

**EVIDENCE 2021
PROFESSORS COYNE AND DIMITRIADIS**

FALL 2021 EXAMINATION

ID# _____

Truth never damages a cause that is just.
GANDHI

Exam Instructions

Use your ID Number on your response you submit.

As a student at MSLAW you are aware of MSLAW's zero tolerance policy forbidding dishonest behavior, cheating, and/or any form of dishonorable conduct.

The camera must be turned on and you must remain in view of the camera during the examination unless you need a brief bathroom break. If the camera is turned off, then you will receive an F on the exam and the matter will be referred for appropriate disciplinary action.

You must upload your answer immediately following the end of 3 hours if you have not already done so. Monitoring of your activity will take place throughout the examination and your activities will be recorded for evaluation. You agree to submit your electronic devices for examination if there is any question of inappropriate conduct.

This is a closed-book examination. You may use another bluebook for notes you make during the examination. You are not permitted to use papers, personal effects, additional electronic devices, or any other means that could provide assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination. You will face disciplinary charges and likely expulsion if you plagiarize your answers, cut and paste material, confer with others by any means, or violate MSLAW's Honor Code in any way.

If any of these rules are violated, you will receive an F on your examination and disciplinary action will follow.

You are required to inform Dean Sullivan of any information you have of any of your classmates violating the Honor Code. Failure to report any such behavior is a violation of the Honor Code.

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. Write well-structured responses.

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

You have three hours to submit your answer using only your student ID number to identify you.

SECTION ONE

Evidence Essay Question One

Austin K. Fite, a professional skateboarder, from Salem, New Hampshire was hit by a car in a pedestrian crosswalk in Andover, Massachusetts. Fite was stoned at the time of the accident having purchased the potent marijuana at ATG Medicinal Inc., a Delaware corporation with headquarters in Massachusetts.

ATG settled the case prior to suit. Fite sued Lee Mudd, the driver of the Trucking Everywhere Inc. truck that hit him, as well as the Town of Andover after he was struck. A jury found the driver 33% at fault and Town of Andover 67% responsible for maintaining an unsafe crosswalk.

The Defendants appeal several errors they say were made by the federal trial court in Boston. Please discuss the evidentiary issues raised by the following claimed errors.

1. The trial judge excluding evidence Fite was intoxicated and failed to look for traffic before skateboarding into the crosswalk.
2. Prohibiting testimony from Eyewitness who would have testified that Fite never stopped and never looked left or right before skating into the crosswalk.

3. The trial court's exclusion of the report of a routine ER hospital urinalysis that found tetrahydrocannabinol or THC, the intoxicating chemical in marijuana in Fite's blood.
4. The trial court's exclusion of Fite's statement to the ER doctor that he was "high on weed" that day.
5. The trial court's allowance into evidence of police reports about prior accidents at the intersection.
6. The admission into evidence of a surveillance video of the intersection showing Fite thrown into the air upon impact with the truck and his body being mangled as the next car ran over him.
7. The trial court's refusal to receive into evidence the Defendants' animation recreating the accident while Defendants' expert, Dr. Sabrina, was explaining their theory of the cause of the accident.

SECTION TWO

State your Ruling circuling either Admissible or Inadmissible or Permissible or Impermissible and in a sentence or two explain your ruling.

Question 1

On trial for murder, Defendant claims self-defense and seeks to testify concerning the victim's prior violent reputation in support of his self-defense claim that the victim was the initial aggressor in the fight with Defendant. In response, the prosecutor offers evidence of Defendant's reputation for violence. Judge admits all of the testimony.

The evidence is

Admissible or Inadmissible Why?

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 the testator was often confused and was frequently “borderline insane” over the last few years. Judge allows the nephew to provide such testimony.

The evidence is

Admissible or Inadmissible Why?

Question 3

At trial, while Client is testifying, Attorney refreshes Client's recollection using Client's journal describing her day-to-day activities following the accident, which 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 or Impermissible Why?

Question 4

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. When Defendant heard what neighbor had been telling people, the neighbor was killed by Defendant before trial. The court admits the testimony.

The evidence is

Admissible or Inadmissible Why?

Question 5

Plaintiff sues Defendant in a slip and fall case. At trial, Plaintiff seeks to introduce evidence that, two weeks after she fell on the sidewalk, Defendant repaired the sidewalk area where Plaintiff fell by filling in the hole and leveling it. Defendant objects. Judge allows the information into evidence

The evidence is

Admissible or Inadmissible Why?

