

DISTRICT OF COLUMBIA SCHOOL OF LAW

Professor Thomas Mack  
Fall 1992

Evidence  
Midterm Exam

I. This is a closed-book exam; you may not possess, use, or even have near you any notes or other 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.

II. If you use more than one blue book, number the books in sequence ("1 of 3, 2 of 3," etc.) and place your social security number on each book.

\*\*\*\*\*

1. Max dies. Max's executor under Max's will, on behalf of the will's legatees, sues Bert, a friend of Max's, for the return of a speedboat. Max had bought and had title papers for the boat but Bert had possession of it. Bert claims the boat was given to him. Bert takes the stand and is asked by his attorney to testify to a statement made to him by Max while alive: "Bert, I'm going to do something very nice for you regarding this boat some day." Before Bert can testify to this statement, the executor's attorney makes a timely hearsay objection. The court will most likely rule the statement is:

- a) Inadmissible hearsay.
- b) Admissible as a declaration against interest.
- c) Admissible under the state of mind exception.
- d) Admissible nonhearsay.

2. Joan's company leases bulldozers to Hiways, a company working on an interstate highway. Joan maintains and inspects the bulldozers for Hiways as is required by federal regulations. Three days after she has inspected a particular bulldozer, the large scoop shovel on the front of the bulldozer falls on a worker, Calvin, walking past the front of the parked bulldozer. Joan is immediately told of the accident. Joan gets a telephone call from the president of Hiways a day after the accident, the president again asserting, as he had the day before, that Joan's inspection was faulty. Joan tells him it was Hiway's fault. Joan hangs up and turns to her secretary and says, "I should have inspected the bolts on the scoop shovel."

Calvin sues Hiways for negligence. Hiways calls the secretary to testify to Joan's statement about the bolts. Calvin makes a hearsay objection. The intended testimony is more likely:

- a) Admissible as a party admission.
- b) Admissible as a statement against interest.
- c) Admissible as an excited utterance.
- d) Inadmissible hearsay.

3. Ric owns a delicatessen next door to “Pat’s” bar, owned by Pat and his wife Mary. Ric looks out the bar one evening and sees his new and expensive canvass awning over his outdoor eating area has been ruined by large rips in it. He assumes Pat did it because “Pat’s” bar has a large broadsword decorating one of its walls and Pat has been known to take it down and slash things when he’s drunk, which is often.

Ric calls next door in a rage. Mary answers the phone and listens to Ric’s suspicions regarding Pat. Mary tells Ric to calm down and be careful about accusing Pat. She tells him she’s heard that Pat was indeed drunk yesterday and was threatening to start slashing things again.

Ric sues Pat for the cost of a new awning, taking the stand to testify as to Mary’s statement to him about Pat over the telephone. Pat objects that it is hearsay. The court will more likely rule the statement is:

- a) Inadmissible double hearsay.
- b) Admissible as a party admission.
- c) Admissible as a statement against interest.
- d) Admissible as an excited utterance.

4. Continuing the facts above and the trial between Ric and Pat, Pat had called Ric after Ric’s call to Mary. Pat had said to Ric, “Heard about your awning. Send me the bill.” Ric does but Pat doesn’t pay. If Pat’s statement to Ric is offered and objected to as hearsay, is it more likely:

- a) Admissible as nonhearsay.
- b) Admissible as a statement against interest.
- c) Admissible as a state of mind exception.
- d) Inadmissible hearsay.

5. Ed sues Don for injuries which Ed received in an automobile accident. Ed claims Don was negligent in exceeding the posted speed limit of 35 m.p.h.

Don testifies in his own behalf that he was going 30 m.p.h. On cross-examination, Ed’s counsel did not question Don with regard to his speed. Subsequently, Ed’s counsel calls Officer to testify that, in his investigation following the accident, Don told him he was driving 40 m.p.h. Officer’s testimony is:

- a) Admissible as a prior inconsistent statement.
- b) Admissible as a party admission.
- c) Inadmissible, because it lacks a foundation.
- d) Inadmissible, because it is hearsay not within any exception.

