

Evidence Final Exam

Fall Term 2005

Saturday, December 17, 2005

8:30 AM – 12:30 PM

Professor Rebecca Cochran

Directions for Cochran Evidence Exam Fall 2005

This exam is allotted four hours to complete.

All 6 essay questions and 33 multiple choice questions will be distributed at the start of the exam.

You may answer the questions in the order you wish. The 6 essay questions were written to take 30 minutes each to answer. The 33 multiple choice questions were written to take 1 hour to complete all of them. Thus, these are suggested time limits; there are no space or word count limits.

During the exam, you may not have access to the Internet, computer files or any paper materials.

Evidence Essay Questions

Use the Federal Rules of Evidence and relevant case precedent to answer these questions.

Use rules of law from cases when needed to supplement the Federal Rules of Evidence. For example, the Federal Rules of Evidence do not include a specific rule for attorney-client privilege or spousal privileges, but the proposed rules and the notes in the Handbook supplied us with the applicable rules of law concerning privilege to apply to a set of facts.

In your essay answers, you need not cite the Federal Rule of Evidence by number. Rather, you may identify the rule by its label or function. Therefore, you write, "Federal Rules of Evidence govern the proper impeachment of a witness by use of a prior criminal conviction." You need not then cite to Federal Rule of Evidence 609; the descriptive label is sufficient.

In your essay answers, you need not cite a case name, volume number, reporter, or page number for rules of case law you wish to use. But, if it is a well known case, you should refer to it by a party name- for example, Crawford; Daubert.

Evidence Multiple Choice Questions

Use the Federal Rules of Evidence and relevant case precedent to answer these questions.

Choose the best answer among those offered and indicate choice on the Scantron sheet. Only answers marked on the Scantron sheet will be given credit.

QUESTION ONE

Dave Dixon was charged with federal mail fraud in U.S. v. Dixon. The two elements of mail fraud are: [1] a scheme to defraud and [2] a use of the U.S. mails to execute the scheme.

Dixon grew up in the East, but relocated to Moab, Utah, where he develops and sells residential lots in the Navajo Ridge sub-division. He is alleged to have created unique letterhead and brochure designs employing images of the local Native American rock pictures. The Prosecution has letters they allege bear Dave's signature and also have Navajo Ridge brochures. Both the letters and the brochures describe the Navajo Ridge lots as having access to plentiful water by means of a well to be drilled on the lot. When the Prosecution investigated, it found several copies of the same letter and brochures in Dave's office. The folks who invested with Dave also had identical letters and brochures.

Vincent is one of the alleged victims of Dave's alleged fraud. At trial, the Prosecution calls Vincent to testify that the letter and the brochure he received both indicated the water level or table was only 20 feet below the surface and could be reached readily with standard drilling equipment. Vincent also testified that a few days after receiving the mailed letter and brochure, he received a call from a caller who stated he was Dave Dixon. During this phone call, the caller asked if the mailing had arrived and also indicated water was readily available. Defense objected to both statements at trial stating: [1] the Prosecution can't use Vincent's testimony to prove the contents of the letter and brochure; they must introduce the actual letters and brochures, [2] the Prosecution can't let Vincent testify to a phone conversation with a voice who states he is Dave Dixon, and [3] the phone call is irrelevant.

Dave Dixon takes the stand at trial. He tells about his background; how he moved to Utah for a better life. His father was a Scottish immigrant and had never owned land in America. Dave understood the value of a man's word when it came to owning land; he would never lie about something so important. He may have been mistaken about the water level in Navajo Ridge, but he would never lie about it to Vincent.

On cross exam, the Prosecution asks Dave, "isn't true that when you sought a job in 2004 with Coldwell Banker realty that you falsely stated you had a valid real estate license?" Defense objected before Dave answered, arguing that [4] Dave was never charged with anything; the Prosecution is "just fishing" with no reason to think Dave ever did this.

In its rebuttal case, the Prosecution calls William and establishes that William, like Dave, has lived in Moab for the past 15 years; he knows Dave by reputation. The Prosecution asks William to Dave's reputation as a law-abiding citizen. Defense objects, arguing [5] Dave never "opened the door to evidence concerning his character." At the sidebar, the Prosecution states William would testify that Dave has a community reputation as a realtor who would make misrepresentations to prospective clients.

Evaluate the validity of the defense's five objections and predict the likely outcome of the judge's ruling on them.

QUESTION TWO

You are clerking for an appellate judge who is hearing the defendant's appeal in U.S. v. Amidon. At trial, evidence was admitted over defendant's objections. Defendant argues on appeal that by admitting this evidence, the trial court committed plain error requiring that defendant Amidon's conviction be overturned on appeal.

First, the trial judge admitted the statements of the deceased, Nathaniel Burgon. Burgon made statements to a neighbor and also made a statement in response to an inquiry by a police officer who questioned him at the scene of the crime.