Question 6

Doctors at The Free Clinic treated Rich for injuries received in a shooting. Later that week, Officer Kyle spoke to Rich who provided a detailed written description of what happened and the person who shot him. Officer Kyle wrote the description down and then had Rich sign it. In that statement, Rich identifies the Defendant, Jared, as his assailant. Rich testifies at Jared's trial but does not identify Jared as his injuries have worsened. Government seeks to offer Rich's original written description into evidence. The description is...

Admissible or Inadmissible Why?

Question 7

The police charge Ashley with the murder of her husband, Brian. Ashley denies she committed the crime and claims she was in Las Vegas on the Saturday the murder was committed. When called by her attorney, Ashley takes the stand and proposes to testify that on Monday at 4:00 P.M. when the police met her at the airport upon her return, she immediately told them, "I have no idea what you're accusing me of, I was in Las Vegas all weekend." Ashley's testimony is...

Admissible or Inadmissible Why?

Question 8

Shayla sues the Chili's Bar for injuries suffered in a car crash that happened on route 93 in Andover near the Massachusetts School of Law. Shayla alleges that Bevie, a patron of Chili's, caused the crash after consuming too much alcohol at Chili's. Shayla claims that Bevie, while drowning her sorrows after reviewing her law school examinations, drank too much liquor at Chili's before the accident.

Shayla offers evidence that Luna, the owner of Chili's, visited her the next night at Mass. General Hospital and said, "I'll pay all your medical bills, this is our fault. We never should have served Bevie that much." The statement that they served Bevie too much is...

Admissible or Inadmissible Why?

Question 9

The Defendant, John, is charged in Federal Court with conspiracy to commit arson. The Government calls John's ex-wife, Jennifer, to testify that while they were married, John confided to her that he and his friend, George, burned the building down. He told her that they did this because his boss was trying to save the business.

John objects. Her testimony is...

Admissible or Inadmissible Why?

Question 10

Haley is charged with possession of cocaine with the intent to distribute. After the arresting officer testifies establishing the chain of custody, 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. Haley objects. The evidence is:

Admissible or Inadmissible Why?

SECTION THREE

- (A) What is the scope of cross-examination?

- (B) What hearsay exception requires the declarant to be available?

- (C) When can a lay witness provide opinion testimony?

**EVIDENCE 2021
PROFESSORS COYNE AND DIMITRIADIS**

MIDTERM EXAM FALL 2021

ID# _____

Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons nor property will be safe.

Frederick Douglass

Exam Instructions

As a student at MSLAW you are aware of MSLAW's zero tolerance policy forbidding dishonest behavior, cheating, and or form of dishonorable conduct.

If you are typing you must upload your answer immediately following the end of one hour and 20 minutes if you have not already done so. You agree to submit your electronic devices for examination if there is any question of inappropriate conduct.

This is a closed-book examination. Other than extra bluebooks to make an outline or notes, you are not permitted to use papers, personal effects, additional electronic devices, or any other means that could provide assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination. You will face disciplinary charges and likely expulsion if you cheat, confer with others by any means, or violate MSLAW's Honor Code in any way.

You may not in any way discuss the examination's contents, format, or answers with anyone prior to 10:00 p.m. on 10.18.2021.

If any of these rules are violated, you will receive an F on your examination and disciplinary action will follow. Use only your exam number in submitting your responses.

You are required to inform Dean Sullivan of any information you have of any of your classmates violating the Honor Code. Failure to report any such behavior is a violation of the Honor Code.

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. Write well-structured responses.

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

You have one hour and 20 minutes to submit your answers using only your student ID number to identify yourself.

SECTION ONE

Evidence Essay Question

Question 1

Man and Woman were waiting in line at the post office to buy stamps. They soon began arguing about the last presidential election, and as their conversation became more animated, Man began shouting at Woman and poking her shoulder with his finger. When Man laughed at her, Woman responded by punching Man in the nose and kicking him when he fell to the ground. Police immediately came and made a police report that also included a statement from Bystander who described Woman kicking and punching Man. Police arrested Woman at the scene and charged her in U.S. District Court with battery. Bystander died from a car accident before trial.

At trial, the prosecutor intends to elicit the following testimony from Eyewitness who was standing in the line behind Woman: Before Man arrived, I saw Woman talking to Neighbor. Neighbor said to Woman, "We have waited so long for these stamps, if anyone annoys us today they will be going to the hospital!" Woman nodded her head and gave Neighbor a thumbs-up signal. I recognized Woman who punched and kicked Man. I live in her neighborhood and see her at least twice a week. Every time I see her, she is arguing with people, acting out, and generally causing problems.

