidence is

Admissible?
Inadmissible?
Reasoning

QUESTION 4

Government charges Barbara with insurance fraud for submitting a false insurance claim to Traveler's Insurance. The Government alleges that Barbara submitted false answers to three of the 10 questions listed on the homeowner's insurance form. Traveler's Insurance claim's supervisor is called by the government to testify to what the three questions and answers were. After providing the foundation for the claim supervisor's requisite knowledge and authority, his testimony is

Admissible?

Inadmissible?

Reasoning _____

QUESTION 5

U.S. Government charges Erin, Catherine and Kateen with conspiracy to distribute cocaine and possession of cocaine. The three were found in a black Mercedes at Chili's in Andover by Officer David Marks of A.T.F. When the three were individually questioned outside Chili's, Kateen told A.T.F. Agent Marks that the three of them were selling cocaine to pay for law school, the drugs were in the trunk, and if he would let them all go, they'd split the drugs and the \$50,000 in cash in the trunk with him. During an inventory search, the trunk was opened and the drugs were found. At their trial, A.T.F. Agent Marks is called to testify regarding his conversation with Kateen. The Agent's testimony is:

Admissible?

Inadmissible?

Reasoning _____

USE BACK OF PAGE IF NECESSARY

PART THREE

Any, Any, Any _____

Unless _____

Or _____

Or _____

Or it's a prior _____

And it is

A. _____

B. _____

C. _____

Under what circumstances can one use the unavailability exceptions?

1. _____

2. _____

3. _____

4. _____

What are the unavailability exceptions to the hearsay rule?

1. _____

2. _____

3. _____

4. _____

5. _____

EVIDENCE
MIDTERM FALL 2010
Professor Coyne

Number _____

*Do not follow where the path may lead. Go instead where there is no path and
leave a trail.*

Ralph Waldo Emerson

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.

PART ONE

QUESTION 1

Plaintiff sues the Defendant for damage to his houseboat. Plaintiff calls the owner of the yacht club where the boat was stored to testify. The owner of the yacht club and Defendant were previously lovers. She is called to testify that she and the Defendant had been drinking and when he saw the Plaintiff's boat, the Defendant took out his cigarette lighter and lit the boat on fire. Defendant objects to the proposed testimony. The testimony is

Admissible?
Inadmissible?
Reasoning _____

QUESTION 2

Shane is charged with bank robbery and he testifies denying he was the bank robber. The Government then seeks to ask Shane about his misdemeanor conviction in December of 2009 for larceny by false pretenses. The judge denies the Government's inquiry. Judge's ruling was

Permissible?
Impermissible?
Reasoning _____

PART TWO

Question One – Put in Blue Book

On September 11, 2010, Dimi Britt, a Federal Officer on guard at the Federal Reserve Bank in Boston, Massachusetts saw a vehicle driven by Jo Allen which had just crashed into a lightpost on the plaza at the Federal Reserve. Britt detected an odor of alcohol coming from Allen. After conducting field sobriety tests and observing her physical condition, the officer arrested Allen. A videotape was taken of her by Federal Officer Joshua while Allen performed the field sobriety tests. Joshua died before trial. Later testing with a BAC DataMaster breathalyzer determined the concentration of alcohol in Allen's breath to be 134 grams of alcohol per 210 liters of breath. Officer Britt charged Allen with driving under the influence of alcohol ("DUI") in violation of 28 U.S.C. 2828 in that she was driving on Federal land while intoxicated. Allen claimed that her arrest was a result of racial profiling and thus impermissible.

You are her trial attorney. Specifically address how you will deal with the following items of evidence:

A photocopy of a certificate of approval by the Director of Health of the accuracy of the BAC DataMaster.

An animation of the accident prepared by Federal Officer Adam. Adam is the Federal Reserve's animation expert. He prepared a recreation of the crash based on all the data and testimony showing how Jo's car was speeding, jumped the curb and then crashed.

Jo Allen's prior convictions in 2004 and 2008 for gross intoxication and larceny by false pretenses respectively.

The videotape of the field sobriety testing which also shows Jo telling the officer "for six lousy drinks you put me through this sh*t".

Six empty beer bottles, a half empty whiskey bottle, some cocaine and a box of condoms found in the back seat of Jo's vehicle.

Officer Britt's arrest records for the last 2 years which Jo claims show racial profiling in that 98% of the arrests were of people with the same national origin as hers.

Photographs from the police holding cell surveillance camera showing Jo drinking the water from the toilet bowl in an effort to dilute her concentration of alcohol prior to the breathalyzer test.

QUESTION 3

Peter Pumpkin sues Jade's Trucks Inc. Pumpkin calls an expert witness in accident reconstruction. After testifying about her background, education, experience and training, the expert proposes to testify and show a video reenactment of the accident that she prepared depicting the Defendant's truck crossing into Pumpkin's lane of travel. Jade's Trucks Inc. objects arguing that the proposed reenactment was done in the morning and the accident under review took place late in the afternoon. Pumpkin's proposed evidence is

Admissible?
Inadmissible?
Reasoning_____

QUESTION 4

Daryl is charged with insurance fraud for filing a false worker's compensation claim. Travelers Insurance's fraud investigator investigated Daryl's previous worker's compensation claims and found that he had made a claim for a serious back injury within the first 30 days of working for each of his last 3 employers. On each occasion Daryl did not return to work for at least 1 year and when he did return, he quit within the next month. The investigator proposes to testify to this. The evidence is

Admissible?
Inadmissible?
Reasoning_____

QUESTION 5

Government charges Felicia with perjury. Felicia testified in an earlier criminal case and provided an alibi for the defendant for a murder that took place on April 1, 2008. The transcript and tape-recording of Felicia's previous testimony are available from that trial. The Government calls the Assistant District Attorney who tried the prior case and asks the attorney, "Who did Felicia say she was with the entire night of April 1, 2008?" This testimony is:

Admissible?
Inadmissible?
Reasoning_____

2. List the Five-Part test:

1.

