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**ESSAY**

<table>
<thead>
<tr>
<th>QUESTION ONE</th>
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<td>QUESTION TWO</td>
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<tr>
<td>SHORT ANSWER QUESTIONS (1-11)</td>
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You are limited to two (2) bluebooks for your answers. If more than two bluebooks are submitted, only the first two will be considered for credit.

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**PLACE THE EXAM INSIDE YOUR BLUE BOOK AND HAND IN BOTH.**
ESSAY QUESTION ONE

Ross left her longtime lover, Robinson, because he just kept her hangin’ on and refused to stop in the name of love. One week later, it was the third of September, Ross met Ruffin, who said that with Ross, he had sunshine on a cloudy day. Ross tried to resist Ruffin because she couldn’t figure out why fools fall in love, but Ruffin told Ross the way she swept him off his feet, you know she could have been a broom. Finally, Ross began a romantic relationship with Ruffin and told him that there ain’t no mountain high enough to keep her from him. Ruffin said to Ross that to have a girl like her was truly a dream come true and that he was ready to touch her in the morning.

When Robinson learned about Ross and Ruffin, he became angry. Robinson confronted Ross outside her home and told Ross there were some things that she didn’t understand now, and that Robinson could feel the presence of another man. Ross told Robinson she was staying with Ruffin and refused to reconcile. Robinson said to Ross, “I know you wanna leave me, but I refuse to let you go.” Ross told Robinson love is here and now you’re gone. Robinson became enraged and told Ross to take a good look at his face and she would see his smile seems out of place. Ross told Robinson to set her free and get outta her life, and walked away, but Robinson shouted that Ross really had a hold on him.

Ross and Ruffin planned to be married a month later. One week before the wedding, Ruffin was given a bachelor party by his friends, Kendricks and Gaye. The party was to be held at the Psychedelic Shack, an upscale bar and grill with screamin’ guitars and a thousand colored lights. Robinson learned about the party a day in advance and called his friend, Franklin, and Franklin said, “Let’s rob the Psychedelic Shack tomorrow night.”

“We need one more guy,” said Franklin. “How about Williams?” Although they had never met, Robinson called Williams and said, “This is Robinson. Franklin and I are gonna rob the Psychedelic Shack tomorrow night. Franklin said you might want to come along.” Robinson then hung up without waiting for a reply, not realizing that he had gotten Williams’ answering machine. Williams showed up half an hour later and agreed to participate in the plan. Franklin drew a diagram of the interior of the Psychedelic Shack showing the location of the safe. He made two copies of the diagram on a portable photocopier and gave a copy each to Robinson and Williams. They all agreed to meet before the bachelor party to carry out the plan. “I’m also gonna take care of Ruffin at the same time,” said Robinson. “If there’s a smile on my face, it’s only there to fool the public.”

The following night, Robinson, Williams and Franklin broke into Ruffin’s bachelor party. Ruffin was seated next to Kendricks, and Gaye was toasting Ruffin by saying how sweet it was to be loved by Ross. The three intruders walked up to Ruffin with guns drawn. “What’s goin’ on?” asked Gaye. “We heard it through the grapevine that you would be here,” snarled Robinson. “Ain’t that peculiar?” replied Gaye. “I second that emotion,” said Robinson.
Robinson walked over to Ruffin and said, “I’ll bet you’re wonderin’ how I knew, about your plans to make me blue here tonight.” Ruffin replied, “No, that’s just your imagination.” Williams and Franklin then went to the office and robbed the safe. When finished, they returned to the party where Robinson held the group captive, by keeping his gun pointed at Ruffin. “Can’t we work this out? I ain’t too proud to beg because I can’t get next to you,” Ruffin said to Robinson, as he choked back a sob. “Get ready,” replied Robinson. “I heard a cryin’ man is only half a man with no sense of pride. Besides, I know a man ain’t supposed to cry.” “But these tears I can’t hold inside,” wept Ruffin. “I’ll see to it that you never get Ross. Of all the fellows in the world, she belongs to me,” said Robinson.

Just as Robinson was ready to pull the trigger, police burst into the room and the crowd began to scatter. Ruffin and Robinson were both shot but Williams, Franklin, Gaye and Kendricks joined forces and escaped with all the money from the Psychedelic Shack. Reports have surfaced that they don’t need no money, fortune or fame, because they got all the riches baby, one man can claim. Ruffin recovered, married Ross, now whenever they’re near, the both hear a symphony, a tender rhapsody, or at least, a sweeter song than the birds in the trees, and continue to experience endless love.

As Robinson lay dying, he was approached by a police officer, Gordy, who said, “Why did you do this?” Robinson answered, “Because Ross made my life so rich, you know she could have been some money.” “But, your wounds are serious,” said Gordy. “and when you die, all you’ll leave us is alone.” “OK, I’ll make a statement,” said Robinson. “Williams planned this whole thing. I’ll get even with him when I get well. Now go call Cagle, my lawyer.” “Where do I find Cagle?” asked Gordy. “Wherever he lays his hat is his home,” replied Robinson, before slipping into a coma. “I’ll tell Ross someday, you’ll be together, even if it’s too bad you couldn’t shop around to keep your freedom for as long as you can now. Guess your future is kind of Smokey,” said Gordy.

Thanks to several Miracles, surgeons saved Robinson’s life. Franklin and Williams were captured. Williams was granted immunity for his testimony. Williams made his deal by telling the prosecutor, “Every night on my knees I pray, dear Lord, hear my plea.” Franklin escaped, reunited with Kendricks and Gaye, recovered his share of the money from the Psychedelic Shack, and is somewhere making it rain whenever he wants it to, and livin’ forever if he so desires.

Cagle was indicted for writing this question, but he is still at large, torturing doctors and insurance companies while succumbing to Temptations, and wishing he had learned significantly more about guitar licks, lyrical composition, and five-part harmony, and significantly less about when to blitz if the guards pull on third and long, bilateral salpingo-ophorectomies and expert witness fee schedules.

At the criminal trial of Robinson held on December 8, 2009, the following occurred:
1. Ross was called to testify that Robinson said, "I know you wanna leave me but I refuse to let you go."

2. On cross-examination, Ross was asked if she was having sexual relations with Ruffin.

3. Williams testified that Robinson left a telephone message which said, "This is Robinson. Franklin and I are gonna rob the Psychedelic Shack tomorrow night. Franklin said you might want to come along."

4. Williams was asked on cross-examination if he had been fired from a job with ABC Corporation for cheating on his expense account.

5. On cross-examination, Williams was asked, "Isn't it true that you were convicted of burglary in 2001?"

6. The diagrams of the interior of the Psychedelic Shack were introduced into evidence.

7. Photographs of the crime scene were introduced into evidence.

8. Gordy testified that Robinson said, "Williams planned this whole thing. I'll get even with him when I get well."

Dr. Moe Towne was called as an expert witness.

9. Towne testified that he is a plastic surgeon who has developed psychic powers which allow him to observe a person speak and determine by the number of times the person blinks his eyes whether the person is telling the truth. The Court accepted Towne as an expert witness and so instructed the jury.

10. Towne testified that, in his opinion, Williams had not told the truth because he blinked his eyes too many times. The Court ruled that Towne's truth determination technique was a proper and acceptable scientific test that was admissible.

11. Towne was asked on cross examination if he was being paid to act as an expert witness in this case.

ASSUME THAT ALL APPROPRIATE OBJECTIONS WERE MADE IN EACH INSTANCE.

DISCUSS IN COMPLETE DETAIL WHETHER EACH OF THE FOREGOING SHOULD BE ADMITTED INTO EVIDENCE, GIVING YOUR REASONS FOR AND AGAINST.
ESSAY QUESTION TWO

Plaintiff was a passenger in an automobile that collided with a vehicle driven by Defendant. The police were called to the scene and the police officer administered several field sobriety tests to Defendant. After the completion of the tests, Defendant was not cited for driving while under the influence of alcohol.

Plaintiff brought suit for damages and alleged that Defendant was drunk at the time of the collision. At trial, Plaintiff’s counsel called Plaintiff as a witness and asked him the following questions:

1. Didn’t your doctor tell you that your arm was permanently damaged as a result of this collision?

2. What, if anything, did you hear Defendant say to the police officer at the scene of the collision?

3. Tell us whether or not Defendant was drunk when he collided with the vehicle in which you were riding.

4. Didn’t you receive an academic scholarship to college after you graduated from high school?

5. Plaintiff was then shown a copy of the police report and was asked if he had ever seen it before. After answering yes, Plaintiff’s counsel asked Plaintiff, “Would you please tell the jury what the police report says about who was at fault in causing this collision?”

ASSUME THAT ALL APPROPRIATE OBJECTIONS AS TO EACH QUESTION WERE MADE BY OPPOSING COUNSEL. HOW SHOULD THE COURT RULE ON EACH OBJECTION?