Upon hearing gunshots late one night, a neighbor, Elizabeth Cruz, testified that she awoke to see Burgon who had been shot twice in the back, lying bleeding on the sidewalk below her second floor apartment. In response to her inquiry about his condition, [1] he told her "I hurt;" that she should call an ambulance; and that she should get him "something to drink, some Pepsi." After calling for an ambulance, Cruz returned with the soda to find a police officer had arrived. Burgon attempted to drink the soda, but could not. [2] He told them that he was in pain and that he was dying. The police officer, who was unable to communicate with Burgon because Burgon spoke only Spanish and the officer spoke only English, asked Cruz to stay and serve as interpreter while he questioned Burgon. The police asked her to ask Burgon who had shot him. [3] Burgon responded to the interpreter's posing of the police officer's question by stating that the shooter was Amidon, whom he identified by name. Burgon died a few hours later.

Second, the trial judge admitted an autopsy report, although the medical examiner who had conducted the autopsy and prepared the report had died in the interim. Thus, [4] at trial another medical examiner testified; his testimony and the autopsy report were admitted into evidence. He testified about the findings delineated in the report and using the report as a reference, he rendered an opinion as to the cause of Burgon's death. The trial judge observed that the Office of the Medical Examiner is a public office required to perform autopsies in a number of different situations ranging from traffic accidents to suicides and other causes of death. The Office is required to complete and to retain the autopsy reports.

The trial judge admitted all three of the numbered statements above by Burgon; and the testimony of the medical examiner and the autopsy report over the defendant's objections. The jury convicted Amidon for Burgon's murder.

Please assess for each item of evidence: the arguments for and against admitting the evidence, and which side should likely win on appeal on each issue.

QUESTION THREE

Our client, Merideth Janson, came to us two years ago when she started up her practice as a real estate developer and has remained with us. She came to visit me recently and seemed quite determined to sue a large out of state company, Denver Construction Company [DCC]. Janson met with the President of DCC, Bill Denver, in March 2005. Bill Denver's attorney, Sue Anton, also attended. Janson had a property available and she agreed to have DCC build a small, upscale office building on her property. Anton prepared a single, written contract; both Janson and Denver signed the contract. Janson recalls the contract provided that Denver would be paid \$75,000, plus the actual cost of materials and labor. Anton took the original of the contract; no copies were ever made. Janson made a few handwritten notes at the meeting and put them in her office file.

DCC completed the building by September 2005 and Janson paid them in full. The building was designated the Oakbrook Executive Building [the Oakbrook Building] But by early October, a heavy rainstorm—the aftermath of a hurricane further south- hit the area and the roof in the new building had major leaks, causing substantial damage to the inside of the building. Janson quickly called over Allen Reeve. Reeve never finished high school, but Janson knew that he ran the most successful roofing business in town and had installed and repaired dozens of roofs in a long lasting career. Reeve reported to Janson that the roof leaked because of shoddy construction work on it and that he had seen other examples of poor workmanship on three other construction jobs that DCC had done in the area. While inspecting to give the estimate on repairs, Reeve noticed some empty beer and wine bottles in the eaves and near the roof.

Janson also went with her secretary Susan to the Oakbrook Building. Janson and Susan toured the damage; Susan videotaped the ceiling leaks and the damage done to the interior of the building. The next day, Susan, feeling overworked and underpaid, dropped off the videotape, gave notice and then left town. Janson's diligent efforts to locate Susan have been unsuccessful.

Janson arranged a meeting with Denver of DCC and his lawyer, Anton, to settle the dispute over the leaking roof at the Oakbrook Building. At the meeting, Janson learned that the written contract between them had been destroyed in a fire at Anton's law office. Denver argued that the leak was caused by the choice of construction materials, a choice that Janson made. Denver did state at the meeting that a few of his roofers do like to have a bit of alcohol to drink over the lunch hour. On a break from the meeting, Denver and Anton stepped out in the hall, leaving the conference room door ajar. Janson could hear Denver tell Anton: "I know the boys got drunk and botched the job, but she can't prove it; she's got nothing in writing." They returned to the conference room, but no settlement was reached.

We will be filing a claim against Denver and DCC for breach of contract. Do **NOT** address the Parole Evidence Rule as an objection. We want to put into evidence the items listed below. For each item, consider our basis to proffer it, likely objections we will face, and the court's likely ruling.

- [1] Janson's testimony as to her recollection of the contract terms and use of her handwritten notes if her memory falters or if it fails completely.
- [2] the videotape that Susan the secretary took of the leak and the interior damage
- [3] the testimony of Allen Reeve as an expert in construction and repair of roofs to testify as to the cause of the roof damage at the Oakbrook Building
- [4] the testimony of Allen Reeve concerning workmanship other construction jobs performed by DCC
- [5] the testimony of Allen Reeve concerning the empty beer and wine bottles found in the eaves and roof area of the Oakbrook Building
- [6] the testimony of Janson to introduce the statement of Denver during the meeting that some of the roofers like to have a few drinks with lunch
- [7] the testimony of Janson to introduce the statement of Denver, made during a break in the meeting in the hallway, that the boys botched the job on the Oakwood Building

QUESTION FOUR

We are prosecuting a criminal assault case in on the federal docket because the crime charged was committed on an Air force base.

