

Original

③

EVIDENCE EXAM (TIMED PORTION)
SPRING 1995 (DANTZLER)

BLIND GRADING

INSTRUCTIONS

This portion of the test will provide one third of your final grade. There are fifteen numbered response opportunities which will be weighted equally for grading purposes. READ CAREFULLY AND FOLLOW DIRECTIONS EXACTLY.

Concisely state your answer in the language of any applicable Federal Rule of Evidence and cite the rule by number except that you need not cite Rules 402 or 802. If your answer is not directly based on a FRE, succinctly state the legal principle which does apply. [None of the questions involve whether or not a question is leading.]

EXAMPLE QUESTION: In OJ, the prosecution calls a witness to testify that Nicole ran from the house, screaming, "He's beating me; he's trying to kill me!" On behalf of the State, respond to Defendant's hearsay objection.

EXAMPLE ANSWER: 803(2) -- statement relates to startling event (being beaten) & is made while declarant (Nicole) under stress of event.

If you are instructed to respond to an objection and you believe that the objection is good, say "withdrawn" and briefly explain why the objection is good. If you are asked to object to evidence which you believe is proper, say "no objection" and briefly explain why the evidence is admissible.

If a Court ruling is given as to one issue in order to set up the next issue, do not assume anything about the correctness of the ruling. Judges are often wrong.

PERMITTED MATERIALS:

You may use your copy of the West 1993 Edition of the FREs assigned for this course along with the hand out I gave you with the text of amended Rule 412 and new Rules 413 - 415 which should be stapled to the inside back cover of your Rule book. Tabbing and notes written in the Rules book are permitted.

In addition, you may use a maximum of five 8 1/2 by 11 inch pieces of paper with writing on ONE SIDE ONLY containing any notes, outlines, etc. which you have personally hand written and which you think may help you. These pages may be copied - BUT NOT photocopied - from another source or they may be your own outlines. Put your blind grading number on the upper left corner of any pages you brought under this rule and turn the pages in when you turn in the exam.

IF YOU HAVE BROUGHT WITH YOU ANY MATERIALS WHICH DO NOT COMPLY WITH THE ABOVE, THEY MUST BE REMOVED FROM THE ROOM BEFORE THE EXAM BEGINS.

DO NOT TURN THE PAGE UNTIL INSTRUCTED.

①

A. The next four questions are based on California v. O.J. Simpson.

1. In an effort to establish time of death, the prosecution calls a witness who testifies that he heard the "plaintive howl" of a dog at 10:45 p.m. On behalf of the State, respond to the Defense's hearsay objection.

2. The court overrules the objection and the witness is asked how he knows it was 10:45. He responds that, since he didn't have a watch, he asked his wife the time, saw her look at her wristwatch and heard her say, "it is 10:45." On behalf of the State, respond to the Defense's hearsay objection.

3. A police officer who has testified to finding drops of blood in OJ's driveway also testifies that he observed a cut on Mr. Simpson's hand the day after the murders. He is then asked to look at a close-up photograph which has already been introduced into evidence and which was taken from a video tape of OJ at his daughter's recital the evening before the murders. The photo shows the defendant's hands and the witness is asked, "Does this photo show any cuts on Mr. Simpson's hands?" Object on behalf of the Defendant.

4. The prosecution asks Denise Brown (victim's sister) whether or not she believes that OJ killed her sister. Object on behalf of the Defendant.

B. The rest of the questions are based on the following fact pattern: This is a personal injury suit in which the plaintiff seeks \$100,000 for his claim that he suffered a whiplash injury when Defendant Corporation's driver (who is not a party to the suit) ran into the rear of plaintiff's stopped car. The Defendant answered the complaint agreeing that there was a collision but denying all other allegations. Defendant's answer also claims that the accident was caused solely by plaintiff's negligence in stopping suddenly in the middle of the intersection; that plaintiff was not injured in any way; and that the entire incident and lawsuit are part of plaintiff's efforts to fraudulently manufacture a false claim against defendant and its

insurance carrier.

5. Defendant offers the testimony of the manager of defendant's insurance agent to the effect that plaintiff is a former employee of the agency and had recent access to the files which show defendant's one million dollars of liability coverage. On behalf of Defendant, respond to Plaintiff's objection that this testimony improperly introduces liability insurance evidence which is irrelevant.

6. Plaintiff offers into evidence a properly authenticated traffic ticket charging defendant's driver with following too close in connection with the collision. Object on behalf of the Defendant.

7, 8 & 9. Plaintiff's chiropractor is asked to testify to a conversation (properly authenticated) with Defendant's vice president in which the V.P. said, "We know that Plaintiff was hurt badly and we will pay all his bills. On behalf of the Plaintiff, respond to Defendant's objections that this testimony:
(7) is hearsay,

(8) the vice president lacked personal knowledge,

and (9) improperly introduces an offer to pay doctor bills.

10. Defendant calls Plaintiff's wife as a witness and plans to ask her about Plaintiff engaging in physical activity inconsistent with the claimed injury and about statements made by Plaintiff to her admitting that he staged the whole incident. Object on behalf of the Plaintiff.

11. Defendant calls a witness to testify that Plaintiff came to Defendant's office and, in the presence of the witness, offered to settle the case for \$1,000,000. On behalf of Defendant, respond to Plaintiff's objection that this testimony is barred as a settlement offer.

12. The court overrules the objection in #11. Plaintiff then cross examines the same witness and asks whether or not Defendant made a counter offer of \$5,000. Object on behalf of the Defendant.

13. Plaintiff offers into evidence a properly authenticated hospital record which contains the following under the heading of ONSET OF SYMPTOMS: "Patient reports that he was stopped at a red light when his car was struck from the rear and that he immediately felt a sharp pain in his neck and shoulder which persists." On behalf of Plaintiff, respond to Defendant's hearsay objection.

14 & 15 Defendant offers into evidence a properly authenticated record of an indictment and guilty plea of Plaintiff's chiropractor in which the latter was convicted of felony insurance fraud based on bogus claims of injury to Plaintiff in this case. (Plaintiff went to trial separately and was acquitted.) On behalf of Defendant, respond to Plaintiff's objections that the conviction is
(14) hearsay

and (15) irrelevant.

STOP

DO NOT TURN PAGE UNTIL
INSTRUCTED

THERE IS A BONUS QUESTION ON THE NEXT PAGE
FOR WHICH YOU WILL BE GIVEN ADDITIONAL TIME.

IF YOU HAVE MORE TIME NOW, GO BACK AND
CHECK YOUR ANSWERS WHILE YOU WAIT FOR THE
BONUS TIME

BONUS QUESTIONS.

DO NOT READ UNTIL INSTRUCTED.

TURN EXAM OVER UNTIL THEN

FRE SCAVENGER HUNT

Write the NUMBER of the Federal Rule of Evidence which relates to each of the following issues:

1. Whether a witness can be impeached by evidence that she is an atheist.
2. Statements of accomplices during a joint criminal enterprise.
3. The Judge telling the Jury to consider evidence for one purpose but not for another.
4. Evidence that someone always does something a particular way to prove that he did it that way this time.
5. Statements by counsel of what would have been proven had the Court not prevented the proof by sustaining an objection.
6. Best Evidence Rule
- 7 & 8. When a witness forgets something (two rules).