

University of Utah
College of Law
Examination Cover Sheet

Student Examination Number: _____

Evidence
Judge Dee Benson

May 14, 1998
1:00 p.m. - 5:00 p.m.

Spring Semester 1998

Time Allowed: 4 hours

Special Examination Instructions:

This is a closed book examination, with the exception of an unannotated copy of the Federal Rules of Evidence which will be provided to you. Other than the copy of the Rules, no books, or notes of any kind may be consulted during the examination.

General Examination Instructions:

1. Print your Examination Number, the title of the course and the instructor's name on the front of every bluebook used.
2. Number each bluebook (1 of 3, 2 of 3, 3 of 3, etc.) and place all bluebooks and examination questions inside the first-numbered bluebook.
3. Students must submit the examination questions with the answers.
4. Students who are typing must use the yellow paper provided.
5. Students may not take any bluebooks or scratch paper from the examination room, whether blank or used.
6. If the examination utilizes a computer answer sheet, print your Examination Number at the top of the front side of the computer answer sheet in the space provided. Complete the space marked "Identification Number" (on the back of the computer answer sheet) by filling in four zeros followed by your Examination Number. For example, if your Examination Number is 99999 fill in 000099999.

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2. The exam consists of 44 pages, including 150 questions numbered in consecutive order. Make sure you have all pages of the examination before you begin.
3. Make sure that you write your exam number on:
 - a. this copy of the examination,
 - b. the bubble sheet used to mark your answers, and
 - c. the copy of the Rules of Evidence that will be provided to you.
4. In answering multiple-choice questions you should choose only one of the choices listed for each question. Mark the best answer listed.
5. Unless the question indicates otherwise, assume that the Federal Rules of Evidence govern.
6. You may not leave the room at any time with this exam or the copy of the Rules.
7. You must turn in the exam questions with your answer sheet and the copy of the Rules.

Ben and Jerry (Questions 1 - 6)

Ben and Jerry were indicted for conspiring to commit securities fraud in connection with the public offering of their company. They entered not guilty pleas. At the preliminary hearing, the prosecutor called an FBI agent as a witness and asked him about conversations the agent had with several of the alleged fraud victims. Ben and Jerry objected on hearsay grounds. Their objection will most likely be:

1. A) sustained because the victims' statements are hearsay.
- B) overruled because the rules of evidence do not apply.

At the same hearing, the prosecutor called Ben and Jerry's priest, Eddie, to give testimony about confidential spiritual conversations Eddie had with both defendants. Both defendants objected on the grounds of priest-penitent privilege. The objection should be:

2. A) sustained because the conversations are privileged.
- B) overruled because the rules of evidence do not apply.

At trial, the prosecutor placed into evidence several pages of the Ben and Jerry Company prospectus and had a witness read portions of the pages to the jury. Defense counsel did not object to the evidence but did ask the court for permission to include two additional pages of the prospectus and to have these pages read to the jury at that time. This request is:

3. A) proper because it is required by the Best Evidence rule.
- B) proper provided the two additional pages relate to the same subject matter as the initial pages.
- C) improper because defense counsel is not allowed to interrupt direct examination in this manner.
- D) improper because defense counsel failed to object to the initial pages.

Prior to his arrest and indictment, Ben told a friend that "Jerry and I flat out lied on the public offering we put together last month." The prosecutor plans to have the friend testify to this statement at Ben and Jerry's trial. This evidence is:

4. A) proper, provided Ben testifies.
- B) proper, provided Ben's friend is competent to testify.
- C) improper as to Jerry under any circumstances.
- D) improper because the evidence constitutes double hearsay.

During jury selection, the prosecutor challenged for cause a prospective juror who was employed in the securities industry. The judge refused to excuse the juror. After Ben and Jerry were convicted, they contended on appeal that, among other things, the court erred in not excluding the securities industry juror. This claim on appeal is:

5. A) proper because an objection was timely raised.
- B) proper because the issue involves a fundamental right.
- C) improper because of a failure to object.
- D) improper because no formal proffer of proof was made by defense counsel.

After the guilty verdict was returned, one of the jurors, Mabel, complained that during deliberations one of the other jurors--a man with experience in the securities industry--compared the Ben and Jerry case with several other cases of which he was aware. According to Mabel, this conduct was directly contrary to the judge's instructions. Based on this information, Ben and Jerry's lawyers filed a motion for a new trial. At a hearing on this motion, Mabel is called to the stand. Her testimony is:

6. A) admissible as long as she does not assert a privilege.
- B) admissible provided the judge is satisfied there is reasonable suspicion that the court's jury instructions were not followed.
- C) inadmissible hearsay.
- D) inadmissible because it constitutes an improper inquiry into the jury's deliberative process.

Angus is charged with bank robbery. At trial, the investigating police officer testifies that he was present at a police lineup shortly after the robbery at which he saw the bank teller who was robbed identify Angus as the robber. This testimony is:

7. A) admissible provided the bank teller testifies.
- B) inadmissible hearsay.
- C) inadmissible against Angus' constitutional rights.
- D) admissible without qualification.

Paula (Questions 8 and 9)

Paula sued her former employer, ABC Company, for gender discrimination after she was fired from her job. ABC Company defended by claiming gender had nothing to do with its decision to terminate Paula's employment and that she was fired for excessive tardiness. At trial, Paula called one of her co-workers, Helen, to acknowledge that on one occasion during working hours Helen stated to Paula: "You are such a good worker. I'm always late. You never are." This testimony is:

8. A) admissible as then existing state of mind.
- B) inadmissible hearsay.
- C) inadmissible as irrelevant.
- D) admissible as an admission of a party opponent.

At trial ABC Company seeks to admit into evidence an investigative report prepared by a company investigator that concluded that Paula was frequently late for work. The Report was based on statements from 6 ABC Company employees, each of whom detailed several instances of Paula's tardiness based on their personal observations. This report is:

9. A) admissible as a business record.
- B) admissible as an expert opinion.
- C) inadmissible because it violates the Best Evidence Rule.
- D) admissible provided it can be shown that the 6 employees were management level employees.
- E) inadmissible hearsay.

