

**D.C. SCHOOL OF LAW**  
**EVIDENCE**  
**MIDTERM, SPRING, 1995**  
**PROFESSOR THOMAS 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. DO NOT write your name or identify yourself in any manner other than placing your exam number on your examination book. You are to choose the best one of the four possible answers to each question below.

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

The prosecution offers in evidence Bill's earlier testimony at the preliminary hearing on the murder charge against Tim. The evidence is:

- a. Admissible as former testimony.
  - b. Admissible as past recollection.
  - c. Inadmissible because Bill is unwilling to testify.
  - d. Inadmissible hearsay.
2. 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.
3. Bob, who is being prosecuted for killing Maria has testified that Maria had been coming at him with a knife when he accidentally killer her. The prosecution seeks to have Maria's parents testify as to numerous times when Maria might have acted violently but

instead acted in a very peaceful manner and as to other times when she acted with downright timidity. The intended testimony is:

- a. Admissible as relevant conduct.
  - b. Inadmissible character evidence.
  - c. Admissible character evidence.
  - d. Inadmissible hearsay.
4. Sharon has sued Nan seeking the return of certain jewelry stolen by Nan. Defendant Nan denies stealing any of Sharon's jewelry and calls Joe to testify as to her reputation for honesty. The intended testimony is most likely?
- a. Inadmissible character evidence.
  - b. Admissible character evidence.
  - c. Inadmissible hearsay.
  - d. Admissible hearsay.
5. Cathy dies. Her executor under Cathy's will, on behalf of the will's legatees, sues Matt, a friend of Cathy's, for the return of a painting. Cathy had bought and had title papers for the painting but Matt had possession of it. Matt claims the painting was given to him. Matt takes the stand and is asked by his attorney to testify to a statement made to him by Cathy while alive: "Matt, I'm going to do something very nice for you regarding this painting some day." Before Matt 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.
6. The IRS and Mo are litigating back taxes allegedly due as "cabaret" taxes on a tavern. The tax has been assessed because the tavern allegedly permitted dancing, making it a "cabaret." Mo denies any dancing took place. An IRS agent testifies he interviewed Curly last week, that Curly was Mo's partner in owning and operating the tavern during the relevant tax years, that Mo was no longer in partnership with Curly at the time of the interview, that Curly stated that there was dancing during the relevant years. Mo's attorney objects on grounds of hearsay to Curly's statement. Would Curly's statement be admissible?
- a. Admissible as party admission.
  - b. Admissible as statement against interest.
  - c. Inadmissible hearsay.
  - d. Admissible as state of mind expression.
7. Betty Crocker wrote a letter to the New York Times saying that Fannie Farmer didn't know how to cook and had hired a ghost writer to write her cookbooks. Fannie sued

Betty for libel. At trial, Fannie called her neighbor James Beard who testified that he was familiar with her cooking, having observed it and eaten her food numerous times. He also testified that in his opinion her apple pan dowdy, which had won the blue ribbon at the Culinary Institute Bakeoff in June of 1981, was the best he had ever tasted. Are these statements admissible?

- a. Inadmissible character evidence.
  - b. Admissible character evidence.
  - c. Admissible noncharacter evidence.
  - d. Inadmissible hearsay.
8. In the same trial as above, James Beard testifies to Fannies' great reputation for good cookery.
- a. Inadmissible character evidence.
  - b. Admissible character evidence.
  - c. Admissible noncharacter evidence.
  - d. Inadmissible hearsay.
9. Mary was hurt in her kitchen when her automatic blender appliance flew apart, a piece hitting her in the head. She sues the maker of the blender. Over proper objection, should the court permit a witness to testify that Mary walked into the living room where the witness was sitting, and calmly announced, with blood dripping from her ear that a large piece of glass had just entered her ear?
- a. Admissible under 803.
  - b. Admissible under 804.
  - c. Admissible nonhearsay.
  - d. Inadmissible hearsay.
10. Don is prosecuted for the attempted rape of Dora. On the issue of the identity of Dora's attacker, the prosecution offers a witness who will testify that she knows Don left town immediately after the rape took place. The Defense objects. Admissible?
- a. Inadmissible hearsay.
  - b. Admissible hearsay.
  - c. Admissible as party admission.
  - d. Admissible nonhearsay.
11. Lin is on trial for the murder of her business partner, Jon. It is established that Jon died as a result of brain injuries caused by a skull fracture. State witness Lou testifies that on the day before Jon's death. She overheard a violent argument between Lin and Jon in which Lin accused Jon of "stealing" from the company. Is Lou's testimony admissible? Explain.
- a. Admissible as notice.
  - b. Inadmissible hearsay.