2.

3.

4.

5.

Do not follow where the path may lead. Go instead where there is no path and leave a trail.

Ralph Waldo Emerson

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.

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 dies before probable cause hearing. The government seeks to offer the written statement into evidence at the hearing through the officer who took the statement. The statement is

Admissible?
Inadmissible?
Reasoning

QUESTION 2

The defendant, Sally Summers, is charged with civil rights violations in Federal Court. Conviction carries with it a 5-year mandatory minimum sentence. Mark is the defendant's husband and is prepared to testify that shortly after their wedding, Sally confided to him that she fired the shots into the victim's house because she was "sick of the way those people drive." The testimony is

Admissible?
Inadmissible?
Reasoning

QUESTION 3

Plaintiff sues the Defendant for damage to his prized Corvette. Plaintiff calls the wife of the Defendant to the stand. She is called to testify that while they were on their honeymoon the Defendant saw the Plaintiff's orange Corvette and became enraged at its color and the Defendant took out his cigarette lighter and lit the Corvette on fire. Defendant objects to the proposed testimony. The testimony is

Admissible?
Inadmissible?
Reasoning

QUESTION 4

Andy is charged with bank robbery and he testifies denying he was the bank robber. The Government then seeks to ask Andy about his misdemeanor conviction in December of 2000 for larceny by false pretenses. The judge denies the Government's inquiry. Judge's ruling was

Permissible?
Impermissible?
Reasoning

QUESTION 5

Peter Fuller sues Mike's Trucks Inc. Fuller calls an expert witness in an accident reconstruction. After testifying about her background, education, experience and training, the expert proposes to testify and show a video reenactment of the accident that she prepared depicting the Defendant's truck crossing into Fuller's lane of travel. Mike's Trucks Inc. objects arguing that the proposed reenactment was done in the morning and the accident under review took place late in the afternoon. Fuller's proposed evidence is

Admissible?
Inadmissible?
Reasoning

QUESTION 6

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

Through his first witness, Al offers evidence that the Tavern's bar owner and manager were released from prison just last year, on mail fraud charges.

Admissible?
Inadmissible?
Reasoning

QUESTION 7

Plaintiff sues for serious injuries to his back and legs sustained in an industrial accident. Plaintiff proposed to show a videotape while testifying. Plaintiff will testify that the tape fairly depicts his typical daily activities. The tape shows plaintiff being fed breakfast, receiving a sponge bath from his home health aid, struggling to get dressed, being helped to his wheelchair, being driven to his doctor's office and returning home exhausted. After the plaintiff testifies the tape should be...

Admissible?
Inadmissible?
Reasoning

QUESTION 8

Tom Martin is on trial for an assault and battery at the Quickmart that took place on May 15, 2009. On direct examination, Ro Bhasin, a forgetful eyewitness is asked, "What, if anything would help refresh your recollection regarding the color of the robber's sweatshirt?" He answers, "My initial statement to the police detective at the scene would help." The attorney then shows Bhasin the police report and Bhasin reviews it. After the witness reads the report quietly to himself, the attorney takes the police report from him and asks him, "So what color was the robber's sweatshirt at the Quickmart?" Bhasin answers "It was red." His testimony is

Admissible?
Inadmissible?
Reasoning

QUESTION 9

George is charged with insurance fraud for filing a false worker's compensation claim. Travelers Insurance fraud investigator investigated George's previous worker's compensation claims and found that he had made a claim for a serious back injury within the first 30 days of working for each of his last 3 employers. On each occasion George did not return to work for at least 1 year and when he did return, he quit within the next month. The investigator proposes to testify to this. The evidence is

Admissible?
Inadmissible?
Reasoning

QUESTION 10

Government charges Rob Roy with perjury. Roy testified in an earlier criminal case and provided an alibi for the defendant for a murder that took place on April 1, 2006. The transcript and tape-recording of the testimony are available from that trial. The Government calls one of the attorneys who participated in the prior case and asks the attorney, "Who did the Defendant say he was with the entire night of April 1, 2006?" This testimony is:

Admissible?
Inadmissible?
Reasoning

Question One

Billy Smith sues Bigdiscount Inc. for damages for handicap discrimination, retaliation and intentional infliction of emotional distress in Federal Court. Mr. Smith began working at Bigdiscount in 2000. Throughout virtually his entire employment at Bigdiscount, his performance reviews were rated Outstanding and Very Good. In 2003, he transferred to the Plainville store where his annual performance reviews rated his work as Outstanding and Very Good. Many witnesses will testify that Mr. Smith was qualified to do the job, did a good job and consistently performed at a high level.

Mr. Smith also had OCD that Bigdiscount refused to accommodate. Instead of accommodating his disability, employees and managers made fun of his cleanliness and called him derogatory names. When he complained about that and a frequent belittler of his calling coworkers derogatory names, the treatment got worse. A 7'X7' pornographic image was painted on the outside of the store bearing a likeness of Mr. Smith with a huge penis in his mouth and the name Billy above it. Mr. Smith complained. Bigdiscount personnel then required Mr. Smith to kneel next to the 7'X7' painting so they could take pictures. They then showed the pictures to others in the store. Not in an effort to investigate the matter though as the testimony is clear, they called the police and then never did another thing to investigate the incident. They did nothing despite their own written rules that require such matters to be treated seriously.