Rental Boy (Questions 10 - 16)

Rental Boy from California was injured while being transported on a toboggan being taken down the ski hill after Rental Boy had been injured in a skiing accident. Rental Boy claimed the ski patrol personnel driving the toboggan, John and Dave, were negligent by going too fast and failing to wear ski goggles. Snowbird defended the suit by denying liability and contending that any injuries Rental Boy suffered were caused solely by the skiing accident, not the toboggan crash.

At trial during plaintiff's case-in-chief, Rental Boy's lawyer introduces John's written statement that neither he nor Dave had worn goggles on the day in question. Snowbird's lawyer objects on the grounds of hearsay and the inability to cross-examine a written report. The judge should:

10. A) admit the evidence, provided Snowbird can show John is unavailable to testify.
- B) admit the evidence without qualification.
- C) disallow the evidence as inadmissible hearsay.
- D) admit the evidence, provided the written statement was under oath.

Rental Boy's lawyer seeks to admit evidence that shortly after the accident Snowbird issued a new requirement that all ski patrol personnel were to wear goggles on all toboggan runs. This evidence is:

11. A) admissible.
- B) inadmissible.

Rental Boy's counsel calls Rental Boy's long-time friend, Pete, as a witness. Pete testified that he followed the toboggan down the hill and watched it crash. He further testified that he rushed to the site of the accident and blurted out: "It is snowing so hard, I could hardly see where you were going." The statement is most likely:

12. A) inadmissible hearsay.
- B) nonhearsay.
- C) admissible as an excited utterance.
- D) admissible as a present sense impression.
- E) C and D.

On cross-examination, Pete is asked to agree that Rental Boy has a reputation for dishonesty. Pete denies that Rental Boy has such a reputation. Snowbird's lawyer then asks Pete if he is aware that Rental Boy had once filed a bogus insurance claim. Pete agrees that he was aware of this conduct.

Snowbird's question to Pete regarding Rental Boy's reputation for dishonesty is:

13. A) admissible provided Rental Boy testified at trial.
- B) admissible whether or not Rental Boy testified at trial.
- C) inadmissible because Pete was Rental Boy's witness.
- D) inadmissible as irrelevant.

Snowbird's question about the bogus insurance claim is:

14. A) inadmissible because it asks about insurance.
- B) inadmissible because it is an improper method of proving character.
- C) inadmissible because Rental Boy's character is not at issue.
- D) admissible provided the judge allows it as a specific instance.

Several days after the accident, Rental Boy writes in his diary - which he has regularly kept for years - that he "felt searing pain in his left knee at the time of the toboggan crash," and "the ski patrolmen were not wearing goggles." At trial he seeks to introduce these entries from his diary. He claims to have completely forgotten about feeling pain in his knee, but he has retained "some memory" that the patrolmen were not wearing goggles. The diary statement regarding pain in his knee is:

15. A) admissible as an admission.
- B) admissible as a present sense impression.
- C) admissible as a recorded recollection.
- D) inadmissible hearsay.

The diary statement regarding the goggles is:

16. A) inadmissible hearsay.
- B) admissible as a recorded recollection.
- C) admissible as a then existing state of mind.
- D) inadmissible because the witness is incompetent on this issue.

In a battery case, plaintiff's witness, Wanda, testified at trial that the defendant punched the plaintiff without provocation. On cross-examination, defendant's counsel asks Wanda about Wanda's use of a false identification card to obtain discount groceries at Sam's Club. Plaintiff's counsel objects. The objection will most likely be:

17. A) sustained because it is not permissible to ask about a specific instance of dishonesty.
- B) overruled because the use of the identification card involved a dishonest act.
- C) overruled because the conduct demonstrates bias.
- D) sustained because the question is irrelevant.

Pipi (Questions 18 and 19)

Pipi sued Deedee for negligence. Pipi called witness X as a fact witness. After plaintiff rested her case in chief, Deedee called witness Y who testified that X's reputation for honesty was "poor." Deedee also called Z who testified that X had once filed a fraudulent bank claim. Y's testimony is:

18. A) improper character evidence.
- B) improper because Deedee had not placed X's reputation at issue.
- C) proper reputation evidence.
- D) proper impeachment by contradiction.

Z's testimony is:

19. A) admissible because the fraudulent conduct at issue involved dishonesty.
- B) inadmissible extrinsic evidence.
- C) inadmissible as unfairly prejudicial.
- D) admissible impeachment by contradiction.

Prior to a criminal trial against her husband, without the consent of her husband, Marilyn voluntarily disclosed to FBI agents confidential marital communications. May Marilyn's husband invoke the marital communications privilege to block the marital communications from being used as evidence against him at his trial?

- 20. A) Yes
- B) No

Bill sues the New York Times newspaper for libel. At trial, Bill's lawyer calls to the stand the newspaper reporter who wrote the story in question. On direct examination, Bill's lawyer asks the newspaper reporter, "Isn't it true you wrote the story on Bill without first checking your facts?" The defendant's lawyer objects, pointing out this is direct examination. How should the judge rule?

- 21. A) Objection sustained
- B) Objection overruled

Which of the following is not a stated purpose of the Federal Rules of Evidence?

- 22. A) Elimination of unjustifiable delay
- B) Elimination of unjustifiable expense
- C) Promotion of legal scholarship
- D) Ascertainment of truth

The Federal Rules of Evidence do not apply at:

23. A) Civil trials
 B) Sentencing hearings
 C) Bail hearings
 D) Criminal trials
 E) B and C
24. T or F Cross-examination is ordinarily allowed beyond the scope of direct examination as long as the trial judge is satisfied the new matter is relevant.

Danny (Questions 25 and 26)

In a drug-distribution criminal trial against Danny, Danny calls an alibi witness, X, who testifies that he and Danny were together at a bar in Toledo on the night when the drug deal allegedly took place in Los Angeles. Prior to trial, the Prosecutor became aware that X had told his ex-wife that he (X) was alone at the bar in Toledo on the night in question. The Prosecutor does not confront X with this information on cross-examination. The Prosecutor calls the ex-wife as a witness in the Government's case in rebuttal, and asks her what X had told her. X is a young person in perfect health who lives in the city where the case is being tried. According to the majority of the federal circuit courts of appeal, is this allowable prosecutorial procedure?

