

DISTRICT OF COLUMBIA SCHOOL OF LAW
EVIDENCE FINAL EXAM
FALL 2001
9:00 a.m. to 1:00 p.m.

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 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.

For each question decide whether admissible or not and give a brief explanation of your conclusions. Cite to the appropriate Federal Rule. No 403 analysis is required in answering any question. Assume objections have been properly made.

1. The defendant, Frank Rosario, is charged with sexual assault and murder of a college student. In the prosecution’s case-in-chief the victim’s roommate testifies as follows:

Q. (By prosecutor) What happened around 1:15 A.M.?

A. I was awakened by a telephone call from my roommate at approximately 1:15 A.M. She told me that she had had a good evening and that she was next door at Ralph’s Grille with someone named Frank.

Defendant: Objection, your honor.

2. The defendant is charged with the aggravated assault of an elderly man. The case is now on trial. In the prosecution’s case-in-chief, the arresting police officer testifies he received a radio call to go to the intersection of 16th and Homan Streets. When he arrived there, he saw the victim lying on the ground, holding his head, bleeding profusely. A crowd of people was around him. During the direct examination, the following happens:

Q. (By prosecutor) What did you do next?

A. I called out. I said: “Who did this to this man?”

Q. Did anyone respond?

A. Yes. Several people in the crowd pointed at the defendant.

Defense: I object.

3. This is a contract case. Plaintiff claims that she entered into an oral contract with the defendant for the sale and delivery of goods. Plaintiff claims that the defendant never delivered the goods as promised. Defendant denies that a final binding agreement was ever reached. The case is now on trial. In the plaintiff’s case-in-chief the plaintiff testifies. During the direct examination, the following happens:

Q. (By plaintiff) Ms. Wilson, when did your conversation with Mr. Richards, the defendant, take place?

A. It happened on October 1 of last year, at Mr. Richard's office. Just the two of us were there.

Q. What did you say and he say during that conversation?

Defense: Objection.

Judge: Counsel, approach. [Lawyers come to the bench.] What is she going to say?

Plaintiff: She's going to say she said: "I will buy 1,000 women's suits from your company for \$50,000, to be delivered with 30 days, with payment in full within 30 days of delivery," and that Richards said: "We have a deal, then."

4. Later in the plaintiff's case, Henderson, one of Wilson's employees, is called as a witness.

During the direct examination, the following happens:

Q. (By plaintiff) Mr. Henderson, did Ms. Wilson talk to you about her deal with the defendant?

A. Yes, she did.

Q. When was that?

A. When she got back to the office from her meeting with Richards.

Q. What did she tell you was the deal she and the defendant had reached?

Defense: Objection.

5-6. Doctor Story testifies for plaintiff as an expert in a personal injury case. Defendant, in putting on her own case seeks to elicit testimony from the head of a medical disciplinary board, that

5. Doctor Story was suspended from practice for filing a false medical report.

6. Doctor Story had been retained and paid as a medical expert by the plaintiff's attorney ten times over the past two years.

Plaintiff objects to both.

7. Defendant is charged with second-degree murder. The charges are based on the defendant shooting his girlfriend, Misty. The defense is accident. Defendant told the police that the shooting was accidental, and that his relationship with Misty was fabulous.

At trial the prosecution intends to call Sarah. She will testify that she was with Misty on the day she died, and that Misty told her that "she was going to get a job and to get a car and she would leave Elliott." Defense objects.

8. Dennis and his brother, Otis, are charged with murdering Johnson. Eyewitnesses had seen the two defendants fighting with the victim outside a bar after midnight. Shortly afterwards, the victim was found shot in the head.