Woman's husband has been subpoenaed by the prosecution to testify to a conversation he had with Woman immediately after the fight and to the fact that she had no marks or bruises on her body at that time.

1. What issues are there admitting the report by Police?
2. What issues are there with Bystander's testimony? Should the statements be admitted into evidence? How would they be admitted?
3. What portions of Eyewitness's testimony, if any, would be admissible? Explain.
4. Assuming that Eyewitness is permitted to testify for the prosecution, defense counsel plans to cross-examine Eyewitness about her five-year-old conviction for shoplifting, a crime punishable by a maximum sentence of six months in jail; and cross-examine Eyewitness about her longstanding friendship with Man. What portions, if any, of the defense counsel's cross-examination should the court permit?
5. Woman objects to husband's testimony in its entirety. How should the court rule?

SECTION TWO

State your Ruling as either Admissible or Inadmissible and in a sentence or two explain your ruling.

QUESTION 1

Doctors at The Free Clinic treated Jeff for injuries received in a shooting. Later that week, Officer Victor spoke to Jeff who provided a detailed written description of what happened and the person who shot him. Officer Victor wrote the description down and then had Jeff sign it and date it under the pains and penalty of perjury. In that statement, Jeff identifies the Defendant, Bonnie, as his assailant. Jeff dies of unrelated causes before Bonnie's trial and Government seeks to offer Jeff's original written description into evidence. The description is...

Admissible or Inadmissible Why?

QUESTION 2

Katie was slightly injured in a routine car accident with a red SUV. Officers Isabel 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, Teddy, an eyewitness, told them that “earlier today, Kay was driving a red SUV and ran the red light and smashed into Katie’s car.” This information was recorded in their police report. Katie sues Kay. Katie calls Officer Isabel and asks Isabel what Teddy told her at the scene. That testimony is...

Admissible or Inadmissible

Why?

QUESTION 3

Sabrina is charged with Grand Larceny in Federal Court for forging checks totaling \$50,000 from the YMCA and then using that money to purchase a camp in the White Mountains. Sabrina testifies, denying she did it and was then cross-examined. She then calls her friend Johana who testified that Sabrina is known as a trustworthy accountant and a truthful person. In rebuttal, the Government calls Alexis to testify that she lives in the same town as Sabrina, knows her reputation and she is known in the community as a dishonest and untruthful person. Alexis’s testimony is...

Admissible or Inadmissible

Why?

QUESTION 4

Haley sues Courtney for damages as a result of a motor vehicle collision. Haley calls Ayanna, an eyewitness to testify that she observed the vehicles traveling down Route 93 and saw Courtney’s white SUV “speeding at the time of the collision, going at least 75 MPH.” The testimony is...

Admissible or Inadmissible

Why?

QUESTION 5

The police charge Terence with the murder of his wife, Ashley. Terence denies he committed the crime and claims he was in Las Vegas at the time the murder was committed. When called by his attorney, Terence takes the stand and proposes to testify that at 4:00 P.M. on the night the murder took place, he had 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." Terence's testimony is...

Admissible or Inadmissible

Why?

QUESTION 6

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

Carrie offers evidence that Beverly, 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." Beverly's statement is....

Admissible or Inadmissible

Why?

QUESTION 7

The Defendant, Guy, is charged in Federal Court with conspiracy to commit arson. The Government calls Guy's new wife, Jennifer, to testify that before they were married, Guy confided to her that he and his friend, George, burned the building down. He told her that they did this because his boss was trying to save the business. Guy objects. Her testimony is...

Admissible or Inadmissible Why?

QUESTION 8

Rose is charged with rape and testifies denying she committed the crime. The government then seeks to ask Rose about her 2012 criminal conviction for misdemeanor larceny by trick. The judge denies the Government's inquiry. The evidence is...

Admissible or Inadmissible

Why?

QUESTION 9

Luna is charged with possession of cocaine with the intent to distribute. After the arresting officer testifies establishing the chain of custody, 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 pure cocaine. Luna objects. The evidence is:

Admissible or Inadmissible

Why?

QUESTION 10

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

Lisa calls Greylib to testify that she knows Amy very well and she drinks like a fish and is frequently drunk. Greylib's testimony is...

Admissible or Inadmissible

Why?

