Evidence

Fall 2004

Final Exam

Multiple Choice Answers

1. In TV Mexico, Inc. v. Echostar Satellite Corp., a small satellite TV company sued a large one for breach of contract. The defendant counterclaimed, alleging business fraud.

The defendant, Echostar, to support its counterclaim of fraud, wants to introduce into evidence an exhibit, printouts from a website. The printouts show what TV Mexico's website looked like at different dates during early 2004. The exhibit would show that TV Mexico continued to advertise the "Mexico Today" program series as available to its viewers, although the contract period that TV Mexico had to broadcast the program with Echostar had already expired at the end of 2003. Thus, the series was no longer available through TV Mexico. The exhibit is accompanied by an affidavit from Molly Davis, verifying that the Internet Archive Company retrieved copies of the website from its electronic archives.

TV Mexico objects to the admission into evidence of the printouts of the website.

Which of the following is a valid response for TV Mexico to make?

[A] The website images are hearsay statements because they are being admitted for the truth of the matter asserted.

[B] The website images are hearsay and do not fall into an exception to the hearsay rule.

[C] The website printouts violate the best evidence rule.

[D] The affidavit is sufficient to satisfy authenticity requirements, but TV Mexico remains free to raise reliability concerns with the jury.

2. In U.S. v. Olsen, Olsen is being tried for sexual assault. To support his defense, Olsen called to the stand Bernard. Bernard testifies that at the time of the alleged rape, he was taking out garbage to the dumpster in the alley behind his apartment building. He looked up and saw the assailant running down the fire escape ladder outside the victim's apartment window. He say the person who ran from the apartment and Olsen is not that person. On cross-exam, the Assistant U.S. Attorney questions Bernard.

Which of these questions would the trial judge be most likely to sustain an objection to when raised in a timely manner by Olsen's attorney?

[A] "Weren't you terminated from your employment at Fifth Third Bank last month because they found that you were embezzling bank money?"

[B] "Isn't it true that you were under the influence of narcotics, specifically cocaine, at the time you were taking the garbage out to the alley?"

[C] "You were convicted of perjury 12 years ago, weren't you?"

[D] “Isn’t it true you and Olsen have known each other since preschool?”

3. In Paulsen v. Dancoff, Paulsen sues Dancoff for gross negligence. Paulsen was crossing the street inside of a marked pedestrian sidewalk crossing, with the green light, when he was struch by a car driven by Dancoff.

Dancoff stopped his car immediately after he struck Paulsen. He approached Paulsen, who was still conscious. Dancoff stayed with Paulsen until the ambulance arrived on the scene of the accident. While they waited for the ambulance, Dancoff told Paulsen: (1) “This was all my fault. I can’t believe that I ran that red light;” and (2) “Don’t be worried. I’ll pay for all your medical expenses.”

Paulsen sued Dancoff for the injuries he sustained when the car struck him. At trial, Paulsen seeks to testify to the two statements that Dancoff made to him while they waited for the ambulance. Dancoff has objected to this testimony.

The trial judge should:

[A] Admit both statements (1) and (2).

[B] Admit statement (1), but find statement (2) inadmissible.

[C] Find statement (1) inadmissible, but admit statement (2).

[D] Find neither statement is admissible.

4. In Porter v. United Airlines and Boeing, Inc., the surviving husband of a passenger on board a plane sued the airlines and Boeing, the plane manufacturer. The husband alleged that his wife, and all others on board United Flight 1201, died as a result of the defendants’ negligence.

After Flight 1201 crashed, the Federal Aviation Administration, as law requires, investigated to determine the cause of the crash. The FAA report indicated that Flight 1201 crashed as a result of human error. Specifically, it cited the pilot’s negligence.

Mr. Porter wishes to introduce the FAA report into evidence.

Should the judge in this case admit the FAA report?

[A] No, because it determines fault and is too prejudicial to be admitted.

[B] No, because it constitutes hearsay.

[C] No, because it falls outside the business record exception.

[D] Yes, because it is a public record.

