

**EVIDENCE**  
**FALL 2023 FINAL**

PROFESSORS COYNE AND DIMITRIADIS

Student ID# \_\_\_\_\_

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

Exam Instructions

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## **SECTION ONE**

### **QUESTION ONE**

John and Kathy David of Boston, Massachusetts consult you as a result of a problem they have due to their use of personal hygiene products made by Larry's Razors Inc. John was a successful meteorologist for NBC10 Boston earning over \$150,000 per year until he developed paralysis on the left side of his face prohibiting him from speaking clearly and also affecting many of his daily activities. Kathy David was previously employed as a painter at Andover Country Club where she earned \$75,000 per year but was unable to continue in that role when she suffered a serious infection in her leg resulting in the ultimate loss of the lower portion of her right leg.

Both John and Kathy attribute their injuries to the use of Larry's Razors all purpose shaving cream. Larry's makes razors and personal hygiene products at its factories in Germany and Puerto Rico.

After using Larry's shaving cream for a month or two both John and Kathy noticed a tingling of their skin and a purplish coloration on their skin that went away after 5-10 minutes. The shaving cream left their skin incredibly smooth and provided a nice close shave, so they continued to use the product over the next 3 months. At that time, both recognized that neither the tingling nor purple coloration ever went away and sought help at Massachusetts General Brigham Hospital in Boston. Their treating physician told them to immediately discontinue using the shaving cream, but it was too late. Days later, John developed the paralysis and Kathy's infection caused surgeons to sever her leg to save her life.

Their combined medical bills are over \$100,000 with their long-term medical bills expected to be 10 times that amount. They can't work and will likely lose their condominium in Boston.

Some studies have found a statistical relationship between the shaving cream and the incidence of cancer, but there is no consensus that the two are linked.

In 2022, over 1,000 people in the United States complained to the Food and Drug Administration about Larry's. They claimed Larry's covered up the cancer risk associated with its shaving cream. The company stopped selling the cream in the United States and Canada in 2023. The FDA had determined that, based upon all the evidence presented, the product was highly dangerous and ordered it recalled as the FDA Act was being violated since the product never received approval for use in the way Larry's began marketing the product.

**You represent the Davids regarding these issues.**

**What are your arguments for admission or exclusion on the following matters?**

**What arguments will you have to counter and how will you respond?**

Items of Evidence

1. Video of John doing the weather of NBC10 Boston and also a video of John's daily activities now showing his difficulty in communicating and his greatly disfigured appearance including the purple color of his face.
2. Testimony from a physician who runs the Institute of America's Dangerous Products to testify that he and his staff examined and tested the shaving cream using innovative testing equipment and proprietary methodologies he developed and that examination determined the product contains asbestos, arsenic, and formaldehyde—all known carcinogens and highly harmful to human tissue.
3. The FDA's formal decision finding the product dangerous and recalling the product.
4. Statements in the press and during her deposition where the chief of quality control at Larry's acknowledged the product had injured many people, contained chemicals that should not be found in personal hygiene products, and her belief that the company should have recalled the product "years ago". She was fired

immediately after the deposition concluded and died in a boating accident shortly thereafter.

5. Written complaints about the shaving cream to the FDA from numerous consumers.

6. Before they graduated in 2018, John and Kathy were both a bit wayward during their time in college. John has convictions for driving while intoxicated, possession of cocaine with intent to distribute, and larceny by trick where he was selling baby formula but telling customers it was cocaine. Kathy was charged with a couple of misdemeanors--possession of alcohol and possession of less than an ounce of marijuana.

7. Who would you call and what evidence would you introduce—what are the arguments for and against its admission—on the issue of damages?

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## SECTION TWO

State your ruling as either Admissible or Inadmissible and in a sentence or two explain the legal basis for your ruling.

### QUESTION 1

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

Admissible or Inadmissible

Why?

### QUESTION 2

Melissa was slightly injured in a car accident with a firetruck. Officers Nicole and Matt were called to the scene. Later that afternoon, Darius an eyewitness, told them that the "firetruck ran the red light and smashed into Melissa's car." This information was recorded in their police report. Melissa sues Fire Department.

Melissa calls Officer Nicole and asks Nicole what Darius told her. That testimony is...

Admissible or Inadmissible

Why?