Major Ed Davidson is charged with criminal assault against a woman he had been seeing for several weeks, Mia Vernon. Major Davidson's neighbor, Anne Wickham, overhead loud voices coming from Major Davidson's house next door in the early morning hours last Sunday. Wickham heard Vernon shout, [1] "Stop! Don't leave me here alone!" When the paramedics and military police officers arrived, Vernon was found alone in Davison's house, bleeding from a stab wound in her side. She said to the paramedic, [2] "If I don't make it, don't let Ed get away with this." Once at the hospital for treatment, [3] Vernon told the physician that Ed had stabbed her in the chest with a knife during a terrible argument. While she recovered in the hospital, [4] Vernon gave a signed statement to the police stating that Major Davidson had attacked and stabbed her during a dispute at his house.

When the criminal case against Major Davidson comes to trial, Mia Vernon has reconciled with him. The prosecution calls her to testify. On the witness stand, she flatly denies that Major Davidson was the person who assaulted and stabbed her, and also denies that she has ever said that Major Davidson was her assailant.

Analyze the admissibility of Vernon's 4 statements: our arguments in support of admission including for what purpose[s] the statement would be admissible; what portion[s] of the statement would be admissible; and defense's likely objections.

[1] the neighbor Wickham's testimony that Vernon yelled, "Stop! Don't leave me here alone!"

[2] the paramedic's testimony that Vernon told her: "If I don't make it, don't let Ed get away with this."

[3] the physician's testimony that Vernon told him that Ed had stabbed her in the chest with a knife during a terrible argument.

[4] Vernon's signed statement to the police stating that Major Davidson had attacked and stabbed her during a dispute at his house.

QUESTION FIVE

In Rita's Guardian v. Nursing Home and Aide, Rita, an 85-year old woman with physical and mental disabilities, was a resident at Nursing Home. She suffered an injury when Aide, a nursing aide hired by Nursing Home three months earlier, battered her.

Aide was subsequently indicted for criminal assault. She initially pleaded guilty, but later withdrew the plea and entered a plea of no contest. Aide was found guilty; the judge placed her on probation.

Rita's guardian sued Nursing Home and Aide. The civil complaint alleged that Nursing Home and Aide had committed assault and battery against Rita and that Nursing Home was negligent in hiring and supervising Aide. At the jury trial of the case, the attorney for Rita's guardian offers the following evidence:

[1] The testimony of a former supervisory employee of Nursing Home, based on her personal observations, that Aide was short-tempered and easily irritated by severely disabled residents of Nursing Home.

[2] Testimony that, two months before Aide's assault on Rita, another nursing aide employed by Nursing Home had assaulted another resident.

[3] The testimony of Aide's previous employer, a hospital, that Aide had been disciplined for losing her temper with patients.

[4] Aide's initial guilty plea and subsequent criminal conviction for the assault on Rita.

[5] A letter that Nursing Home had sent to Rita's guardian offering to pay Rita's medical expenses resulting from the assault by Aide.

[6] Testimony that Aide was fired after the assault on Rita and that, immediately thereafter, Nursing Home implemented a new policy requiring full pre-employment background checks and psychological evaluations of all nursing aide job candidates.

At the jury trial of the case, attorney for Nursing Home offers the following evidence:

[7] The testimony of Nursing Home's human resources manager that, although Aide's personnel file has been lost and she has no specific recollection of the result in Aide's case, the human resources manager's consistent practice before hiring a nursing aide was to contact all of a job candidate's prior employers, and to reject any candidate as to whom a prior employer gave information that indicated the candidate was not suited for the position.

Assume that the respective attorneys have properly objected to admissibility of the items of evidence listed above. How should the court rule on each item?

QUESTION SIX

We are working with the Prosecutor's office to finally put Chris Dillard in jail after he spent the last few years keeping federal law enforcement officials busy chasing him.

Two criminal charges are pending in U.S. v. Dillard: a charge of burglary and a fraud charge for a fraudulent investment scheme.

In the burglary charge, Dillard is accused of burglarizing several homes during recent floods of the area. At trial, we learn that Dillard plans to call a friend, Wilma, to testify that at the time of the floods and the burglaries, Dillard was with her on vacation in Las Vegas. We have done some research on Wilma and we have indicated to the court that we will cross examine Wilma and intend to question her about her conviction in 1998 for filing false federal income tax returns. Dillard objects to our planned use of this evidence.

In the fraud claim, we have alleged that Dillard fraudulently induced investors to buy stocks in a fictitious business. The fraud allegations state that Dillard induced Veronica to invest in the illegal scheme. However, in a strange twist, Dillard says that Veronica was the perpetrator of the fraudulent scheme and that Dillard was her victim in the scheme. Dillard will try prove his version of the events by calling Wendell, who will be testifying that Veronica has a reputation in the community for dishonest business dealings.

We would like to call Taylor. Taylor will testify that Dillard has a reputation in the community for dishonesty in his business dealings. Dillard has objected to our notice that we will be calling Taylor.

Please help me respond to both of these objections from Dillard. If possible, we need to convince the judge that:

[1] we should be permitted to cross examine Wilma concerning her tax conviction

[2] we should be permitted to put Taylor on the witness stand to testify about Dillard's reputation in the community for dishonest business practices

For each item, also consider the objections Dillard will raise and if, on balance, we will succeed or not in getting these items admitted.

MULTIPLE CHOICE QUESTIONS

[1] In State v. Franklin, defendant Franklin is charged with forgery. At the trial, defendant Franklin takes the stand to testify. The State wishes to impeach the defendant by introducing into evidence the defendant's arrest record from two years ago for felony aggravated robbery. How should the judge respond to the State's attempt to introduce this evidence?