25. A) Yes
 B) No

Will the defense be permitted to call X as a witness in sur-rebuttal?

26. A) Yes
 B) No

Does the marital confidential communications privilege survive the marriage?

- 27. A) Yes
- B) No

Does the spousal witness privilege survive the marital relationship?

- 28. A) Yes
- B) No

Billy and Sue (Questions 29 - 31)

Billy and Sue were high school sweethearts and they continued to go steady throughout college. The day after their college graduation they were married. A few hours before the wedding ceremony Billy admitted to Sue that he and his best man had "stolen" a car during his bachelor party and that the police were looking for him.

Later, after the wedding ceremony, the police questioned Sue and asked her if she knew about the stolen car. She says she does but she doesn't feel good about telling them anything. The prosecutor thereafter calls Sue to testify before a grand jury. Can she be forced to testify?

- 29. A) Yes
- B) No

What if Sue chooses to take the witness stand at Billy's trial, and Billy objects to her taking the stand, will she be permitted to testify?

- 30. A) Yes
- B) No

If Sue is allowed to take the witness stand and she is asked to repeat what Billy told her about stealing the car, and Billy objects, should the judge sustain the objection?

- 31. A) Yes
- B) No

In a homicide case, the defendant claims that the victim was the aggressor in a fight. The Prosecutor, anticipating this defense, puts on evidence in his case in chief that the victim had a reputation for peacefulness. Is this considered proper?

- 32. A) Yes
- B) No

33. T or F A party may not attack the credibility of her own witness.

In a products liability suit, Mr. X, a mechanical engineer hired by the plaintiff, attended all parts of the trial pertaining to the alleged product defects. At the conclusion of the trial, X is called by plaintiff's counsel to give his opinion whether the product was defective. This procedure is:

- 34. A) permissible, provided Mr. X qualifies as an expert.
- B) permissible if Mr. X first describes all assumptions upon which his opinion rests.
- C) impermissible because Mr. X's testimony is irrelevant.
- D) impermissible because Mr. X has no personal out-of-court knowledge of the product.

Joe is charged with burglary of a residence. The Prosecutor offers evidence that when Joe was arrested the day after the burglary he possessed a quantity of cocaine. This evidence is most likely:

- 35. A) admissible to show motive.
- B) admissible to show bias.
- C) inadmissible because its probative value is substantially outweighed by the danger of unfair prejudice.
- D) inadmissible because its introduction would violate Joe's Fifth Amendment rights.

Pete (Questions 36 - 38)

Pete is charged with sexual molestation of B, his four year-old nephew. The abuse is alleged to have occurred at Pete's home in Texas during B's week-long visit there. At the end of the visit, B returned to his home in Los Angeles. At trial, B's mother, called by the prosecution, testifies that a few minutes after B returned home he told her about the incident and identified Pete as the perpetrator. This testimony is most likely:

- 36. A) admissible as a present sense impression.
- B) inadmissible hearsay.
- C) inadmissible as a violation of Pete's right of confrontation.
- D) admissible as an excited utterance.

At trial the Prosecutor seeks to place into evidence Pete's six year-old criminal conviction for burglary. This evidence is:

- 37. A) admissible, provided Pete testifies and the court finds the probative value is not outweighed by the danger of unfair prejudice.
- B) inadmissible because the crime does not involve a sexual assault.
- C) admissible, provided Pete testifies and the court finds that its probative value outweighs its prejudice to Pete.
- D) inadmissible because the crime does not involve dishonesty.

At trial the prosecution introduces evidence through Witness (W) of a previous incident involving Pete's sexual molestation of a ten year-old boy. No charges were brought against Pete with respect to this incident. Pete has denied that it happened. This testimony is:

- 38. A) admissible to show Pete's propensity to commit the act at issue in the trial.
- B) admissible, provided the alleged victim in the previous incident is available to testify.
- C) inadmissible because Pete has not put his character in issue.
- D) inadmissible because it violates Pete's right to confront his accusers.

Johnny is accused of committing a murder on the grounds of the U.S. Capitol. The Prosecutor asks the trial judge sitting in Washington, D.C. to take judicial notice that the U.S. Capitol is within the boundaries of Washington, D.C.

39. A) the Court may take judicial notice of the fact, and the jury should be instructed to accept the fact as true.
- B) the Court may not take judicial notice of the fact because the fact is not capable of easy resolution by a reliable source.
- C) the Court may take judicial notice of the fact, but the jury will not be required to accept the fact as true.
- D) the Court cannot take judicial notice because it would violate the defendant's right of confrontation.

Defendant is charged with distribution of cocaine. After his arrest he told police officers that he had voluntarily distributed the cocaine for "chump change" for men he would prefer not to identify because "they will kill me if they find out I snitched." At trial the government introduces the portion of the defendant's oral statement where he admitted voluntarily distributing the cocaine for chump change. The defendant then seeks to have the balance of the statement read as evidence. He argues that he needs the remaining portion to support a defense of coercion. Should the court grant the request?

40. A) Yes
- B) No

41. T or F The Rule of Completeness embodied in Rule 106 applies to recorded oral conversations.

A federal judge is permitted to make comments to the jury regarding the weight of the trial evidence.

42. A) Yes
- B) No

43. T or F In the discretion of the trial judge, the admissibility of a confession may be decided in the presence of the jury.

Which standard of proof applies to most court-determined preliminary questions?

44. A) clear and convincing
 B) preponderance of the evidence
 C) beyond a reasonable doubt
 D) beyond a scintilla

A & B were involved in an automobile collision. A sued B's employer, alleging an agency relationship between B and B's employer at the time of the accident as the basis for respondeat superior liability. At a trial to a jury B is asked by A's counsel to admit that at the accident site, B stated, "I ran the red light." B's employer objects on hearsay grounds. A argues the statement comes in under Rule 801 as a statement by an agent of his party-opponent. B complains that the question of agency goes to the very heart of the case and it is improper for the judge to decide this issue. May the judge find an agency relationship sufficient to admit this evidence without improperly interfering with the province of the jury?