The case against both defendants is now on trial. In the defense case-in-chief, an eyewitness testifies. During direct examination the witness said that he had seen Otis, one or two

minutes after the shooting, leaving the scene and tucking a gun under his shirt. During cross-examination, the following happens:

Q. (By prosecutor) When you saw Otis, that was real shortly after the shooting, wasn't it?

A. Yes sir.

Q. And you all were still all excited and everything, weren't you?

A. Yes sir.

Q. And was Otis excited?

A. He didn't look excited to me.

Q. And Otis told you that his brother Dennis had shot Johnson because Johnson had taken a swing at Otis.

Defense: Objection, your honor.

9. The defendant is charged with possession of cocaine with intent to distribute. The prosecution's main witness is Brown, an accomplice who made a plea agreement with the prosecution under which he agreed to testify against the defendant in exchange for a more lenient sentence.

The case is now on trial. On direct examination Brown, as expected, implicates the defendant. During the defense's cross-examination, the defense extensively attacked his credibility, in effect calling Brown a liar.

On rebuttal, the prosecution calls a police officer. During the officer's direct examination, the following happens:

Q. (By prosecutor) Lt. Goshert, have you used Brown in the past as a confidential informant?

A. Yes.

Q. For what purpose?

A. To obtain search warrants over the past four years.

Q. How many times did you use Brown?

A. Numerous times.

Q. Did you find him truthful in using his information on those search warrant applications?

Defense objects.

10. Defendant is charged with sexual misconduct involving his fourteen-year old daughter. The defendant denies that anything happened.

The case is now on trial. During the defense opening statement the defense lawyer says the following:

"There are only two people on the face of the earth who are in a position to know what happened. There will be evidence that the daughter who will be testifying has serious problems that may affect her ability to recount and describe what happened accurately."

When the opening statements are finished, the prosecution puts on its case. During its case-in-chief, prosecution calls the victim's teacher to testify that the victim has a good character for truthfulness. Defense objects.

11. This is a products liability case. The plaintiff claims he was injured while using a power saw. Plaintiff claims the saw was manufactured by the defendant, and the design of the saw without a lower blade guard was unreasonably dangerous. The defense is that the design of the saw was reasonably safe and that the plaintiff's misuse of the saw caused his injury.

Plaintiff plans to introduce evidence that the defendant, after manufacturing and selling the saw to plaintiff, added a lower blade guard to the saws it manufactured after Underwriters Laboratory issued a new safety standard but before plaintiff was injured. Defense objects.

12. The defendant is charged with first-degree murder of two men and aggravated assault of a third. The defense is self-defense.

The charges arose out of a confrontation between the defendant and a group of men. During that confrontation the defendant shot three men in the group.

A person in that group, Ali, was subpoenaed by the prosecution and testified before the county grand jury. Ali testified that he was part of the group of men that confronted the defendant. An argument arose and quickly escalated. Ali testified that the defendant tried to retreat before he took out a handgun and began shooting. Ali was injured during the shooting, and two other men were killed.

Some time after testifying, Ali was convicted of robbery and sentenced to prison. Ali escaped from the prison, and his present whereabouts are unknown.

Before trial the defense lists Ali's grand jury transcript as an exhibit the defense intends to introduce at trial. The prosecution objects.

13. This is a fraud case. Plaintiff claims he bought a farm from the defendant based on the defendant's representation that the well near the house would provide water for the farm for the next hundred years. In fact, the well went dry two months after the plaintiff bought the farm. Plaintiff is now seeking money damages for the reduced value of the farm.

The case is now on trial. Plaintiff testifies in plaintiff's case-in-chief. During the direct examination, the following happens:

Q. (By plaintiff) When and where did you talk with the defendant about the well?

A. At my house, a week before we signed the papers.

Q. What did he say to you?

A. I had a stroke since then, and I can't really remember.

Q. Did you do anything after that conversation?

A. Yes, the next day I sat down in my living room and wrote down what he said exactly as he said it.

Q. I show you Plaintiff's Exhibit No. 4. Do you recognize it?

A. Yes, that's the paper I wrote.

Defense: I object, and ask to be heard.