[A] The judge should find the defendant's arrest admissible only if the judge concludes that the probative value of the arrest outweighs its prejudicial impact.

[B] Because the crime of felony robbery involves dishonesty or false statement, the judge has no discretion and cannot exclude the arrest.

[C] The judge should exclude the arrest because the character for lack of truth and veracity of a defendant who testifies cannot be attacked until the defendant offers evidence of his good character.

[D] The judge should exclude the arrest evidence.

[2] In Boston v. Dryden, the plaintiff sued the defendant in a personal injury action. Boston was riding a bicycle and alleged that due to Dryden's negligence, Dryden's car collided with Boston as he rode his bicycle. To prove that he was not negligent, Dryden wishes to testify at trial that after he collided with Boston, he stopped, got out of his car, walked over to Boston where he lay on the ground and said: "You know, I stopped at that stop sign there, just like I stop there everyday, three times a day-- on the way to work, to lunch, and home again."

This statement:

[A] is inadmissible hearsay.

[B] is hearsay, but admissible as evidence of habit or custom.

[C] is admissible as an admission.

[D] is hearsay, but admissible as an excited utterance.

[3] In Patterson v. Daniels, Patterson sues Daniels for personal injuries arising from a boating collision. As a result of the injuries, Patterson alleges she has lost wages during 2004. Patterson prepared her own tax returns. Patterson gave a copy of her 2004 tax return to Ann, her attorney, so that Ann could advise her about filing the personal injury suit. During the discovery begun early in the litigation, Daniels notices Patterson's

deposition and sends Patterson a subpoena to produce his 2004 tax return. Patterson moves to quash the subpoena, arguing she cannot be compelled to produce the tax return.

The judge would find:

[A] the privilege for income tax return applies.

[B] the Fifth Amendment privilege applies.

[C] Patterson must produce her tax returns.

[D] the attorney –client privilege applies.

[4] In Patient v. Doctor, Patient alleges malpractice against the Doctor. At trial, Doctor takes the stand and testifies. Doctor states that he does not know how many sponges he removed from Patient’s abdomen following the gall bladder surgery, but that the standard operating procedure for such surgery is to have the surgical nurses count all the sponges and notify the surgeon if fewer sponges came out of the abdomen than went in to the abdomen. Doctor testifies that after Patient’s surgery, he did not receive any notice from the surgical nurses concerning the sponges.

Doctor’s testimony is:

[A] inadmissible for lack of Doctor’s personal knowledge of the issue.

[B] inadmissible hearsay.

[C] admissible

[D] irrelevant.

[5] In Plaintiff v. Defendant, a negligence action goes to a jury trial. During direct examination of one of Plaintiff’s witnesses, Wendy, who claims that she saw the whole accident, Defendant’s attorney raises a specific objection to a question asking Wendy to describe what she saw. After extensive argument on the evidence and the objection, the court sustains Defendant’s objection.

Which of the following best reflects what Plaintiff’s lawyer should do next?

[A] Plaintiff’s lawyer should place in the trial record a statement of what Wendy would have testified to if she had been permitted to answer the question asked.

[B] Plaintiff’s lawyer should move on to the next question.

[C] Plaintiff's lawyer should ask the court to have the record reflect Plaintiff's disagreement with the court's ruling, and move on to the next question.

[D] Plaintiff's lawyer should cease the examination of Wendy because continuing with the examination will create a risk that an appellate court would find that Plaintiff impliedly waived the right to appeal the court's ruling.

[6] In State v. Guthrie, Guthrie is charged with the burglary of a rare and antique book store. At trial, the State calls Officer Wendell to testify. Wendell testifies that after Guthrie had been taken into custody and read his Miranda rights, Guthrie told the assistant prosecuting attorney on duty that he would like to plead guilty to a lesser charge.

Officer Wendell's testimony is:

[A] inadmissible hearsay.

[B] inadmissible because the statement was an offer to compromise a claim.

[C] admissible hearsay.

[D] admissible if the judge finds the evidence's probative value substantially outweighs any prejudicial effects.

[7] In State v. Northern Oil Corporation, the state of Alaska sues the Northern Oil Corporation [Northern] and seeks an injunction against it. The state seeks to compel Northern to finish the clean up of harm caused when a Northern oil tanker ran into a dock and ruptured the tanker, spilling millions of gallons of oil into the bay and beaches around it. The state wants to show that Northern does not intend to resume its clean up operations once spring comes to the area. The state wishes to offer into evidence the statement of Northern's public relations officer. As fall ended and winter approached, the officer held a press conference and announced, "Northern's job here is done! We have restored the beaches and the bay to a status that is better and cleaner than before the oil spill!"

What is the best argument for the state to advance in support of admitting the public relations officer's statement?

[A] The statement is hearsay, but admissible as an excited utterance.

[B] The statement is hearsay, but admissible as a declaration against interest.

[C] The statement is admissible as an authorized admission.

[D] The statement is not hearsay because it is not being offered for the truth of the matter asserted.