**EVIDENCE 2020
PROFESSORS COYNE AND DIMITRIADIS**

MIDTERM EXAM FALL 2020

ID# _____

Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons nor property will be safe.

Frederick Douglass

Exam Instructions

Use your ID Number on your response you submit through TWEN.

As a student at MSLAW you are aware of MSLAW's zero tolerance policy for bidding dishonest behavior, cheating, and or form of dishonorable conduct.

During this examination, you must be appropriately attired with the Zoom application open and displaying your name. The camera must be turned on and you must remain in view of the camera during the entire examination. You agree to comply with the proctor's requests to change the angle or view of the camera. If the camera is turned off or you become no longer visible on camera, then you will receive an F on the exam and the matter will be referred for appropriate disciplinary action.

You must upload your answer through TWEN immediately following the end of one hour and 45 minutes at 7:45 p.m. if you have not already done so. Remote monitoring of your activity will take place throughout the examination and your activities will be recorded for evaluation and further investigation if advisable. You agree to submit your electronic devices for examination if there is any question of inappropriate conduct.

This is a closed-book examination. You may have one blank piece of scrap paper to use for notes you make during the examination. You must display the front and back of that piece of paper to the camera at the beginning of the examination. You are not permitted to use papers, personal effects, additional electronic devices, or any other means that could provide assistance in completing this examination, create any unfair advantage in completing this

examination, or otherwise frustrate the honest administration of this examination as a closed-book examination. You will face disciplinary charges and likely expulsion if you plagiarize your answers, cut and paste material, confer with others by any means, or violate MSLAW's Honor Code in any way.

If any of these rules are violated, you will receive an F on your examination and disciplinary action will follow. Use only your exam number in submitting your responses by TWEN.

You are required to inform Dean Sullivan of any information you have of any of your classmates violating the Honor Code. Failure to report any such behavior is a violation of the Honor Code.

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. Write well-structured responses.

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

You have one hour and 45 minutes to submit your answer to TWEN using only your exam number to identify you.

SECTION ONE

Evidence Essay Question

Question 1

Man and Woman were waiting in line at a federal museum to purchase tickets. They soon began arguing about sports, and as their conversation became more animated, Man began shouting at Woman and poking her shoulder with his finger. When Man laughed at her, Woman responded by punching Man in the nose and kicking him when he fell to the ground. Police immediately came and took a statement from Bystander who described Woman kicking and punching the man. Police arrested Woman at the scene and charged her in U.S. District Court with battery. Bystander died from a car accident before trial.

At trial, the prosecutor intends to elicit the following testimony from Eyewitness who was standing in the line behind Woman: Before the man arrived, I saw Woman

talking to Neighbor who passed by. Neighbor said to Woman, “We have waited so long for these tickets, if anyone annoys us today they will not be seeing this exhibit—they’ll be going to the hospital!” Woman nodded her head and gave Neighbor a thumbs-up signal. I recognized Woman who punched and kicked Man. I live in her neighborhood, and I probably see her at least twice a week. Every time I see her, she is arguing with people, acting out, and generally causing problems.

Neighbor refuses to testify at trial.

Woman’s husband has been subpoenaed by the prosecution to testify to a conversation he had with Woman about the event and to the fact that she had no marks or bruises on her body after the incident.

1. What issues are there with Bystander’s testimony? Should the statements be admitted into evidence? How would they be admitted?
2. What portions of Eyewitness’s testimony, if any, would be admissible? Explain.
3. Assuming that Eyewitness is permitted to testify for the prosecution, defense counsel plans to cross-examine Eyewitness about her five-year-old conviction for shoplifting, a crime punishable by a maximum sentence of six months in jail; and cross-examine Eyewitness about a letter recently written by Eyewitness to Man saying, “Thanks for 10 years of a great friendship.” What portions, if any, of the defense counsel’s cross-examination should the court permit?
4. Woman objects to husband’s testimony in its entirety. How should court rule?

SECTION TWO

State your Ruling as either Admissible or Inadmissible and in a sentence or two explain your ruling.

QUESTION 1

Doctors at The Free Clinic treated Rich for injuries received in a shooting. Later that week, Officer Kyle spoke to Rich who provided a detailed written description of what

happened and the person who shot him. Officer Kyle wrote the description down and then had Rich sign it and date it under the pains and penalty of perjury. In that statement, Rich identifies the Defendant, Jared, as his assailant. Rich dies of unrelated causes before Jared's trial and Government seeks to offer Rich's original written description into evidence. The description is...