Plaintiff’s counsel then called Defendant to the stand and asked the following:

6. You were drunk when you collided with the vehicle in which Plaintiff was riding, weren’t you?

7. Isn’t it true that you were convicted of perjury 9 years ago?

8. You were fired from your last job for cheating on your expense account, weren’t you?

Plaintiff’s counsel then called Able, a co-worker of Defendant, to the stand and asked the following:
9. Didn't Defendant tell you on the afternoon of the collision, that he was going out to "hit all the bars and get really blitzed", because he was depressed about losing his job?

10. Didn't Defendant get fired for cheating on his expense account?

11. What is Defendant's reputation in the community for telling the truth?

ASSUME THAT THE APPROPRIATE OBJECTIONS WERE AGAIN MADE TO EACH QUESTION. HOW SHOULD THE COURT RULE ON EACH OBJECTION?

SHORT ANSWER QUESTIONS

You are to evaluate the following out of court statements to determine their admissibility at trial. After you have made your determination, indicate whether each statement is HEARSAY, NOT HEARSAY, or A RECOGNIZED HEARSAY EXCEPTION. IF AN EXCEPTION, YOU MUST ALSO IDENTIFY THE APPROPRIATE EXCEPTION. In addition, you must also discuss the reasons for your decision and your answers must be based upon the Federal Rules of Evidence.

1. Action for adultery against husband by wife. Wife offers evidence that a house guest after a visit had accurately described a birthmark on Husband's buttocks to a friend. The existence of the mark had previously been testified to by Wife, while Husband had previously testified that only his parents and Wife knew of the birthmark.

2. Action for paternity. Evidence from the Plaintiff that the Defendant referred to the child as "My son."

3. Criminal trial for murder. Defense claims self-defense and introduces a witness who will testify that before the killing, Defendant told him he was afraid of the victim.

4. Hearing to determine the sanity of Davis. To prove sanity, evidence is offered to show that Davis was confined to a psychiatric ward.

5. To show defendant was home, and therefore could have killed his wife, the prosecution calls Wife's lover, who testifies that when Husband was gone, Wife always pulled down the shade in the living room, but when Husband was home, the shade was always open. The prosecutor then calls a neighbor who testifies that on the night the murder occurred, the shade was open.

6. Criminal trial for robbery of State Bank. Statement by the defendant to his brother on the day before the robbery, "Able and I are going to hold up the State Bank tomorrow."
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8. Action against a hand surgeon for malpractice. Plaintiff claims his hand is so disabled that he cannot write or hold eating utensils. At trial, Defense introduces a note in the Plaintiff's handwriting dated one week before the trial started. The note states: "I can't meet you on Thursday because I'm getting ready to testify next week."

9. Action for negligence after a car crash. Plaintiff testifies that while at the emergency room, he saw the defendant being treated and yelled, "There's the damn fool who hit me!"

10. Action for murder. Witness testifies that she was speaking with the victim on the telephone at the time of the incident, and he told her that the defendant walked in and looked really angry.

11. Action for products liability for a defective light fixture that caused bodily injury from a house fire. Electrician testifies, "A month before this fire, I told the Plaintiff this light fixture was made by the XYZ Company."
MASSACHUSETTS SCHOOL OF LAW
EVIDENCE
CLOSED BOOK FINAL EXAMINATION
DECEMBER 11, 2007
PROFESSOR TIMOTHY CAGLE

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ESSAY
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PLACE THE EXAM INSIDE YOUR BLUE BOOK AND HAND IN BOTH.
ESSAY QUESTION ONE

Corleone owned an olive oil importing business, which law enforcement officials suspected was a front for a criminal organization, known on the street as a "family." One day, Corleone's chief advisor, Hagen, known as the "Consiglieri", was contacted by Sollozzo, who requested a meeting to discuss the distribution and trafficking of illegal drugs. Sollozzo, who was known as "the Turk", was supposedly very good with a knife, and claimed to have the poppy fields and processing facilities necessary to produce illegal drugs. Corleone was known for his powerful political influence, someone who carried all the judges and politicians in his pockets like so many nickels and dimes.

One week later, on October 1, 2003, Corleone, Hagen, Sollozzo, and Corleone's eldest son, Santino, nicknamed "Sonny", met at Corleone's office. Sonny was Corleone's chosen successor to take over the "family" business if Corleone became unable to function.

The meeting was not successful. Corleone refused to make a deal with Sollozzo. Several weeks later, on December 10, 2003, Corleone was shot as he shopped for fresh fruit. An ambulance arrived and took him to St. Timothy the Refused Offeror Hospital, where Corleone was treated by Dr. O.K. Bendova.

As Corleone lay gravely wounded, Sollozzo confronted Hagen outside a department store and forced Hagen to drive with him to Sollozzo's headquarters. After they arrived, the following conversation occurred:

Sollozzo: "Your boss is dead. We got him with six shots outside his office. Now, it's up to you to make the peace between me and Sonny."
Hagen: "Sonny will come after you with everything he's got."

Meanwhile, Corleone's youngest son, Michael, went to the hospital to visit his father. While standing outside the hospital, Michael was struck brutally in the face by McCluskey, a police captain. The punch was witnessed by Enzo, a family friend who had avoided repatriation to Italy and was now working as a baker.

Two days later, Hagen, Santino, Michael, and two of Corleone's most trusted buffers, or liaison "family" members, Clemenza and Tessio, met. At the meeting, the following occurred:

Santino: "Sollozzo wants a meeting. Can you imagine the nerve on him? He craps out when he shot Pop and now he wants to meet!"
Hagen: "I think we should hear what they have to say."
Santino: "No, Consiglieri, I don't. No more meetings, no more negotiating, no more Sollozzo tricks. You send them a message. I want Sollozzo. And do me a favor, no more advice on how to patch things up. Just help me win."
Michael: "We can't wait. Sollozzo is gonna kill Pop. Set the meeting. It will be me, Sollozzo and McCluskey. They'll search me when we first meet, so I can't have a weapon. But, if Clemenza can find a way to hide a gun, then I'll kill them both."

Later that week, Santino, Hagen, Michael, Clemenza and Tessio met at Santino's home. The following occurred:

Santino: "The meeting will occur at Louie's Restaurant."
Hagen: "Is the information reliable?"
Santino: "I was told this by my man in McCluskey's precinct. A police captain has to be on call 24 hours a day. McCluskey signed out at that number between 8 and 10."

Later that night, McCluskey and Sollozzo were murdered at Louie's Restaurant by a single gunman. The gunman dropped the gun on his way out and was whisked away in a dark sedan. One week later, Michael Corleone was indicted for the murders of Sollozzo and McCluskey.

At trial held on December 16, 2006, the following occurred:

1. Hagen was called to testify that he was contacted by Sollozzo who allegedly said to him in September, 2003, "I want to meet with Corleone to discuss a deal for us to distribute illegal drugs."

2. Hagen then testified about Sollozzo's statement, "Your boss is dead. We got him outside his office."

3. Hagen then testified about Michael's statement, "If Clemenza can figure a way to hide a gun, I'll kill them both."

4. On cross-examination, Hagen was asked: "Isn't it true that you were convicted of burglary in 1995?"

5. Enzo was called to testify about witnessing Captain McCluskey strike Michael.

6. Clemenza testified that Michael was with him on the evening Sollozzo and McCluskey were shot. On cross-examination, Clemenza was asked, "Isn't it true that you and Michael belong to the same crime family and that you work for his father, Vito Corleone?"

7. Dr. O. K. Bendova testified on direct examination that Corleone had told him that Sollozzo shot him, and he would get even with Sollozzo when he recovered.

8. The check for the dinner at Louie's Restaurant was introduced into evidence by the prosecution.
9. Photographs of the crime scene, which included the dead bodies of Sollozzo and McCluskey, were introduced into evidence.

10. The defense then called Barzini as a witness. Barzini testified that he is a psychiatrist who has developed psychic powers which allow him to observe a person speak and determine by the number of times his eyes blink per minute whether or not he is telling the truth. The Court accepted Barzini as an expert witness and so instructed the jury.

11. The Court allowed Barzini to testify that in his opinion, Hagen had not told the truth when he testified because Hagen had blinked his eyes too many times. The Court then ruled that Barzini's truth determination technique was a proper and acceptable scientific test that was admissible.

ASSUME THAT ALL APPROPRIATE OBJECTIONS WERE MADE IN EACH INSTANCE.

DISCUSS IN COMPLETE DETAIL WHETHER EACH OF THE FOREGOING SHOULD BE ADMITTED INTO EVIDENCE, GIVING YOUR REASONS FOR AND AGAINST.

ESSAY QUESTION TWO

Plaintiff was a passenger in an automobile that collided with a vehicle driven by Defendant. The police were called to the scene and the police officer administered several field sobriety tests to Defendant. After the completion of the tests, Defendant was not cited for driving while under the influence of alcohol.

Plaintiff brought suit for damages and alleged that Defendant was drunk at the time of the collision. At trial, Plaintiff's counsel called Plaintiff as a witness and asked him the following questions:

1. Didn't your doctor tell you that your arm was permanently damaged as a result of this collision?

2. What, if anything, did you hear Defendant say to the police officer at the scene of the collision?

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4. Didn’t you receive an academic scholarship to college after you graduated from high school?