During the remainder of the month, Bigdiscount employees ridiculed Mr. Smith describing him and the activity depicted in the 7'X7' painting in highly offensive terms. He complained. Bigdiscount did nothing. Early the next month he was hospitalized in a Psychiatric facility and during the next month, he would be hospitalized yet again in a Psychiatric facility. When Mr. Smith returned to work Bigdiscount managers and coworkers now ridiculed him for his Psychiatric hospitalization calling him wacko, crazy and saying he had been in the looney bin. His private medical information had been shared throughout the store. He complained. Bigdiscount did nothing. When he complained some more Bigdiscount finally did something. Bigdiscount retaliated even more against the "complainer".

You are the clerk for the trial judge who has asked you to investigate the admissibility of the following pieces of evidence:

1. Proposed testimony and documents that show that throughout Smith's entire employment at Bigdiscount, Smith's annual performance reviews stated that his performance was Outstanding and Very Good. Testimony from Bigdiscount's managers and employees that Mr. Smith was qualified to do the job did a good job and consistently performed at a high level.

2. Various photographs of the 7'X7' pornographic image painted on the outside of the store showing Mr. Smith with a huge penis in his mouth and the name Billy above it.
3. Evidence that when Mr. Smith returned to work, Bigdiscount managers and coworkers ridiculed him for his Psychiatric hospitalization calling him wacko, crazy and saying he had been in the looney bin.
4. Evidence that after he complained about his mistreatment, Bigdiscount cut Smith's hours from an average of 37.5 hours per week to an average of less than 32 hours per week over a three-month period. Bigdiscount wouldn't assist him in timely obtaining health insurance for his baby and wrote him up for being minutes late for work when other employees more egregious tardiness was excused.
5. Smith and eyewitnesses will testify that Bigdiscount did not provide Smith access to the nearest bathroom which was needed because of his disability. Bigdiscount instead required him to use a bathroom "a football field" away from his work area. That resulted in Smith's defecating in his pants on at least 2 occasions as he ran from the back of the store to the front. After that, when he complained about the need to use the nearest bathroom Claudia Jones, Bigdiscount's MOD (manager on duty), said to him, "I don't give a fuck if you get in your car and go down the street to McDonalds you're not using" the rear bathroom.

EVIDENCE
MIDTERM FALL 2008
Professor Coyne

Number _____

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

Max of 2 points for each question in Part Two; max total of 10.

PART TWO

1. Define Hearsay as it is defined under F.R.E. 801 including what 801 defines as non hearsay.

2. Describe the circumstances in which character evidence is admissible.

3. Explain the analysis used concerning the admissibility of spousal testimony.

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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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 of 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."

SEE NEXT PAGE
USE BACK OF PAGE IF NECESSARY

QUESTION TWO

1. Define Hearsay: _____

2. Describe the circumstances in which character evidence is admissible?

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

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

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

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**EVIDENCE
MIDTERM FALL 2006
Professor Coyne**

*It is easier to make things legal
than to make them legitimate.*

Chamfort

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

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

No more than six (6) pages handwritten, one side only.

QUESTION ONE

The Plaintiff, Harry Daniels, was seriously injured when his truck careened off the road after he took the sleeping pill Ambull. He had purchased the prescription at his local CVS. The injury occurred on Christmas Day, 2005 and severely injured him, and caused his wife extensive brain damage. Daniels 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 C.V.S., Johnson & Johnson Pharmaceuticals, the manufacturer of the drug and Dr. Velvel, his treating physician. The Defendants all maintain that the drug was improperly used by Mr. Daniels.

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

- a. Testimony from Bob Barker that he had sold Mr. Daniels cocaine that morning.
- b. Testimony from Budd Taylor, a witness to the crash. Mr. Taylor proposes to testify that he saw the crash and believes that Mr. Daniels caused the crash by speeding around the corner.
- c. Color photographs taken immediately after the crash by emergency workers, that show a very bloody and severely injured Mr. Daniels.
- d. Expert testimony prepared by the Defendants that they intend to offer that utilizes a video reenactment of the crash that shows Mr. Daniels' truck speeding and swerving into the other lane of traffic.
- e. Statements made by Harry Daniels to hospital personnel that he knew he should not be driving the morning as he was very tired.
- f. Evidence that six years ago Mr. Daniels was convicted of embezzlement from his employer, Brook Drugs.

SEE NEXT PAGE

Prior to trial I would move for Motion in Limine to clear up all these evidentiary issues prior to trial. All the evidence will have to pass the 5-Part test - Relevance, Competency, Hearsay, Foundation, Rule 403.

Section a: ~~Bob Bob will have to~~ I would argue first that the fact that Bob sold Mr. Daniels coke that morning is ^{relevant} ~~irrelevant~~. To be relevant a fact of consequence must show that some thing is more or less likely. Mr. Daniels purchasing coke ~~does not make a difference~~ the morning of the crash is relevant because he could have used the coke with the Ambull. The TT will argue it is irrelevant w/out evidence he used it and more prejudicial than probative. The jury will misuse the info. Either way Bob must pass the competency requirement. He must be able to perceive, understand, recall + communicate the evidence he is going to give. There is nothing to indicate he won't pass this test. If his testimony is deemed relevant ~~TT~~ will attempt to impeach his character for truthfulness. Every witness puts their character for truthfulness on the stand with them. By showing Bob is a drug dealer his character will be impeached. I would have to lay foundation for evidence to begin with. Somehow showing Bob's testimony can be relied on.

B: Budd will also have to pass the competency test. It will have to be shown that he ~~can~~ could perceive + understand what happened at the time of the accident and can recollect and communicate that news at trial. There does not appear to be any information to the contrary. As a lay witness Budd can only testify to what he knows, not what he thinks, unfortunately for my client. Speed is one of the exceptions to that rule and lay people can testify as to speed. I will do my best to impeach the witness, but Budd will be a very good witness for the IT.

