

DISTRICT OF COLUMBIA SCHOOL OF LAW
EVIDENCE FINAL EXAM
SPRING 1995

10:00 A.M. to 1:00 P.M.
May 10, 1995

PROFESSOR MACK

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 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 exam number on your examination book. If you use more than one “blue book,” number the books in sequence and place your exam number on each book. Give a brief explanation of your conclusions, cite to the appropriate Federal Rule. Assume objections have been properly made to all evidence offered.

1. John is prosecuted for sale of marijuana to Ann, a police informer. Ann testifies she bought the marijuana from John one night, on a particular street corner where she had been making frequent buys as part of her undercover assignment. She testifies that over the six weeks she was buying, she clearly remembers John’s purchase during her third week on the assignment.

John claims that there was no buy and he wasn’t even in town on the night in question. John calls a friend of Ann’s to take the stand to testify about Ann’s memory, hoping to prove how bad Ann’s memory is.

Ann’s friend testifies that she knows Ann quite well over the past twenty years. John asks the friend whether she know Ann’s reputation concerning her ability, or lack thereof, for remembering. The friend testifies that Ann has a reputation in that area and that the friend knows what the reputation is. John asks the friend to state what Ann’s reputation is. The government objects. What result and why?

2. Joe is being tried for the crime of burglary. Joe calls a friend, Mary, to the stand who testifies that Joe has a reputation for being always honest. On cross examination, the prosecutor asks Mary whether it’s true that last year she had applied to law school. Mary answers in the affirmative. The prosecutor then asks whether she stated falsely on that application that she have never been convicted of misdemeanor possession of marijuana. Joe objects. What result and why?
3. Delia, out driving one day, dies in a car accident. The administrator of her estate sues David, the driver of the other car. At trial David calls as a witness a nurse who sat with Delia in the hospital during a period when Delia and everyone else thought Delia was getting much better and would soon be released. In fact, Delia had a heart attack and died the day before she was to be released. David asks the nurse if Delia said anything about the accident. The nurse will testify that Delia told her she had been looking at a stain on

her dress when the accident occurred. David makes a timely objection to this proffered testimony. What result and why?

4. George is on trial for criminal battery. Lisi, the victim, testifies on direct for the prosecution that George hit her very hard with a golf club and that she failed to tell the police for months because of her fear of George. Lisi testifies she did tell her friend Dante about the beating three days after it occurred. The prosecution calls Dante as its next witness and he confirms that Lisi had told him that George had hit her with a golf club. George objects in timely fashion to Dante's testimony. What result and why?
5. Terri has been sued by Connie for stealing Connie's motorcycle and taking it to Chicago without any permission. Terri testifies she never took the motorcycle. Terri puts Connie's daughter, Lin, on the stand to testify that she has known Terri for years and is certain Terri is a truthful person. Will the daughter's testimony be admissible if a timely objection is made? What result and why?
6. Mr. and Mrs. Bush leave their eight year old son George home alone one evening. While George is rummaging through his parents' closet, he hears a window break and looks out and sees a tall, bearded man climbing through the window. George throws a shoe at the intruder, who flees. Later that week, while shopping with his mother at a mall, he sees a bearded man, jerks his mother's coat sleeve and whispers in her ear, "that's the man! I could identify him anywhere." The mother walks over to a nearby police officer and quietly tells him what little George said, explaining to the officer that George was referring to a man who had climbed into the window of their home. The officer arrests Larry, the bearded man in the mall. In the attempted burglary trial of Larry, the officer is asked to testify to what he was told by Mrs. Bush. Larry objects to the question. Analyze the admissibility of the officer's intended testimony.
7. Matt sues Jen alleging she was drunk driving and negligently hit him with her car while he was in the crosswalk. At trial, Matt calls a witness, Jo, a doctor at the hospital, and asks Jo to testify to what she heard Matt and Jen say to each other at the hospital five hours after the accident. Jen objects. Matt advises the court that if allowed to respond, Jo will testify she heard Matt say to Jen, "You are really drunk and were speeding," and that Jen said nothing in response. What argument would Matt make for admissibility of the proffered testimony?
8. In a suit by Boo against Marge for assault and battery, Marge takes the stand and denies that during a verbal argument she kicked Boo in the knee. Marge then calls Boo's ex-boy friend and seeks to elicit his testimony that he has known Marge for many years and she's an extremely nonviolent type. Boo objects. What result?
9. Beth, a minister, sues Janice for conversion of her car. Beth testifies to the conversion. In defense, Janice calls Vivian, who testifies Beth once lied to her entire congregation about how much money she had taken from Church friends for her personal use. Is Vivian's testimony admissible if timely objection is made?

10. *[Missing from the exam file provided by the Professor]*
11. Paul sues Dora's executor for fraud by Dora regarding Dora's nail care business which Dora had sold to Paul just before she died. Paul alleges Dora lied to him about the value of her business, which turned out to be bankrupt. Paul seeks to testify that prior to his entering into the contract to purchase the business, Dora had falsely told him the annual gross income of the business was over \$100,000 per year. Will Paul's testimony be admissible?
12. Maria is injured when a Ferris Wheel ride at an amusement park stops suddenly causing her to fall out. She sues the park and at trial, calls Pat to testify that Pat heard Sue say to the park manager the day before the accident that the Ferris Wheel seemed to be periodically stopping even though the operator was not trying to stop it. The park objects. What ruling and why?
13. Jones is indicted for sexual molestation. His nephew Frank is the victim. At trial, the prosecution offers various evidence of the molestation. It also calls Frank, a fifteen year old, who testifies he wasn't molested. The prosecution then seeks, to help prove the molestation, the admission of a grand jury transcript, properly authenticated, of Frank's testimony before the grand jury detailing Jones' molestation of Frank. Jones objects. What ruling and why?
14. Witness Martha testified that she clearly saw criminal Defendant holding a knife and demanding cash from Victim. On cross examination by Defendant, Martha admits she had once told her friend, Mary, it was so dark and foggy the night of the robbery that she really couldn't see very well who was robbing the Victim. Defendant later calls Mary to testify as to her close friend Martha's various lies to Mary over the years. Prosecution objects. Is Mary's intended testimony admissible?
15. Mark is on trial for murder. His attorney calls Bob as a witness for Mark. Bob testifies that he has known Mark all his life and that he knows Mark has a reputation as a pacifist religious person, firmly committed to nonviolence as a religious principle.