- c. Admissible statement of intent.
  - d. Admissible as nonhearsay.
12. In the above trial, the testimony of Jon's secretary is offered that Jon told her on the day of his death that Lin had threatened him with bodily harm. Is the testimony admissible? Explain.
- a. Admissible as notice.
  - b. Inadmissible hearsay.
  - c. Admissible statement of intent.
  - d. Admissible as nonhearsay.
13. 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 that Pat was probably drunk at work 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.
14. 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 as part of Ric's testimony and objected to as hearsay, it is more likely:
- a. Admissible as nonhearsay.
  - b. Admissible as a statement against interest.
  - c. Admissible as a state of mind exception.
  - d. Inadmissible hearsay.
15. Ann, a rich socialite, cannot stand Bob, her space-law seminar teacher at law school. One day in class, she shouts out that he is one of the most hypocritical, lying, and unethical lawyers in town. Bob sues Ann for slander, alleging her statement was highly defamatory and untrue. At trial, Ann calls Bob's ex-lover to testify to numerous instances where, to

her personal knowledge, Bob told lies to many people. Is her intended testimony admissible?

- a. Inadmissible character evidence.
- b. Admissible character evidence.
- c. Inadmissible hearsay.
- d. Admissible as statement against interest.

16. Bruno leases cranes to construction companies. On December 1, Bruno inspected one of his leased cranes at a construction site at 15<sup>th</sup> Street and New York Avenue, as he is required to do by the lease. Two days later, the sidewalk collapses into the excavation pit dug by the construction company, injuring Leslie, a pedestrian. Bruno's crane had been placed between the sidewalk and the pit, where the collapse occurred.

Bruno, who already knows of the collapse and is worried about the crane being the cause, gets a telephone call from the construction company president who asserts it was Bruno's crane which caused the collapse. He turns to his brother and says, "I should have inspected the ground stability under the crane." Leslie sues construction company, which at trial has its lawyer call Bruno's brother to the stand, asking him about Bruno's statement to him. Plaintiff objects. Is the intended testimony admissible?

- a. Admissible as a declaration against interest.
- b. Admissible as party admission.
- c. Inadmissible hearsay.
- d. Admissible as present sense impression.

17. 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 observed her in many situations where she could have exhibited violence and that she's an extremely non-violent type. Boo objects. What result?

- a. Inadmissible under Rule 701.
- b. Inadmissible under Rule 405.
- c. Inadmissible under Rule 404.
- d. Admissible.

18. 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.
19. 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 to complain. 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.
20. 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.
21. Mary is a passenger with driver Bill, her employee, in Mary’s delivery truck making a final delivery. The truck hits Cal’s car, with Mary winding up in Georgetown University Hospital for six months. Cal hires you to sue Bill but not Mary since he has hopes of marrying her. You file suit against Bill and when you get a trial date, you subpoena Mary to testify and also subpoena a hospital orderly who overheard Mary talking in the hospital, hearing Mary say that they had been going “too damn fast but loved driving that way.”
- Mary gets out of the hospital, but she leaves the country two days before trial and has totally disappeared. You offer the orderly’s testimony regarding Mary’s statement in the hospital. The statement will be:
- a. Inadmissible because the statement is not against declarant’s interest.
  - b. Admissible because the statement is against declarant’s interest.
  - c. Inadmissible hearsay.
  - d. Inadmissible because not within the orderly’s personal knowledge.

22. A bystander witness testifies that she saw someone drive a red car into plaintiff's car. Seeking to elicit testimony that will allow defendant to argue that defendant was actually driving a blue car and didn't hit plaintiff at all, defendant's counsel asks the witness on cross examination whether or not she told the police when they arrived at her house the day after the accident, that she saw a red car hit plaintiff and a blue car driven by defendant narrowly miss hitting plaintiff. Plaintiff's counsel objects in

*Remainder of exam is missing from archives.*