C In order for the photos to be admitted ^{the foundation must be laid. They must be current, they must be reliable, they must be shown.} the foundation must be laid. They must have a sworn spring witness who will testify that they are what they purport to be. Any one with knowledge can testify. In this case perhaps the EMTs or even Mrs. Daniels, but given her brain damage, she would not in all likelihood pass the competency test (Purc). If the foundation is laid for the inclusion of the photos I would argue that there is a 403 problem in that they are more substantially more prejudicial than probative. The grossness of the pictures can be called into question and I would argue

Photos.

D. Videos, like photos, have to have a sponsoring witness, ^{and foundation will have to be laid.} here the expert. An expert is allowed to testify as to his/her opinions, but only if they pass the BEST Test. They must have the Background, Experience, Education & Training to show they are an expert. I would offer evidence to show that our Expert has a ~~combination~~ ^{or enough of any of them.} of those 4 things. Experts must also testify as to Scientific matters. Here he will be testifying as to speed, although a lay witness could also testify to that, and Swerving of vehicle. Expert will testify that the video is what it purports to be - a reenactment of the crash. The reenactment must be shown to be Substantially similar to the actual event. Here I would offer evidence to show it is the same time of day, same weather & road conditions, same part of the road, same vehicle used by Mr. Daniels in same mechanical shape.

E. Was the Statement Henry made Hearsay? Is it an out of court Statement? Answer is yes. Is it being offered to prove the truth of the matter asserted therein? [He ^{knows} should not drive b/c he was tired]. The ~~is~~ Δ is offering the Stmt. They are offering it ~~to~~ to prove ~~that he knew he should not be driving~~ he knew he should not be driving. It is hearsay, but it is a party's own Statement offered against that party so under the Federal Rules it is non-hearsay and admissible. ~~I would first agree that we are not offering it to prove the truth of the matter asserted herein, but to show that TT should not have been driving.~~ ~~we are trying to prove~~ that TT misused Ambull.

In order to get the Statement in to begin with I would call anyone who heard it, here it would be hospital personnel. I could call Mr. Daniels himself as well. If he were to deny the Stmt I would agree it is admissible as a prior inconsistent Stmt. Because the prior Stmt is not under oath I could only use it for impeachment purposes and not substantive purposes.

F. This evidence will have to first be shown to be relevant, does it make a fact of consequence more or less likely. I would agree that it does, unfortunately I would most likely lose that argument. The only way I can get it in is Character Impeachment of Mr. Daniels. Unless Mr. Daniels takes the stand himself or offers Character evidence in another way, I'm not going to be able to get it in. He has to open that door.

If the door is opened the court will have no discretion. The Crime is False, less than 10 yrs old comes in. HE WAS CONVICTED ~~THE~~ 6 YRS AGO. The 10 yrs runs from date of conviction or date of last incarceration. Here, 6 yrs ago is date of conviction, well within the 10 years. Embezzlement is a Crime False, a crime that goes to the truthfulness or honesty of the person. Stealing money goes directly to honesty. If judge determines it is not a Crime False, he/she will have discretion. The decision will be based on whether probative value ~~outweighs~~ outweighs prejudicial value, b/c it is a crime of the accused.

(C) The fact that he embezzled from his employer six years ago really doesn't make it more likely he misused the prescription drug Ambill here.

First of all, I would ask for motions in limine to clarify any ~~court~~^{pre-trial} rulings on the exclusion or admission of any items in dispute.

A. I would argue that Bob's testimony is relevant as it would tend to prove that Mr. Daniels improperly used the Ambulance. Relevant evidence is that which tends to make a material fact more or less likely that it would have been without that evidence. Plaintiff would probably suggest that, as a drug dealer, Bob's evidence is either not credible, or that Bob could have been ^{high} on cocaine and therefore not a competent witness. But I would argue that Bob had first-hand knowledge of the transaction and could perceive, understand importance of telling the truth, could remember, and communicate, and was therefore competent.

B. Budd's testimony is certainly relevant. As a witness to the crash, Budd is presumed to be a competent witness. Lay witness can only testify on what they know (personal knowledge) But can give their opinion of speed, speech, signature, sobriety, and sanity - so Budd's opinion as to Mr. Daniels' speed should be admissible.

C. I would want to keep the photos out of evidence. Photos require a sponsor to tell the court that the photo is what it purports to be. Anyone familiar with the subject of the photo may sponsor it. I would try to argue that foundation for the photo had not been laid. Otherwise I would argue that it is not relevant to know that Mr. Daniels was so injured, in that it does not tend to make Defendants' negligence any more or less likely. If deemed relevant, I would argue that Rule 403 grounds should prevent it being admitted because the jury would use the evidence improperly. Rule 403 says that Relevant evidence can be excluded if the prejudicial effect substantially outweighs its probative value, and I would argue that that's true here.

D. Expert testimony must have foundation by showing the expert has Background, Education, Experience, and Training. I would show Expert has these. The re-enactment must be substantially similar to the actual events and must aid the fact-finder.

in understanding the event.

E. The statement by Daniels is an out of court statement, offered to prove the truth of the matter asserted therein - But it is offered against Mr. Daniel and therefore it is non-hearsay and should be admitted. Plaintiff may claim that the statement is not relevant, but I don't think that would be likely to succeed. Assuming that Mr. Daniels were to take the stand and testify that he had not been negligent himself, I would argue that his statement could come in as non-hearsay as a prior inconsistent statement. Since not made under oath, the statement could be used only to impeach credibility. Daniels might also seek to exclude the statement as a privileged communication between patient and doctor. I would argue that 'hospital personnel' is not a doctor.