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8. You were fired from your last job for cheating on your expense account, weren’t you?

Plaintiff’s counsel then called Able, a co-worker of Defendant, to the stand and asked the following:

9. Didn’t Defendant tell you on the afternoon of the collision, that he was going out to “hit all the bars and get really blitzed”, because he was depressed about losing his job?

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- QUESTION TWO 25 %
- SHORT ESSAY QUESTIONS (1-5) 25 %

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ESSAY QUESTION ONE

Instead of staying home alone, Pesci and his girlfriend, Lisa, went to see the film, "My Cousin Vinny", which was playing at the Goodfellas Theater. After arriving at the theater, Pesci tripped and fell on a worn carpet located on the stairway leading to the balcony. Pesci brought suit against the Goodfellas Theater, alleging that they were negligent in not properly maintaining the premises. Goodfellas has defended this action by denying that Pesci fell or injured himself at the theater, or, if he did, it was not the result of the negligence of the theater.

At trial held on December 17, 2002, the following occurred:

1. Pesci testified on direct that the rug at the Goodfellas Theater was defective at the time he tripped.

2. The exact time of Pesci's fall was a key issue at trial. Pesci was wearing a gold Rolex watch that kept accurate time to the millisecond. During the fall, Pesci claims that the Rolex was damaged. As a result, the hands of the watch were imbedded in a position which indicated a time of 8:25 P.M. Pesci's attorney introduced the watch as evidence of the time that the fall occurred.

3. On cross-examination, Pesci was asked: "Isn't it true that you were convicted of insurance fraud in 1994?"

4. Lisa testified that after Pesci fell, she helped him get into his car and then drove him to the hospital. On cross-examination, Lisa was asked, "Haven't you been having sexual relations with Pesci during recent months?"

5. Dr. Kevorkian testified as a witness for the theater. Kevorkian testified on direct examination that a day before the alleged occurrence, Pesci had called him at his house and reported that he had fallen in his bathtub and that later that day, upon physical examination by Kevorkian, the doctor had found that Pesci had sustained a broken arm, and that it was the same arm that Pesci was now alleging that he had broken in his fall at the theater.

6. Spielberg, the manager of the theater, testified that over 20,000 persons used the stairway in question during the six months before and after the alleged date of Pesci's injuries, and that except for Pesci's complaint, no one had either complained about the condition of the stairway or reported falling thereon.

7. Two weeks prior to the fall, Goodfellas had placed an order for new carpeting to be installed in its theater. The new carpeting was installed one week after Pesci claims he was injured in the fall.
8. Counsel for the theater introduced a series of photographs depicting the area in which the alleged fall occurred. These photographs were taken by a professional photographer approximately one month after the incident.

9. Counsel for the theater then called DeNiro as a witness. DeNiro testified that he was a plastic surgeon who had psychic powers that allowed him to accurately predict the future. The Court accepted DeNiro as an expert witness in his field and so instructed the jury.

10. DeNiro testified that he has developed a new technique for determining whether or not a person is telling the truth. The technique consists of a laser-enabled sensor pointed toward a person, and activated while the person is speaking. The sensor converts the voice level of the person speaking to a ratio of red blood cells to white blood cells. An elevated white cell count during speech indicates that the person is not being truthful.

The Court allowed DeNiro to testify that in his opinion, Pesci had not told the truth when he testified. The Court then ruled that DeNiro’s truth determination technique was a proper and acceptable scientific test that was admissible.

ASSUME THAT ALL APPROPRIATE OBJECTIONS WERE MADE IN EACH INSTANCE.

DISCUSS IN COMPLETE DETAIL WHETHER EACH OF THE FOREGOING SHOULD BE ADMITTED INTO EVIDENCE, GIVING YOUR REASONS FOR AND AGAINST.

ESSAY QUESTION TWO

Plaintiff was a passenger in an automobile that collided with a vehicle driven by Defendant. The police were called to the scene and the police officer administered several field sobriety tests to Defendant. After completion of the tests, Defendant was cited for speeding but was not cited for driving while under the influence of alcohol.

Plaintiff brought suit for damages and alleged that Defendant was drunk at the time of the collision. At trial, Plaintiff’s counsel called Defendant as a witness and asked him the following questions:

"Isn’t it true that one year prior to this collision, you were convicted of drunk driving?"

"You were drunk when you collided with the vehicle in which Plaintiff was riding, on the day of this collision, weren’t you?"
"You were fired from your last job for cheating on your expense account, weren’t you?”

"Isn’t it true that after the collision, Plaintiff said to you, ‘This was all your fault because you ran the red light,’ and that you looked down and the ground and remained silent?”

"Didn’t you tell your friend, Able, on the afternoon of the collision, that you were going out to “hit all the bars and get really blitzed”, because you were depressed about losing your job?”

ASSUME THAT THE APPROPRIATE OBJECTIONS WERE MADE TO EACH QUESTION. HOW SHOULD THE COURT RULE ON EACH OBJECTION?

SHORT ESSAY QUESTIONS

1. This is an automobile negligence case. A witness testifies during his deposition that he was in a bar with the defendant a few days after the collision and the defendant told him: "I can't believe I fell asleep behind the wheel during the accident." At trial, defense counsel moves to bar the admission of this testimony on the grounds of hearsay.

HOW SHOULD THE COURT RULE? EXPLAIN YOUR ANSWER.

2. This is a kidnapping case. At a preliminary hearing, a witness testifies that a woman ran out of the apartment where the kidnapping occurred yelling: "X has a gun and he grabbed Y. He's been threatening to do this for weeks now." Defense counsel moves to preclude this statement at trial on the grounds of hearsay.

HOW SHOULD THE COURT RULE? EXPLAIN YOUR ANSWER.
3. This is a civil battery case. Plaintiff claims that her boyfriend drugged her and that she had to be treated for a drug overdose at the hospital. The emergency room record contain plaintiff's statement: "I drank some LSD. My boyfriend put the LSD in my drink." The defendant moves to exclude this statement on the grounds of hearsay.

**HOW SHOULD THE COURT RULE? EXPLAIN YOUR ANSWER.**

4. This is a criminal trial for murder. Defense claims self-defense and introduces a witness who will testify that before the killing, Defendant said to him: "I am afraid of the victim." The prosecution objects to the admission of this statement on the grounds of hearsay.

**HOW SHOULD THE COURT RULE? EXPLAIN YOUR ANSWER.**

5. This is a negligence action against an airline manufacturer after a fatal plane crash. On the issue of survivorship, evidenced is offered that at the crash site, investigator heard the victim (plaintiff who was dead on arrival at the hospital) cry out, "Help me, I think my leg's broken!" Defense counsel objects to this evidence on the grounds of hearsay.

**HOW SHOULD THE COURT RULE? EXPLAIN YOUR ANSWER.**
This is a three hour examination. Assume that the Federal Rules of Evidence apply to all questions. Your success on the essay portions of this examination will depend on your careful analysis of the questions and the structure of your answers. There will be no credit given for extended treatises on the areas of the law presented by these questions, and you should, therefore, avoid any rambling discourses. However, you should discuss with adequate particularity the issues and the applicable law for each question.

Questions will be weighed as follows:

MULTISTATE QUESTIONS (1-17)  33 1/3%  
ESSAY/SHORT ANSWER  
  SHORT ANSWER QUESTIONS (1-11)  33 1/3%  
  ESSAY QUESTION ONE  33 1/3%

No materials of any type are to be used in this examination. Nor are you to discuss this examination with students from the other sections unless all examinations have been completed by all sections. Nor should you discuss this examination with a student who has not taken this exam during its regularly scheduled time because of an excused absence. Infractions of the above will subject any students involved to disciplinary action which shall include expulsion from MSL.
INSTRUCTIONS:

1. MULTIPLE CHOICE(1-17)
   
   A. READ EACH QUESTION THOROUGHLY AND CHOOSE THE BEST ANSWER

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2. WHEN FINISHED, CHECK TO MAKE SURE YOUR SOCIAL SECURITY NUMBER IS ON THIS TEST BOOKLET AND YOUR BLUE BOOK.

3. PLACE THE EXAM INSIDE YOUR BLUE BOOK AND HAND IN BOTH.
EVIDENCE
CLOSED BOOK EXAMINATION

1. Devlin was injured during a fall at a garage sale, while buying a tie that Rorschach had hand-painted while tripping on hepatitis C vaccine. After the cheering subsided, Devlin was taken to the hospital for treatment. At trial, Devlin's counsel called Devlin's personal physician, O. K. Bendova, who treated Devlin after the accident. Bendova read the notes which he wrote in Devlin's hospital record before taking the witness stand. On the stand, he is asked what he observed about these injuries, and testifies about Devlin's physical condition without referring to the hospital record.