5. In Carlton v. Hiram, an adult child, aged 20, has brought a civil sexual assault claim against her uncle for sexual abuse she had suffered at his hands when she was age 9. Carlton had never spoken to anyone about the abuse, but her uncle, Hiram, had. Carlton calls to testify as a witness, a woman that had been Hiram's personal secretary eleven years ago, the time when the alleged abuse was occurring. Sally, the secretary, will testify that Hiram spoke to her and admitted that he had sexually abused his niece, Carlton.

Hiram objects to Sally's testimony. Should the trial judge permit Sally to testify?

[A] Yes, because Hiram's statement, made to Sally, his personal secretary, constitutes an admission by a party opponent and thus may be admitted.

[B] Yes, because prior bad acts may be admitted under an exception to the general rule against admitting character evidence to show conformity.

[C] Yes, because although the acts were allegedly committed eleven years ago, they did not result in a criminal conviction at that time.

[D] No, unless Carlton can produce corroborating evidence to show that Hiram, and not another person, committed the sexual acts.

6. In Bonnessen v. Walmart, the plaintiff brought a negligence claim against Walmart on the basis of a slip-and-fall she took on a slippery floor while doing some last-minute Christmas shopping. The parties dispute whether Bonnessen, who was taken to the emergency room, was conscious and able to speak when she arrived at the emergency room. She had hit her head on the corner of the pre-packaged meat counter when she fell. Bonnessen has located the emergency room nurse's assistant, Nancy, who was working the night that she arrived there and was the first person to see her. The nurs's assistant will testify that Bonnessen was unconscious when she arrived by ambulance to the emergency room. But, Walmart's attorney has objected to letting Nancy testify.

Should the trial judge let Nancy, the ER nurse's assistant, testify?

[A] No, because Nancy is not a physician and thus cannot give an expert opinion about whether Bonnessen was conscious or unconscious.

[B] No, unless Bonnessen can convince the judge that Nancy, in her testimony, will give proper opinion testimony as a lay witness.

[C] No, because the physician-patient privilege belongs to both the patient and the caregiver; Bonnessen cannot on her own waive the privilege.

[D] No, because the dispute over Bonnessen's state of mnind should be left to the trier of fact to resolve based upon the medical records, not Nancy's testimony.

7. Teller was new to the practice of law and at his first trial, he had terrible problems deciding when to object and when to keep his mouth shut. He tried to remember the basics about direct and cross-examination that he had learned in law school. But at trial the questions came too fast and furious; it was hard for him to keep up.

Which question below should have gotten Teller off his chair and to his feet to object that opposing counsel was leading the witness?

[A] During direct examination of his own client, opposing counsel asked his client: "You reside at 221 Robin Hood Lane in Pittsburgh, PA, don't you?"

[B] During direct examination of his own client, opposing counsel asked his client: "Isn't it true you were born on August 23, 1980?"

[C] During cross-examination of Teller's client, opposing counsel asked Teller's client: "You used illegal drugs during college, didn't you?"

[D] During direct examination of his own client, opposing counsel asked his client: "Isn't it true that you observed that the defendant never slowed down as he approached the intersection?"

8. In Parker v. Railroad, the surviving family members of Parker file a wrongful death action against the Railroad. Wallace, an elderly gentleman of 85, sat on his porch swing and observed Parker as he drove past Wallace's house in his pickup truck. Wallace watched Parker drove onto the railroad tracks and then was struck by a train. Wallace is called as a witness for the Plaintiff Parker family at the wrongful death trial. He testifies that he did not hear the train whistle blow before the collision.

On cross-examination, the defense counsel asks Wallace several questions about his limited income and lack of financial resources and suggests Wallace is testifying about the event of the train whistle in exchange for money plaintiff Parkers promised him from any recovery they may achieve.

Plaintiff Parkers now seed to introduce evidence of a statement Wallace made to the ambulance driver who was first on the scene. Wallace told the driver that the train whistle never blew.

Defense counsel objects to use of the statement Wallace made to the driver. The trial judge should:

[A] Admit the statement for the limited purpose of "rehabilitating" Wallace's credibility as a witness.

[B] Admit the statement for the truth of the matter it asserts.

[C] Admit the statement both for rehabilitation purposes and for the truth of the matter it asserts.

[D] Exclude the statement because it was hearsay.