45. A) Yes.
 B) No.

46. T or F In determining preliminary facts under Rule 104(a), the court is required to follow the Rules of Evidence.

Albert (Questions 47 - 49)

While Albert's vehicle is stopped for a traffic violation, 20 kilos of cocaine are found by the police officer in a hidden compartment in the vehicle. A is placed under arrest and told that he has the right to remain silent. A doesn't say anything regarding the cocaine at that time. At trial, Albert testifies on direct examination that he didn't know the cocaine was in his car. On cross-examination, he is asked to admit that he had previously been convicted of drug dealing. Albert's lawyer objects. The prosecutor then asks Albert "Why didn't you tell the police at the time of your arrest that you didn't know about the cocaine?" Albert's lawyer does not object. The prosecutor then asks A about a previous conviction for the felony of perjury. A's lawyer again objects.

As to the objection regarding the drug dealing conviction, how should the judge rule?

47. A) Overruled, provided the judge is satisfied the probative value of the evidence outweighs the prejudice to the defendant.
- B) Sustained, because it is always improper to allow evidence of a conviction for the same type of crime for which the defendant is on trial.

As to the objection regarding the perjury conviction, how should the judge rule?

48. A) Sustained
- B) Overruled

On appeal the defendant claims the court erred in allowing the question regarding the defendant's failure to explain himself to the police at the time of his arrest. Should the appeal be dismissed because of the defendant's counsel's failure to timely object?

49. A) Yes
- B) No

50. T or F Application of the plain error rule is more likely with respect to the admission of evidence than to the exclusion of evidence.

Does the plain error principle embodied in Rule 103 allow the reviewing court to look beyond the record?

51. A) Yes
- B) No

In an action for breach of contract, the plaintiff is asked on cross-examination: "What did you tell the defendant after the contract was signed?" Plaintiff's counsel objected to the question as irrelevant. The judge overruled the objection. On appeal defendant can assert what grounds of error in this ruling:

- 52. A) Hearsay
- B) Rule 403
- C) Relevance
- D) Misleading as assuming the contract was signed
- E) All of the above

In an action for personal injuries arising from a rear-end collision, the defendant called a witness who testified she had been in the defendant's car pool for three years, had observed his driving on dozens of occasions, and as a result believes he is a careful driver. This evidence is:

- 53. A) admissible to show that the defendant was careful on the day in question.
- B) inadmissible because the witness is not competent.
- C) inadmissible evidence of character and prior acts.
- D) inadmissible as irrelevant.

In a prosecution for consumer fraud, the victims testify that the person who sold them gold coins cracked his knuckles while making his sales pitch. The prosecution then calls the defendant's ex-wife to testify that the defendant had a habit of cracking his knuckles whenever he was nervous. The testimony of the ex-wife is:

- 54. A) admissible.
- B) inadmissible as hearsay.
- C) inadmissible as evidence of character.
- D) inadmissible because of the spousal witness privilege.

In a personal injury action, the plaintiff testified that he developed a rash all over his head and shoulders but that when he stopped using the defendant's shampoo, these symptoms disappeared. This testimony is:

- 55. A) admissible.
- B) inadmissible as irrelevant.
- C) inadmissible as evidence of subsequent repairs.
- D) inadmissible opinion testimony.

In a child custody dispute, the mother testifies that the father has a reputation in the community as "lazy," that in her opinion he is dishonest, and that he has frequently failed to pay his child support.

- 56. A) All of this evidence is admissible.
- B) The reputation evidence is inadmissible.
- C) The opinion evidence is dishonest.
- D) The evidence about the child support payments is inadmissible.
- E) Only B and C are admissible.

In a rape prosecution the defendant's wife identifies a vest found at the scene as coming from her husband's three-piece suit because the buttons are sewn on it with a peculiar stitch she used when repairing the vest. The vest is:

- 57. A) admissible.
- B) inadmissible as irrelevant.
- C) inadmissible as not properly authenticated.
- D) inadmissible as a violation of the spousal communication privilege.
- E) inadmissible hearsay.

A and B (Questions 58 and 59)

A and B were cellmates in Lompoc Prison. A is on trial for murder. B testifies for A. After B has testified, the prosecution seeks to introduce evidence through C, another inmate, that A and B belong to the same prison gang that has, as one of its tenets, a duty to protect fellow gang members.

58. A) This evidence by C is inadmissible extrinsic evidence.
- B) Assuming no Rule 403 problems, this evidence is admissible as impeachment of bias.
- C) This evidence is inadmissible as collateral evidence.
- D) This evidence is admissible to show A belonged to a gang and is therefore more likely to have committed the crime.
59. T or F If the testimony were allowed and a Rule 403 objection is raised by the defendant, the objection should be sustained only if the probative value of the evidence clearly outweighs the danger of unfair prejudice to the defendant.
60. T or F If while testifying under oath at trial a witness adopts as true an out-of-court statement made by him, there is no hearsay problem.
61. T or F Once authenticated a public record is thereafter always admissible in all respects as evidence.
62. T or F A court may take judicial notice on its own motion.

ABC Company (Questions 63 and 64)

ABC Company is charged with negligence arising out of a forklift accident. ABC Company's employee, Mr. F, was the operator of the forklift. Two weeks after the accident, ABC Company fired Mr. F because they thought he was a bad forklift operator. The accident involving plaintiff was Mr. F's third forklift accident in three months. At trial the plaintiff introduced evidence of Mr. F's firing. Defendant objected. Plaintiff also sought to introduce evidence of the two previous accidents. The defendant objected.

The evidence about Mr. F's termination is:

63. A) inadmissible because it is irrelevant.
- B) inadmissible because it shows remedial action.
- C) admissible because it tends to demonstrate negligent behavior.
- D) admissible because it shows the employer had notice that its employee was a poor forklift operator.