6. Jack is injured when hit by a truck owned by Mack Trucking and driven by Mack’s employee, Joe. Lou, also a Mack employee, was riding in the truck to help unload the truck at their destination. At trial Jack’s attorney calls Lou to the stand and after properly showing that

the statement was written by Lou, seeks to introduce Lou's written statement that he had been told by Joe's wife that Joe was drunk the afternoon he hit Jack with the truck.

- a) Admissible as a party admission.
- b) Inadmissible as double hearsay.
- c) Admissible as past recollection recorded.
- d) Inadmissible because irrelevant.

7. Jan, charged with murder, was present with her attorney at the preliminary hearing on her charge when Bill, who was the defendant in a separate prosecution for concealing the body of the murder victim, testified for the prosecution against Jan. When the prosecution calls Bill to repeat his testimony in the trial of Jan, he refuses though ordered to do so.

The prosecution offers evidence of Bill's testimony at the preliminary examination. The evidence is:

- a) Admissible as former testimony.
- b) Admissible as past recollection.
- c) Inadmissible because Bill is unwilling to testify.
- d) Inadmissible hearsay.

8. Bob bought a microwave oven from Microstore. The oven doesn't work properly and Bob sues for breach of warranty.

At trial, a Microstore salesman testifies that Bob specifically waived any warranties. Bob's attorney calls Bob's friend to the stand to testify he heard Bob say to the friend, "I'm not going to buy any stove without a lifetime warranty." If objection, as hearsay is timely made, the friend's testimony is:

- a) Inadmissible hearsay.
- b) Admissible as a present sense impression.
- c) Admissible as a party admission.
- d) Admissible to show he requested a warranty.

9. Sue was a guest at a private country club. While walking toward the pool, she slipped on a marble floor injuring her hip. After she fell, she got up and went looking for the manager. When she finally found him she said, "I slipped by the pool earlier and it really hurt when my hip hit the floor." The manager's only response is to say, "I'm terribly sorry but I'm too busy to help you right now." At trial, as part of her proof of pain and suffering damages, Sue calls the manager to the stand and asks the manager to relate what Sue had told her the day of the accident. Sue's statement is:

- a) Admissible as a statement of physical condition.
- b) Admissible as a party admission.
- c) Admissible as an excited utterance.
- d) Inadmissible hearsay.

10. While crossing Connecticut Avenue, Bea, a tall woman in a yellow dress, was hit by a car she didn't see. She sues Alex for her injuries. At trial Bea calls Officer Bill to testify that twenty minutes after the accident, a driver stopped him to say, "Officer, I just saw a hit and run accident involving a tall woman in a yellow dress and a red jeep, which I followed a short ways to 13<sup>th</sup> Street," and that a few seconds later Officer Bill saw Alex sitting in a red jeep on 13<sup>th</sup> Street. Officer Bill's testimony about the driver's statement is:

- a) Admissible as a statement of recent perception.
- b) Admissible as a present sense impression.
- c) Inadmissible hearsay.
- d) Admissible as a statement of identification.

11. Microstore sues Bea for stealing \$5000 from one of its stores. Microstore thinks Bea committed the theft with Al's help but sues only Bea, who is rich.

Bea goes to Al and tells him Microstore is accusing the both of them. Al calmly tells her, "I should never have gone into that store the night the money was taken." Bea denies the allegation and seeks to testify as to Al's statement to her, in an attempt to demonstrate it was Al, not her, who took the money. Bea's testimony is:

- a) Admissible as a party admission.
- b) Admissible as a declaration against interest.
- c) Admissible as a state of mind exception.
- d) Inadmissible hearsay.

12. Defendant Boo puts Carol on the stand in prosecution against Boo for murdering Jay. If permitted, Carol will testify that the day before Jay was murdered, Jay said to Carol that he had been physically beating Boo and would do it again. The statement is:

- a) Admissible as nonhearsay.
- b) Admissible as a statement against interest.
- c) Inadmissible hearsay.
- d) Admissible for impeachment only.