9. In Petrella v. Elder Beerman, Jen Petrella brought an action against Elder Beerman, alleging that an electric coffeemaker, a basic one without an automatic turn off, she purchased from them over heated and set fire to her kitchen and eventually the whole of her house and everything in it. In response, Elder Beerman alleged that the coffeemaker could not have overheated unless Petrella left it turned on when she left the house for work that morning. Therefore, Petrella offers the testimony of her husband, Charlie. Charlie would testify that he has been married to Jen Petrella for ten years. During that time, they have always divided household chores. When they prepare to leave the house together in the morning, Jen turns off the coffee maker and Charlie makes sure the lights are turned off in the house.

Should the judge admit this testimony?

[A] Yes, because prior conduct may be used to show conformity with a particular habit.

[B] Yes, because of evidence of habit may be used to show that a person acted in conformity with that habit on a particular occasion.

[C] No, because Jen and Charlie are spouses, were married both at the time of the fire and at trial, he has an interest or motive to lie because he will share in any recovery against Elder Beerman.

[D] Yes, but only if there is also evidence of habit shown by opinion or reputation rather than the specific conduct evidence offered by Charlie.

10. In U.S. v. Dover, Dover has been charged with assault with a deadly weapon. At trial, Dover's attorney calls Wendall to the stand. Dover's attorney asks Wendall: "What is the reputation for honesty and veracity that Dover has in your community?" But the Government objects before Wendall has a chance to answer.

Should the trial judge allow Wendall to give this testimony?

[A] Yes, because the testimony of reputation evidence is admissible under these circumstances to establish a character trait.

[B] Yes, because Dover's character traits were put in issue by the Government when it pursued the assault charges against him.

[C] Yes, because the testimony is hearsay, but falls into a recognized exception for character and reputation evidence.

[D] No, because the evidence being offered through Wendall's testimony is not relevant to any material issue in the case brought against him.

11. In U.S. v. Dansen, Dansen is charged with arson for hire. The Government alleges that Dansen burned down the old federal courthouse in the downtown area. The Government wants to introduce into evidence the testimony of Federal Agent Frank Allen. Agent Allen will testify that he showed a photo lineup that contained Dansen's photo to a witness, Watson. AAgent Allen will testify that Watson saw the person who ran from the back of the old courthouse just at the time of the fire. And, Agent Allen will testify that Watson selected Dansen's picture from among the others in the photo lineup. Since then, however, Watson has moved out of the country and diligent efforts to secure her return to testify have been unsuccessful.

Should the trial judge permit Agent Allen to testify on these matters?

[A] Yes, because it is a prior identification and thus is non-hearsay.

[B] Yes, because it is a past recollection recorded.

[C] Yes, but only after the Hansen photo in the lineup is properly authenticated.

[D] No, because the testimony is hearsay and does not fall within an exception.

12. In Deaver v. Moore, Deaver, an antiques dealer, sued one of her customers, Moore, alleging that Moore failed to pay her a 20% commission owed Deaver. Moore had asked Deaver to locate an antique wormy American chestnut end table and Deaver agreed to locate one for her. Moore agreed that she would pay Deaver her cost of purchasing the table plus commission. Unfortunately, after Deaver located and purchased the end table, she and Moore disagreed over the commission amount. Moore contended the commission was 15% while Deaver asserted the commission was 20%.

Deaver brings suit and at trial, Deaver introduces photocopies of certain records that she had copied by her assistant; these included dates of sales and prices of antiques located for other purchasers, as well as in previous dealings with Moore. The commission that appears uniformly is 20%.

The evidence that Deaver seeks to introduce is:

[A] Admissible under the business records exception to the hearsay rule.

[B] Admissible as a past recollection recorded.

[C] Admissible as a prior identification and thus not hearsay.

[D] Inadmissible because it violates the best evidence rule. P. 53 PMBR

13. In Peterson v. Donato, Peterson sues Donato alleging his negligence in driving caused the personal injuries he sustained in an automobile collision. At trial, Peterson wants to have Dr. Werner testify. Dr. Werner would testify that as he was examining Donato after the accident, Donato said to him, "Doc, I have this terrible pain in my back and upper neck."