The evidence about Mr. F's previous accidents is:

64. A) admissible for the purpose of showing ABC Company had knowledge of its employee's poor driving abilities.
- B) admissible for the purpose of showing Mr. F was an incompetent forklift operator when he injured the plaintiff.
- C) inadmissible as evidence of prior bad acts.
- D) A and B

Drew (Questions 65 - 67)

Drew was charged with smuggling cocaine into the United States. Drew's vehicle had been stopped by Border Patrol officers. A trained sniffer dog alerted to the vehicle as containing drugs. When the dog alerted, Drew drove off in the vehicle and eluded officers for several hours. Drew stated that he left because of fright. The prosecution's theory was that during the time Drew eluded the officers Drew got rid of cocaine that had been in the trunk of the vehicle, leaving only a small residue that was later found. Officer W testified to the training and certification of the sniffer dog and that the dog's reactions indicated an alert for a controlled substance. Drew objected that W's testimony was hearsay and, if not hearsay, lacked first-hand knowledge because W was only interpreting the dog's reaction. In addition, Officer U, a New Mexico highway trooper, testified that during the chase of Drew, Drew's vehicle reached a speed of 112 miles per hour based on a radar reading. Officer W's testimony is:

65. A) admissible, provided the dog was available to be examined by the defendant.
 B) inadmissible hearsay.
 C) admissible, provided Officer W laid a proper foundation.
 D) inadmissible as irrelevant.

Evidence that Drew drove off is:

66. A) admissible to prove guilty knowledge.
 B) admissible, provided Drew testifies.
 C) inadmissible as irrelevant.
 D) inadmissible as subsequent remedial repairs.
67. T or F The radar reading repeated by Officer U is hearsay.

Penny and Dexter (Questions 68 and 69)

Penny sued Dexter, alleging that Dexter had used various aerial sprays on Dexter's property to rid the property of insects, especially mosquitos, but that the spray had drifted to the vicinity of other property, including Penny's. As a result, numerous bees were killed that would normally pollinate Penny's fruit trees. Penny contended that Dexter's action resulted in a 60% loss of fruit production. F was Penny's foreman for a citrus area of Penny's orchards. F was called to testify as to his observations about the absence of bees during an important time of the growing season. Dexter objected that the evidence was opinion, conclusion and not proper for a lay person. Penny testified over Dexter's objection to the value of the lost crop, admitting this was based only on "Penny's own experience."

68. T or F F could not testify as to the reduction of bees since this would be improper opinion evidence.
69. T or F Penny's opinion of the value of the crop loss is admissible.

Pipin and Dan (Questions 70 - 72)

Pipin sued Dan, alleging wrongful termination of employment. The jury returned a special verdict in favor of Dan. Following the verdict, J, one of the jurors, called Pipin on the telephone and said that the jury didn't honestly follow the legal instructions given by the judge. J also related that the verdict was "arrived at by chance draw." Finally, J said another juror brought a newspaper article about the case into the jury room and several of the jurors read the article. Pipin made a motion for a new trial and submitted an affidavit from J as to the jury irregularities.

70. T or F The affidavit of J may be considered as to whether the jury followed the judge's instructions.
71. T or F The affidavit of J may be considered as to the claim of verdict by chance.
72. T or F The affidavit of J may be considered as to the jury's use of the newspaper article.

Polly and Danny (Questions 73 and 74)

Polly sued Danny for injuries sustained when Polly slipped on a stairway in Danny's building. Polly contended that Danny was negligent in not having adhesive matting on the stairway and that the stairway was unreasonably slick and dangerous as a result. Polly testified that at the time of the accident Polly was wearing shorts and flat-heeled shoes and that Polly was thrown forward striking the right side of Polly's knee on one of the stairs. W, a paramedic, testified that although Polly was wearing flat-heeled shoes, Polly wore a skirt that was knee length. Polly objected to the testimony relative to the skirt, claiming it was irrelevant. On cross-examination of W, Polly asked whether W had ever expressed hostility toward people who brought personal injury suits. Danny objected and the court sustained the objection.

W's testimony about Polly's wearing a skirt is:

73. A) admissible.
- B) inadmissible as irrelevant.
- C) inadmissible as collateral
- D) inadmissible because it impeached Polly by extrinsic evidence.
74. T or F The trial judge committed error in sustaining Danny's objection to Polly's cross-examination of W regarding hostility to people who bring personal injury suits.
75. T or F At the beginning of a civil trial, plaintiff's counsel requested that all witnesses be excluded from the courtroom until after they testify. The judge, in his discretion, may deny the plaintiffs counsel's request.

"Lucky" is on trial for the murder of Don Corleone. Wendy testified that she was present in a bar with "Lucky" shortly after the murder of Mr. Corleone. She testified that on that occasion the bartender, Joe, said directly to "Lucky" that "the whole city knows you're the one who shot Don Corleone. Nice going, Boss!" to which Lucky simply smiled and said "set 'em up, Joe, drinks are on me". The defense objected. Wendy's testimony is:

76. A) admissible, provided Joe is available to testify.
- B) admissible under a hearsay exception.
- C) inadmissible hearsay.
- D) inadmissible because it unfairly prejudicial to Lucky.

W, a bank teller at a police lineup, picks out B as the man who robbed her. At trial an FBI agent who was present at the lineup, testified that he saw W pick out B as the robber. The FBI agent's testimony about what W did at the lineup is:

77. A) admissible, provided W testified at the trial.
- B) admissible, whether or not W testified at the trial.
- C) inadmissible hearsay.
- D) inadmissible because B had no opportunity to cross-examine W at the police line up.

P and D are in a car accident. Within minutes of the collision, officer Muldoon arrives at the scene and takes photographs showing that D's skid marks crossed the dividing line. P seeks to introduce the photographs at trial. On the day of trial, P learns that officer Muldoon recently died of a heart attack. The photographs are:

78. A) inadmissible hearsay.
- B) hearsay but admissible because Muldoon is unavailable.
- C) admissible if some competent witness testifies that they fairly and accurately depict the scene of the accident.
- D) admissible as recorded recollection.
- E) not legally relevant.