Admissible or Inadmissible

Why?

QUESTION 2

Heidi was slightly injured in a routine car accident with a red SUV. Officers Isabel 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, Teddy, an eyewitness, told them that "a half an hour ago, Kay was driving a red SUV and ran the red light and smashed into Heidi's car." This information was recorded in their police report. Heidi sues Kay. Heidi calls Officer Isabel and asks Isabel what Teddy told her at the scene. That testimony is...

Admissible or Inadmissible

Why?

QUESTION 3

Thomas is charged with Grand Larceny in Federal Court for forging checks totaling \$50,000 from the YMCA and then using that money to purchase a retreat in the White Mountains. Thomas testifies, denying he did it and was then cross-examined. He then calls his friend Karen who testified that Thomas is known as a trustworthy accountant and a truthful person. In rebuttal, the Government calls Kaitlyn to testify that she lives in the same town as Thomas, knows his reputation and he is known in the community as a dishonest and untruthful person. Kaitlyn's testimony is...

Admissible or Inadmissible

Why?

QUESTION 4

Nadia sues Amanda for damages as a result of a motor vehicle collision. Nadia calls Ayanna, an eyewitness to testify that she observed the vehicles traveling down Route 93 and saw Amanda's white SUV "speeding at the time of the collision, going at least 75 MPH." The testimony is...

Admissible or Inadmissible

Why?

QUESTION 5

The police charge Brian with the murder of his wife, Ashley. Brian denies he committed the crime and claims he was in Las Vegas at the time the murder was committed. When called by his attorney, Brien takes the stand and proposes to testify that at 4:00 P.M. on the night the murder took place he had 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." Brien's testimony is...

Admissible or Inadmissible

Why?

QUESTION 6

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

Desiree offers evidence that Jade, 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." Jade's statement is....

Admissible or Inadmissible

Why?

QUESTION 7

The Defendant, John, is charged in Federal Court with conspiracy to commit arson. The Government calls John's new wife, Stephany, to testify that before they were married, John confided to her that he and his friend, George, burned the building down. He told her that they did this because his boss was trying to save the business. John objects. Her testimony is...

Admissible or Inadmissible

Why?

QUESTION 8

Lauren is charged with rape and testifies denying she committed the crime. The government then seeks to ask Lauren about her 2012 criminal conviction for misdemeanor larceny by trick. The judge denies the Government's inquiry. The evidence is...

Admissible or Inadmissible

Why?

QUESTION 9

Jesika is charged with possession of cocaine with the intent to distribute. After the arresting officer testifies establishing the chain of custody, 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. Jesika objects. The evidence is:

Admissible or Inadmissible

Why?

QUESTION 10

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

Lisa calls Daodu to testify that he knows Amy very well and she drinks like a fish and frequently is drunk. Daodu's testimony is...

Admissible or Inadmissible

Why?

SECTION THREE

(A) What is the Best Evidence Rule?

(B) What are the unavailability exceptions to the Hearsay Rule?

**EVIDENCE 2020
PROFESSORS COYNE AND DIMITRIADIS**

FALL 2020 EXAMINATION

ID# _____

Truth never damages a cause that is just.
GANDHI

Exam Instructions

Use your ID Number on your response you submit through TWEN.

As a student at MSLAW you are aware of MSLAW's zero tolerance policy for bidding dishonest behavior, cheating, and or form of dishonorable conduct.

During this examination, you must be appropriately attired with the Zoom application open and displaying your name. The camera must be turned on and you must remain in view of the camera during the examination unless you need a brief bathroom break. You agree to comply with the proctor's requests to change the angle or view of the camera. If the camera is turned off or you become no longer visible on camera, other than for a brief bathroom break, then you will receive an F on the exam and the matter will be referred for appropriate disciplinary action.

You must upload your answer through TWEN immediately following the end of 3 hours if you have not already done so. Remote monitoring of your activity will take place throughout the examination and your activities will be recorded for evaluation and further investigation if advisable. You agree to submit your electronic devices for examination if there is any question of inappropriate conduct.

This is a closed-book examination. You may have one blank piece of scrap paper to use for notes you make during the examination. You must display the front and back of that piece of paper to the camera at the beginning of the examination and again, when you finish. You are not permitted to use papers, personal effects, additional electronic devices, or any other means that could provide assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration

of this examination as a closed-book examination. You will face disciplinary charges and likely expulsion if you plagiarize your answers, cut and paste material, confer with others by any means, or violate MSLAW's Honor Code in any way.