Judge: Approach the bench. [Lawyers approach.] Plaintiff, what do you intend to do with that piece of paper?

Plaintiff: After the witness describes how he wrote out that piece of paper, I intend to offer it in evidence and ask that it go back to the jury during deliberations.

Defense: I object to that.

14. Gil is charged with murdering his wife. Gil testifies he couldn't stand her but that he wasn't the one who murdered her. He testifies he is a peaceful man. After defense rests, prosecution in rebuttal calls Moseley a friend of Gil's to testify that more than five times he had seen Gil physically beat people. Defense objects.

15. In the same case, Moseley also seeks to testify he once asked Gil's wife why she didn't leave Gil and the wife told him that eight years ago she did try to leave Gil but Gil said he would kill her if she ever tried it again. Defense objects.

16. Sana worked for a company until leaving its employment on March 11. He has sued company for workman's compensation for a stomach illness he alleges happened at and because of work while still employed by company. Company thinks the illness arose only after Sana left. Company's insurance company hires Rutherford Investigations to investigate. Rutherford prepares a report which includes statements from two of Sana's Company co-workers that Sana had told them at work he was feeling sick to his stomach before he left work on March 11.

To help prove he was ill while still employed, Sana offers the Rutherford report which he properly shows through a qualified witness was a business record. Defense objects to that part of the report containing the co-worker statements to Rutherford about what Sana told them.

17. Defendant and others are charged with conspiracy to distribute cocaine and launder money. Part of prosecution's case against defendant is a set of Western Union records reflecting 15 "to send money" forms, all of which show defendant's name, address, and telephone number as the sender of cash wired to other alleged co-conspirators. Prosecution calls a qualified Western Union witness who testifies that it is the regular practice of Western Union employees to record the information contained in the records and to do so at or near the time transmitted in the regular course of business. Prosecution moves the admission of the records. Defense objects.

18. Defendant is charged with failing to register for the draft as required by law. The Universal Military and Service Act makes it the duty of every male between 18 and 26 years of age to register. An essential element of the charge is proving that the defendant is between the ages of 18 and 26.

The case is now on trial. To help prove that the defendant is between those ages, the prosecution offers in evidence the defendant's application for a driver's license signed by the defendant. These documents show the defendant's age as over 18 and under 26. The defense objects to this.

19 – 20. Claudio is charged with the murder of Zweikert. The shooting happened early in the morning, when Zweikert was accosted by four youths as he emerged from the subway. One of the youths had a gun, and they demanded money. Zweikert tried to wrestle the gun away, and was fatally shot.

A police investigation of the shooting led to Boyle, who told police that he had been with Claudio the night of the shooting, and that Claudio had a gun. Later Boyle testified at the preliminary hearing on the murder charge. Boyle testified that on the evening of the shooting, his friend Buck and Claudio drove up to Boyle's house in a green Mustang. Boyle got in the car, and Buck said they were planning a robbery and asked if Boyle wanted to join them. During the car ride Boyle saw Claudio with a gun. Boyle left the car after a while, and did not participate in the robbery.

19. Boyle, died before the case was tried. The prosecution intends to introduce Boyle's statement to the police. Defense objects.

20. Prosecution intends to introduce Boyle's preliminary hearing testimony. The defense objects.

21. Investigation of a series of burglaries leads to police officers themselves and to Officer George. George resigns, cooperates, is given immunity to testify, and testifies before the grand jury. He names the other officers who were involved with him in burglarizing homes. Before trial George commits suicide. Among his papers is found a note saying "Officer Mike Lemon had nothing to do with the burglaries." Mike Lemon, though not named by George in his grand jury testimony is among those being prosecuted for the burglaries. He has offered ample other admissible evidence that he was not involved and he offers, after proving George's suicide, the note authenticated as having been written by Officer George. Prosecution objects.