[8] In State v. Carter, Defendant Carter is charged with child molestation. Carter, however, claims that he is not the person who committed the crime. To prove that Carter was the person who committed the molestation, the State wishes to offer evidence that several years earlier, Carter molested another child. Carter objects to this evidence.

Which of these statements is most correct?

[A] The evidence is admissible to prove the *modus operandi* used to molest children and thus to prove that Carter is the molester in this case.

[B] The evidence is admissible unless the court finds that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

[C] The evidence is admissible regardless of the balance of probative value and unfair prejudice.

[D] The evidence is inadmissible character evidence.

[9] In State v. Carter & Dunham, the defendant business partners were charged with participating in a fraudulent investment scheme.

Earlier in Parker v. Dunham, Parker, an investor who lost a great deal of money had sued Dunham, alleging misrepresentation in an investment purchase. At that trial, Parker testified about the investment scheme and identified Dunham as the person who had lured her into investing her life savings. Parker died before the criminal charges were filed.

At the criminal trial, the State wants to call a newspaper reporter, Walters, who was in the courtroom at the civil trial when Parker testified, to testify about Parker's civil trial testimony.

Walters' testimony recounting Parker's civil trial testimony is:

[A] hearsay, and is inadmissible against both Carter and Dunham because it does not satisfy the former testimony exception because of the "similar motive" requirement of the former testimony exception.

[B] hearsay, and inadmissible against both Carter and Dunham because it is not offered in the form of a trial transcript.

[C] hearsay, and admissible against Dunham, but not against Carter.

[D] hearsay, and admissible against both Carter and Dunham.

[10] In State v. Dalton, the State charges Dalton with aggravated assault of Vernon. At trial, Dalton calls William. William testifies that he has lived in the same residential neighborhood as Dalton for the past 20 years. Further, William testifies that Dalton has a reputation in the community as a peace loving and gentle person. On cross-exam, the State wants to ask William if he has heard that Dalton had once started a fight at Ben & Jerry's on free cone day. The State acknowledges that although there were stories about Dalton's involvement in the Ben & Jerry's fight, it was actually someone else who was involved in that fight. Dalton objects to this proposed cross examination.

How should the court rule on Dalton's objection?

[A] The court should sustain the objection because the question should be framed as "did you know," not "have you heard."

[B] The court should sustain the objection because Dalton was not involved in the Ben & Jerry's fight.

[C] The court should sustain the objection because the question concerns a specific instance of conduct.

[D] The court should overrule the State's objection unless the court determines that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

[11] In U.S. v. Dirksen, Dirksen has been charged with murder. At trial, the Prosecution puts the police officer who investigated the murder on the stand. The Prosecutor shows the officer a photo of the murder scene that was taken by the police photographer. The photo shows the murder victim lying on the garage floor in a pool of blood. The Prosecutor asks the police officer, "Is that a fair and accurate representation of the scene as you found it when you arrived?" The officer answers, "Yes."

The photograph of the murder scene:

[A] is admissible.

[B] is inadmissible because it is cumulative evidence; the officer is available to testify.

[C] is inadmissible, unless the police photographer can be called to authenticate it and that the chain of custody can be established.

[D] is a violation of the Original Writing rule.

[12] In State v. Dutton, the State prosecutes Dutton for the “date rape” of Vera. Vera had agreed to go out on a date with Dutton to attend X-Fest and then have a late dinner at Dutton’s apartment. Dutton admits having sexual intercourse with Vera, but alleges that Vera consented. To prove Vera’s consent, Dutton offers evidence that Vera had consensual sexual relations with several of the men that she has dated in the past two years. The State objects to this evidence.

The court should:

[A] The court should sustain the State’s objection because the evidence offered was in the form of specific instances of conduct, rather than in the form of opinion or reputation.

[B] The court should sustain the objection because Dutton, the accused, may not use character evidence to support his defense of consent in a rape charge.

[C] The court should overrule the objection because the court must admit the evidence in order to preserve a defendant’s Constitutional right to present a defense.

[D] The court should overrule the objection because the evidence is admissible as non-character evidence to prove a pattern of behavior on Vera’s part, which tends to suggest she consented on this occasion also.

[13] In State v. Home Nurse, the State charges Home Nurse with murder for the death of Patient, by poison. Home Nurse denies the charge, and at trial, Home Nurse takes the witness stand and testifies. Home Nurse also calls two of her long time nursing colleagues as character witnesses who attest to her peaceful and non-violent character. The State establishes that Home Nurse makes a living by caring for patients in her home facility. The State also proves that Home Nurse has only one or two patients in her care at a time. The State calls several witnesses to testify that on three prior occasions, patients in Home Nurse’s care have died from suffocation. Home Nurse objects.

How should the court rule?

[A] The court should sustain Home Nurse’s objection unless the State can prove Home Nurse’s guilt in each of the three prior offenses.

[B] The court should overrule Home Nurse’s objection because the State’s evidence is admissible to impeach Home Nurse.

[C] The court should overrule Home Nurse’s objection because this evidence is admissible to prove Home Nurse’s guilt through the use of the “doctrine of chances.”

[D] The court should overrule Home Nurse’s objection because this evidence is admissible to rebut the evidence offered by Home Nurse’s character witnesses.

