

DISTRICT OF COLUMBIA SCHOOL OF LAW  
EVIDENCE FINAL EXAM  
FALL 1991

PROFESSOR 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. Give a brief explanation of your conclusions; cite to the appropriate Federal Rule. No Rule 403 analysis is required in answering any question. Assume objections have been properly made to all evidence offered.

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1. In a suit by Bob against Sue, challenging her firing of him from employment in her firm, alleging that the firing was illegal because it violated a statute prohibiting discrimination against homosexuals, the plaintiff calls to the stand his friend Morris to testify that Sue’s sister told Morris that Sue often stated she couldn’t stand being around homosexuals. Will the witness’s testimony be admissible?
2. Don is sued by Allstate to recover insurance proceeds which Allstate claims he fraudulently obtained by deliberately setting fire to his own house and then claiming the insurance proceeds. Don had been convicted of arson for the burning of his house. Don, who in fact is innocent, locates the real arsonist Boo, just before going to trial against Allstate. Boo tells him that she burned his house because she couldn’t stand Don’s wife. Don is going to call Boo to the stand but she dies the very night of her confession to Don. So Don himself takes the stand to exonerate himself by testifying to Boo’s statement. Will his testimony be admissible?
3. Zeke is defending against allegations by plaintiff Yolanda, his former lover, that Zeke took her car across country to California without her knowledge or consent. Zeke has taken the stand to testify that he in fact never took the car. Zeke, in addition, calls Yolanda’s own mother to testify that she has known Zeke her entire life and is certain that he is a truthful person. Will the mother’s testimony be admissible?
4. Kenny is on trial for battery. Barbie, the alleged victim, testifies on direct by the prosecution that Kenny battered her but that she didn’t report his battery to the police for three months because she was afraid of him but that she did start telling friends that Kenny beat her about one month after the beating. The prosecution calls as its next witness Barbie’s friend to confirm that indeed, Barbie, had told her one month later that Kenny had battered her. The defendant objects in timely fashion to the friend’s testimony. Is it admissible?
5. Continuing the above, on cross examination of Barbie, Kenny’s attorney asks her whether she had not, in an earlier prosecution of another defendant, Ed, for an unrelated robbery of

Barbie, falsely stated in that case that Ed had robbed and beat her. The prosecution objects that the question calls for hearsay and prior bad acts and is therefore inadmissible. What ruling?

6. Mary is prosecuted for battering Joe. The prosecutor calls Bert who is asked what, if anything, Joe said to Bert the day before Joe was battered. Mary's lawyer objects. Bert will, if permitted, testify that Joe told him that Mary had said she was going to break Joe's nose. Will the offered testimony be admissible?

7. Jerry sues Angel for damages in a negligence action arising from Jerry's car colliding with Angel's car. Jerry was thrown out of his car into some bushes. Jerry calls to the stand a police officer who arrived at the scene of the accident ten minutes after it occurred. The officer testifies he filed a police report in the standard manner and identifies a report as being the one he signed and filed. The report contains his statement that car appeared to him to have been going very fast because he measured the skidmarks made by the car. It also contained his statement that a bystander came up to the officer and said he had just tripped over someone in the bushes who was apparently bleeding to death. Angel objects to the police report being admitted. What result?

8. In a prosecution of Abe for kidnapping Bea, the prosecution calls Frank who will testify that less than a year previous to Abe's alleged kidnapping of Bea, he kidnapped a little boy. Is Frank's proffered testimony admissible?

9. Ed is prosecuted for negligent homicide, having killed Dot in a car accident where Ed was driving a car in which Dot was a passenger. Ed takes the stand to testify. Among other things he testifies without objection that he has very high driving abilities, having been trained in race car driving. Later in the case the prosecution calls Ed's friend, Mark, to the stand to have him testify that he knows Ed's reputation in the community and that it is that of a very reckless driver. Ed objects to Mark's testifying as to his reputation. What would the court rule?

10. Betty is prosecuted for stealing diamonds from Tom on December 1, 1990. As her first witness, Betty calls her mother to testify as to a number of opportunities her daughter had to steal diamonds from Tom but never did. The prosecution objects to this line of proffered testimony. Is the testimony admissible?

11. An insurance adjuster arrives at a hospital to talk to passengers hurt in a bus accident the day before. He later files a report with his employer, who insures that bus company. The report contains his statement that one passenger whispered to him that the bus driver Lou, had said to him that Lou wished the bus had better brakes. In a later negligence lawsuit by another passenger against the bus company, the plaintiff seeks the admission of the investigator's report after examining the investigator on the stand about his making it. The defendant objects. What ruling?

12. Sam is on trial for murdering Sarah in Chicago on December 1<sup>st</sup>. He calls Tina to testify that Sam had told her by telephone, in a voice she knew to be Sam's, on November 30<sup>th</sup> that he was in Paris, France and that he was about to leave for Moscow. The prosecution objects. What ruling?