Peterson objects to this testimony. The trial judge should:

[A] Overrule the objection because Donato's statement is hearsay, but admissible as an excited utterance.

[B] Overrule the objection because Donato's statement is admissible as a statement of a then existing mental, emotional, or physical condition.

[C] Sustain the objection because Donato's statement improperly implied the cause of his pain and thus cannot be admitted as a statement made for the purposes of medical diagnosis or treatment.

[D] Sustain the objection because Donato's statement is hearsay and not within any exception.

14. In platt v Wendella Boatlines, Inc., a plaintiff sailboat owner brought a negligence claim against Wendella, a company that operates large boats that tour the Chicago River and the nearby shores of Lake Michigan. Joe Wendella operates the company and has several employees who actually take the boats out and give the tours.

One day around noon, Joe Wendella received a call from the Coast Guard station at Navy Pier. He learned that one of the Wendella tour boats had collided with a large sailboat and while no one was hurt, the tour boat sank. When he heard this news, Joe Wendella hung up the phone and

turned to his office manager and said: "The Wendella II ran into a sailboat at noon. This will doom our insurance rates. And I would lay odds that it was Oliver's fault. That guy is a great boat pilot, but you just can't keep him off the dope. I knew I should have let him go!"

The Coast Guard investigated and found that the large sailboat had run into the Wendella II. Platt, the sailboat pilot, still brought a negligence suit.

At the trial, Joe Wendella's office manager is called to testify as to the statements Joe Wendella made to her after the call from the Coast Guard.

The judge should find her testimony is:

[A] Admissible as an admission against a party opponent.

[B] Admissible as a declaration against interest.

[C] Inadmissible because Joe Wendella has no personal knowledge of the events of the collision between the sailboat and the Wendella II.

[D] Inadmissible because it is character evidence concerning Oliver and used to show that Oliver was acting in conformity therewith on a particular occasion.

15. In U.S. v. Rosenberg, the Government brought a failure to pay taxes claim against Dr. Rosenberg. Rosenberg is a successful plastic surgeon, yet after attending a seminar, determined that the federal government had no constitutional authority to levy taxes upon him. Therefore, Dr. Rosenberg decided that he would no longer pay his federal income taxes and did not pay them for the past three years. Very soon after he was charged with failure to pay taxes, the Government subpoenaed from Rosenberg his private bank records. Rosenberg decided that maybe he did need some help with these charges and so retained an attorney, Ansel. Rosenberg directed the bank to send the bank records to Ansel. When the bank records were not turned over to the Government, it moved to compel production despite Ansel's objections claiming privilege for the bank records.

The trial judge should:

[A] Compel production of the bank records because the bank records, when created, were not confidential.

[B] Compel production of the bank records because their production would not violate the attorney-client privilege.

[C] Deny production of the bank records because to compel them would violate Dr. Rosenberg's privilege against self-incrimination.

[D] Deny production of the bank records because to compel them would violate valid attorney-client privilege that has not been waived

16. In Bettman v. Setter, a real estate buyer is suing a real estate seller. Bettman's problem as buyer includes an issue over the accuracy of the legal description of the parcel of land she purchased. The legal description was originally part of the deed to the property. The deed was written in 1982; one copy was in an attorney's office. The attorney has since died and all efforts to locate the deed in his office and among his records have been unsuccessful. The only remaining record is a microfilm copy made of the 1982 deed. The microfilm of the deed is kept in the County Recorder's Office.

As evidence at trial, the microfilm is:

[A] Inadmissible because it would violate the best evidence rule.

[B] Admissible under the hearsay rule exception of an ancient document because it is over twenty years old.

[C] Admissible as a past recollection recorded.

[D] Admissible to prove the legal description of the property in the 1982 deed.

17. In Patzer v. Dow Chemical, the plaintiff Paltzer is trying to establish that defendant Dow had negligently produced a dangerous product. In an earlier lawsuit against Dow, there had been expert testimony given concerning Dow's production process. Patzer would like to use the expert testimony that was given in the earlier Dow case in his own case against Dow. Dow objects and Patzer wants to establish that the expert who testified earlier is no longer available to testify.