If the defendant moves to strike the answer, the trial judge should:

a. allow the motion because the hospital record is the best evidence of the plaintiff's injuries

b. allow the motion unless the plaintiff also offers the notes themselves into evidence

c. deny the motion because the doctor's testimony is admissible as past recollection recorded

d. deny the motion because the doctor is testifying from present memory which has been refreshed

2. Corleone was accused of arson. At trial, Corleone's daughter, Constanzia, testified that on the day of the fire, her father was visiting her in a neighboring state. On cross-examination, the prosecutor asked Constanzia, "Isn't it true that you testified before the grand jury that you did not know where your father was on the day of the fire?" Constanzia denied the testimony.

The prosecutor then sought to introduce evidence of Constanzia's grand jury testimony. Corleone's attorney objected. The court should rule the evidence is:

a. admissible on the issue of Constanzia's credibility only

b. admissible to impeach Constanzia's testimony and for use as substantive evidence

c. inadmissible unless Corleone had the opportunity to cross-examine Constanzia during the grand jury proceeding

d. inadmissible as violative of grand jury secrecy requirements
3. After the Weld family purchased a house from the Cellucci family, the Weld family discovered the plumbing was defective. The Weld family was advised that the majority of the interior walls would have to be torn down in order to correct the problem. The Weld family has alleged that the real estate broker and the Cellucci family knew of the condition and actively concealed the defects. The Cellucci family contends that the plumbing is not defective and has worked properly since the house was built in 1968. At trial, the defendants seek to have a letter written by the contractor admitted. The letter was written during construction and concerned the plumbing in the house. The court should rule the letter is:

   a. inadmissible, because it is hearsay falling within no exception

   b. inadmissible, because it is not the best evidence of when the house was built

   c. admissible, because it is an ancient document

   d. admissible, if the author is present and subject to cross-examination

4. Yearwood sued Oslin for conversion of an automobile, alleging that the automobile was loaned to Oslin by McIntyre, Yearwood's grandmother, and that Oslin has knowingly asserted ownership and control over it. McIntyre died intestate in the interim, leaving Yearwood as her sole heir. In her defense, Oslin offered into evidence a handwritten note which purported to be a bill of sale by which the signer acknowledged receipt of a stated sum in return for the automobile. The note was signed, "McIntyre." Prior to moving that the note be admitted, Oslin called Loveless to testify that she had sold furniture to McIntyre four times in the past five years, that McIntyre had paid by signed personal check each time, and that the signature on the note appeared to be McIntyre's signature.

Which of the following most accurately describes the minimal finding which the trial judge must make to admit the note into evidence?

   a. The judge need make no finding; the question of authenticity is decided solely by the jury.

   b. The judge must find that there is sufficient evidence adduced regarding the signature that a reasonable juror could conclude it was McIntyre's.

   c. The judge must find that, by a preponderance of evidence, the signature is McIntyre's.

   d. The judge must find that, as a matter of law, the signature is McIntyre's.
5. Coyne was indicted for the murder of Velvel by poison. At trial, the prosecutor calls the county coroner, Dr. Coppola, who is a board-certified pathologist, to testify that, in accordance with good medical practice in his specialty, he has studied micro-photographic slides made under his supervision by medical assistants, of tissue taken from Velvel's corpse. Furthermore, it is Coppola's opinion, based on that study, that Velvel died of poisoning. The slides have not been offered in evidence.

Dr. Coppola's opinion should be:

a. excluded, because the cause of death is a critical issue to be decided by the trier of fact.

b. excluded, because his opinion is based on facts not in evidence.

c. admitted, because Coppola followed accepted medical practice in arriving at his opinion.

d. admitted, because his opinion is based on matters observed pursuant to a duty imposed by law.

6. Sleazy, counsel to the plaintiff, is conducting the direct examination of his client, Rip Off. After Rip's memory about an important meeting is exhausted, Sleazy hands Rip a summary of that meeting prepared by Rip and Sleazy prior to trial. Rip then completes direct examination using the summary. Before commencing cross-examination, Angel, attorney for the defendant, asks Rip to deliver the summary to him. Upon objection from Rip's attorney, the trial judge should:

a. permit the inspection because Rip relied upon the document in direct examination.

b. permit the inspection because Sleazy's conduct in helping the witness is unethical.

c. deny the inspection because it is the work product of the attorney.

d. deny the inspection because of the attorney-client privilege.

7. In a civil suit by Starkis against Malaguti, Malaguti called Bell, a chemist, as an expert witness and asked him a number of questions about his education and experience in chemistry. Over Starkis' objection that Bell was not shown to be qualified in chemistry, the trial court permitted Bell to testify as to his opinion regarding causation by the defendant in response to a hypothetical question.
On cross-examination, Starkis asked Bell if he had failed two chemistry courses while doing his graduate work. The answer should be:

a. admitted, because it is relevant to the weight to be given Bell's testimony.

b. admitted, because specific acts bearing on truthfulness may be inquired about on cross-examination.

c. excluded, because the court has determined that Bell is qualified to testify as an expert.

d. excluded, because Bell's character has not been put in issue.

8. Cagle sued Copani for negligence, alleging that Copani, while wildly celebrating the acquittal of a self-confessed mass murderer who Copani had defended, recklessly pushed Cagle, causing Cagle to plunge down a long stairway. The fall resulted in permanent injuries to Cagle's back, exacerbated Cagle's natural shyness and underlying pacifistic, non-aggressive attitude toward insurance companies, and ruined his ostrich boots. At trial, Luca Brasi testified for Copani. On cross-examination, which of the following questions is the trial judge most likely to rule improper?

a. "Isn't it a fact that you are Copani's close friend?"

b. "Isn't it true that you are known in the community as 'Luca the Lush' because of your addiction to alcohol?"

c. "Didn't you fail to report some income on your tax return last year?"

d. "Weren't you convicted, seven years ago in this court, of obtaining money under false pretenses?"

9. Cardozo is being tried for the common law rape of Palsgraf by force. Cardozo alleges consent. Martin, a prosecution witness, testified that immediately after the purported rape of Palsgraf, Palsgraf told Martin of the incident. On cross-examination Martin was asked whether he was awaiting trial for a misdemeanor. The trial judge should rule this question:

a. objectionable, because it is irrelevant as to whether the rape had been reported

b. objectionable, because the question is about a misdemeanor, not a felony

c. objectionable, because it may indicate that the witness has reason to dislike the police

d. unobjectionable as indicating a possibility of bias in favor of prosecution
10. The State charged Rose with receiving stolen property. At trial, before testifying herself, Rose called Colby, who testified that Rose is a woman whose reputation in the community for being honest and law-abiding is excellent. On cross-examination, the prosecutor asked Colby whether Rose had been convicted five years ago of offering a bribe to a public official. The trial judge should rule the question:

   a. proper as bearing on the probability of Rose's guilt.
   b. improper because not the best evidence of the conviction.
   c. improper because it calls for hearsay.
   d. improper in form.

11. Defendant is on trial accused of the armed robbery of a supermarket. Wolfe, the cashier, testified during the prosecution's case in chief that defendant, who is the brother-in-law of the manager, was the robber. On cross-examination, Wolfe admits that she told the store manager shortly after the robbery that the robber was a person who was much shorter and lighter than defendant. On redirect examination, Wolfe is asked why she gave the manager then wrong description of the robber. Wolfe answers that she gave a false description to the manager because she was afraid she would lose her job if she identified the defendant.

   If the defense counsel makes a motion to strike the question and answer, the trial judge should:

   a. allow the motion because the issue had already been raised in direct examination.
   b. allow the motion because the statement is not within the scope of cross-examination.
   c. deny the motion because a witness can explain a prior inconsistent statement.
   d. deny the motion because the answer comes within the present mental state exception to the hearsay rule.

Questions 12, 13 and 14 are based on the following fact situation.

   Paul, the plaintiff in a personal injury action, called Neil as a witness to testify that Dan's car, in which Paul had been riding, ran a red light.

   Neil, however, testified that Dan's car did not run the light. Paul then called Julie, an eyewitness, to testify that Dan's car did run the light.
12. The trial judge should rule that Julie's testimony is:

   a. admissible because Paul was surprised by Neil's testimony
   b. admissible because Julie's testimony was relevant to material issues.
   c. inadmissible because Paul cannot impeach his own witness.
   d. inadmissible because Paul is bound by the testimony of his own witness.

13. On cross-examination of Julie, Dan's attorney asked if Julie was drunk at the time she witnessed the accident, and Julie responded, "No, I have never in my life been drunk." Dan's attorney then sought to prove by Margaret that Julie was drunk on New Year's Eve two years before the accident. The trial judge should rule that Margaret's testimony is:

   a. admissible to impeach Julie by showing that she had an imperfect recollection of recent events.
   b. admissible to show that Julie is not the kind of person on whom one should rely for ascertaining the truth.
   c. inadmissible because a witness cannot be impeached by proof of specific acts of misconduct.
   d. inadmissible because the question of whether Julie has ever been drunk is a collateral matter.

14. Assume that Paul has properly introduced the testimony of the investigating officer, Kopp, that at the scene of the accident Neil told him that Dan ran the light. Dan now calls Josephine as a witness. Josephine testifies that Neil, just prior to the trial, told her that Dan's car did not run the light.

