

DISTRICT OF COLUMBIA SCHOOL OF LAW

EVIDENCE
MID-TERM
FALL, 1990

Professor Thomas Mack

This is a “closed book” exam; you may not possess, use, or even have near you any notes or any materials with writing on them other than the FRE provided with the exam. Apply the Federal Rules, not common law. DO NOT write your name or identify yourself in any manner other than placing your social security number on your examination book. If you use more than one “blue book,” number the books in sequence and place your social security number on each book.

Question 1. In litigation over air quality in the law school, on the relevant issue whether the law school should have known of the toxic quality of the air circulating in its ventilation system, the plaintiff student association offers in evidence a letter sent by student Mo to the Dean in which she stated that, “Room 102’s air quality is toxic.”

The letter is:

- A. Inadmissible hearsay.
- B. Admissible business record.
- C. Admissible as not being hearsay.
- D. Admissible as a statement of her state of mind.

Question 2. Joe and Bea are joint tenants in Blackacre. Bea attempts to have Joe committed for insanity and Joe testifies at a hearing thereon. After the hearing, Joe conveys his interest in Blackacre to Mary. Joe dies. In subsequent litigation between Bea and Mary over the validity of Joe’s conveyance to Mary, Bea offers in evidence one of many letters received in evidence in the previous hearing. In the letter, written by Joe, Joe states that he murdered both President Kennedy and Senator Kennedy. The letter is admissible as:

- A. Former testimony.
- B. Party admission.
- C. Excited utterance.
- D. None of the above.

Question 3. Emergency room nurse, Ann, likes to visit her friend, the general counsel to the hospital. One evening she goes from the emergency room area to the general counsel offices, which take up the top floor of the hospital. As she climbs the last flight of stairs to the top floor, the stair railing appears to her to be dangerously rusted, which she mentions later that evening while chatting with the general counsel. A janitor slips on those stairs that night crashing through that stair railing. In a negligence lawsuit between janitor and the hospital, general counsel is on the witness stand and is asked by janitor to recount nurse Ann’s statement to her about the stair railing. Hospital objects that question calls for hearsay. The court will most likely rule the response is:

- A. Admissible as a present sense impression.

- B. Admissible as a party admission.
- C. Admissible as either a nonhearsay or a “state of mind” expression.
- D. Inadmissible hearsay.

Question 4. X, Y and Z have been indicted for conspiring to distribute heroin. The indictment alleges that on three separate occasions, Y and Z sold heroin to an undercover agent, and that X supplied the heroin to Y and Z.

At trial, X, Y and Z all testify to their innocence. The agent testifies that in January he met Y and negotiated a heroin purchase with him. After Y and the agent agreed as to price, quantity and quality, Y took the agent to Z, who accepted the money and gave him the heroin. Two weeks later the agent made a second purchase, which followed the same pattern. After the second purchase, the agent met with Y and complained that the purity of the heroin wasn’t what Y and Z promised. Hoping to retain the agent as a customer, Y assured the agent, “Listen, Z and I work for X, and X insists that we keep our customers happy. X will make sure that the next package is pure.”

Before the agent can testify about the third sale, Y and Z each object that Y’s statement is inadmissible hearsay. Y’s statement is:

- A. Admissible against only Y.
- B. Admissible against only Z.
- C. Admissible against both Y and Z.
- D. Inadmissible against either Y or Z.

Question 5. Roz and Bo are opponents in a divorce trial, and Bo’s assets are at issue. Bo’s friend, who knows all the facts concerning Bo’s assets, had once told Roz at a party that Bo owned a farm in Costa Rica. In grand jury proceedings involving whether Bo evaded taxes, the friend had denied Bo owned any such farm but conceded that he had told Roz that Bo owned such a farm. At the divorce trial, the friend testifies that Bo in fact never really owned any such farm. Roz asked Bo’s friend during cross examination whether the friend had told her at a party that Bo owned a farm in Costa Rica. If a hearsay objection is made, the court will most likely rule the response:

- A. Admissible only to prove farm ownership.
- B. Admissible but not to prove farm ownership.
- C. Admissible for all relevant purposes.
- D. Inadmissible hearsay.

Question 6. Jan and Dean are on trial for conspiracy to commit an axe murder. Lou is called as a witness for the prosecution to testify concerning his knowledge that Jan and Dean were the murderers. He testifies they had a falling out as soon as the deed was done, that Dean wanted to confess but Jan didn’t. Lou then testifies he heard Jan tell Dean, “I hope you hid the bloody axe so nobody will find it!” Defense counsel for both Jan and Dean object and move to strike the last statement as hearsay.