To establish that the expert witness is unavailable, Patzer must show:

[A] The expert witness has died.

[B] The expert witness is alive, but no longer residing within the court's jurisdiction.

[C] The plaintiff has made all reasonable and diligent efforts to obtain the presence of the expert witness.

[D] The expert witness has left the country.

18. In Paulette v. Gene's Cleaners, Paulette sued the Cleaners for the destruction of her great-aunt's antique quilt, valued at $15,000. Paulette had brought the quilt to the Cleaners to have it cleaned so she could use it in her home. But, when the quilt was returned to her, it smelled heavily of wood smoke. She took the quilt to other cleaners in an effort to rid the quilt of this terrible smell. But these attempts proved unsuccessful and the smell remained undiminished. The smell was so bad that Paulette could not use the quilt in her home or on her bed.

At trial, Paulette testified and described these facts. She also identified a quilt as being the quilt that she had taken to the Cleaners. She further stated in court that the quilt still retained horrible wood smoke smell that it had produced when she picked it up after Cleaners had worked on it. Paulette's attorney offered to introduce the quilt into evidence for the purpose of having the members of the jury smell the quilt. The attorney for the Cleaners objected.

The judge should:

[A] Admit the quilt into evidence based on Paulette's testimony.

[B] Admit the quilt into evidence but only if Paulette can present extrinsic evidence sufficient to support a finding that the quilt at trial is the quilt that she had cleaned by Cleaners.

[C] Exclude the quilt from evidence because Paulette's testimony about the quilt has not been impeached on cross-examination.

[D] Exclude the quilt from evidence because it has limited probative value in resolving the dispute and that value would be substantially outweighed by the prejudice that will result from permitting the jury to smell the quilt.

19. In Kendall v. Werner, the plaintiff Kendall brought a medical malpractice claim against his surgeon, Dr. Werner. At trial Dr. Werner called an expert witness, Dr. Eden, to testify about the surgery.

Unfortunately, the judge at trial was singularly unimpressed with Dr. Eden and her expert testimony. After both direct and cross examination for Dr. Eden had been completed, the judge asked Dr. Eden a series of questions. The judge's questions brought out Dr. Eden's shabby medical credentials, an M.D. from an unaccredited medical school, and also asked other questions that tended to undermine Dr. Eden's earlier testimony. Counsel for Dr. Werner objected to the judge's questioning, but the judge overruled those objections. Dr. Werner's counsel made a record of the objection and preserved the issue for appeal.

The jury found for the plaintiff Kendall and awarded him a substantial amount of damages. Dr. Werner's counsel filed a timely appeal. The appeal is based on the assertions that the judge improperly questioned the expert witness, Dr. Eden, and the testimony elicited by those

questions was inadmissible. The brief accurately states that Dr. Eden was the only witness that the judge questioned at the trial.

On appeal, the appellate court should find the testimony given by Dr. Eden in response to the questions by the judge:

[A] Inadmissible because the judge lacks the medical expertise to question Dr. Eden as an expert witness.

[B] Inadmissible because the judge, through her questions, raised doubts about Dr. Eden's credentials as an expert witness.

[C] Inadmissible because the judge questioned a single witness, Dr. Eden, and thus created substantial prejudice a the jury trial.

[D] Admissible because a judge may ask questions of a witness.

20. In Paulson v. Denley, Paulson sued Denley for negligence that resulted in injuries from a car collision. Paulson alleges that Denley was at fault because he sped through the intersection running a red light. An eyewitness for Paulson, Walter Witness, testifies that he had observed the accident and that he observed that Paulson's car was traveling at the slow speed and went though the intersection with a green light.

Denley's counsel seeks to impeach Walter Witness on cross-examination. Of the evidence listed below, which is the court least likely to permit into evidence to impeach Walter Witness?

[A] Testimony from a witness stating that while she was having a drink with Walter Witness last week in a bar, Walter Witness told her that Paulson's light was red.

[B] A certified copy of a record of Walter Witness's conviction for assault and battery dated seven years ago.

[C] A record of arrest for Walter Witness's arrest last week for embezzlement.