13. For a criminal prosecution against John for assault on Don, Defense witness Mary testifies she saw Don hitting John before John ever lifter a finger against Don. On cross examination she is examined whether she is biased in her testimony about the fight since she and John got married last June. On re-direct, Mary is asked whether she had ever told anyone else that Don was the first to start the fight. She replies she told her mother and many others the same thing on the day of the wedding. If a timely objection were made, Mary's reply would be:

- a) Inadmissible hearsay.
- b) Admissible as a prior consistent statement.
- c) Admissible as a statement of identification.
- d) Admissible as a state of mind exception.

14. Jo sues Grocery store for personal injuries alleging she was knocked to the floor by a grocery cart being pushed by Ron, a store clerk. Ron testifies Jo fell near the cart but was not struck by it. Thirty minutes after Jo's fall, Ron, in accordance with the regular practice of Grocery Store, has filled out a printed form "Employee's Report of Accident – Grocery Store" in which he states Jo had been leaning over near his cart and had fallen. Counsel for Grocery Store offers the report in evidence, which he obtained from Ron's supervisor. The report is:

- a) Admissible as a present sense impression.
- b) Admissible as an excited utterance.
- c) Admissible as a business record.
- d) Inadmissible hearsay.

15. Harry sues Dave for injuries received in a traffic accident. Dave claims contributory negligence on Harry's part, alleging Harry didn't have his lights on though it was dark. Dave calls Bystander to testify that passenger, who was in Harry's automobile at the time and who was injured also, confided in him at the scene of the accident that "we should have had our lights on." Bystander's testimony is:

- a) Admissible as a party admission.
- b) Admissible as a declaration against interest.
- c) Inadmissible hearsay.
- d) Inadmissible because irrelevant.

16. In the same case as above (15), Dave offers to have Bystander testify that he was talking to Witness when he heard the crash and heard Witness, now dead, exclaim, "That car doesn't have any lights on." Bystander's testimony is:

- a) Admissible as a present sense impression.
- b) Admissible because witness is unavailable.
- c) Inadmissible hearsay.
- d) Admissible as state of mind expression.

17. Don is prosecuted for bank robbery. At trial the bank teller, Lu, was unable to identify Don, who now has a beard, as the bank robber. The prosecutor then shows Lu a group of photographs, and Lu testifies that she had previously told the prosecutor the middle picture (admittedly one of Don before beard) was a picture of the bank robber. The testimony is:

- a) Inadmissible hearsay.
- b) Admissible nonhearsay.
- c) Admissible as past recollection recorded.
- d) Admissible as a present sense impression.

18. Jim is prosecuted for murder at an apartment on 13<sup>th</sup> Street on October 30. As part of its proof that Jim was there on that evening, the prosecution calls a police officer to testify to a parking ticket issued by the officer that night. The officer testifies thoroughly as to the ticket

having been made by him according to regular practices of the department and that he recorded the license number he saw that night accurately on the ticket because it was his practice to be accurate. He testifies he has no memory left as to the circumstance of the evening in question. The ticket is then offered in evidence because it contains a license plate number, which other evidence shows, is the number of Jim's car's license plate. If hearsay objection is made, the ticket will be most safely admitted on the basis of the following exception:

- a) Past Recollection Recorded.
- b) Business Record.
- c) Present Memory Refreshed.
- d) As nonhearsay.

20. On the evening of the day of a traffic accident between Abe's and Bea's cars, Janice Passenger writes a letter to her brother in which she describes the accident. When Janice at a negligence trial concerning the accident testifies she cannot remember some details concerning the accident, plaintiff Abe's attorney seeks to show Janice the letter to assist her in her testimony on direct examination. The trial judge should rule this:

- a) Permissible under the doctrine of present recollection refreshed.
- b) Permissible because of the doctrine of past recollection recorded.
- c) Objectionable because the letter was not an excited utterance.
- d) Objectionable because the letter is self serving.

\*\*\*\*\*