W is the custodian of records for the Holistic Happiness Supermarket. Upon learning that Holistic Happiness is making tremendous profits selling tofu, local criminals decide to rob the place. On the morning of December 1, 1995, the robbery is committed. Customer Jones, thinking that he recognizes one of the robbers, rushes to inform employee W, who proceeds to make the following entry on the accounts receivable ledger: "Rambo was one of the robbers." If subsequently offered into evidence, the ledger entry will be:

79. A) admissible as non-hearsay.
- B) admissible as a business record.
- C) admissible as a business record, provided that the declarant is unavailable.
- D) admissible as an excited utterance.
- E) inadmissible hearsay.

D is on trial for murder. His defense is self-defense. He seeks to introduce evidence of the following statement made by the victim a day before the alleged crime occurred: "I hate D's guts; I intend to kill him first chance I get." D had not heard the statement prior to the homicide. The statement is:

80. A) admissible as non-hearsay.
- B) hearsay, but admissible under the confrontation clause.
- C) admissible as state of mind circumstantially probative of subsequent conduct.
- D) all of the above.
- E) inadmissible hearsay.

Police find a shirt at the scene of a crime. Attached to the shirt is a sewn label bearing D's name, Dumont. At trial, the first witness is the police officer who found the shirt. After the officer identifies the shirt, a friend of D testifies that he "recognizes the shirt as one D frequently wore. The label in particular is distinctive." The shirt is offered into evidence. D objects on hearsay grounds. The shirt is:

81. A) admissible as a verbal act.
- B) admissible as real evidence.
- C) inadmissible hearsay because the name on the label is being offered for its truth.
- D) admissible as real evidence, provided the label is removed.
- E) none of the above

In a criminal trial charging the defendant with drug dealing, may the defendant--who chooses not to take the witness stand himself-- introduce character evidence through another witness that the defendant has a reputation for honesty?

82. A) Yes
- B) No

In a criminal trial charging the defendant with fraud, the defendant testifies that he "has never broken a law in his life." Is this testimony technically admissible under the Federal Rules of Evidence?

83. A) Yes

B) No

In a criminal trial charging the defendant with drug trafficking, the defense introduces testimony by Katie, the defendant's girlfriend of 2 weeks. She testifies that in her opinion the defendant is law-abiding. Is this testimony admissible?

84. A) Yes

B) No

85. T or F Attacking a witness' credibility may be permitted only after evidence has been received that the witness is truthful.

86. T or F The fact that a testifying defendant has been convicted of a felony may be established by extrinsic evidence.

Robert, on trial for murder, takes the stand in his own defense. He does not put his character at issue. He was once convicted for passing a bad check, a misdemeanor for which he paid a \$50.00 fine. May the prosecutor ask about this incident on cross examination?

87. A) Yes

B) No

88. T or F Relevancy is based solely on logic.

89. T or F In determining whether evidence is relevant a judge may consider the sufficiency and weight of the evidence.

90. T or F Under the Federal Rules of Evidence, a presumption, once established, is binding on the jury unless the party against whom the presumption is directed rebuts the presumption by clear and convincing evidence.

91. T or F A court is required to take judicial notice of an adjudicative fact when the moving party has demonstrated to the court that the fact is generally known in the territorial jurisdiction of the court.

W is a government witness in a federal criminal prosecution. After his direct testimony concerning D's participation in the crime, defense counsel decides not to cross-examine W. Instead, the defense attorney offers into evidence through a defense investigator, W's written statement indicating that the defendant was not present at the crime scene. W is available for recall. W's prior written statement is:

92. A) inadmissible hearsay.
- B) hearsay but within the recorded interview exception.
- C) inadmissible as collateral.
- D) improper because W was not shown the document when he was initially called as a witness.
- E) admissible but only for impeachment by a prior inconsistent statement, provided W is given an opportunity to explain the statement.

D is on trial for bank robbery. The prosecution has alleged that the robbery was committed by someone who bound and gagged the bank tellers and customers using a unique sailor's knot. At trial, the prosecution seeks to introduce evidence that D was involved in two recent robberies in which the victims were tied in the same manner. Such testimony is:

93. A) admissible to prove D's identity as the bank robber.
- B) admissible to prove D's propensity for engaging in bank robberies.
- C) admissible only if D elects to take the stand.
- D) inadmissible character evidence.
- E) inadmissible because it requires proof through extrinsic evidence.

D is on trial for the murder of V. The prosecution seeks to introduce a statement made by V shortly before the homicide occurred. At that time, V was conversing on the telephone with W when he said: "I've got to get off; I see D arriving." An hour later V is found dead. To prove D was present with V, V's statement is:

94. A) admissible as non-hearsay.
 B) admissible as state of mind.
 C) admissible as dying declaration.
 D) inadmissible hearsay.

Lucille and Edgar are attending a banquet together when Edgar suddenly cries out "I've been robbed. That man George over there just picked my pocket." Lucille, visibly shaken by this occurrence, then pulls aside a police officer and says "George just robbed Edgar." At George's trial, Lucille's statement will be:

95. A) admissible as non-hearsay.
 B) admissible as an excited utterance.
 C) admissible as a present sense impression.
 D) admissible as either B or C.
 E) inadmissible.

W observes D negligently strike P's automobile. At trial, W is called to the stand by P's counsel. At a critical point in direct examination, counsel asks W, "Isn't it a fact that D went through the red light?" This question:

96. A) violates the best evidence rule.
 B) violates the rule against hearsay.
 C) is improperly leading.
 D) all of the above
 E) is proper.

In D's trial on racketeering charges, the government seeks to introduce tape-recorded telephone conversations in which reference is made to terms such as "La Cosa Nostra," "Capo," "Consigliere," and "Soldato." To explain the meaning of these terms, the government offers the expert testimony of W, a police officer who has listened to hundreds of similar tape-recordings and investigated many organized crime cases. W, however, has no college degree and has never previously testified as an expert. W's testimony is:

97. A) inadmissible because it concerns a matter within the comprehension of most jurors.
- B) inadmissible because of the absence of a college degree.
- C) inadmissible because of W's lack of prior testifying experience.
- D) inadmissible for reasons B and C.
- E) admissible.