The trial judge should rule Josephine's testimony:

   a. admissible to rehabilitate Neil's credibility.
   b. admissible to rebut the inference that Neil's testimony was a recent contrivance.
   c. inadmissible because a witness can only be rehabilitated by the party who called him.
   d. inadmissible because Neil's statement to Josephine was not made prior to his statement to Kopp.
15. In a contract suit by Ford against Becker, each of the following is an accepted method of authenticating Becker's signature on a document offered by Ford EXCEPT:

a. a non-expert who, in preparation for trial, has familiarized himself with Becker's usual signature testifies that, in his opinion, the questioned signature is genuine.

b. the jury, without the assistance of an expert, compares the questioned signature with an admittedly authentic sample of Becker's handwriting.

c. a witness offers proof that the signature is on a document that has been in existence for at least 20 years, that was in a place where it would likely be if it was authentic, and that has no suspicious circumstances surrounding it.

d. a witness testifies that Becker admitted that the signature was his.

16. Dickinson is charged with the murder of Olsen. The prosecutor introduced testimony of a police officer that Olsen told a priest who was administering the last rites to him while Olsen was in the hospital, "I was stabbed by Dickinson. Since I am dying, tell Dickinson I forgive her."

Thereafter, Dickinson's attorney offers the testimony of Bernard that the day before the priest came to see Olsen, when Olsen believed he would live, he stated that he had been stabbed by Corsaro, an old enemy. The testimony of Bernard is:

a. admissible under an exception to the hearsay rule.

b. admissible to impeach the dead declarant.

c. inadmissible because it goes to the ultimate issue in the case.

d. inadmissible because irrelevant to any substantive issue in the case.
17. Shire was the sole owner of a chain of restaurants, operating under the name of Chez Ptomaine. Shire hired Golder to manage the restaurants. Golder did so for the next five years, sending regular reports to Shire's headquarters and receiving irregular phone calls and written messages from Shire in reply. Then, Lovins arrived unannounced at Golder's office, carrying a power of attorney apparently bearing Shire's signature. Lovins notified Golder that, effective immediately, he was fired, and that Lovins was taking over the management of the restaurants. Golder responded that Shire's signature on the power of attorney was a forgery, and that Lovins's proposed actions were illegal. Golder then brought an action in court to prevent Lovins from taking control of the restaurants. Golder was called to testify that he and Shire had signed a contract when he was hired, in which they agreed that Golder would manage the restaurants for a ten-year period, and that only Shire personally could fire him during that period.

Which of the following objections by Lovins to Golder's testimony is most likely to be sustained?

a. that the testimony is hearsay

b. that the testimony violates the "best evidence" rule

c. that the testimony violates the "parol evidence" rule

d. that the testimony is irrelevant to the matters
SHORT ANSWER QUESTIONS

QUESTIONS 1-11

You are to evaluate the following out of court statements to determine their admissibility at trial. After you have made your determination, indicate whether each statement is HEARSAY, NOT HEARSAY or A RECOGNIZED HEARSAY EXCEPTION. IF AN EXCEPTION, YOU MUST ALSO IDENTIFY THE APPROPRIATE EXCEPTION. In addition, you must also discuss the reasons for your decision. Your answers must be based upon the Federal Rules of Evidence.

1. Action on the issue of Able's adverse possession of Blackacre. Able's statement, "I am the owner of Blackacre."

2. Action for paternity. Evidence from the plaintiff that the defendant referred to the child as: "My son."

3. Action for adultery. Wife offers evidence that a house guest after a visit had described a birthmark on Husband's buttocks to a mutual friend. The existence of the mark had previously been testified to by Wife, while Husband had previously testified that only his parents and Wife knew of the birthmark.

4. Criminal trial for assault and battery. Prosecution offers a confession made by the Defendant to police officers.

5. Hearing to determine the sanity of Davis. To prove sanity, evidence is offered to show that Davis was confined to a psychiatric ward.

6. Action for paternity. To prove that Defendant is the father of the child, the mother offers a letter from Defendant's attorney, in which the attorney states that his client has admitted that he is the father of the child.

7. On the issue as to whether a $10,000.00 transfer was a gift or a loan, statement by Transferor, "Here is your graduation present."

8. Criminal trial for murder. Defense claims self-defense and introduces a witness who will testify that before the killing, Defendant told him he was afraid of the victim.
9. Action against airline after a fatal plane crash. On the issue of survivorship, evidence is offered that at the crash site, investigator heard the victim (plaintiff who was dead on arrival at the hospital) cry, "Help me, I'm alive!

10. Suit for property damage. At trial, Plaintiff seeks to introduce note that was found on Plaintiff's windshield when Plaintiff returned to her car that had been damaged when it was struck by another vehicle. The note stated, "I saw the accident. The car that hit you had license plate XYZ-111." The Defendant owned an automobile with the same plate number on the date of the accident.

11. To show that the defendant was home, and therefore could have killed his wife, the prosecution calls Wife's lover, who testifies that when Husband was gone and the coast was clear, Wife always pulled down the shade in the living room, but when Husband was home, the shade was always open. The prosecutor calls a neighbor who testifies that on the night the murder occurred, the shade was open.
ESSAY QUESTION ONE

Once upon a time, in the land of Hope, a child named Billy was born, who had greatness thrust upon him. He rose up to become a scholar, attended an Ivy League school, married a socialite named Hillary, and distinguished himself by dodging the draft and learning every way there was to lie, either by moving his lips or staying silent. As expected, his career soared and he became the leader of a huge corporation called United States, Inc.

Billy ran United States, Inc., for eight years. According to the by-laws of United States, Inc., Billy could not run for another term and he was forced to leave office. This was probably best for all the shareholders of United States, Inc., as Billy had been engaged in a variety of shenanigans since he had first taken office. Also, Hillary had tried to help all shareholders with their health care needs, but most of the corporate directors, led by Newt the Shy and Trent Quite-A-Lott, did not agree with her methods and her efforts failed. This caused Hillary much concern and Billy told her that he felt her pain.

Fortunately for Billy, in the final days before his last term ended, Hillary managed to get a very good job in a magical place called New York. Hillary and Billy moved to New York before Billy's last term ended because if they could make it there, they could make it anywhere. Plus, New York is such a wonderful place to live. Traffic is always light, usually only a ten planet backup. Rents are cheap. You can get a time-share, bottom row shelf in a broom closet on the lower West Side for the annual Pentagon budget. Shelf paper is extra.

When Billy was in the last weeks of his tenure, an election was held to decide who would succeed him as president of United States, Inc. After months of campaigning and political maneuvering, two major candidates emerged. One was Billy's right hand man, a pioneer from Tennessee named Al the Stiff who had served as Billy's vice president for eight years. Al was a legend in his own mind, a Harvard man who was convinced he had, in his spare time, invented the wheel, motion pictures, the printing press, the Internet, the novel Love Story, differential calculus, the marginal propensity to consume vis-à-vis guns and butter, Las Vegas, spinal cord neurogenesis, anesthesia, the theory of relativity, the Constitution, sighing, voting machines, thermodynamics and the Federal Rules of Evidence.

Al the Stiff's chief rival for Billy's job was a lanky Texan named George the Dim. George was a Yale man whose father had gotten him into the family business. While at Yale, George the Dim almost read a book by William Shakespeare, until he discovered that he had misread the title and it was not Two Gentlemen Chug Corona. George the Dim was an affable, fun-loving guy who would never be accused of operating under the influence of cognitive thought or sentence syntax. George the Dim had made his fortune in the oil business and major league baseball and had also served as the chief executive officer of the great state of Texas, a wonderland located somewhere west of Route 128.
Texas is a fun, fun place and was certainly the perfect state for George the Dim to run. The death penalty is available for double parking. There are only two sports George the Dim had to be concerned about at the University of Texas, football and spring football. Endless chains of think-tanks are located in your basic poolrooms, barrooms and bedrooms. There are honky-tonks filled with local philosophers who are so stupid they think that asphalt is a rectal disorder. Juke boxes and country stations are filled with mega-hit songs such as "My wife ran off with my best friend and I shore miss him" and "You're the reason our kids are ugly."

Al the Stiff and George the Dim began to campaign for Billy's job several months before Billy left office. They held a series of debates on television. They each took to the airwaves in order to advocate for their respective positions. Finally, on the first Tuesday in November, Al the Stiff and George the Dim squared off in an election to decide who would succeed Billy. The election dragged on through the early morning hours of the following day. It was determined that the election was settled in every jurisdiction except one. The shareholders of Florida had made the contest too close to determine a winner.

Immediately, Al the Stiff and George the Dim sent representatives to Florida to discover who had won Billy's job. Jim the Shark represented George the Dim and Warren the Embalmed was Al the Stiff's envoy. They immediately discovered that the problems in Florida were overwhelming. Shareholders in one county in Flori-duh cried voter fraud and disenfranchisement, by claiming their ballots were so confusing, they read like Kafka debating Spinoza while both were free-basing battery acid, and the ballot design caused voters to vote for either Buchanan, Milosovich or Hitler. The battle for the presidency went into the courts. Soon, all the stockholders of United States, Inc., were besieged with accounts of indented chads, dimpled chads and pregnant chads. Billy immediately called Ken the Starr and denied he had any involvement in impregnating the chads.