### QUESTION 3

Tradia is charged with Grand Larceny in Federal Court for forging checks totaling \$50,000 from Gloria and then using that money to purchase a boat. Tradia testifies she did not commit the crime. Tradia was vigorously cross-examined and her credibility attacked. Tradia calls her friend Yanique to testify that Nicole is known as a truthful person. The testimony is...

Admissible or Inadmissible

Why?

### QUESTION 4

Morgan sues Kimberly for damages as a result of a motor vehicle collision. Kimberly denies liability. Morgan calls Jared, a witness to testify that he was drinking at the pub across the street and saw Kimberly's car speed through the red light and hit Morgan's car. The testimony is...

Admissible or Inadmissible

Why?

### QUESTION 5

The police charge Damion with the murder of his ex-girlfriend, Jen. Damion denies he committed the crime and claims he was out of state at the time the murder was committed. When called by his attorney, Damion takes the stand and proposes to testify that when the police first contacted him he immediately told them he was away. Damion's testimony is...

Admissible or Inadmissible

Why?

### QUESTION 6

Devon is charged with mail fraud and testifies denying he committed the crime. The government then seeks to ask Devin about his 2020 criminal conviction for mail fraud. The judge denies the Government's inquiry. Judge's ruling is...

Permissible or Impermissible

Why?

#### QUESTION 7

Milan is charged with spousal battery of his wife Diane. The arresting officer proposes to testify that he arrived on the scene as Milan walked away from Diane when a bloody and injured Diane screamed out, "Please help me, it hurts so bad, Milan broke my arm." The arresting officer recorded this in his police report. The Government proposes to offer into evidence the officer's testimony of what Diane said and the police report. Milan objects. Mike and Diane have reconciled, and Diane refuses to testify. The evidence is:

Admissible or Inadmissible

Why?

#### QUESTION 8

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

Jessica calls Jen's ex-husband to testify that Jen confirmed to him on their honeymoon that she had done a terrible thing in getting drunk and crushing Jessica's car. The testimony is...

Admissible or Inadmissible

Why?

Question 9 What is the Best Evidence Rule?

Question 10 Define hearsay and its exclusions as F.R.E. 801 does. (The one you wrote 25 times.)



EvidenceFinalFall2023/Coyne/Evidence



**EVIDENCE 2022**  
**PROFESSORS COYNE AND DIMITRIADIS**

**FINAL EXAM FALL 2022**

**Student ID# \_\_\_\_\_**

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

**Potter Stewart, C.J. of the U.S. Supreme Court**

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## **PART ONE**

### **Evidence Question One**

BUBGR8.com is a reseller of products—second only to Amazon.com in the United States- and a social media titan and the country’s largest resource for those interested in “living their best life.” Jaz Devlino of Salem, Massachusetts, a law professor at U Mass, saw their advertisement about GR8GREENS, a diet drug, that he further investigated through YouTube.

GR8GREENS was described as a “wonder drug” and the company promised “life changing results.” Jaz Devlino of Salem, Massachusetts went to purchase the diet drug and bath salts.

Devlino quickly started to lose significant weight. Tragedy struck when Jaz had a heart attack just 5 months after starting the drug. He has lost sight in his left eye and now walks with a limp. The bath salts also appear to have caused him minor brain damage. His wife Katisha has quit her job as a physician in charge of Massachusetts Medical Center to help nurse him back to health.

After a three-day hearing held after complaints from consumers, the Federal Drug Safety Bureau recalled GR8GREENS and the bath salts for failing to meet certain federal safety and labeling standards. Federal law mandates that all drugs be safe and properly labeled. Violations allow any injured party to sue the distributor and manufacturer in Federal Court for twice the actual damages plus attorney’s fees.

The Devlinos have filed suit in Federal District court in Boston for violations of the statute and negligence claims. The matter is now scheduled for trial.

You are the Devlino's attorney and must address the admissibility or exclusion of the following pieces of evidence.

1. BUBGR8.com's ads both in print and YouTube describing GR8GREENS as a "wonder drug" promising "life changing results."
2. Jaz Devlino's medical records describing his injuries, treatment, billing records, and prognosis for recovery.
3. Testimony from Jaz Devlino's medical expert explaining how medically the drugs and bath salts caused the injuries.
4. Two separate videos of Jaz Devlino. The first one shows him at his daughter's 2nd birthday smiling, laughing with no observable physical problems. The second video shows him at his daughter's 8th birthday party unable to even feed himself and later that day being unable to go to the bathroom or bathe without assistance.
5. Some videos from YouTube where other consumers are shown complaining about the products and displaying their injuries.
6. Evidence that the Defendants propose to offer that Jaz Devlino, while in school 10 years ago, abused drugs and was dependent on cocaine and Adderall throughout law school.
7. Text messages between Jaz and Katisha shortly after he lost sight in the eye describing how a plumbing accident that month might have caused the injury.
8. Jaz Devlino's conviction for conspiracy to commit wire fraud that he perpetrated with a client when he left his law practice 5 years ago.