- A. Jan’s statement is admissible against both Jan and Dean.
- B. Jan’s statement is inadmissible, regardless of availability, against Jan but not Dean.
- C. It is inadmissible hearsay.
- D. It is admissible hearsay only if Jan is unavailable as a witness.

Question 7. The Dean said to her secretary, "I'm going to lunch, record all my calls as usual." School policy provided a standard log book to record messages when an employee was not present to receive a call. While the Dean was out, Bill, a faculty member, called. The Dean's secretary recorded the following message: "Bill called and said he had just landed at National and was going to take a cab to Cabin John and that the Dean should cancel his Evidence class." A taxi driver was found murdered in his cab. The taxi was parked in Bethesda, a town between the airport and Cabin John. Bill was charged with murder. The prosecution moved to admit both the secretary's phone log entry as well as the taxi driver's own fare log stating his destination as Cabin John. Which of the following statements is correct?

- A. Both entries will likely be admitted under the business record exception to the Hearsay Rule.
- B. Only taxi driver's entry will likely be admitted as a business record.
- C. Secretary's entry will be admitted as a declaration against interest.
- D. Secretary's entry will not be admitted because it is hearsay within hearsay.

Question 8. In a battery suit by Art against Bob, to prove a consequential fact that Bob was in the law school during the ABA visit, Art places Hazel on the stand. When Hazel denies ever being at the law school during the ABA visit and denies any memory of ever seeing Bob during the time of the ABA visit, Art offers Hazel's grand jury testimony that she was studying with Bob at the law school during the ABA visit. The grand jury testimony is:

- A. Admissible only to impeach Hazel.
- B. Admissible because it's not hearsay.
- C. Inadmissible because Hazel is available.
- D. Admissible as a state of mind exception.

Question 9. In a civil battery suit of Bea against Ann, where Ann's sole contention is self defense, the defendant offers a witness who testifies that a few hours after the fight, Ann said "I hit him only after he jumped me from behind." The statement is:

- A. Inadmissible hearsay.
- B. Admissible as a declaration against interest.
- C. Admissible as a declaration of state of mind.
- D. Admissible as a party admission.

Question 10. George, a married man, is prosecuted for rape of Ann, a hooker. On the issue of the identity of Ann's attacker, the prosecution seeks to introduce testimony of George's friend that George went to a venereal disease clinic soon after the date of the alleged rape. Such testimony would be:

- A. Inadmissible as irrelevant.
- B. Admissible as hearsay exception.
- C. Inadmissible hearsay.
- D. Admissible nonhearsay.

Question 11. Bo and his beloved Dora are in Hecht's department store, standing at a jewelry counter looking at various pieces laid out on the counter by a helpful Hecht's employee. Bo notices in horror that Dora has just slipped a valuable piece of jewelry into her blouse. He knows the employee will notice it's missing in a second or two. To protect Dora from suspicion, Bo

suddenly runs from the counter, runs down the aisle and out the door. Some time later Dora is indicted and put on trial for stealing the piece of jewelry. Bo's whereabouts are unknown. Heartless Dora tries to pin the crime on Bo and puts on a witness who testifies to Bo's flight from the store. The Government objects that the testimony is hearsay. The witness's testimony regarding Bo's flight is:

- A. Inadmissible hearsay.
- B. Admissible as a declaration against interest.
- C. Admissible nonhearsay.
- D. Party admission.

Questions 12-15 are based on the following fact situation:

Debra is being criminally tried for the severe beating of her onetime friend Ali. It is established that Ali suffered serious injury from a beating.

12. The Government offers a witness, Dot, who testifies that on the day before Ali's beating, she heard Ali and Debra arguing and heard Debra accuse Ali of molesting Debra's daughter. Dot's testimony is:

- A. Inadmissible because irrelevant.
- B. Inadmissible because hearsay.
- C. Relevant and admissible either as non-hearsay, or under state of mind exception to hearsay rule.
- D. Non-hearsay, but inadmissible because Dot had no personal knowledge.

13. The state offers the testimony of Ali's friend, that Ali had told her on the day of the beating that Debra had threatened him the day before with bodily harm. The testimony is:

- A. Admissible under the state of mind exception to the hearsay rule.
- B. Admissible as reflecting on the credibility of Debra.
- C. Inadmissible hearsay.
- D. Admissible as an excited utterance.