On cross examination, the prosecution asks whether Bob had ever heard of Mark's being repeatedly arrested for stealing money from the various nonviolence organization to which he belonged. Is the testimony the prosecution seeks to elicit admissible?

16. Dora testifies for the defense, in a criminal prosecution of Belle, that she saw JoJo hit Belle first. On cross, Dora is asked and admits her deposition was taken in a civil suit brought by Belle against JoJo. She then admits that she testified during the deposition as to what she had said concerning JoJo right after she witnessed the fight. The prosecution then asks her if on the day of the fight, she had said right after the fight that JoJo had not hit anyone? Defendant objects. For what, if anything, is the testimony admissible? Why?

17 and 18

In a legal malpractice action against an attorney, an expert attorney witness, a former bar president, testifies for plaintiff. On cross, the expert attorney witness is asked whether she had ever been suspended from law school for falsely stating college grades. Plaintiff's objection is overruled and the former bar president vehemently denies any suspension or any such false statement. Defendant later, again over plaintiff's objection, is permitted to call attorney witness's law school dean who testifies the witness was indeed suspended for false statements in his application about his college grades.

17. Was the Court's first overruling correct? Why?

18. Was the Court's second overruling correct? Why?

19. In juvenile prosecution against Conor for stealing certain traffic signs, evidence was offered to show that Conor had a bedroom full of other stolen traffic signs hanging on the walls. Prosecution also seeks to offer witnesses with personal knowledge who will testify that Conor has in the past stolen a car, and has now a collection of stolen ashtrays, and a collection of stolen Redskins football souvenirs, such as a Redskin Jersey, pennants, jackets, etc. Conor objects to these witnesses being called. What ruling?

20. In a murder trial against Sam, Kathleen seeks to testify on direct that Sam is as honest and truthful as anyone on earth and therefore not likely to have murdered anyone. Prosecution objects. Ruling?

21. Toy Mfgr. Supplies Toy store with various dolls under a contract between the two, which requires all dolls to have fire proof clothing and accessories. Jane, a cashier at Toy Store, one day overhears a Toy Mfgr. sales employee says the dolls he's delivering every week are said around the Toy Mfgr. offices to have flammable dresses. In a breach of contract action, by Toy Store against Toy Mfgr. for failing to supply fire proof doll clothing, Jane testifies at her deposition as to what the Toy Mfgr. employee stated. At trial, that portion of the transcript of the deposition relating only to her description of the Toy Mfgr. employee's statement is offered in evidence after authenticating the transcript as an accurate record of what was said under oath at the deposition. What ruling on the admissibility and Why?

22. Gary dies in a plane crash. The administrator of his estate files a conversion action against Art to recover damages for Art having kept a painting of Gary's without compensating Gary. Joan is on the stand as a witness for Art and will respond affirmatively to each of two questions from Art's attorney, the first whether she heard Art ask Gary if he would give Art the painting as a gift, and the second, whether she saw Gary nod his head up and down in response. If the administrator objects on grounds of hearsay to each question, what would you respond as Art's attorney?

23. Sue sues Mo for negligence. She offers in evidence a standard accident report used by the police to record information and observation at the scene of an accident. The officer who filled out the report testifies he filled out the form at the scene of the accident, accurately and carefully, as he always does. The report contains a statement by the owner of a shop in front of which Sue's and Mo's cars hit each other. The owner is recorded as saying to

the officer, who arrived 15 minutes after the accident, "I'll tell you exactly what I saw as I saw it. The whole thing happened right in front of my eyes. The main is driving very fast, the woman going slow, and they hit. The blood is everywhere and I can still barely stand up or talk because I can't stand seeing such things. I'm shook, very shook." The report further states the officer's opinion that the shopkeeper appeared to be "stressed out." When asked on the stand about whether the shopkeeper was excited, the officer testifies, "I have no idea. I cannot remember anything about that evening. I don't even remember going there." Is the report admissible as proof that Mo was driving too fast?

24. If Mo objects only to the officer's statement observing that the informant appeared "stressed out." Will the statement be excluded? Explain.
25. Billy Lucas is on trial for murder. The police investigation centered largely around Billy's brother Martin. The night after the killing, detective MacWilliams (Mac) talked to Martin. Martin said that Billy sold dope to a guy in a Cadillac at about 10pm. At 10:30 the same guy came back in the same car and yelled at Billy that the amount of dope was "short." Billy threatened the guy with a pistol, the guy spit at Billy's face and Billy shot him. After talking to Martin, Detective Mac got a warrant and arrested Billy. Martin told the same story to the grand jury. Billy was indicted. At trial, the prosecutor called Martin and Martin said that he didn't know who did the killing, that lots of people were around the car that night and could have done it, and that he (Martin) never saw Billy with a gun on the night in question. The prosecutor, after laying the proper foundation, asks Martin whether or not on the night after the killing he (Martin) had told Detective MacWilliams that Billy had done the killing. Admissible? Explain.

*****END OF EXAM*****