13. Mo's executor sues Nan, a doctor, for wrongful death in an auto collision. At trial, Nan's attorney offers a page from Nan's office desk diary with a notation that Nan had the brakes of her car fixed the day before the accident. Nan testifies that it is from her office desk diary and her attorney moves its admission. What ruling?

14. Ed died sometime during December 16<sup>th</sup> by a violent blow to the head. His executor discovers that Jerry, a burglar, broke into an apartment shared by Ed and John, on the night of December 16<sup>th</sup>. He sues Jerry in a wrongful death action, alleging battery to the head with a blunt instrument. At trial, Jerry calls Dot to the stand to testify to a statement made to her by Ed's roommate. If permitted, she will testify that in January, John, an acquaintance of hers with whom she often spoke when they found themselves in the same bar, had told her that he was embarrassed to admit that he had become extremely angry with his roommate, Ed, one evening and hit him with an iron fireplace poker. Admission of this testimony is opposed. What ruling?

15. Pat testified in a criminal case against Roy for burglary that she saw Roy on the unlit lawn of the burglarized property on the night in question. On cross examination, she is asked whether she told Jane that her eyesight was so poor she couldn't see at night. Pat denies having said anything to Jane. Defendant later calls Jane to the stand and asks Jane what, if anything, Pat said to her. Jane testifies that Pat said her eyesight was poor. The prosecutor timely objects, on a hearsay basis. What ruling?

16. Wally owned a company which leased steel purifying machines to steel companies. On May 15<sup>th</sup>, he inspected a machine his company leased to Daisy Steel Co. Two days later an explosion occurred at Daisy Steel, injuring Pete. Wally inspected the premises after the accident. He later told his friend Wendy, "The explosion was caused by my machine. I should have inspected it more closely." Pete sues Daisy Steel, which calls Wendy to testify to Wally's statement. Pete objects. What ruling?

17. Mary sues Bob, a real estate broker, for fraud in intentionally lying to Mary about defects in a house Mary bought with Bob's help. Bob denies he even knew about the defects. Unknown at the time by Bob, Mary had also been relying on Jane, another broker, for advice. Jane later admits to Bob that Jane knew of the defects but lied to Mary, saying the house had no problems. Bob asks Jane to testify at the trial and Jane reluctantly agrees and accepts a subpoena to testify at trial some six months hence. However, Jane falls in love two weeks before trial and elopes to Nepal. Bob takes the stand to testify what Jane told him about her lying to Mary. Mary objects. What ruling?

18. Ann brings a wrongful death action seeking damages against Boeing for causing the death of her husband Harry. Boeing seeks to have one of its witnesses testify that Harry told the witness that, Harry was in love with Bob and in fact loved and worried about Bob more than his own family, so much so, that he didn't care if his love for someone of the same sex caused a scandal. Ann objects. What ruling?

19. Sue is charged with the crime of assault on Joe. She claims self defense, that she was only protecting herself from his offensive touching. She calls her boss, who testifies without objection that she has always been a good worker. He then seeks to testify that to his knowledge

Sue had not been in one fight in the ten years she had worked for him. Prosecution objects. What ruling?

20. In the same case, Sue seeks to have her boss testify that on the day before the alleged assault, Sue had come crying to him, complaining that Joe had just threatened to “have” her whether she liked it or not. Prosecution objects. What ruling?

21. In the same case, the prosecution cross examines the boss. The prosecution asks the boss whether he had ever heard that Sue often engaged in fights in bars. Sue objects. What ruling?

22. Joe sues Wanda for breach of an oral December 20<sup>th</sup> contract. He offers into evidence, through the testimony of the court reporter of a previous case, between the same parties, concerning an injunction sought to enforce the same contract, a transcript of Roy’s testimony that he was present when Joe and Wanda reached their December 20<sup>th</sup> agreement and heard Wanda agree to pay ten thousand dollars for Joe’s services. Wanda objects. What ruling?

23. Defendant Sam puts Bob on the stand in a prosecution against Sam for murdering his wife Mary. If permitted, Bob will testify that the day before Mary was murdered, Bob told Sam that Mary had said to Bob she was going to shoot Sam. The prosecution objects to Bob’s proffered testimony. What ruling and why?

24. Jerry once worked for Decker Crane Leasing. Paul is suing Decker for negligence when one of its leased cranes fell on Paul. Paul puts Jerry on the stand to testify that Susan told him that when she was operating one of Decker’s cranes, it also fell, a month before Paul’s being hurt. When Jerry heard this, he told it to Decker’s president. Decker’s attorney objects. What ruling and why?

25. Al is the chef at John’s restaurant. One night Al has had too many drinks and tells a friend that he was in a stall in the restaurant’s men’s room that night and overheard John the owner tell the headwaiter to use false credit card slips to conceal how much money the restaurant was actually taking in. In a later tax evasion prosecution against John, the prosecutor puts the friend on the stand to testify as to what she heard chef Al say. What ruling and why?