22 – 23. Defendant is charged with aggravated sexual assault and burglary. After the assault occurred, the victim was taken to a local hospital's emergency room. In the ER the victim told a nurse the following and the nurse is asked by prosecution to testify that victim said:

22. She had been attacked by a man who hit her over the head with a flashlight.

23. She was able to see a tattoo consisting of red lips on her attacker's hip.

Defendant objects to both 22 and 23.

24 – 25. Defendant is charged with sexually assaulting a woman. Dr. Seuss, a clinical psychologist, diagnosed and treated the victim. She told the doctor that the defendant had sexually assaulted her many times, even before she became an adult. She also described to the doctor what happened during the assault for which defendant is now charged.

24. Before trial defendant moves to exclude testimony by the victim about the claimed earlier assaults.

25. Before trial defendant moves to exclude testimony by Dr. Seuss about what the victim had told him about either the claimed earlier assaults or the incident on which the present charges are based.

26. The defendant, Scrima, is charged with income tax evasion for the years 1995 through 1998. The prosecution is attempting to prove its case using the net worth method, showing Scrima enjoyed increases in his net worth greater than could be explained by his reported income and any nontaxable source of funds.

In his defense, Scrima claims that at the beginning of 1995 he possessed \$375,000 in cash, which was more than sufficient to explain his increases in net worth from 1995 to 1998.

The case is now on trial. In the defense case-in-chief Scrima's business associate, Clayton, is called as a witness. During direct examination the following happens:

Q. (By defense) Mr. Clayton, in the spring of 1995, were you considering a business venture with Scrima?

A. Yes.

Q. Did he discuss his resources with you?

A. Yes. We talked at my office, just him and me. I asked him how much he had available.

Q. What did he say?

Prosecutor: I object.

27. The defendant, Griffin, is charged with first-degree murder. The defense is that he wasn't present when the shooting took place.

A witness, Jiminez, will testify that, on the night Green was killed, she was with Green at Green's home. Green got a telephone call, and after hanging up said: "I've got to meet Griffin and somebody else to buy some marijuana." He then left the home.

Before trial the defense moves to preclude Jiminez's testimony at trial.

28. This is a personal injury case. The plaintiff, a passenger on a cruise ship, was injured when an automatic sliding door closed quickly and ran over her foot.

Plaintiff plans to call several witnesses, other passengers on the cruise, who will testify that, following her injury, the door was kept propped open for the remainder of the cruise. Defendant then moved in limine to preclude the testimony.

29 – 31. Which of the following three items is hearsay?

29. On the issue of John's ill-feeling towards Mary, John's statement, "Mary's a liar and a hypocrite."

30. On the issue of reasonableness of Mo's conduct, in the shooting of Lee by Mo, Dora's statement to Mo, "Lee has threatened to kill you on sight."

31. In a suit by the deceased Don's estate for the value of a vase, on the issue whether a transfer of the vase from Don to Maria was a sale or gift, Don's statement the day following the transfer, "I gave you the vase as a birthday present."

32. Prosecution of Don for killing Sam. On the issue of whether Sam attacked Don, a defense witness for Don testifies that she heard Will say, "Sam has knifed three people in the last year." Prosecution objects.

33. On the issue of whether plaintiff's decedent Vera had injuries to her head caused by the first car after Vera's car was struck by the first of two cars, a witness passenger in Vera's car testifies, that before the second car struck, Vera said, "My head hurts." Defense objects.

34. Action by plaintiff against defendant. To prove defendant was present in the city, defendant offers a witness who testifies she heard plaintiff say, "I know defendant is in the city." Plaintiff objects.

35. A witness, Vera, testifies for plaintiff that defendant's car was going over 50 miles per hour. Defendant calls a witness to testify that Vera said, a day after the accident, that defendant was going slow. Plaintiff objects.

***** END OF EXAMINATION *****

**[Attached to the original examination was a photocopy of
Articles IV-VIII of the Federal Rules of Evidence]**