For three weeks, the battle raged until George the Dim took the lead. At that time, Al the Stiff held a meeting with his vice presidential running mate, Joe the Stuffy. At that meeting, the following dialogue took place:

AI: "Joe, the only way we can win is to stuff the ballot boxes with phony ballots."

Joe: "I agree, but we have to act right away."

At that moment, Al the Stiff's top aide, Daily the Hack, entered the room. The following dialogue occurred:

AI: "Daily, Joe and I are going to start stuffing ballot boxes."

Joe: "Wait a minute. I won't do that."
Al: "But, Joe, you just agreed to stuff the ballot boxes with me."

Joe the Stuffy remained silent and looked down at the floor.

Daily: "Joe, are you with us or not?"

Joe: "Damn it, Daily, if we lose and I get found out, I could go to jail!"

Al: "Lighten up, Joe. Billy will pardon you for anything you do!"

Joe: "I'm sick just thinking about this. You guys will have to do it alone."

Daily: "Then it's agreed, Al and I will start stuffing ballots tomorrow."

After the meeting ended, Daily wrote several notes about what had occurred and put them in one of the campaign file folders. A week later, several phony ballots were discovered.

The following day, Al the Stiff was called to give a deposition in one of the lawsuits which had been filed in Florida. The following excerpt is from Al's deposition testimony, which was given under oath:

Attorney: "Al, did you ever say you were going to stuff ballot boxes with phony ballots?"

Al: "No."

After the deposition, Al the Stiff's attorney called a press conference and stated: "Al the Stiff never discussed stuffing the ballot boxes with phony ballots. It's an outright lie."

A week later, George the Dim was declared the winner of the election by the United States Supreme Court. He immediately drove to Seattle, and is still searching for the White House, because he knows it's in Washington. His vice-president, Dick the Shrewd, has been running the United States, Inc. So far, Dick the Shrewd has overrun Saddam Hussein's government and turned Iraq into time-share condominiums, the Dow and NASDAQ are each at four hundred thousand, and every congressional Democrat is on death row in Texas.

The following day, Joe the Stuffy turned himself into the United States Attorney and provided the details of Al the Stiff's plan to stuff ballot boxes. Al the Stiff has been indicted for fraud and scheduled for trial. Daily the Hack has been given immunity to testify.

At Al's trial, during the prosecution's case in chief, the following occurred:

1. Joe testified about Al's statement: "Joe, the only way we can win is to stuff the ballot boxes with phony ballots."
2. Daily testified about Al's statement: "Daily, Joe and I are going to start stuffing ballot boxes."

3. Daily testified about Al's statement: "But, Joe, you just agreed to stuff the ballot boxes with me," and the fact that Joe the Stuffy remained silent and looked down at the floor.

4. Daily testified about his question: "Joe, are you with us or not?" and Joe's response: "Damn it, Daily, if we lose and I get found out, I could go to jail!"

5. The prosecutor offered Daily's notes from the meeting into evidence.

6. The prosecutor offered Al's deposition testimony when the Attorney asked: "Al, did you ever say you were going to stuff ballot boxes with phony boxes?", and Al's response: "No."

7. The court reporter who recorded Al the Stiff's deposition testimony testified about what Al the Stiff said at his deposition.

8. The prosecutor offers into evidence Al the Stiff's attorney's statement at the press conference: "Al the Stiff never discussed stuffing the ballot boxes with phony ballots. It's an outright lie."

The defense then called Ashcroft as a witness and qualified him as an expert truth examiner. Ashcroft testified that he has developed a new technique for determining whether or not a person is telling the truth. The technique consists of a laser-enabled sensor pointed toward a person, and activated while the person is speaking. The sensor converts the voice level of the person speaking to a ratio of red blood cells to white blood cells. An elevated white cell count during speech indicates that the person is not being truthful. Ashcroft testified that he had pointed the laser at Daily while Daily testified at trial.

9. The Court accepted Ashcroft as an expert witness in his field and so instructed the jury.

10. The Court allowed Ashcroft to testify that in his opinion, Daily had not told the truth when he testified.

11. The Court ruled that Ashcroft's truth determination technique was a proper and acceptable scientific test that was admissible.

ASSUME THAT ALL APPROPRIATE OBJECTIONS WERE MADE IN EACH INSTANCE.

DISCUSS IN COMPLETE DETAIL WHETHER EACH OF THE FOREGOING SHOULD BE ADMITTED INTO EVIDENCE, GIVING YOUR REASONS FOR AND AGAINST.
This is a three hour examination. Assume that the Federal Rules of Evidence apply to all questions. Your success on the essay portions of this examination will depend on your careful analysis of the questions and the structure of your answers. There will be no credit given for extended treatises on the areas of the law presented by these questions, and you should, therefore, avoid any rambling discourses. However, you should discuss with adequate particularity the issues and the applicable law for each question.

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EVIDENCE
CLOSED BOOK EXAMINATION

1. Devlin was injured during a fall at a garage sale, while buying a tie that Rorschach had hand-painted while tripping on battery acid. After the cheering subsided, Devlin was taken to the hospital for treatment. At trial, Devlin's counsel called Devlin's personal physician, O. K. Bendova, who treated Devlin after the accident. Bendova read the notes which he wrote in Devlin's hospital record before taking the witness stand. On the stand he is asked what he observed about these injuries, and testifies about Devlin's physical condition without referring to the hospital record.

   If the defendant moves to strike the answer, the trial judge should:

   a. allow the motion because the hospital record is the best evidence of the plaintiff's injuries

   b. allow the motion unless the plaintiff also offers the notes themselves into evidence

   c. deny the motion because the doctor's testimony is admissible as past recollection recorded

   d. deny the motion because the doctor is testifying from present memory which has been refreshed

2. Corleone was accused of arson. At trial, Corleone's daughter, Constanzia, testified that on the day of the fire, her father was visiting her in a neighboring state. On cross-examination, the prosecutor asked Constanzia, "Isn't it true that you testified before the grand jury that you did not know where your father was on the day of the fire?" Constanzia denied the testimony.

   The prosecutor then sought to introduce evidence of Constanzia's grand jury testimony. Corleone's attorney objected. The court should rule the evidence is:

   a. admissible on the issue of Constanzia's credibility only

   b. admissible to impeach Constanzia's testimony and for use as substantive evidence

   c. inadmissible unless Corleone had the opportunity to cross-examine Constanzia during the grand jury proceeding

   d. inadmissible as violative of grand jury secrecy requirements
3. After the Weld family purchased a house from the Cellucci family, the Weld family discovered the plumbing was defective. The Weld family was advised that the majority of the interior walls would have to be torn down in order to correct the problem. The Weld family has alleged that the real estate broker and the Cellucci family knew of the condition and actively concealed the defects. The Cellucci family contends that the plumbing is not defective and has worked properly since the house was built in 1968. At trial, the defendants seek to have a letter written by the contractor admitted. The letter was written during construction and concerned the plumbing in the house. The court should rule the letter is:

a. inadmissible, because it is hearsay falling within no exception

b. inadmissible, because it is not the best evidence of when the house was built

c. admissible, because it is an ancient document

d. admissible, if the author is present and subject to cross-examination

4. Yearwood sued Oslin for conversion of an automobile, alleging that the automobile was loaned to Oslin by McIntyre, Yearwood's grandmother, and that Oslin has knowingly asserted ownership and control over it. McIntyre died intestate in the interim, leaving Yearwood as her sole heir. In her defense, Oslin offered into evidence a handwritten note which purported to be a bill of sale by which the signer acknowledged receipt of a stated sum in return for the automobile. The note was signed, "McIntyre." Prior to moving that the note be admitted, Oslin called Loveless to testify that she had sold furniture to McIntyre four times in the past five years, that McIntyre had paid by signed personal check each time, and that the signature on the note appeared to be McIntyre's signature.

Which of the following most accurately describes the minimal finding which the trial judge must make to admit the note into evidence?

a. The judge need make no finding; the question of authenticity is decided solely by the jury.

b. The judge must find that there is sufficient evidence adduced regarding the signature that a reasonable juror could conclude it was McIntyre's.

c. The judge must find that, by a preponderance of evidence, the signature is McIntyre's.

d. The judge must find that, as a matter of law, the signature is McIntyre's.
On cross-examination, Starkis asked Bell if he had failed two chemistry courses while doing his graduate work. The answer should be:

a. admitted, because it is relevant to the weight to be given Bell's testimony.

b. admitted, because specific acts bearing on truthfulnes may be inquired about on cross-examination.

c. excluded, because the court has determined that Bell is qualified to testify as an expert.

d. excluded, because Bell's character has not been put in issue.

