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EVIDENCE EXAMINATION

PROF. SAMMONS
SPRING SEMESTER
1987-88

PART I (50%)

1. You have two hours and fifteen minutes to answer the following six problems. Answer every question in every problem.
2. Answer the problems in order.
3. This is a closed book examination for this part of the examination. You may not use any materials to assist you in answering these problems. You should have nothing with you now other than a pen or pencil.
4. Put your examination number, the name of the exam, and the semester on each blue book. Number each blue book. Please do that now.
5. Please double space your answers. If you forgot to double space, do not panic and do not rewrite what you have written to that point.
6. Turn in your blue books when you have finished this part of the examination. Do not turn in the questions.
7. Be back in this classroom at 4:05 for the second part of the examination.
8. You will be under time pressure on this part of the exam. Keep your answer short and to the point. All problems are of equal value. Allocate your time carefully.

Problem I-6. Plaintiff brings a negligence action against defendant after an automobile accident. Plaintiff was riding in the car of X at the time of the accident. Two of the issues that go to trial are whether the defendant drove at a negligently high rate of speed, and if so, whether this proximately caused plaintiff's injuries. One of the witnesses called by plaintiff was X. On direct examination, X testified only to his own driving up to the moment of the accident. On cross-examination, defendant sought to obtain from X testimony to the effect that X had left the scene of the accident (while plaintiff was unconscious in a drug store to which she had been carried) without notifying anyone of his, X's, identity. **Should this line of inquiry be permitted? What is the objection?**

Problem III-4. Defendant is indicted for knowingly damaging the dwelling house of X by fire. At the trial, the prosecution offers into evidence a large, authenticated photograph showing a portion of the smoldering remains of X's house in the background and the anguished faces of X and her husband prominently featured in the foreground. **Is the photo relevant? How might defendant protect against its admission?**

Problem IV-1. The plaintiff's wife and children were killed as the result of a collision with a railroad train. The collision occurred at a crossing protected by wigwag signals. The plaintiff brought an appropriate action to recover damages. At trial, the plaintiff seeks to introduce:

- (a) A photograph of the intersection taken two weeks after the accident. The photograph shows the way the crossing looked at the time of the accident, except that by the time the picture was taken the railroad had replaced the wigwag signal with a flashing red light accompanied by a wooden barrier to block automobile traffic when a train was coming.
- (b) Testimony that a week after the accident the railroad replaced the wigwag signal with a flashing red light and a wooden barrier.
- (c) The same evidence as in (b) if the railroad alleged in its pleadings that the county highway commission and not the railroad was responsible for maintaining the safety of railroad crossings.
- (d) The same evidence as in (b) if an expert testifying on behalf of the railroad told the jury that a wigwag signal was the safest kind of automatic device for the type of crossing in question.
- (e) Testimony from the train's engineer describing how the railroad determines speed limits for different portions of its track and stating that the speed limit for the portion of the track on which the accident occurred had been reduced from 90 m.p.h. to 70 m.p.h. nine months after the accident.

Should any of this evidence be admitted over objections based on FRE 407?

Problem V-47. Elizabeth Souris is sued for damages arising from an automobile accident. She testifies in her own defense. The plaintiff, Peter Lapin, introduces two prior inconsistent statements allegedly made by Elizabeth to witnesses shortly after the accident. Thereafter, Elizabeth seeks to introduce witnesses to testify to her good character for truth and veracity. Peter objects. **What is the proper ruling?** Assume that these witnesses are permitted to testify that Elizabeth has a good reputation for truth and veracity. **May Peter thereafter impeach the character witnesses for the defendant by showing that they have bad reputations for truth and veracity?** **May the witnesses be asked on cross-examination if they have heard that Elizabeth was convicted of drunk driving, arrested for shoplifting, suspended from college (some 9 years earlier) for plagiarism, divorced on the grounds she "cheated on her husband," and claimed to be the head of a coven of witches?**

Problem VI-60. Early on the evening of September 19, 1982 a truck traveling west on U.S. Route 20 collided with a car traveling south on State Route 6, killing four of the five teenagers riding in the car. Route 20 is a four lane divided highway, while Route 6 is a two lane country road. The intersection is controlled by a light which is always red in the direction of Route 6 and green in the direction of Route 20, except when a car on Route 6 trips a sensor. When this occurs, if six seconds pass without any vehicle tripping a sensor on Route 20, the light turns to amber on Route 20 for four seconds and then after one second of red on both roads it turns to green on Route 6 and red on Route 20.

At the time of the accident Sergeant Bonny Hendricksmeier, a twenty-eight year veteran of the state highway patrol, was on duty at a local patrol office. She reached the scene of the accident about six minutes after the collision. She carefully examined the physical circumstances of the accident and noted the tire marks on the highway and the damage done to the vehicles. Several days later she interviewed the surviving passenger from the car and the truck driver. The passenger had no recollection of the event and the truck driver said he could not say what color the light was because he had been blinded by the sun. He did say that he did not see any east-bound traffic on Route 20 stop or slow down and that he saw the car emerge from behind a house on Route 4. After finishing her investigation Hendricksmeier filled out an accident report. The report quoted what the truck driver had said verbatim. It also contained the observation that "apparently the car entered the intersection against a red light", and she had checked a box under the heading "contributing circumstances" which read "failure of vehicle #2 [the car] to yield the right of way." Nearby in the margin were the words, "teenage driver!".