[14] In Spellman v. Driver, Plaintiff Spellman brings a claim for wrongful death. Plaintiff Spellman's adult daughter was driving Spellman's car when she was killed in a car collision with Driver. To prove that Driver was traveling at a speed in great excess of the posted 25 miles an hour, Spellman wants to offer into evidence several color photographs that were taken at the scene of the collision. The photographs show that the impact of the collision was great; Spellman's car is reduced to a twisted chunk of metal half its original size. There are visible blood stains visible through the windshield in the photographs. Driver wishes to stipulate that he was traveling at least 60 miles per hour at the time and moves that the court should exclude the photographs. Spellman refuses to accept Driver's stipulation and persists in her effort to have the photographs admitted into evidence.

How should the court rule?

[A] Trial courts typically exclude gory photographs because they tend to invite unfair prejudice by working on the jury's passions against a defendant, the court could and should exclude them, even absent the Driver's offer to stipulate to his speed.

[B] Because the photographs provide the jury with a greater understanding of the collision and the accident, the court should deny the Driver's motion to exclude and allow Spellman to offer the photographs into evidence.

[C] Because the proposed stipulation would provide the jury with the same facts as the photographs, the court should grant Driver's motion and exclude the photographs.

[D] Because a party may prove its case with any otherwise admissible evidence and may never be forced to accept a stipulation, the court should grant Drivers motion and exclude the photographs.

[15] In Porter v. Darrow, the Plaintiff, Porter, sues Darrow for damages, alleging negligence. Porter was driving home after consuming many drinks at the Study Pub. While driving, he was overcome by the effects of the alcohol and fell unconscious behind the wheel and his car run through a red light at an intersection. Darrow, driving his car, struck Porter's car in the intersection. The impact of the collision aroused Porter and he left his car and staggered, bleeding and dazed, over to Darrow. Darrow thought that Porter's condition was caused by the collision and said: "I am so sorry; this was my fault. I wasn't paying attention. But don't worry; I'll take care of your medical bills. Just send them to me." Porter was treated for minor injuries at the nearby hospital and released.

Porter sues Darrow and offers the testimony of Wendy, who was prepared to testify that after the accident, Darrow calmly stated to Porter: "I was not paying attention. I'll take care of all your medical bills." Darrow timely objects to this offer. Should the judge admit Darrow's statement?

[A] No, if the judge determines that Porter was negligent per se.

[B] No, because Darrow's statement is an offer to settle.

[C] The judge should admit that statement "I was not paying attention," but exclude the statement, "I'll take care of your medical bills."

[D] Yes, because it is an admission by Dane.

[16] In U.S. v. Davis, Davis is charged with murdering Vincent. Vincent was murdered by someone who lay in wait outside of Vincent's house one evening. It was raining hard and quite dark. The murderer shot Vincent when Vincent returned home. The same evening as the murder, Davis went out alone. When Davis returned an hour after he had left, his wife, Wendy and her friend from work, Ashley, were at his home watching American Idol. Wendy noticed that Davis's clothes were wet and his shoes had left muddy prints down the hallway carpet. At the time of the murder trial, Ashley has left for Japan where she is teaching English. The Prosecution wants to have Wendy testify as to what she saw at her home that night. Wendy is willing to testify, but her husband, Davis objects.

How should the judge rule?

[A] The judge should sustain the objection based on the privilege for confidential communications between spouses.

[B] The judge should sustain the objection based on the privilege against adverse spousal testimony.

[C] The judge should sustain the objection based on both privileges.

[D] The court should overrule the objection.

[17] In U.S. v. Drew, the defendant is charged with distribution and sale of drugs, specifically, cocaine. Drew is alleged to have sold a large quantity of cocaine to William. William is a familiar purchaser to Drew and other drug dealers because he has been addicted to cocaine for many years. Recently, however, William had broadened his career path and also became a confidential police informant. Therefore, at the trial, the Prosecution will put William on the witness stand to testify that he purchased a substance from Drew; he used the substance he had purchased from Drew; and that the substance he purchased from Drew was, in fact, cocaine.

William's opinion testimony is:

[A] Admissible because this is a lay person's opinion; but the court should instruct the jury to receive the opinion with caution.

[B] Admissible because this is permissible expert opinion testimony.

[C] Inadmissible because the substance speaks for itself and constitute the best evidence of the substance's identity.

[D] Inadmissible because William's testimony is improper lay opinion.

[18] In U.S. v. Dawson, Dawson is charged with a murder that took place in Dayton, Ohio. At trial, however, Dawson takes the stand and testifies that at the time of the murder, he was in Brazil on a business trip. On cross-examination, the Prosecution seeks to impeach his credibility and asks Dawson, "Isn't it true that when your lawyer first interviewed you at the police station following your arrest, that you told your lawyer you were in Dayton at the time of the murder?"

Dawson's lawyer leaps up and shouts, "Objection! That is protected by attorney-client privilege!"

The trial judge should:

[A] sustain the objection.

[B] overrule the objection because Dawson, the client, owns the privilege, not the attorney, and must assert it.

[C] overrule the objection because the Prosecutor's question goes only to Dawson's credibility as a witness and not to establish the fact that he was in Dayton at the time of the murder.

[D] overrule the objection, because the attorney-client privilege protects only the confidential communication, not the information within it.