8. Cagle sued Copani for negligence, alleging that Copani, while wildly celebrating the acquittal of a self-confessed mass murderer who Copani had defended, recklessly pushed Cagle, causing Cagle to plunge down a long stairway. The fall resulted in permanent injuries to Cagle's back, exacerbated Cagle's natural shyness and underlying pacificist, non-aggressive attitude toward insurance companies, and ruined his ostrich boots. At trial, Luca Brasi testified for Copani. On cross-examination, which of the following questions is the trial judge most likely to rule improper?

a. "Isn't it a fact that you are Copani's close friend?"

b. "Isn't it true that you are known in the community as 'Luca the Lush' because of your addiction to alcohol?"

c. "Didn't you fail to report some income on your tax return last year?"

d. "Weren't you convicted, seven years ago in this court, of obtaining money under false pretenses?"

9. Cardozo is being tried for the common law rape of Palsgraf by force. Cardozo alleges consent. Martin, a prosecution witness, testified that immediately after the purported rape of Palsgraf, Palsgraf told Martin of the incident. On cross-examination Martin was asked whether he was awaiting trial for a misdemeanor. The trial judge should rule this question:

a. objectionable, because it is irrelevant as to whether the rape had been reported

b. objectionable, because the question is about a misdemeanor, not a felony

c. objectionable, because it may indicate that the witness has reason to dislike the police

d. unobjectionable as indicating a possibility of bias in favor of prosecution
10. The State charged Rose with receiving stolen property. At trial, before testifying herself, Rose called Colby, who testified that Rose is a woman whose reputation in the community for being honest and law-abiding is excellent. On cross-examination, the prosecutor asked Colby whether Rose had been convicted five years ago of offering a bribe to a public official. The trial judge should rule the question:

a. proper as bearing on the probability of Rose's guilt.

b. improper because not the best evidence of the conviction.

c. improper because it calls for hearsay.

d. improper in form.

11. Defendant is on trial accused of the armed robbery of a supermarket. Wolfe, the cashier, testified during the prosecution's case in chief that defendant, who is the brother-in-law of the manager, was the robber. On cross-examination, Wolfe admits that she told the store manager shortly after the robbery that the robber was a person who was much shorter and lighter than defendant. On redirect examination, Wolfe is asked why she gave the manager then wrong description of the robber. Wolfe answers that she gave a false description to the manager because she was afraid she would lose her job if she identified the defendant.

If the defense counsel makes a motion to strike the question and answer, the trial judge should:

a. allow the motion because the issue had already been raised in direct examination.

b. allow the motion because the statement is not within the scope of cross-examination.

c. deny the motion because a witness can explain a prior inconsistent statement.

d. deny the motion because the answer comes within the present mental state exception to the hearsay rule.

Questions 12, 13 and 14 are based on the following fact situation.

Paul, the plaintiff in a personal injury action, called Neil as a witness to testify that Dan's car, in which Paul had been riding, ran a red light.

Neil, however, testified that Dan's car did not run the light. Paul then called Julie, an eyewitness, to testify that Dan's car did run the light.
12. The trial judge should rule that Julie's testimony is:

   a. admissible because Paul was surprised by Neil's testimony
   b. admissible because Julie's testimony was relevant to material issues.
   c. inadmissible because Paul cannot impeach his own witness.
   d. inadmissible because Paul is bound by the testimony of his own witness.

13. On cross-examination of Julie, Dan's attorney asked if Julie was drunk at the time she witnessed the accident, and Julie responded, "No, I have never in my life been drunk." Dan’s attorney then sought to prove by Margaret that Julie was drunk on New Year's Eve two years before the accident. The trial judge should rule that Margaret's testimony is:

   a. admissible to impeach Julie by showing that she had an imperfect recollection of recent events.
   b. admissible to show that Julie is not the kind of person on whom one should rely for ascertaining the truth.
   c. inadmissible because a witness cannot be impeached by proof of specific acts of misconduct.
   d. inadmissible because the question of whether Julie has ever been drunk is a collateral matter.

14. Assume that Paul has properly introduced the testimony of the investigating officer, Kopp, that at the scene of the accident Neil told him that Dan ran the light. Dan now calls Josephine as a witness. Josephine testifies that Neil, just prior to the trial, told her that Dan's car did not run the light.

The trial judge should rule Josephine's testimony:

   a. admissible to rehabilitate Neil's credibility.
   b. admissible to rebut the inference that Neil's testimony was a recent contrivance.
   c. inadmissible because a witness can only be rehabilitated by the party who called him.
   d. inadmissible because Neil's statement to Josephine was not made prior to his statement to Kopp.
15. In a contract suit by Rudnick against Becker, each of the following is an accepted method of authenticating Becker's signature on a document offered by Rudnick EXCEPT:

a. a non-expert who, in preparation for trial, has familiarized himself with Becker's usual signature testifies that, in his opinion, the questioned signature is genuine.

b. the jury, without the assistance of an expert, compares the questioned signature with an admittedly authentic sample of Becker's handwriting.

c. a witness offers proof that the signature is on a document that has been in existence for at least 20 years, that was in a place where it would likely be if it was authentic, and that has no suspicious circumstances surrounding it.

d. a witness testifies that Becker admitted that the signature was his.

16. Dickinson is charged with the murder of Olsen. The prosecutor introduced testimony of a police officer that Olsen told a priest who was administering the last rites to him while Olsen was in the hospital, "I was stabbed by Dickinson. Since I am dying, tell Dickinson I forgive her."

Thereafter, Dickinson's attorney offers the testimony of Bernard that the day before the priest came to see Olsen, when Olsen believed he would live, he stated that he had been stabbed by Corsaro, an old enemy. The testimony of Bernard is:

a. admissible under an exception to the hearsay rule.

b. admissible to impeach the dead declarant.

c. inadmissible because it goes to the ultimate issue in the case.

d. inadmissible because irrelevant to any substantive issue in the case.
17. Shire was the sole owner of a chain of restaurants, operating under the name of Chez Ptomaine. Shire hired Golder to manage the restaurants. Golder did so for the next five years, sending regular reports to Shire's headquarters and receiving irregular phone calls and written messages from Shire in reply. Then, Lovins arrived unannounced at Golder's office, carrying a power of attorney apparently bearing Shire's signature. Lovins notified Golder that, effective immediately, he was fired, and that Lovins was taking over the management of the restaurants. Golder responded that Shire's signature on the power of attorney was a forgery, and that Lovins's proposed actions were illegal. Golder then brought an action in court to prevent Lovins from taking control of the restaurants. Golder was called to testify that he and Shire had signed a contract when he was hired, in which they agreed that Golder would manage the restaurants for a ten-year period, and that only Shire personally could fire him during that period.

Which of the following objections by Lovins to Golder's testimony is most likely to be sustained?

a. that the testimony is hearsay
b. that the testimony violates the "best evidence" rule
c. that the testimony violates the "parol evidence" rule
d. that the testimony is irrelevant to the matters
SHORT ANSWER QUESTIONS

QUESTIONS 1-11

You are to evaluate the following out of court statements to determine their admissibility at trial. After you have made your determination, indicate whether each statement is 
HEARSAY, NOT HEARSAY or A RECOGNIZED HEARSAY EXCEPTION. IF AN 
EXCEPTION, YOU MUST ALSO IDENTIFY THE APPROPRIATE EXCEPTION. 
In addition, you must also discuss the reasons for your decision. Your answers must be based 

1. Action on the issue of Able's adverse possession of Blackacre. Able's statement, "I am 
the owner of Blackacre."

2. Action for paternity. Evidence from the plaintiff that the defendant referred to the 
child as: "My son."

3. Action for adultery. Wife offers evidence that a house guest after a visit had described 
a birthmark on Husband's buttocks to a mutual friend. The existence of the mark had 
previously been testified to by Wife, while Husband had previously testified that only 
his parents and Wife knew of the birthmark.

4. Criminal trial for assault and battery. Prosecution offers a confession made by the 
Defendant to police officers.

5. Hearing to determine the sanity of Davis. To prove sanity, evidence is offered to show 
that Davis was confined to a psychiatric ward.

6. Action for paternity. To prove that Defendant is the father of the child, the mother 
offers a letter from Defendant's attorney, in which the attorney states that his client has 
admitted that he is the father of the child.

7. On the issue as to whether a $10,000.00 transfer was a gift or a loan, statement by 
Transferor, "Here is your graduation present."

8. Criminal trial for murder. Defense claims self-defense and introduces a witness who 
will testify that before the killing, Defendant told him he was afraid of the victim.
9. Action against airline after a fatal plane crash. On the issue of survivorship, evidence is offered that at the crash site, investigator heard the victim (plaintiff who was dead on arrival at the hospital) cry, "Help me, I'm alive!"

10. Suit for property damage. At trial, Plaintiff seeks to introduce note that was found on Plaintiff's windshield when Plaintiff returned to her car that had been damaged when it was struck by another vehicle. The note stated, "I saw the accident. The car that hit you had license plate XYZ- 111." The Defendant owned an automobile with the same plate number on the date of the accident.