[D] A question put to Walter Witness on cross-examination that asks him: "It is true isn't it, that you lied to your employer about your expense account last year when you claimed expenses for a trip to Denver?"

21. In Pilsen v. Donnelly, plaintiff Pilsen, sued defendant Donnelly for negligence. Specifically, Pilsen alleged that while he traveled in his car past Donnelly's home, a dead tree on Donnelly's property fell and crushed him and his car. Defendant Donnelly responds to the claim by alleging

that the tree that fell was not on his property, but was actually on the vacant lot next to his property.

At trial, Pilsen calls Wendy Witness to testify that soon after the ambulance took Pilsin away,, she saw Donnelly cutting down several trees on the vacant lot adjoining his.

Wendy Witness's testimony is most likely to be"

[A] Admissible to show that Donnelly owned the lot.

[B] Admissible to show that Donnelly was negligent in failing to take due care of the trees.

[C] Inadmissible because evidence of subsequent remedial measures are encouraged as a matter of public policy; here, to improve public safety.

[D] Inadmissible because the evidence will not prove conclusively that Donnelly owned the lot.

22. In U.S. v. Davis, the Government charged Davis with armed robbery of a federally insured bank. At trial, the Government offers evidence tending to show that Davis committed two other armed robberies in the year before this current offense was charged. Further, the evidence offered tended to show that Davis committed all three of the armed robberies to support his drug habit.

Defense attorney for Davis objects to admitting this offered evidence. The trial judge should:

[A] Exclude the evidence, unless Davis was convicted of the other armed robberies.

[B] Exclude the evidence if Davis has not testified at the trial.

[C] Admit the evidence, unless the court finds that the probative value of the evidence is substantially outweighed by its prejudicial effect.

[D] Admit the evidence if the Government can establish by clear and convincing evidence that Davis committed the other armed robberies.

23. In Peterman v. Computer Re-Sales, plaintiff Peterman sued Computer Re-sales. Peterman had sent a computer to Computer Re-sales for the company to refurbish and to re-sell. But, Peterman contended that he was not properly credited with all the features on the computer that he sent in properly boxed and labeled. Specifically, the computer had both a disc drive and a CD drive.

Bob Workman, an employee at Computer Re-sales, described the company's process when a boxed computer was received for re-sale. The clerk opening the box would identify the computer and its components. Then another clerk would record this information in the inventory ledger.

Computer Re-sales wants to enter into evidence the original inventory ledger entry concerning Peterman's computer. Workman authenticated the ledger entry. The entry indicates that the computer had a disc drive only. Peterman objects to the admission of the ledger entry into evidence.

The trial judge should find that the ledger entry is:

[A] Admissible, because it is a record of a business transaction and Workman does not have any present recollection of the transaction.

[B] Admissible, because it is a regular company practice for Computer Re-sales to record the computer components in its inventory ledger.

[C] Inadmissible as hearsay within hearsay because the employee recording computer component information into the inventory ledger has no personal knowledge of the comuter component information he was recording.

[D] Inadmissible hearsay because the absence of an entry concerning the CD drive cannot be used as proof that no CD drive was in the computer wihin the box Peterman sent to Computer Re-sales.

24. In U.S. v. Rollin, Rollin is being charged with robbery of a federal post office. At the trial, the Government asks the court to take judicial notice of the fact that at Metro City's latitude, the sun remains in the sky at 5:30 pm EST on June 21, 2004, the date of the robbery. The trial judge takes judicial notice of this fact.

Therefore, the effect of the judicial notice of the fact is that:

[A] The burden of persuasion has now shifted to the defendant Rollin to prove otherwise as to the fact judicially noticed.

[B] The Government's burden of production of evidence for the fact that judicially noticed is now satisfied.

[C] The fact judicially noticed is established beyond a reasonable doubt.

[D] The fact judicially noticed is conclusively established.

25. In Pollard v. Thompson, the plaintiff brought an action based on the death of her husband in an automobile accident. Plaintiff alleges that the accident occurred because the defendant Thompson was driving an RV with a large luggage carrier on top that was not properly secured. The luggage carrier came completely loose, fell off the RV and caused the late Mr. Pollard to swerve into oncoming traffic to avoid it.