[19] In U.S. v. Daniels, the defendant is charged with murder of his ex-wife. Daniels is accused of poisoning the red wine that his ex-wife and he were drinking at his home one evening. The Prosecution alleges that Daniels had grown tired of the substantial spousal support payments he had to pay to his former wife and thus determined to murder her.

At trial, Daniels calls to the stand the medical examiner who performed the autopsy on his ex-wife. The examiner is asked about the cause of the ex-wife's death: "The cause of her death was unknown- isn't that true?" The medical examiner answers: "No, she died from poisoning; she ingested poison." Daniels' attorney persists and asks: "But didn't

you sign the death certificate that states the cause of her death was unknown?" The Prosecutor jumps to her feet and shouts, "Objection!"

The judge will find that the last question was:

[A] Permitted because the medical examiner's testimony will be more reliable when it is directed to a written opinion like the death certificate

[B] Permitted because a party may impeach his own witness.

[C] Not permitted because a party cannot impeach its own witness by using a prior inconsistent statement.

[D] Not permitted because the medical examiner has not been qualified as an expert in poisoning and poison's effects on the body.

[20] In Patterson v. Dinsmore, Patterson sued Dinsmore over a car accident and alleged that Dinsmore had been speeding through a red light just before the car crash. Waters, a witness to the crash, testified that he observed the accident and that Patterson had been traveling at a low speed and had the green light at the time of the accident.

The court **is least likely to allow** which item of evidence below to be used to impeach the credibility of Waters as a witness:

[A] A certified copy of a conviction for felony assault and batter that is dated from seven years earlier.

[B] A witness's testimony that last month, while drinking at a bar, Waters had told her that the light he saw was red at the time of the accident.

[C] A stamped court record showing Waters' arrest last week for embezzlement.

[D] The question, asked on cross-exam: "Isn't it true that you falsified expenses on your employer's travel account last year on your trip to Dayton?"

[21] In Peterson v. Dover Farms Resort, a minor plaintiff, through his father, sued in negligence. The child, Patty Peterson, was five years old and went to a family farm resort style vacation resort. The parents and Patty spent a week on a working farm. One day when Patty was feeding the pigs, one of the pigs broke through a weak spot in the fence and crushed and injured Patty. Patty and her father Paul went together to talk about the incident with Attorney Anders and consider different options. Ultimately, Paul Peterson decided to bring suit against Dover Farms and retained Attorney Bowman to handle the case.

At trial, Dover Farms' counsel calls Attorney Anders to testify about his conversation with Paul Peterson about the pig incident and Patty's condition. Attorney Bowman objects. The judge will rule that the testimony is:

[A] Admissible, because the presence of a third party during an attorney-client communication destroys the privilege.

[B] Admissible, because Attorney Anders may testify because he is not representing Paul Peterson at trial.

[C] Inadmissible, because any statements concerning Patty's medical condition were not made to facilitate her medical treatment.

[D] Inadmissible, because the attorney-client privilege precludes the testimony.

[22] In U.S. v. Dutton, the defendant is charged with murder. The murder was alleged to have been the result of repeated violent blows to the victim by means of a large hammer. Defendant Dutton denied any and all association with or involvement in the alleged murder. At trial, he calls Wallace to the witness stand. Wallace testifies that, in his opinion, Dutton is a nonviolent and peace-loving man.

If the Prosecution attempts to offer the following items of evidence, which of the four will the court be most likely to find admissible?

[A] the Prosecution calls one of Wallace's neighbors who will testify that Wallace has beaten his wife and children on several occasions.

[B] the Prosecution calls a police officer who will testify that Dutton has a general reputation in the community as a violent person.

[C] the Prosecution calls one of Dutton's neighbors to testify that Dutton has a reputation in the community for being untruthful.

[D] the Prosecution presents evidence that Dutton has a prior conviction for aggravated assault and battery.

[23] In U.S. v. Dittmer, the defendant is charged with armed robbery. The Prosecution requests that the judge take judicial notice of the fact that at Dayton, Ohio, on June 21, 2005, at 5:00 PM EST, the sun was still up in the sky. The judge states that she will take judicial notice of the fact. As a result of the judge taking judicial notice of this fact:

[A] The fact judicially noticed is now conclusively established.

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

[C] The burden of persuasion now moves to the defendant to rebut and prove otherwise the fact judicially noticed.

[D] The Prosecution's burden of production of producing evidence of the fact judicially noticed is met.

[24] In U.S. v. Davidson, the defendant was charged with murder. The indictment alleges Davidson pushed Vernon into an open manhole on the street early on a Monday morning. Several people were on the street at the time and some of them were eye witnesses to the event. Officer Oliver arrived at noon and was able to locate and interview some of the witnesses. He could remember interviewing one woman, Willow, but later he could no longer remember her name or what it was she had told him that day. But he did have his notebook that day and he wrote down the statement as Willow was speaking to him.

At trial, Officer Oliver brought the notebook with him and the Prosecution asked him to read Willow's statement from it to the jury. Defense counsel objected. The trial court should:

[A] sustain the objection because Willow's statement is classic hearsay and not within any exception.

[B] overrule the objection because the statement is an excited utterance.

[C] overrule the objection because the statement is a past recollection recorded.