F. Prior conviction for embezzlement could only be relevant if Plaintiff puts his character for truthfulness at issue by testifying. If he does, Defence may offer evidence of prior convictions to impeach. Assuming, arguendo, that Embezzlement is a *crimen falsi* (a crime where false statements are an element of the crime) then the judge would have no discretion to exclude the conviction since the conviction (or last day of incarceration) is less than 10 years old. If it is NOT a *crimen falsi*, then the judge must balance whether the undue prejudice ^{SUBSTANTIALLY} OUTWEIGHS the probative value. ^{PER} RULE 403. I would argue it does not outweigh the probative value and that the conviction should be admitted into evidence.

If Mr. Daniels were the Defendant, and not the Plaintiff, then the judge would use a more restrictive test than Rule 403. The judge could exclude the prior conviction if the undue prejudice merely OUTWEIGHED its probative value.

**EVIDENCE
MIDTERM FALL 2004
Professor Coyne**

*A legal decision depends not on the teacher's age,
but on the force of his argument.*

Talmud, Bava Batra

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

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

No more than six (6) pages handwritten, one side only. I will not read anything that exceeds the page limitation.

QUESTION ONE

The Plaintiff, Patty Plunder, was seriously injured when her flatscreen television exploded as she was smoking marijuana and watching the football game. She had purchased the flatscreen television just two months before at Circuit City. The injury occurred on Thanksgiving Day, 2003 and severely injured her, and caused her extensive brain damage. Ms. Plunder contends that the injuries resulted from the negligent design and manufacture of the television. She sued both Circuit City and Sony Televisions, Inc., the maker of the television. The Defendants maintain that the television was improperly used by a stoned Ms. Plunder.

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

- a. Information that the Defendants settled six similar cases.
- b. Testimony from Bob Malaguti that he had sold Ms. Plunder an ounce of marijuana that morning.
- c. Testimony from Billy Budd, a visitor at Ms. Plunder's house that Thanksgiving Day, whose vision was damaged in the explosion. Mr. Budd proposes to testify that he was really stoned and believes that Ms. Plunder caused the injury herself.
- d. Color photographs taken immediately after the explosion by the fire department emergency workers, that show a very bloody and severely burned Ms. Plunder.
- e. Expert testimony prepared by the Defendants that they intend to offer that utilizes a video reenactment of the explosion and recreates how it occurred.
- f. Statements made by Ms. Plunder to her boyfriend that she caused the television to explode when she tried to rewire it to make it compatible with her surround sound system.
- g. Evidence that six years ago Ms. Plunder was convicted of tax fraud.

SEE NEXT PAGE

QUESTION TWO

1. Define Hearsay:

2. What constitutes the declarant being unavailable so that the 804 unavailability exceptions can be used? _____

3. What are the unavailability exceptions? _____

4. Define relevance. _____

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

EVIDENCE MID TERM
SAMPLE ANSWER
(PlunderCase)

If we are in Federal Court this case would be resolved using the FRE. If we are in Superior Court, this case will be resolved using the Massachusetts Rules of Evidence. Unlike the FRE, which have codified, the Massachusetts rules of evidence come to us from various statutes, cases and the common law. I may need to move for a Motion in Limine requesting that the court rule in advance of the trial for a ruling on the pieces of evidence for the reasons provided.

The information that the defendants settled similar cases would be offered by Plunder. Relevance is defined as making a material fact - - which is a fact of consequence - - either more or less likely. I would argue that the settlement information is not relevant because it doesn't tend to show that the defendants were negligent in their design of the TV. The settlements merely show that the defendants were trying to keep the peace. I would next argue that Plunder wouldn't be able to lay a proper foundation for admitting the evidence. Foundation is the proper and sufficient basis for the admissibility of the evidence. It must be shown to be reliable and it must be authenticated. I would also argue that under Rule 403 the evidence of the settlements would be more prejudicial than probative. This evidence would be confusing to the jury as to how it contributed to the defendants' negligence. In all likelihood, the jury would misuse this evidence. Typically, evidence of prior settlements is not admissible to show negligence in civil cases. In all likelihood, this evidence will not be admissible either based on the fact that it's not relevant to the case or the fact that it's more prejudicial than probative.

For Bob's testimony to be admissible, it must first be relevant. Here, the fact that it tends to prove or disprove Plunder's contributory negligence to why she may or may not have been injured. The testimony is relevant. Bob's needs to pass the competency standard. Because Bob has first-hand personal knowledge of selling Plunder the marijuana, his testimony will be admissible. For a witness to be competent, he must be able to perceive, understand, remember and communicate. There doesn't appear to be any defect in P.U.R.C. that Bob possesses that would make him incompetent to testify. I would then lay the proper foundation for Bob's testimony. Because he has first-hand personal knowledge, he can testify as to the events surrounding the sale. However, Plunder may object on the grounds that his testimony is unreliable. I would also make a 403 argument that this evidence is more probative than prejudicial. It is central to the case because it shows that Plunder could've contributed to her injuries by being under their influence of drugs. Plunder may attack the credibility of Bob's testimony. This is done by impeaching the witness' character for

truthfulness. It helps to show to the jury that Bob is a liar and untruthful. Plunder may do this by calling reputation witnesses that know Bob's reputation in the community for truthfulness, may bring in other prior bad acts that are probative for truthfulness, or other prior convictions. Plunder may attack Bob on cross examination, if he does indeed take the stand, for bias, credibility, or subject matter of direct. In all likelihood, Bob's testimony will be discredited, because he's a drug dealer. However, I could rehabilitate his testimony by offering evidence that is probative of his truthfulness. In all likelihood, Bob's testimony will be admissible evidence. It will be for the jury to determine how much weight they will give it when determining negligence.