If any of these rules are violated, you will receive an F on your examination and disciplinary action will follow.

You are required to inform Dean Sullivan of any information you have of any of your classmates violating the Honor Code. Failure to report any such behavior is a violation of the Honor Code.

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. Write well-structured responses.

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

You have three hours to submit your answer to TWEN using only your exam number to identify you.

SECTION ONE

Evidence Essay Question

Essay Question One

After many months of wearing a FACEFACTS face mask while working at Better Balance sneakers in Andover, Massachusetts, Will Haley of Salem, New Hampshire developed a face rash and nagging cough that wouldn't go away. He decided he should try the extra-large version of the mask and bought more packs of the masks from the same store he goes to, BigPharma Inc., in Lawrence near his work. BigPharma has a drugstore on what seems like every other corner in America. Its advertising slogan is "Where America goes to get drugs and feel better".

The masks made Will sicker. His face rash turned into a permanent discoloration of significant portions of his face with a number of large lumps on it and his doctors informed him that he has throat and lung cancer. Will's wife and 5 young children are devastated.

In investigating this matter through Google and WebMD, Will discovered that FACEFACTS masks are likely the cause of his injuries. FACEFACTS masks are produced for BigPharma by Ivan Enterprises Corp.

The Haleys sue BigPharma and Ivan Enterprises in Federal Court in Boston and this matter is now scheduled for trial in December. There are a number of evidentiary issues that you need to address as the trial judge. What law is important in addressing the arguments that you expect the lawyers to make and how would you rule on the following matters?

1. Testimony from Will regarding his purchase, use, and physical reaction from wearing the masks as well as his lost wages and diminution in quality of life. He also wants to testify about his research on the internet and his findings from that investigation.
2. Will also will be the sponsoring witness for a “Day in the Life” film that shows him needing assistance for his most basic needs like showering and using the bathroom as well as how he must now interact with his children during his daily medical treatments.
3. Testimony from Will’s wife regarding how this has affected their intimacy and relationship. Defense counsel has already indicated that they may subpoena her anyway and if she testifies, they will ask her about her husband’s extensive smoking of marijuana, his conviction three years ago for larceny by trick, her husband’s confidential disclosure to her that “the pesticides in the marijuana may have caused all this” and her having seen him putting dye on his face to further discolor his face.
4. The Plaintiffs’ expert scientist from MIT will explain how his recent research and novel testing methods with face coverings revealed extensive previously hidden dangers and it is likely that the FACEFACTS masks caused Will’s injuries.
5. Defense intends to call their product control officer, Carol Marks, who received a call and an email from Will’s first wife, Stephanie Lauren, who told them that this is all a big scam, Will told her “I’ll pay you the back child support when this scam is over and I hit this lottery with BigPharma. We’ll laugh all the way to the bank.” Will and Stephanie had a bitter divorce after her last conviction for prostitution 7 years ago. Plaintiff intends to ask Carol Marks about her statement to

CNN that” many products are dangerous including ours. FACEFACTS face masks help some people too”.

6. Defense intends to call Will’s neighbor to testify that Will is known in the neighborhood as “that guy, a con man, and a thief. Someone who’ll ask to borrow your nail gun or ladder and then sell them on Craigslist”.

SECTION TWO

State your Ruling as either Admissible or Inadmissible or Permissible or Impermissible and in a sentence or two explain your ruling.

Question 1

On trial for assault and battery, Defendant claims self-defense and seeks to testify concerning the victim's prior violent reputation in support of his self-defense claim that the victim was the initial aggressor in the fight with Defendant. In response, the prosecutor offers evidence of Defendant's reputation for violence. Judge admits all of the testimony.

The evidence is

Admissible or Inadmissible Why?

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 confused and was frequently “not right in the head “over the last few years. Judge allows the nephew to provide such testimony.

The evidence is

Admissible or Inadmissible Why?

Question 3

At trial, while Client is testifying, Attorney refreshes Client's recollection using Client’s journal describing her day-to-day activities following the accident, which

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 or Impermissible Why?

Question 4

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 shot and killed by Defendant before trial. The court admits the testimony.

The evidence is

Admissible or Inadmissible Why?

Question 5

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 allows the information into evidence

The evidence is

Admissible or Inadmissible Why?