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## **SECTION TWO**

State your ruling as either Admissible or Inadmissible and in a sentence or two explain the legal basis for your ruling.

### **QUESTION 1**

Doctors at The Free Clinic treated Jim for injuries received in a shooting. Later that week, Officer Rohit spoke to Jim who provided a detailed written description of what happened and the person who shot him. Officer Rohit wrote the description down and

then had Jim sign it and date it under the pains and penalty of perjury. In that statement, Jim identifies the Defendant, Anne, as his assailant. Jim testifies at trial and identifies the Defendant. Government then seeks to offer Jim's original written description into evidence. The description is...

Admissible or Inadmissible

Why?

## **QUESTION 2**

Melissa was slightly injured in a car accident with a red SUV. Officers Isabel and Chris were on scene when it happened and quickly crossed the street. Teddy, an eyewitness, then told them that Kris "was driving a red SUV and ran the red light and smashed into Melissa's car." This information was recorded in their police report. Melissa sues Kris. Melissa calls Officer Isabel and asks Isabel what Teddy told her at the scene. That testimony is...

Admissible or Inadmissible

Why?

## **QUESTION 3**

Nicole is charged with Grand Larceny in Federal Court for forging checks totaling \$50,000 from Meta and then using that money to purchase a convertible. As her first witness, Nicole calls her friend Johana to testified that Nicole is known as a truthful person. The 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 was talking to Courtney about the accident and Courtney told her that she hit Haley's car because she hates her. The testimony is...

Admissible or Inadmissible    Why?

### **QUESTION 5**

The police charge Ed with the murder of his wife, Amy. Ed denies he committed the crime and claims he was in Las Vegas at the time the murder was committed. When called by his attorney, Ed takes the stand and proposes to testify that at 4:00 P.M. on the night the murder took place, he had told his friends at their card game, "I'm leaving right from here to go to the airport as I'm taking the red eye to Vegas." Ed's testimony is...

Admissible or Inadmissible

Why?

### **QUESTION 6**

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

Eddie offers evidence that Beverly, the owner of the 99, visited her the next night at Mass. General Hospital and said, "Ally was too drunk. We will cover your medical bills, it's the least we can do." Beverly's statement that Ally was too drunk 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 ex-wife, Jennifer, to testify that while 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 they hated his boss. Guy objects. Her testimony is...

Admissible or Inadmissible

Why?

### **QUESTION 8**

Carol is charged with robbery and testifies denying he committed the crime. The government then seeks to ask Carol about his 2011 criminal conviction for larceny by trick. The judge denies the Government's inquiry. Judge's ruling is...

Permissible or Impermissible

Why?

### **QUESTION 9**

Paula is charged with spousal battery of her husband Mike. The arresting officer proposes to testify that he arrived on the scene as Paula walked away from Mike when a bloody and injured Mike screamed out "Arrest the b@#ch, she did not have to beat me this bad. She bit the end of my nose off." Arresting officer recorded this in his police report. The Government proposes to offer into evidence the testimony and the report of Mike's statements. Paula objects. Paula and Mike have reconciled, and he refuses to testify. 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 her friend Jessica to testify that she watched Amy in the bar that night and saw her leave. Jessica proposes to testify that "Amy looked drunk to me." Jessica's testimony is...

Admissible or Inadmissible    Why?

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### **PART THREE**

1. What is the scope of cross examination in Federal Court?

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2. What are the unavailability exceptions to the Hearsay Rule?

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3. What is the Best Evidence Rule?

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**EVIDENCE 2021**  
**PROFESSORS COYNE AND DIMITRIADIS**

**FALL 2021 EXAMINATION**

**ID#** \_\_\_\_\_

*Truth never damages a cause that is just.*  
**GANDHI**

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### **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.

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## **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?

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## **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**

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## **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?
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## **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.**

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**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.**

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

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## **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?

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### **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**

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**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.**

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## **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”.

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## **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?

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**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**

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### **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.

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## 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?

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## **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?