I would argue that Billy's testimony is relevant because it goes to show that Plunder was responsible for the accident, and that it tends to make this fact more likely than not. I would also argue that Billy is a competent witness. He was at the scene of the accident, has personal first-hand knowledge of the incident, and is able to perceive, communicate, understand, and remember. Although he's a lay witness, he may still give his opinion of Plunder's sobriety at the time. This is one area that lay witnesses can give opinion testimony to, including speech, signature, speed of a car, and sanity. Plunder may argue because Billy was so stoned and lost his vision, and thus ability to perceive, that he's not competent. Plunder may also argue that his opinion as to whether she caused the accident is not within the areas which a lay witness is permitted to testify about. Therefore, Billy wouldn't be able to testify about whether Plunder caused the accident, as his "belief" is irrelevant since he is limited to things which he has personal knowledge. However, if he could testify that she was high, I would lay the foundation for this testimony by establishing that it's reliable because Billy has been smoking marijuana for years and with Plunder. Therefore, he knows what she looks and acts like when she's high. The trial judge will prohibit Bill from giving his opinion as to whether Plunder caused the accident, but will allow his testimony pertaining to her sobriety. I would also expect Plunder to argue that this evidence is more prejudicial than probative. However, I don't think this argument will win because Plunder's sobriety is probative as to whether she contributed to the accident and her injuries.

I would argue that the photos are not admissible because they are more prejudicial than probative. They are in color and are so gruesome that they will cause the jury to misuse the evidence. Plunder will argue that they are relevant because they show her injuries which tend to make it more probable that the TV exploded. She will also argue that they are relevant on the issue of damages. Plunder will be able to lay a proper foundation for the photos I she can call a sponsoring witness, probably one of the fire department emergency workers, to testify that the pictures are authentic in that they actually and fairly depict what they purport to, which is that Plunder had these injuries. These photos will most likely be inadmissible as evidence because of the substantial prejudicial effect they will have on the jury. The jury is likely to misuse the evidence in determining the defendant's negligence and therefore excludeable under 403.

I would argue that the video is relevant because it tends to show that they're not negligent. I would lay the proper foundation by showing that the recreation is substantially similar to the actual event on Thanksgiving Day, 2003. The weather conditions, temperature, where the TV was located, would all need to be substantially similar. I would therefore show that it's reliable and authentic. I would also establish that the expert was competent. For an expert to be competent as a witness, he must have sufficient background, education, experience and training in this field. I would show that the expert knows a lot about how TVs work and the manufacturing and design defects that contribute to how a TV explodes. I would want this evidence to come in to show that the design and manufacturing had nothing to do with the defendant's negligence. I would also argue that it's more probative than prejudicial. It doesn't tend itself to misuse by the jury. If anything, it assists the jury in realizing how a TV doesn't normally explode without some type of contributory negligence by the owner, or in this case Plunder.

I would offer these statements as exceptions to the hearsay rule in Massachusetts and as a party's own statement and therefore an admission under FRE801. Hearsay under the FRE is defined as any out of court statement offered to prove the truth of the matter asserted therein except for a party's own statement offered against that party. This is a party's own statement that the other side would offer and is therefore not Hearsay under the FRE. I would argue that it's relevant because it proves the defendants aren't responsible for the explosion. I would lay the foundation that it's reliable because it was made by a witness that actually had first-hand personal knowledge because he heard the statement. I would also argue that the boyfriend appears to be a competent witness, for all witnesses are presumed competent. It doesn't appear that he suffers from any physical or mental defect that would compromise his competency.

I would offer this evidence only if Plunder took the stand. I would offer this evidence to impeach her credibility for truthfulness, but could only do so if she testified at trial. This crime is a *crimen falsi*, which is a crime of a dishonest act or false statement. This crime is less than 10 years old, and therefore the judge should not exclude it. It's less than 10 years old because the date of conviction or last date of confinement was only 6 years ago. The judge has no discretion to exclude it. The crime should come in if Plunder testifies, but only if she testifies.

EVIDENCE
MIDTERM FALL 2003
Professor Coyne

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

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

No more than five (5) pages handwritten, one side only, or four (4) typed double spaced pages. I will not read anything that exceeds the page limitation.

The Plaintiff Peter Sullivan was seriously injured when the chemistry set he purchased at Radio Shack was improperly stocked with highly toxic compounds and the compounds exploded when he was using them. The injury occurred on Christmas Eve 2002 and severely burned Mr. Sullivan and caused his wife, who was assisting him permanent brain damage. Mr. Sullivan contends that the injuries resulted both from the negligent design and stacking of the compounds. The Defendant, Radio Shack and Dow Chemicals, the manufacturer of the chemistry set, blame Mr. Sullivan and his wife for being drunk and using the chemicals for something other than their intended purpose. Mr. Sullivan had previously been convicted of possession with intent to distribute PCP or angel dust.

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

- a. Evidence indicating that in the previous three years Mr. Sullivan was arrested three times for drunken driving.
- b. Testimony from Mrs. Sullivan about what she can recall of the accident.
- c. Color photographs of a badly burned Mr. Sullivan taken immediately after the explosion. Showing his severed fingers still attached to the tool he used to mix the chemicals.
- d. Expert testimony which utilizes a video reenactment of the incident, prepared by Dow and recreates how it occurred.
- e. Statements made by Mr. Sullivan to the EMT's that he caused the chemicals to explode when he added additional substances to the compounds.

