

DISTRICT OF COLUMBIA SCHOOL OF LAW
EVIDENCE
MIDTERM
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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. 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.

1. Don is prosecuted for criminal battery of Mary. He chooses not to testify and the court rules he is so privileged. The government calls Joan, who testified that Mary told her Don had said last March he was going to beat Mary badly. If Don objects to the offered testimony, the court will most likely rule the testimony is:
 - A. Inadmissible because irrelevant.
 - B. Admissible as a declaration against interest.
 - C. Admissible as a party admission.
 - D. Inadmissible hearsay.

2. In a civil suit by Mary against Don, for battery, to prove that Don was in Mary’s home with Joan and Mary on the night Mary was beaten, Mary calls Joan to the stand and asks her where she was the night of the beating. Joan says that, thinking back, she’s pretty sure she was at the movies with Don that evening but that she really doesn’t remember for certain. Mary then asks Joan whether she testified at the previous criminal trial that she spent that entire evening with Mary and Don at Mary’s house. If Don makes a hearsay objection, the court will most likely rule that the proffered testimony is:
 - A. Admissible only to impeach Joan.
 - B. Admissible under the former testimony exception to the hearsay rule.
 - C. Admissible because not hearsay.
 - D. Admissible as a state of mind exception.

3. Roz wants Jerry to paint her portrait. Jerry says he will, but only if Roz puts in writing that she’ll help him with his evidence course. She signs the writing and Jerry paints the portrait. Later, however, he feels that Roz is not helping him much with his evidence course. He sues Roz to get the portrait back, alleging the tort of conversion, claiming Roz was lying all along and never intended to help him. Roz answers that she always intended to help Jerry when she signed the writing and did help him. On the stand in her own behalf, she identifies the writing and her signature and asks the judge to admit it. Jerry objects that the writing is an out of court statement inadmissible because hearsay. The court will most likely rule the writing to be:
 - A. Hearsay which is inadmissible.
 - B. Hearsay but admissible under the state of mind exception.
 - C. Hearsay but is admissible as a contract term.
 - D. Admissible as a party admission.

4. Ann is being prosecuted for stabbing her onetime friend Bo one evening after they both got drunk. A neighbor comes by the morning after the stabbing. She finds Bo sitting in a chair stabbed and bleeding. Bo tells the neighbor: "That bitch Ann set me up and then stabbed me."

Later that day, after being treated for the stabbing, Bo goes to the police, files a complaint.

The prosecution offers the neighbors testimony about Bo's statement upon being discovered by the neighbor. Ann objects that it is hearsay. The court will most likely rule Bo's statement to be:

- A. Admissible as a statement against interest.
- B. Inadmissible hearsay.
- C. Admissible as a statement of identification.
- D. Admissible as an excited utterance.

5. Safeway is convinced that it was Bea and Al who robbed one of its grocery stores one evening, getting about \$10,000. Safeway sues Bea civilly to recover the money. Safeway doesn't sue Al because he has no money. Al gets a telephone call from Bea informing him that Safeway knows who robbed its store. Al tells her over the phone, "Hell! I should never have gone into that Safeway with my gun! If they catch me I'll get extra time because of the gun." Bea denies Safeway's allegations, takes the stand and seeks to testify as to Al's statement in an attempt to put the blame entirely on Al. Upon hearsay objection, the court will most likely rule Bea's testimony as to Al's out of court statement:

- A. Admissible as a party admission.
- B. Admissible as a declaration against interest.
- C. Admissible as an excited utterance.
- D. Admissible as both a declaration against interest and as an excited utterance.

6. Conor and Angela own and operate a tavern together. Conor is bartending one evening and he continues to serve liquor to a group of law students even though they are already intoxicated. A fight ensues among the students among a politically incorrect statement, and a bystander in the tavern is injured. The bystander sues Conor in tort.

On the day after the fight, one of the students complained to Angela that Conor should not let them have drink so much. Angela replied, "Look, I don't know anything about it. I wasn't there. I know Conor likes to see our customers get real happy, but I wasn't there."

The bystander calls the law student who complained to Angela to testify to Angela's statement. Conor objects that it is hearsay. The court will most likely rule the statement admissible as:

- A. State of mind expression.
- B. Declaration against interest.
- C. Party admission.
- D. Excited utterance.

7. Dee, a witness in a criminal prosecution of Bob for battery of Sue, testifies for Bob. Dee says she saw the fight between Sue and Bob, and that it began when Sue jumped Bob from behind. On cross, the prosecution asks Dee whether she testified earlier in a civil suit that she saw Bob swing at Sue before she jumped him.

Dee admits she testified but denies that she testified that she saw Bob swing first. The prosecution then asks whether she told her friends the night of the fight the very same thing, that

she saw Bob swing first. Bob objects to this question as calling for hearsay. The court will most likely rule the testimony is:

- A. Admissible only for impeachment.
- B. Admissible for all relevant purposes.
- C. Inadmissible hearsay.
- D. Admissible as consistent statement.

8. Joe tells Lulu, "I love you and I am going to take care of you." Joe dies soon thereafter and his wife demands Lulu return the Cadillac which Joe owned. Lulu claims it's hers because Joe gave it to her even though he never had time to transfer the title. Joe's wife, as sole heir, sues Lulu for conversion of the Cadillac. Lulu offers Joe's statement to her in evidence. The wife objects that it's hearsay. The court will most likely rule the statement is:

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

9. In an action based on negligence, the administrator of Linda's estate sues Bob, the driver of a car that collided with Linda's car, causing Linda's death after a prolonged hospitalization. At trial, Bob calls Joan as a witness and she testifies that she visited Linda in the hospital two days after the accident and that they had a nice long chat. Bob then asks her whether Linda said anything about the accident. The administrator objects, on hearsay grounds. Bob advises the court that Joan will respond that Linda told her she had been looking at the sky when the accident happened.

The court will most likely rule that the testimony is:

- A. Admissible as a party admission.
- B. Admissible as a dying declaration.
- C. Admissible as a statement against interest.
- D. Inadmissible hearsay.

10. Art leases window washing equipment to office building owners. Art goes to the D.C. Law building to inspect some equipment he has leased to the building owner. Two days later, the equipment falls to the sidewalk, injuring Boo, a pedestrian.

That evening, the president of the company which owns the building calls Art, who has already heard about the accident. In the course of a long conversation, the owner tells Art that frayed cables caused the fall of the equipment. Art hangs up and tells his sister, "I should have looked more closely at those damn cables."

Boo sues the company owning the building, which at trial has its attorney call the sister to testify about Art's statement. Upon a hearsay objection, the court will most likely rule the testimony:

- A. Admissible as an excited utterance.
- B. Admissible as a declaration against interest.
- C. Admissible as a party admission.
- D. Inadmissible hearsay.

Remainder of exam is missing from archives.