14. The state offers testimony of a police officer that he was on patrol in Debra's neighborhood, when an unknown bystander ran up to him shouting, "Help! There is a terrible fight going on at Debra's house!" The testimony is most likely:

- A. Inadmissible hearsay.
- B. Inadmissible because identity of hearsay declarant unknown, and therefore trustworthiness unverifiable.
- C. Hearsay, but admissible as an excited utterance.
- D. Hearsay, but admissible as an official police record.

15. The state offers further testimony by the officer, that on arrival at Debra's house he could not find Ali but found him in an alley an hour later, lying on the ground; that Ali said calmly, "I have been lying here thinking, Debra hit me from behind, but I'll get even if it's the last thing I ever do," and that Ali thereupon lapsed into unconsciousness and was taken to the hospital. This testimony is:

- A. Hearsay, but admissible as declaration against interest.
- B. Inadmissible hearsay.

- C. Inadmissible because irrelevant, there being no showing that the accused Debra, was the “Debra” to whom Ali was referring.
- D. Hearsay, but admissible under the state of mind exception.

Question 16. Bo files suit against Sue for breach of a contract to sell Bo 100 dresses at \$50 per dress, for failure to deliver the dresses required by the contract. Sue answers that she did deliver the dresses required by the contract. Bo takes the stand and testifies to the agreement between the two and then identifies a piece of paper with writing on it as the contract that Sue and he had signed. His attorney offers it in evidence. Sue’s attorney objects that the contract is hearsay. The contract is:

- A. Admissible as a party admission.
- B. Admissible as nonhearsay.
- C. Admissible as hearsay exception, as a statement of intent.
- D. Inadmissible hearsay.

Question 17. Ann is one of three supervisors in a company’s office. Like the other supervisors, Ann is in charge of a number of employees. Her duties include submitting weekly reports on how well each worker she supervises does his or her job.

Ann happens to be something of a nutrition faddist. She makes a point of noticing what each worker brings for lunch from home, and includes this information in her weekly reports. Her superiors don’t complain about these unorthodox additions to her reports.

One evening after returning home from work, Joe, an office employee, falls sick. Eventually doctors diagnose the ailment: food poisoning. Joe sues a neighborhood market, alleging that it sold him spoiled lunchmeat.

To corroborate his own testimony that he ate the supermarket’s lunchmeat earlier on the day he took ill, Joe wants to introduce the weekly employee evaluation form that Ann filled out for the week in question. The food store objects on a hearsay basis. The form is:

- A. Admissible as a party admission.
- B. Admissible as a business record.
- C. Admissible as nonhearsay.
- D. Inadmissible hearsay.

Question 18. Pat owns a business. He sues Don, his former accountant, claiming Don stole company money. During pretrial discovery, Pat deposes Jan, who had been living with Don while Don worked for Pat. Jan testified at the deposition that Don had one night said to her with great excitement, “I’m really cheating Pat out of a fortune!” At trial, Pat offers the transcript of Jan’s deposition into evidence. Don objects that it is hearsay. The deposition will be:

- A. Admissible as a party admission by Don.
- B. Admissible as declaration against interest by Don.
- C. Admissible as former testimony.
- D. Inadmissible hearsay.

Question 19. A lone male was seen to shoot and kill Val on Christmas Day. Don was indicted and tried. At trial, Don takes the stand and denies he was Val’s killer. Don also offers a witness who testifies she was in a bar near where the killing took place and overheard the bartender say to a patron, “I had to get out of town for awhile after I took my revenge on Val last Christmas

Day.” When the prosecutor objects, that the statement is hearsay, Don informs the court that the bartender has since died, offering a public record, his death certificate. The bartender’s statement is:

- A. Admissible as nonhearsay.
- B. Admissible as a declaration against interest.
- C. Inadmissible hearsay.
- D. Inadmissible because irrelevant.

Question 20. D is indicted for killing his wife in his cabin on March 20th with a “bowie knife” (a particularly large blade hunting knife). Prosecution, to prove D’s bowie knife was in cabin on day of killing, puts friend of D’s son on stand, who testified he and D’s son were hunting early on March 20th, and that he heard son say to him next day, “I just loved skinning that rabbit while it was still warm and I loved using my daddy’s bowie knife to do it.” D objects that the son’s statement is hearsay. Prosecutor responds that he’s not concerned whether son loved or hated skinning rabbits. The son’s statement is:

- A. Admissible as either nonhearsay or under the state of mind exception.
- B. Admissible as an excited utterance.
- C. Inadmissible hearsay.
- D. Admissible as a present sense impression.