In a federal criminal prosecution, the government calls W as a witness in its case in chief. Although W had previously provided the FBI with a detailed statement incriminating D, he now testifies that "D had nothing to do with it." Beyond that, W professes no recollection. Counsel for the government seeks to impeach W with his prior statement.

98. A) This is improper because the statement is hearsay.
- B) This is permissible because a proponent may attack the credibility of his own witness.
- C) This is improper because impeachment of one's own witness is not permissible absent affirmative harm on the record.
- D) This is permissible only if the prior statement was given under oath.

With respect to the interrelationship between the confrontation clause and hearsay evidence, which of the following is true:

99. A) The admission of hearsay evidence in a criminal case is precluded by the confrontation clause of the Sixth Amendment.
- B) The law relating to hearsay evidence and the Sixth Amendment is completely compatible because if evidence is admissible under any exception to the hearsay rule there is no denial of the right of confrontation.
- C) Where evidence is admissible under an exception to the hearsay rule because of a well-established exception supporting the trustworthiness of the evidence, the confrontation clause is not violated.
- D) All of the above
- E) None of the above

In the film classic "My Cousin Vinny" when Vinny cross-examines the elderly lady with the thick eyeglasses, he is impeaching with evidence of:

100. A) bias
- B) capacity
- C) prior inconsistent statement
- D) contradiction

B visited his doctor with complaints of a sore back. The doctor asked him what happened. B told his doctor that X hit him across the back with crowbar. At the trial of B's case against X for battery, the doctor is called as a witness and is asked about B's statement.

101. A) The statement is inadmissible hearsay in its entirety.
- B) The statement is admissible if the reference to X is omitted.
- C) The entire statement is admissible as a statement made for the purpose of medical treatment.
- D) The statement as told to the doctor is inadmissible because B is available to testify at the trial.
- E) The statement is admissible under the state of mind exception to the hearsay rule.

A murder happened at a Circle-K convenience store the evening of October 31, 1996. A witness, W, testified at a murder trial against D. W stated he saw D near the Circle-K store shortly before the murder. The prosecution asked W how he could be certain of the date. W responded by stating that he saw short people in costumes going from door to door asking for candy. Defense counsel objected on the grounds that the latter statement constituted hearsay.

102. A) W's statement must be stricken because it is based on hearsay.
- B) W's statement is based on hearsay but is admissible under one of the exceptions to the hearsay rule.
- C) W's statement is irrelevant.
- D) W's statement should be stricken because it is collateral to the main issue in the case.
- E) W's statement is admissible as nonhearsay.

A and B #1 (Questions 103 and 104)

A brought a negligence action against B for injuries sustained in an auto accident. A sought \$100,000 in damages. B admitted he was involved in the accident, but argued he was not negligent. B also asserted that, even if he was liable, A only suffered \$10,000 in damages. At the trial A calls W, an eyewitness, to testify that one of the parties involved in the accident resembled B. The testimony is:

103. A) Admissible, because W was an eyewitness.
- B) Inadmissible, because W's identification is not sufficiently certain.
- C) Inadmissible, because its slight probative value is substantially outweighed by its tendency to mislead the jury.
- D) Inadmissible, because it is irrelevant.

A calls C, a mediator, to testify that during pretrial negotiations, B offered to settle, stating, "I ran the red light. I'll pay \$1,000." C's testimony is:

104. A) Admissible, because the offer to pay \$1,000 amounts to an admission of fault.
- B) Admissible as an admission of the statement "I ran the red light," but not admissible as to the offer to pay \$1,000.00.
- C) Inadmissible for reasons of public policy.
- D) Inadmissible because it is not logically relevant.

A and B #2 (Questions 105 - 107)

A sued B for injuries A received in an automobile accident. A claimed B was negligent in (a) exceeding the posted speed limit of 55 m.p.h. and (b) failing to keep a proper lookout. Carlos, an eyewitness, testified on cross-examination that B was wearing an orange sweater at the time of the accident. B's counsel calls Dan, another eyewitness, to testify that B's sweater was blue. Dan offers no other testimony. Dan's testimony is most likely:

105. A) admissible as substantive evidence of a material fact.
- B) admissible as impeachment by contradiction.
- C) inadmissible, because it has no bearing on the capacity of Carlos to observe.
- D) inadmissible, because it is irrelevant.

B testified in his own behalf that he was going 50 m.p.h. On cross-examination, A's counsel did not question B with regard to his speed. Subsequently, A's counsel calls a police officer to testify that, in his investigation following the accident, B told him he was driving 60 m.p.h.. The officer's testimony is:

106. A) admissible, provided B is given an opportunity to explain.
- B) admissible as an admission.
- C) Inadmissible, because A's counsel failed to ask B about the statement on cross-examination.
- D) Inadmissible hearsay.

A offers in evidence a photograph showing the scene of the accident while the cars were still in place. A proper foundation must include, as a minimum, testimony by which of the following?

107. A) The photographer.
- B) A person who was present at the time the photograph was taken.
- C) A person who observed the cars while they were still in place and who can compare the photograph with what she actually observed.
- D) A person in whose custody the photograph has been since it was developed.

108. T or F Victim-witnesses scheduled to testify only at the sentencing phase of a trial are subject to exclusion from the trial prior to the sentencing phase.

In an action for violation of the antitrust laws, the plaintiff offers evidence that the defendant offered the plaintiff \$10 million to settle the case if plaintiff would dismiss the case and agree to destroy evidence plaintiff had of defendant's alleged price-fixing agreements. This evidence is:

109. A) admissible.
 B) inadmissible under Rule 408.
 C) inadmissible as hearsay.
 D) inadmissible character evidence.

To support a claim of self-defense, the defendant in a murder case calls the victim's psychiatrist to testify that in her opinion the victim was a homicidal maniac. The testimony is:

110. A) admissible.
 B) inadmissible if the psychiatrist claims the psychotherapist privilege.
 C) inadmissible opinion evidence.
 D) inadmissible evidence of character.

Arson (Questions 111 - 113)

The prosecution in an arson case gives pretrial notice to the defense a month before trial that it intends to introduce an oral statement of the man who had set the fire. As this man lay dying from burns suffered in the fire he stated he was paid to burn down the abandoned factory by the defendant, the owner of the building.