11. To show that the defendant was home, and therefore could have killed his wife, the prosecution calls Wife's lover, who testifies that when Husband was gone and the coast was clear, Wife always pulled down the shade in the living room, but when Husband was home, the shade was always open. The prosecutor calls a neighbor who testifies that on the night the murder occurred, the shade was open.
ESSAY QUESTION ONE

Once upon a time, in the land of Hope, a child named Billy was born, who had greatness thrust upon him. He rose up to become a scholar, attended an Ivy league school, married a socialite named Hillary, and distinguished himself by dodging the draft and learning every way there was to lie, both while moving your lips or staying silent. As expected, his career soared until he became the leader of a huge corporation called United States, Inc.

United States, Inc.'s headquarters were in Washington, D.C., and Billy moved there as part of his new job. Billy immediately began to take charge of the corporation's day to day operations, while Hillary sought to improve the health care of all the corporation shareholders. Some of the newly-elected corporate directors, led by their leader, Newt the Shy, did not agree with her methods, and her efforts failed. This caused Hillary much concern, and she blamed her failure on the fact that she and Billy were from the much-maligned state of Hope, coupled with a massive right-wing conspiracy. Billy did his best to feel her pain.

Unfortunately, with his other female acquaintances, Billy had a habit of feeling other things besides pain. Slowly but surely, women everywhere began to step forward and allege that Billy was not a sensitive 90's guy, and was in a constant state of impure thoughts and deeds. Billy only shrugged and smiled, insisting that the only thing he played with besides his wife was his saxophone, although he admitted that he had engaged in premarital sax. Rumors came and went, Gennifer stopped sending Flowers, and Billy became the teflon executive, as no charges could stick to him.

Then, one day, back in the land of Hope, Billy was sued by Paula, who said that Billy was a naughty, naughty boy. Paula alleged that she had worked with Billy at his previous corporation and one day, Billy had some co-workers invite her to his hotel suite. Once Paula arrived, she was left alone with Billy. After some small talk and a mumbled offer of refreshment, Paula went on to say that Billy undid his pants, and showed her all the corporate secrets. Paula claims she was shocked, and that Billy's actions were lewd, lascivious, caused her great mental distress, constituted sexual harassment, created a hostile work environment and entitled her to great damages. Billy denied Paula's claims and hired a lawyer, Nasty Bob, to fight Paula's charges.

At this time, from out of the west, in the land of the fashionably chic and incredibly shallow, came a young woman named Monica. Monica had heard of Billy and desperately wanted to get to know him. Indeed, Monica was interested in evaluating the same corporate secrets that had shocked Paula so, and Monica had some secrets of her own she wanted to share with Billy. In fact, Monica could not see a Thong wrong with it, and had plans to merge her secrets with Billy's.

Soon, Monica was working for United States, Inc. as a corporate intern. In no time, Monica got to meet Billy face to face, so to speak. Immediately, Monica and Billy became friends. Their friendship began to grow and one day, Billy and Monica were alone at headquarters. Faster than a takeover rumor, both of them revealed their corporate secrets, although Billy refused to merge with Monica at that time.
Billy muttered to Monica, "I can't merge now, but we will merge after I know I can trust you." Monica said she understood, but needed to have Billy's corporate seal to effectuate the merger. Billy agreed, but warned her about doing anything that would downsize him.

Billy and Monica continued to meet several times and reveal their secrets. Monica gave Billy a tie. Billy gave Monica a cigar, before finally giving her the heave-ho and the shaft (figuratively, of course) and Monica was told not to return to corporate headquarters. Billy also told Monica if she cooperated, he would have his friend, Vernon, see about getting her a better job.

Monica was so distraught she talked to her friend and coworker, Linda, about her meetings with Billy. Linda was worried about hearing Monica correctly, so she began to tape record their telephone conversations without Monica's knowledge, so that Monica would not get Tripped-up. In the recordings, Monica talked about her relationship with Billy, and how they had finally merged. Monica even told Linda that she had ink from Billy's corporate seal on her dress, which she was saving in her closet.

Several days later, Nasty Bob told Billy that Paula's lawyers wanted to talk to Billy under oath. Billy and Monica had another meeting. The following dialogue took place at the meeting.

Billy: "Forget we ever merged. I don't want Hillary to find out."

Monica: "But you know we did. We did more than once."

Billy remained silent and looked down at the floor.

Billy then called in Betty, his secretary, to join him and Monica. Billy said to Betty, "You know that Monica and I were never alone here, and you'll testify that we were never alone, right?" Betty shrugged her shoulders.

Billy then said to Monica: "Will you sign an affidavit that we never merged?"

Monica: "Yes. You know I'd do anything for you, you silver-haired stallion!"

Billy then said to Betty: "Tell Yassar Arafat I'll be right with him."

After Betty left, she wrote several notes about her meeting with Billy and Monica and has kept them in a file.

Monica signed an affidavit under oath denying she had ever merged with Billy. The affidavit was introduced as an exhibit at Billy's deposition. The following are excerpts from Billy's deposition, at which Billy testified under oath:
Paula's lawyer: "Billy, did you ever merge with Monica?"
Billy: "No."
Paula's lawyer: "Were you ever alone with Monica at corporate headquarters?"
Billy: "I don't recall."
Paula's Lawyer: "Is this affidavit by Monica true?"
Billy: "Every word is true."

After the deposition, Nasty Bob called a press conference and stated, "Billy never merged with Monica. It's a lie and Billy reaffirms that it is a lie." "Furthermore," continued Nasty, "Linda says that Monica and Billy merged, and she's a liar."

Immediately, Linda made public the tapes of her conversations with Monica. Billy went on television and wagged his finger at the camera and declared, "I want you all to listen to me. I'll say this for the last time. I did not merge with that woman Ms. Monica." Immediately, a grand jury was convened, and Billy was invited to testify. When asked under oath if he ever merged with Monica, Billy replied, "No, I didn't." When asked if he was ever alone with Monica at corporate headquarters, Billy replied, "No, I wasn't."

After testifying before the grand jury Billy again went on television and said, "My answers in the Paula deposition and before the grand jury were legally accurate. But I want all you stockholders to know that I may have misled you. Monica and I did indeed have an inappropriate relationship. It just wasn't the traditional type of inappropriateness."

After Billy's television appearance, Hillary decided to move to New York, because, if she can make it there, she can make it anywhere. Traffic is always light, usually only a ten planet backup. Rents are cheap. You can get a time-share, bottom-row shelf in a broom closet on the lower West Side for the annual Pentagon budget. Shelf paper is extra.

Hillary declared that although Hope is truly exciting, New York is where the action really is, because it is the home of the United Nations, Rockefeller Center, legitimate stage productions and the surliest waiters who ever charged you five hundred dollars for three twigs swimming in cream sauce next to a mound of shrubbery clippings. New York also sets the standard for culture and class, led by Exhibit A, its courteous cab drivers, and followed closely by Exhibits B, C, D and E, George Steinbrenner, Leona Helmsley, Joey Buttafouco and Howard Stern. Hillary has declared that she wants to work for the government, but so far, many New Yorkers, who are known for their rudeness, have declared that Hillary may not be RUDY enough to get the job.

Although Billy was asked to resign, he refused, saying he did nothing wrong except use poor judgment. Billy has been indicted for perjury and is set for trial. Meanwhile, Monica has been granted immunity to testify, and is on her way to becoming rich enough to afford one-hour dry cleaning.
At Billy’s trial, during the prosecution’s case in chief, the following occurred:

1. Monica testified about Billy’s statement, "I can't merge now, but we will merge after I know I can trust you."

2. Monica testified about Billy’s statement, "Forget we ever merged," her response, "But you know we did. We did more than once," and Billy remained silent and looked at the floor.

3. Monica testified about Billy’s statement, "Will you sign an affidavit that we never merged?" and her response, "Yes. You know I'd do anything for you, you silver-haired stallion!"

4. The prosecutor offered Linda's tapes into evidence.

5. The prosecutor offered Monica's stained dress into evidence.

6. Betty testified about Billy's statement to her, "You know that Monica and I were never alone here, and you'll testify that we were never alone, right?"

7. The prosecutor offered Betty's notes about the meeting with Billy and Monica into evidence.

8. The court reporter who recorded Billy's grand jury testimony testified about what Billy told the grand jury.

The prosecution then called Bennett as a witness and qualified him as an expert truth examiner. Bennett testified that he has developed a new technique for determining whether or not a person is telling the truth. The technique consists of an intra-venous line inserted into the person’s vein while the person is being questioned, and determining the blood levels of red and white cells. An elevated white cell count during questioning indicates that the person is not being truthful.

9. The Court accepted Bennett as an expert witness in his field and so instructed the jury.

10. The Court allowed Bennett to testify that in his opinion, Billy had not told the truth when he stated during the test that he had not committed perjury.

11. The Court ruled that Bennett’s truth determination technique was a proper and acceptable scientific test that was admissible.

ASSUME THAT ALL APPROPRIATE OBJECTIONS WERE MADE IN EACH INSTANCE.

DISCUSS IN COMPLETE DETAIL WHETHER EACH OF THE FOREGOING SHOULD BE ADMITTED INTO EVIDENCE, GIVING YOUR REASONS FOR AND AGAINST.