[D] overrule the objection because Officer Oliver's notebook is a business record

[25] In Paulsen v. Donnell, Paulsen is suing Donnell for injuries he suffered as a result of Donnell's alleged negligence. While he was walking on the sidewalk past a vacant lot, Paulsen was struck in the head and seriously injured by a rotten, falling tree limb. The limb came from a tree located on a vacant lot next to Donnell's property and the lot appeared to be a part of Donnell's property. Paulsen sued Donnell, alleging negligence in care of the tree. But Donnell's defense was that the City, not he, owned the vacant property and the tree growing on it.

At trial, Paulsen calls Waldo to testify that soon after Paulsen was taken to the hospital for emergency care Donnell was seen cutting down rotten tree limbs off several trees on the vacant lot.

Waldo's testimony will most likely be:

[A] Admissible to assist in showing that Donnell owned the lot.

[B] Admissible to assist in showing that Donnell was negligent in failing to remove the rotten tree limbs sooner.

[C] Inadmissible because the evidence will not prove that Donnell owned the lot.

[D] Inadmissible because subsequent repairs such as this are encouraged for reasons of public policy, such as public safety.

[26] In U. S. v. Durham, the defendant is charged with robbing the Fieldhouse Bar and its patrons, while wielding a gun, on December 2 at 3:00 PM. At trial, Durham calls as a witness his friend, Wanda. Wanda will testify that she was having breakfast with Durham at First Watch around 9:30 AM on December 2. As they left the restaurant that morning, Durham said to Wanda, "I'm dreading the rest of this day because I am going to a birthday party for my mother-in-law this afternoon at her condo in Lincoln Village."

Should the judge allow Wanda's testimony?

[A] No, it is irrelevant.

[B] No, it is hearsay and does not fall into any exception.

[C] Yes, because it is hearsay but it falls within an exception and thus is admissible.

[D] Yes, because it is not being offered to prove the truth of the matter asserted and thus is not hearsay.

[27] In Packer v. Damon, Packer is suing over major injuries he suffered when his car was struck by Damon's 16 wheeler truck. Packer alleges that Damon fell asleep at the wheel of the truck during a cross-country drive and had driven all night at the time of the crash. At trial, Damon called his partner, Carl, who testified that he drove with Packer and had been in the truck at the time of the crash and had driven the truck for several hours that night while Parker slept. Then, Parker called Carl's girlfriend, Wendy. Wendy testifies Carl told her that he had the stomach flu and had been unable to get out of bed to drive the week end that the accident occurred.

Wendy's testimony should be found:

[A] Admissible, but for impeachment purposes only.

[B] Admissible for impeachment purposes and also as substantive evidence as a statement of physical condition.

[C] Inadmissible because this type of impeachment can be achieved only through cross-examination.

[D] Inadmissible because Packer had to first give Carl an opportunity to explain or deny the statement made.

[28] 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.

[29] In Patton v. Two Men and a Truck [TMT], Patton sued a local moving company. True to its name, TMT always sent two employees to perform a moving job: a van driver and a helper. The driver was to drive the truck, load, and unload cargo. The helper was to load and unload cargo and to assist the driver as needed. Daniels was employed by TMT as a driver and Henry was his helper. While Daniels and Henry were transporting furniture in a TMT van, Daniels failed to stop at a stop sign and crashed into a car driven by Patton. Patton was severely injured.

Patton sued TMT, alleging negligence on the part of one of its employees. At trial, Patton wants to introduce evidence of a written statement by Henry. Henry's statement is that when the accident occurred, Daniels was dialing his cell phone and was not watching the road ahead of him. Henry's written statement should be admitted if:

[A] Henry takes the stand and testifies that Daniels was dialing his cell phone at the time of the accident.

[B] Henry is unavailable to testify.

[C] Henry's statement was given under oath at a trial or other proceeding.

[D] Evidence is introduced to establish that Henry is an employee of TMT and that his written statement is within the scope of his employment.

[30] 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 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 true you observed the defendant never slowed down as he approached the intersection?"

[31] In Pollock 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 true that on the morning in question you were eating at the Old Timer Pancake House and not at the International House of Pancakes?"

Pollock'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 contradicts Edwin's testimony.

[32] In Patzer v. Dow Chemical, the plaintiff Patzer 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 that:

[A] The expert witness has died.

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

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

[D] The expert witness has left the country.

[33] In Pitman v. City of Oakwood, the plaintiff is a former employee of the City of Oakwood. Pitman worked as the Environmental Engineer for the City of Oakwood for many years. However, Pitman was terminated from his position when the Director of City Services learned that Pitman had been convicted of selling prescription drugs illegally. Thus, Pitman brought suit in federal court under a federal statute, 42 U.S.C. § 1983, alleging that he had been discharged with out notice or a hearing and therefore his constitutional right to due process had been violated. This allegation satisfied the pleading requirements under the statute. At trial, Pitman called the City Attorney for the City of Oakwood as an adverse witness. The City Attorney objected and raised the attorney-client privilege.

The court's ruling will be based on:

[A] the law of the forum state, Ohio.

[B] the federal common law.

[C] either the federal common law or the state law depending on which is more likely to support a finding that the evidence is admissible.

[D] the court determining, within its discretion, whether to apply federal common law or Ohio state law.