SAMPLE ANSWER
EVIDENCE ESSAY - FALL 2003

I would pursue motions in limine to clarify any pretrial rulings on the exclusion or inclusion of any of these disputed items of evidence. Each piece of evidence must also be analyzed using the five part test.

The evidentiary issue in Section A comes down, first, to relevance. As the attorney for Mr. Sullivan, I would argue that his three prior arrests for driving under the influence lack relevance in the present action. The question to ask is whether his arrests make it any more likely that the injuries were a cause of his own negligence in mixing the chemicals. I would argue no, and therefore the arrests are not relevant.

The other side, however, would argue that his arrests may show a habit. Evidence of habit is permissible, and you prove habit by specific instances of conduct. They might also seek to introduce this to show that on the night of the accident, he acted in conformity with his expressed habit. They may also try and argue that these other bad acts show intent, motive, scheme, absence of mistake, common plan, etc. As his attorney, I would argue his three prior arrests don't show any of these things and thus are inadmissible. Also, a rule 403 analysis would show that introducing the arrests are more prejudicial than probative, because they would tend to show the jury, "See, because he's a drunk, he caused his own injuries." For these reasons, the arrests should be inadmissible.

As for B, the issue is one of the competency of Mrs. Sullivan. While every witness is presumed to be a competent witness under the Federal Rules, there is a question if Mrs. Sullivan can perceive, understand, recollect and communicate what happened on that evening. If I wanted her to testify, I would argue that despite the brain damage, she could still perceive, understand, recollect and communicate the events. Case law interpreting this standard sets a very low threshold and favors a witness' ability to testify. If I did not want her to testify, I would argue that the brain damage Mrs. Sullivan suffered rendered her incompetent because she could not sufficiently perceive, understand, recollect or communicate what happened.

Also, I might argue that Mrs. Sullivan has a spousal privilege that bars her from testifying for the defense and against her husband, but since this only applies in criminal cases, I will lose but may be able to exclude private marital communications.

In Section C, the issue has to do with foundation. I would want to get the photos introduced because they show the extent of the injuries suffered. In order to do that, however, I would need to lay the proper foundation by getting a sponsoring witness for the photos to tell the court that they show what they purport to show. That sponsoring witness does not need to be the photographer, but merely someone who can tell the court what is in the pictures and that the pictures accurately reflect the information -- namely that the person shown in the photograph is Mr. Sullivan and that they show him to have severed fingers and badly burned skin. The sponsoring witness could be either the EMT, the doctor who treated Mr. Sullivan after the accident, or anyone with personal knowledge about what is shown in the photos.

As Sullivan's attorney, all would also be concerned that the other side would try to argue that

the photos are more prejudicial than probative, and that they are simply being introduced to elicit sympathy for Mr. Sullivan. Gruesome photographs can be excluded when they are substantially more prejudicial than probative. I would argue that because they accurately depict what happened to him, they are more probative than prejudicial and should be admitted.

~~In Section D, the issue is whether the video reenactment is substantially similar to what~~ actually happened that night and whether it fairly represents the way in which the explosion occurred. In order to introduce the video you would have to lay a foundation for the expert's testimony by making certain that he has the background, education, training and experience to offer an opinion about what is shown in the video reenactment. That opinion would have to aid the jury's understanding of the event. I would question whether the recreation fairly represents and is substantially similar to what happened. I would question whether the expert testifying has the proper background, training, education and experience to offer his/her opinion regarding the video reenactment.

In Section E, the issue is hearsay. Hearsay is defined as any out of court statement offered to prove the truth of the matter asserted therein, except if it's a party's own statement offered against that party, or a co-conspirator's statement offered in furtherance of the conspiracy, or a statement made by an agent of the party made within the scope of his employment, or a prior statement of a witness testifying at the present trial that is inconsistent was made under oath in a judicial proceeding, or that was consistent with the present testimony but is being made to rebut or charge of recent fabrication or improper influence or motive, or is a statement of identification after having perceived someone.

In this case, Sullivan's statement to the EMT is an out-of-court statement, and it is offered to prove the truth of the matter asserted therein -- that his own negligence in adding illegal substances caused the accident. But the analysis can't end there. Next, was it a party's own statement offered against that party? In this case, the answer is yes. Therefore, it is non-hearsay and is admissible against Mr. Sullivan. Because of this, I would seek to get that statement ruled inadmissible by arguing that he is not a chemist, and therefore has insufficient knowledge of this matter and is incompetent to know what caused the chemicals to explode. However, when you make an admission of fact coupled with an admission of liability, the law allows the statement to come in as an admission.

I might also argue that it is a statement that goes to character, and because this is a civil case, specific instances of character are inadmissible if they're introduced to show that a party acted in conformity with a particular character trait. I think this argument is weak, however. Also, I would seek to attack the EMT's own character for truthfulness once he gets on the stand. By doing this, I could impeach his testimony. If he has lied before on the witness stand, and he was convicted of, say, perjury, and it happened less than 10 years ago, I could attack his testimony for both substantive and impeachment purposes. I would look for crimes committed by the EMT but especially *crimen falsi*.

EVIDENCE
MIDTERM FALL 2002
Professor Coyne

SOCIAL SECURITY NO:

*A legal decision depends not on the teacher's age,
but on the force of his argument.*

Talmud, Bava Batra

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

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

No more than five (5) pages handwritten, one side only. I will not read anything that exceeds the page limitation.

QUESTION ONE

The Pilgrim Nuclear Power Plant in Plymouth, Massachusetts is owned and operated by Entergy Corporation of New Orleans, Louisiana. The plant has a history of shoddy operation and has been shut down numerous times by the Nuclear Regulatory Commission for a variety of problems.