Question 6

Doctors at The Free Clinic treated Rich for injuries received in a shooting. Later that week, Officer Kyle spoke to Rich who provided a detailed written description of what happened and the person who shot him. Officer Kyle wrote the description down and then had Rich sign it. In that statement, Rich identifies the Defendant, Jared, as his assailant. Rich testifies at Jared's trial but does not identify Jared as his injuries have

worsened. Government seeks to offer Rich's original written description into evidence. The description is...

Admissible or Inadmissible Why?

Question 7

The police charge Ashley with the murder of her husband, Brian. Ashley denies she committed the crime and claims she was in Las Vegas on the Saturday the murder was committed. When called by her attorney, Ashley takes the stand and proposes to testify that on Monday at 4:00 P.M. when the police met her at the airport upon her return, she immediately told them, "I have no idea what you're accusing me of, I was in Las Vegas all weekend." Ashley's testimony is...

Admissible or Inadmissible Why?

Question 8

Desiree sues the Chili's Bar for injuries suffered in a car crash that happened on route 93 in Andover near the Massachusetts School of Law. Desiree alleges that Ally, a patron of Chili's, caused the crash after consuming too much alcohol at Chili's. Desiree claims that Ally, while drowning her sorrows after reviewing her law school examinations, drank too much liquor at Chili's before the accident.

Desiree offers evidence that Jade, the owner of Chili's, visited her the next night at Mass. General Hospital and said, "I'll pay all your medical bills, this is our fault. We never should have served Ally that much." The statement that they served Ally too much is...

Admissible or Inadmissible Why?

Question 9

The Defendant, John, is charged in Federal Court with conspiracy to commit arson. The Government calls John's ex-wife, Stephany, to testify that while they were married, John confided to her that he and his friend, George, burned the building down. He told her that they did this because his boss was trying to save the business.

John objects. Her testimony is...

Admissible or Inadmissible Why?

Question 10

Jesika is charged with possession of cocaine with the intent to distribute. After the arresting officer testifies establishing the chain of custody, 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. Jesika objects. The evidence is:

Admissible or Inadmissible Why?

SECTION THREE

- (A) What is the scope of cross-examination?

- (B) What hearsay exception requires the declarant to be available?

- (C) When can a lay witness provide opinion testimony?

**EVIDENCE 2021
PROFESSORS COYNE AND DIMITRIADIS**

FALL 2021 EXAMINATION

ID# _____

Truth never damages a cause that is just.
GANDHI

Exam Instructions

Use your ID Number on your response you submit.

As a student at MSLAW you are aware of MSLAW's zero tolerance policy forbidding dishonest behavior, cheating, and/or any form of dishonorable conduct.

The camera must be turned on and you must remain in view of the camera during the examination unless you need a brief bathroom break. If the camera is turned off, then you will receive an F on the exam and the matter will be referred for appropriate disciplinary action.

You must upload your answer immediately following the end of 3 hours if you have not already done so. Monitoring of your activity will take place throughout the examination and your activities will be recorded for evaluation. You agree to submit your electronic devices for examination if there is any question of inappropriate conduct.

This is a closed-book examination. You may use another bluebook for notes you make during the examination. You are not permitted to use papers, personal effects, additional electronic devices, or any other means that could provide assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination. You will face disciplinary charges and likely expulsion if you plagiarize your answers, cut and paste material, confer with others by any means, or violate MSLAW's Honor Code in any way.

If any of these rules are violated, you will receive an F on your examination and disciplinary action will follow.

You are required to inform Dean Sullivan of any information you have of any of your classmates violating the Honor Code. Failure to report any such behavior is a violation of the Honor Code.

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. Write well-structured responses.

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

You have three hours to submit your answer using only your student ID number to identify you.

SECTION ONE

Evidence Essay Question One

Austin K. Fite, a professional skateboarder, from Salem, New Hampshire was hit by a car in a pedestrian crosswalk in Andover, Massachusetts. Fite was stoned at the time of the accident having purchased the potent marijuana at ATG Medicinal Inc., a Delaware corporation with headquarters in Massachusetts.

ATG settled the case prior to suit. Fite sued Lee Mudd, the driver of the Trucking Everywhere Inc. truck that hit him, as well as the Town of Andover after he was struck. A jury found the driver 33% at fault and Town of Andover 67% responsible for maintaining an unsafe crosswalk.

The Defendants appeal several errors they say were made by the federal trial court in Boston. Please discuss the evidentiary issues raised by the following claimed errors.