At trial, Pollard wants to introduce testimony from a Wilma Witness who was driving her truck on the same highway at the time of the accident. Wilma and Thompson were both using CB radios at the time of the accident. Witness heard another person's voice come on the CB radio. This voice told Thompson that the luggage carrier on his RV was loose and starting to move around. Witness does not know the name or identity of the person on the CB radio who told Thompson about the loose luggage carrier.

Thompson objects to the admission of Witness's testimony. The trial judge should:

[A] Find the testimony admissible for the purpose of notice – to prove that Thompson was notified that the luggage carrier was loose.

[B] Find the testimony admissible for the purpose of notice – to prove that Thompson was notified that the luggage carrier was loose – and aas substantive evidence that the luggage carrier was loose.

[C] Find the testimony inadmissible because the Witness is unable to identify who made the statement that the luggage carrier was loose.

[D] Find the testimony inadmissible because it is hearsay not within any exception.

26. In Patterson v. DeVoe, the plaintiff brings an action alleging breach of contract. The very existence of the contract and the contract's terms are disputed. Patterson's attorney calls him to testify. Patterson's attorney asks questions in an effort to have him testify that at the Third Watch Restaurant on a specific date, Patterson and DeVoe met and reached an agreement and reduced that agreement to writing.

Patterson intends to testify: "The writing we created was later inadcertently shredded as part of a routine business practice. The writing provided that DeVoe would purchase from Patterson 250 pounds of antique brick for a price of $2,000."

The testimony in the quotation marks above will be admitted if:

[A] The jury finds that the writing is unavailable.

[B] The judge finds that the writing is unavailable.

[C] The jury finds that Patterson is accurately conveying the contents of the writing.

[D] The jury finds that Patterson is inaccurately conveying the contents of the writing.

27. In Parsons v. Lotus Room Restaurant, Parsons alleges that he became ill after eating Chinese food at the Lotus Room Restaurant. He became very ill later that evening and attributes his illness to food poisoning. After being out of work for several weeks and still feeling unable to work at a competent level, he sued the Lotus Room Restaurant for damages.

At trial, Parsons wishes to offer the fact that in the month before his dinner at the restaurant, eight other people, all in separate parties, had become ill after eating at the Lotus Room Restaurant for dinner.

If the defendant objects to this evidence, the trial judge should:

[A] Exclude the evidence because it is hearsay and it is irrelevant.

[B] Exclude the evidence, unless additional evidence is offered to show a much greater similarity between the other events and Parson's dinner.

[C] Admit the evidence because it is relevant o show how Parsons became ill.

[D] Admit the evidence because everyone else became ill after eating the dinner, just as Parsons did.

28. in Paul's Remodeling v. Denver, Paul's alleges that Denver failed to pay them for remodeling her kitchen. Denver claims that the job was never completed and the word performed was totally inadequate. At trial, Paul's calls one of its project supervisors, Simpson, to testify about the word that was performed on the kitchen. The judge, Judge Jemson, had a hut feeling that Simpson was misstating the facts and was somewhat unbelievable, although she recognized that some reasonable people could find Simpson reliable.

After Simpson testifies, Judge Jemson should:

[A] Strike the testimony from the record if Judge Jemson believes that the jury would discredit the testimony.

[B] Inform the jury the Simpson testimony is being struck from the record because Judge Jemson found it questionable.

[C] Allow testimony if Simpson's testimony is important element of Paul's defense.

[D] Allow the testimony if Judge Jemson concludes that the Simpson testimony is supported by a preponderance of the evidence.

29. In U.S. v. Dante, Dante is arrested and charged with the murder of Vinson. At trial the Government offers Vinson's statement, made as she lay dying from a bullet wound to the abdomen. Defense counsel objected. The judge called both counsel to the bench to discuss the question of admissibility.

Judge: Government, please proffer what the statement Vinson allegedly made was?

Government: The statement Vinson made, which we would like to introduce is: "I can't believe this! I allowed myself to be shot and by that good-for-nothing Dante!" the statement is a dying declaration.