Recently, a serious explosion occurred at the plant when some spent nuclear fuel rods were improperly placed in a storage shed by the plant superintendent, Joseph Malaguti, of Plymouth, Massachusetts. Malaguti put 100 rods in a storage shed where they became exposed to the air, exploded and ultimately caused respiratory problems and some minor burns to people living in the Manomet section of Plymouth.

Ann and Brian Wiseman have come to see you to complain about this serious health hazard and want you to pursue some help for them.

They explain to you that they have successfully lobbied the Nuclear Regulatory Commission to sanction Malaguti and Entergy for this behavior and the Nuclear Regulatory Commission has fined Entergy \$1 million dollars for violating the Federal statute that makes it unlawful to place spent nuclear rods in anything other than an approved holding facility.

The case was ultimately placed in suit against Entergy and Malaguti. You are the trial attorney for the plaintiffs, Ann and Brian Wiseman. Please discuss what you would do about the following:

- a. Information that the defendants settled six similar cases.
- b. Testimony from Mr. Rosa, the head of the local regulatory agency. Mr. Rosa proposes to testify that, in his opinion, there was nothing unusual or improper about how the rods were stored.

- c. Color photographs that show a very badly burned Mr. Wiseman which were taken immediately after the incident by the fire department emergency workers.
- d. Expert testimony that the plaintiffs intend to offer utilizing a video reenactment of the explosion and recreates how it occurred.
- e. Statements made by Mr. Malaguti to his mother that he intentionally caused the damage because he was sick of the way the company treated him.

QUESTION TWO (Please define the term or terms below and explain how, if at all, this concept applies to Question One.)

1. Hearsay:
2. What constitutes the declarant being unavailable so that the 804 unavailability exceptions can be used? _____
3. The unavailability exceptions?
4. Relevance.

1. 2.
3. 4. 5. 6. 7. 8. 9. 10.

5. ~~Coyne's 5-part test for the admissability of evidence.~~

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EVIDENCE
MIDTERM FALL 2001
Professor Coyne

*A legal decision depends not on the teacher's age,
but on the force of his argument.*

Talmud, Bava Batra

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

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

No more than five (5) pages handwritten, one side only. I will not read anything that exceeds the page limitation.

QUESTION ONE

The Plaintiff, Paul Porkay, was seriously injured when his refrigerator exploded as he was reaching inside it for a beer shortly after he purchased it at Circuit City. The injury occurred on Thanksgiving Day, 2000 and severely burned Mr. Porkay. Mr. Porkay contends that the injuries resulted both from the negligent design and manufacture of the refrigerator and sued both Circuit City and Mike's Frig, Inc., the maker of the refrigerator. The Defendants maintain that the refrigerator was improperly used by a drunken Mr. Porkay.

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

- a. Information that the Defendants settled six similar cases.
- b. Testimony from Mr. Rosa, a visitor at Mr. Porkay's house that Thanksgiving Day, whose vision was damaged in the explosion. Mr. Rosa proposes to testify that he noticed nothing unusual when he saw the refrigerator before the accident.
- c. Color photographs taken immediately after the explosion by the fire department emergency workers, which show a very bloody and severely burned Mr. Porkay.
- d. Expert testimony that the Defendant intends to offer that utilizes a video reenactment of the explosion and recreates how it occurred.
- e. Statements made by Mr. Porkay to his mother that he caused the refrigerator to explode when he tried to rewire it to make it compatible with his TV changer.

QUESTION TWO

1. Define Hearsay:

2. What constitutes the declarant being unavailable so that the 804 unavailability exceptions can be used? _____

3. What are the unavailability exceptions? _____

4. Define relevance. _____

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

1. 1. 1.

2.

EVIDENCE
MIDTERM FALL 2000
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No more than five (5) pages handwritten, one side only, or four (4) typed double spaced pages. I will not read anything that exceeds the page limitation.

QUESTION ONE

Mark Martin, the Plaintiff, was seriously injured when the Black and Decker lawnmower he was using malfunctioned. The lawnmower completely severed Mark Martin's toes. Mr. Martin contends that the injuries were caused by Black and Decker's negligent design and manufacture of the lawnmower. The Defendant, Black and Decker, maintains that the lawnmower was being improperly used by a very drunken Mr. Martin.

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

- a. Testimony from Mr. Becker, an engineer for Black and Decker, who will testify that during Black and Decker's tests on this model, it frequently malfunctioned in much the same way as Mr. Martin alleges took place.
- b. Color photographs of Mike Martin's severed toes which are severely mangled as a result of this incident.
- c. Expert testimony which utilizes a video reenactment of the incident and recreates how it occurred.
- d. A statement Mr. Martin made to his wife that he should have been more careful which she later repeated to the emergency workers on the scene.

How should the judge rule?

QUESTION TWO

Define hearsay, explain what renders a witness unavailable in order to utilize the 804 exceptions and then list those exceptions.

EVIDENCE
MIDTERM FALL 2002
Professor Coyne

SOCIAL SECURITY NO:

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Talmud, Bava Batra

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

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No more than five (5) pages handwritten, one side only. I will not read anything that exceeds the page limitation.

QUESTION ONE

The Pilgrim Nuclear Power Plant in Plymouth, Massachusetts is owned and operated by Entergy Corporation of New Orleans, Louisiana. The plant has a history of shoddy operation and has been shut down numerous times by the Nuclear Regulatory Commission for a variety of problems.

Recently, a serious explosion occurred at the plant when some spent nuclear fuel rods were improperly placed in a storage shed by the plant superintendent, Joseph Malaguti, of Plymouth, Massachusetts. Malaguti put 100 rods in a storage shed where they became exposed to the air, exploded and ultimately caused respiratory problems and some minor burns to people living in the Manomet section of Plymouth.

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