1. The trial judge excluding evidence Fite was intoxicated and failed to look for traffic before skateboarding into the crosswalk.
2. Prohibiting testimony from Eyewitness who would have testified that Fite never stopped and never looked left or right before skating into the crosswalk.

3. The trial court's exclusion of the report of a routine ER hospital urinalysis that found tetrahydrocannabinol or THC, the intoxicating chemical in marijuana in Fite's blood.
4. The trial court's exclusion of Fite's statement to the ER doctor that he was "high on weed" that day.
5. The trial court's allowance into evidence of police reports about prior accidents at the intersection.
6. The admission into evidence of a surveillance video of the intersection showing Fite thrown into the air upon impact with the truck and his body being mangled as the next car ran over him.
7. The trial court's refusal to receive into evidence the Defendants' animation recreating the accident while Defendants' expert, Dr. Sabrina, was explaining their theory of the cause of the accident.

SECTION TWO

State your Ruling circling either Admissible or Inadmissible or Permissible or Impermissible and in a sentence or two explain your ruling.

Question 1

On trial for murder, Defendant claims self-defense and seeks to testify concerning the victim's prior violent reputation in support of his self-defense claim that the victim was the initial aggressor in the fight with Defendant. In response, the prosecutor offers evidence of Defendant's reputation for violence. Judge admits all of the testimony.

The evidence is

Admissible or Inadmissible Why?

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 the testator was often confused and was frequently “borderline insane” over the last few years. Judge allows the nephew to provide such testimony.

The evidence is

Admissible or Inadmissible Why?

Question 3

At trial, while Client is testifying, Attorney refreshes Client's recollection using Client's journal describing her day-to-day activities following the accident, which 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 or Impermissible Why?

Question 4

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. When Defendant heard what neighbor had been telling people, the neighbor was killed by Defendant before trial. The court admits the testimony.

The evidence is

Admissible or Inadmissible Why?

Question 5

Plaintiff sues Defendant in a slip and fall case. At trial, Plaintiff seeks to introduce evidence that, two weeks after she fell on the sidewalk, Defendant repaired the sidewalk area where Plaintiff fell by filling in the hole and leveling it. Defendant objects. Judge allows the information into evidence

The evidence is

Admissible or Inadmissible Why?

Question 6

Doctors at The Free Clinic treated Rich for injuries received in a shooting. Later that week, Officer Kyle spoke to Rich who provided a detailed written description of what happened and the person who shot him. Officer Kyle wrote the description down and then had Rich sign it. In that statement, Rich identifies the Defendant, Jared, as his assailant. Rich testifies at Jared's trial but does not identify Jared as his injuries have worsened. Government seeks to offer Rich's original written description into evidence. The description is...

Admissible or Inadmissible Why?

Question 7

The police charge Ashley with the murder of her husband, Brian. Ashley denies she committed the crime and claims she was in Las Vegas on the Saturday the murder was committed. When called by her attorney, Ashley takes the stand and proposes to testify that on Monday at 4:00 P.M. when the police met her at the airport upon her return, she immediately told them, "I have no idea what you're accusing me of, I was in Las Vegas all weekend." Ashley's testimony is...

Admissible or Inadmissible Why?

Question 8

Shayla sues the Chili's Bar for injuries suffered in a car crash that happened on route 93 in Andover near the Massachusetts School of Law. Shayla alleges that Bevie, a patron of Chili's, caused the crash after consuming too much alcohol at Chili's. Shayla claims that Bevie, while drowning her sorrows after reviewing her law school examinations, drank too much liquor at Chili's before the accident.

Shayla offers evidence that Luna, the owner of Chili's, visited her the next night at Mass. General Hospital and said, "I'll pay all your medical bills, this is our fault. We never should have served Bevie that much." The statement that they served Bevie too much is...

Admissible or Inadmissible Why?

Question 9

The Defendant, John, is charged in Federal Court with conspiracy to commit arson. The Government calls John's ex-wife, Jennifer, to testify that while they were married, John confided to her that he and his friend, George, burned the building down. He told her that they did this because his boss was trying to save the business.

John objects. Her testimony is...

Admissible or Inadmissible Why?

Question 10

Haley is charged with possession of cocaine with the intent to distribute. After the arresting officer testifies establishing the chain of custody, 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. Haley objects. The evidence is:

Admissible or Inadmissible Why?

SECTION THREE

- (A) What is the scope of cross-examination?
- (B) What hearsay exception requires the declarant to be available?
- (C) When can a lay witness provide opinion testimony?