At the trial the defendant company which is being sued on a *respondeat superior* theory calls the truck driver who repeats the observations he made to the officer and is vigorously cross-examined about them. The company also calls Hendricksmeier and asks her to describe in detail the accident scene as it appeared to her and the investigation she conducted. However, the defense does not ask Hendricksmeier whether she had reached any judgments regarding the cause of the accident. Later in the trial, after Hendricksmeier has been excused, the company offers her accident report. Should it be admitted over the plaintiff's objection?

Problem XI-11. The plaintiff brings an action for libel against Joanne Mulvey and the Charlottesville Times. The complaint alleges that Mulvey was the author of a statement, in the form of a letter, accusing the plaintiff of bribery and corruption in office, that Mulvey handed the letter to a reporter for the paper, and that it thereafter appeared in the paper. Without any preliminary proof, the plaintiff offers in evidence the issue of the paper containing the allegedly libelous letter. Mulvey and the Times both object on the basis of the best evidence rule. They argue that the original letter to the paper should be produced. **Would you sustain either objection?**

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PART II (50%)

1. You have one hour and fifteen minutes to answer the following problem.
2. This is an open book examination for this part of the examination. You may use any materials you wish to assist you in answering these problems.
3. Put your examination number, the name of the exam, and the semester on each blue book. Number each blue book. Please do that now.
4. Please double space your answers.
5. Turn in your blue books when you have finished this part of the examination. Do not turn in the questions.

Action by P, executor of A's estate, against D, an insurance company, to recover on A's life insurance. At trial, evidence is introduced to show that A was behind in his premium payments and the policy was due to lapse at midnight, May 31. A's body was found in shallow waters of the Concord River the morning of June 1. The crucial issue at trial is the time of A's death.

P calls W, the night clerk at the Hotel Thoreau, an inn near the Concord River. W testifies that A checked in on May 31st. The following examination then ensues:

Q: What time was it when he checked in?

A: I think it was around 10 P.M.

Q: Why do you think that?

A: Well, the pianist in the lobby is supposed to play until 10. That guy is very punctual and he always stops playing right at 10. I remember that he stopped right before A came in.

Q: How do you remember that?

A: Well, I usually notice the quiet when he stops and I remember that it was quiet when A came up to the desk. I also remember the pianist saying so long while A was standing at the desk. This might not be important, but I remember running out of ink when I logged the pianist out.

Q: What do you mean?

A: Well, we keep a log of events at the desk, and we always log in and log out the pianist and the other employees. I logged out the pianist just before I signed in A.

Q: How do you know that?

A: Because, like I said, I ran out of ink as I was logging out the pianist. I had to change pens. The second pen was a different color than the first. I checked that in the log book just before I came in to testify today. The first entry in the registration list with the second pen was for A. I checked that too.

Q: Did A go straight to his room after signing in?

A: Yes.

Q: Did you see him again that evening?

A: Yes. I did.

Q: When was it?

A: Around 11.

Q: How do you know that?

A: It seemed like an hour had gone by since I saw him before. And I heard one of the people in the lobby ask the bellboy what time it was. The bellboy said 11, and that was right before A came back to the lobby.

Q: Did you observe A's expression when he came back to the lobby?

A: Yes, I did.

Q: What was it?

A: He had an expression of great sadness.

Q: Did you observe his conduct at that time?

A: Yes, he acted as if he was disoriented.

Q: What did he do?

A: He paced up and down the lobby for a few minutes, twirled the revolving door, went out, and walked up and down the sidewalk in front of the hotel several times. I noticed that he bumped into a few people when they came by trying to get in the hotel.

Q: What happened then?

A: He left.

Q: What happened then?

A: Well, one of the guest who had bumped into A asked me if that was A. I told him it was.

Q: What did he say?

A: He said he thought so. He had seen A's face in the newspaper. Something about A being involved in a gambling operation that failed and that A owed several people quite a bit of money. He said the paper said that A knew that somebody was going to seek revenge. He guessed that was why A seemed so disoriented.

Q: What happened next?

A: Nothing until about six in the morning.

Q: What happened then?

A: I heard somebody yelling outside that they had found a body and I ran out the door to see what was going on.

Q: And?

A: Well, sure enough. There was A lying face up in the shallow water of the river.

Q: Could you describe the body?

A: The stomach was bloated, the skin was blue, there was blood coming from the nose and froth from the mouth. The whole body seemed stiff as a board.

Q: How long would you say the person had been dead?

A: About seven hours.

Q: How long have you been a night clerk?

A: Seven years. I've been there longer than anyone because the boss thinks I'm more responsible than most people who are willing to be nightclerks.

Q: How do you know that?

A: Well, he's told me. Also, I've gotten several raises.

Q: Have you ever been convicted of a crime?

A: Yes, once.

Q: What was it?

A: Bad checks, but that was before I became a Christian. I wouldn't do anything like that now.

Q: No more questions. Your witness, counsel.

What objections should have been made? What results would you have expected on each objection? Briefly, why that result?

(Note: This is primarily a test of your familiarity with evidentiary issues. Cover as many issues as you can by raising appropriate objections. You will gain more points by covering issues than you will by in depth analysis of each. Keep your explanations brief and to the point. Do not try to tell me all you know about evidence.)

You were a good class. I sincerely enjoyed struggling through this stuff with you.