Defense: Under FRE 804(b)(2), that is not a dying declaration. A dying declaration requires the maker of the statement to be unavailable, the statement be about the circumstances of the death, that the maker believe death was imminent at the time of the statement, and that the statement be made in a homicide or civil case.

Identify the statement below that most accurately describes the admissibility of Vinson's statement:

[A] Vinson's statement is direct evidence of Vinson's death.

[B] The government has an affirmative obligation to offer some evidence that Vinson knew death was imminent before the judge can admit the statement into evidence.

[C] The jury will decide whether Vinson believed death was imminent; therefore, the Government has no further foundational requirements.

[D] The Government must show that Vinson died from the gunshot wound or was unavailable to testify beyond a reasonable doubt.

30. In Pollack v. Dawson, the plaintiff alleges a negligence action arising from a car accident against the defendant. At trial Pollock calls an eyewitness, Edwin, to testify about his observations the morning of the accident at 8:00 a.m. Edwin testified that he ate breakfast at the International House of Pancakes and as he was leaving, he almost immediately observed the accident.

On cross-examination, Edwin is asked: "Isn't it true that on the morning in question you were eating at the Old Timer Pancake House and not at the International House of Pancakes?"

Pollack's attorney objects to this question. The trial judge should:

[A] Disallow the question because it raises issues collateral to the issues in the case.

[B] Disallow the question because it is confusing and unfairly prejudicial.

[C] Allow the question because it is permissible impeachment by a prior inconsistent statement.

[D] Allow the question because it contracts Edwin's testimony.

31. In U.S. v. Darrin, the Government charged Darrin with murder and conspiracy to commit murder. Darrin has raised the defense of "coercive indoctrination" or brainwashing by Darrin's older, more experienced alleged co-conspirator. Under this influence, Darrin was rendered temporarily insane. Darrin calls a psychologist to the stand to testify that in his opinion, Darrin was indoctrinated into this crime by his co-conspirator.

Which statement below best describes his testimony?

[A] The psychologist's opinion's admissibility will turn about whether it is the product of reliable principles or methods reliably applicable to the facts of the case and based upon sufficient facts or data.

[B] The Daubert standard does not apply to fields of study like psychology.

[C] The Daubert test will apply, but the opinion offered will be admissible if it is generally accepted in the field of psychology.

[D] The Daubert test will apply, but only if the study of "coercive indoctrination" is based on novel scientific principles using novel scientific methods.

32. In U.S. v. Dettmer, the Government has charged the defendant with murder. The judge determines that a heasay statement the Government wants to put into evidence against the defendant meets all the foundational requirements of the residual hearsay exception.

As a result, the statement is:

[A] Admissible.

[B] Admissible but only if the statement was made under oath.

[C] Admissible but only if the Government establishes that the declarant is unavailable as a witness.

[D] Inadmissible if the defendant has had no opportunity to cross-examine the declarant and the statement was made in response to a police offer's custodial questioning.

33. In U.S. v. Dalton, the Government charges defendant with attempted murder. Dalton takes the witness stand at his trial as part of his defense.

On cross-examination, the Government asks Dalton, "Isn't it true that you were convicted of tax fraud two years ago?"

The Government's question is:

[A] Permitted to show that Dalton is inclined to lie.

[B] Permitted to show that Dalton is inclined to steal.

[C] Not permitted because tax fraud has insufficient similarity to the crime of attempted murder, the crime Dalton is charged with.

[D] Not permitted because the probative value of the evidence is outweighed by the danger of unfair prejudice.

34. In U.S. v. Dillon, the Government charged the defendant with rape. Dillon raises the defense of consent. The Government seeks to offer into evidence that on three earlier occasions, Dillon had sexual intercourse with three other women. All three of these women claimed rape, but then dropped their charges before trial because they feared that Dillon, a very wealthy man, would try the case in the newspapers and ruin their lives.

The Government's evidence is:

[A] Inadmissible act propensity evidence.

[B] Admissible act propensity evidence.

[C] Admissible if the trial judge concludes a reasonable jury could, by a preponderance of the evidence believe that the three earlier incidents happened and involved the defendant as the three women described.

[D] Admissible if the trial judge is convinced by a preponderance of the evidence that the three earlier incidents happened and involved the defendant as the three women described.