- 111. T or F The statement is admissible as dying declaration.
- 112. T or F The statement is admissible as declaration against interest.
- 113. T or F The statement is admissible as an admission.

Smokin Joe (Questions 114 - 116)

Smokin Joe was injured while attending a rodeo when a bull broke through retaining fences and knocked Smokin Joe to the ground. Smokin Joe sued the rodeo exhibitor and the owner of the exhibition grounds. Smokin Joe contended that R, the rodeo exhibitor, was negligent in not having clowns and trained personnel to deflect the bull from the area where spectators were located and it was further contended that the owner of the grounds, D, was negligent in not having an adequate retention fence. At the time of trial, Smokin Joe sought to call W as an expert witness. W was a former bull rider and all-round cowboy for a number of years on the rodeo circuit. W was called to testify as to the need to use deflecting persons and various things to attract the bull after the rider had been removed or tossed. The exhibitor, R, objected to the testimony of W on the grounds that it was not a proper subject matter for expert testimony. The trial judge overruled the objection. Smokin Joe then sought to call F, who was the sales person for a local chain link fence company. F had been employed selling chain link and other metal and wire fences for a period of 25 years and had sold chain link fences for baseball, football, ice hockey, rodeo and automobile racing spectator events. F was to testify that the gauge of the fence in question was one-half of the thickness that a chain link fence should be to restrain heavy animals and that the pole attachments were too far apart to give the full restraining strength of the fence. The owner of the grounds, D, objected on the grounds that F's testimony was inappropriate expert opinion.

- 114. T or F The court acted improperly in allowing W, the former bull rider to testify as an expert since the area of testimony was not one of specialized knowledge.
- 115. T or F The issue for the court to determine as to F's testimony is whether it will assist the jury.
- 116. T or F The trial judge should allow F to testify as an expert witness.

Puggy (Questions 117 - 119)

Puggy was injured at a church picnic when the wheel on a pony ride car came off catapulting Puggy off the cart to the ground. Puggy sued D, the manufacturer of the cart. D claimed there was no defect in the manufacture, but that the church, which bought the cart had not maintained it properly. Puggy called F, a mechanic at the local automotive shop, who had years of experience with vehicle wheels and lubrication. F had examined the wheel and was prepared to testify the wheel locks were so placed that they would wear out with frequent heavy load use. D challenged F's qualifications as an expert. F had no formal education in mechanics or metallurgy. Puggy said F would testify only from F's observations and as to the fact the wheel locks were misplaced and would wear with use. D contended only an expert could testify to such a conclusion.

117. T or F An educated or experienced lay person cannot give an opinion based on the person's observation of a matter even if it is within the person's experience or training.
118. T or F The judge should overrule D's objection as to the need for an expert to give an opinion on the condition of the cart.
119. T or F Because F's opinion would not be helpful to an issue in the case, it should be excluded.

Pam and Darwin (Questions 120 - 122)

Pam sued Darwin, a police officer, who shot X. Pam was the surviving spouse of X and filed suit as the representative of X's estate claiming that Darwin unnecessarily shot and killed X during a routine traffic stop. Pam proposed to call W as an expert witness, who had been a former police officer for ten years and now was a full-time witness in suits involving claims of excessive force by police. Pam proposed to ask W a number of questions involving different fact situations that illustrate the circumstances when, in W's judgment, a police officer would be entitled to use deadly force. The trial judge indicated that W could testify but, in the course of asking W a question about Darwin's conduct, Pam asked if Darwin's conduct would violate the constitutional standard as set by the United States Supreme Court. Darwin objected and the trial judge sustained the objection. Pam also asked questions of W as to whether the shooting could have been based on Darwin's reasonable fear of loss of life or injury. W testified that "A police officer is not entitled to be afraid in a city like this." Darwin moved to strike the answer and have the jury disregard it. The trial judge granted the motion.

120. T or F The fact that W was a full-time witness would preclude W from testifying as an expert.

121. T or F The trial judge's ruling excluding W's opinion as to whether Darwin's conduct was contrary to a Supreme Court decision was correct.
122. T or F The trial judge's ruling striking W's answer regarding fear was correct.

P and D (Questions 123 - 126)

P was employed by C Company to install large marine batteries in various vessels. P worked for C Company in installing the batteries for a period of 17 years before P developed lung cancer. P had been a smoker for ten of those years. P sued D Company, the manufacturer the marine batteries that P and C installed. P contended that exposure to battery chemicals was responsible for P's lung cancer. At the time of trial, P offered W as an expert witness on cancer causation. W was a physician specializing in treatment of lung cancer and had had some experience in attempting to identify factors that could be causative of such cancer. At P's request, W had researched the relevant literature, had made tissue examinations and had examined P's tissue for the presence of certain chemicals that were used in the batteries. However, no chemicals were detected but this was explained as being likely because of the normal expulsion of the chemicals by the body after P was removed from their presence. D company moved to prohibit W's testimony at trial contending that W's testimony was speculative and problematic and not adequately founded for admissible scientific evidence. Over P's objection the trial judge held a hearing for two days to determine the basis for W's testimony and whether it should be admitted.

123. T or F The trial judge correctly held a hearing on the admissibility of W's testimony.
124. T or F In order to find W's testimony admissible, the trial judge must find that it is reliable and relevant to the issue an the case.
125. T or F If W had not published anything with regard to battery chemical causation of lung cancer or otherwise subjected W's finding to other physicians of scientists for review, it could not affect the admissibility of W's testimony in any way.
126. T or F In order for the judge to admit W's testimony, the judge must find that the conclusion contained in W's opinion is correct.

Pandora (Questions 127 - 129)

Pandora sued D alleging that D had caused the wrongful death of V, Pandora's child. V had been playing at a park playground when a swing broke causing V to fall and strike V's head. D manufactured the swing. D contended the swing was being misused and called W to the stand. W was a patient at a nearby psychiatric facility and had gone to the park with other patients. W was psychotic and at times had auditory hallucinations. Pandora objected that W was incompetent to testify as to what W had allegedly seen. W claimed to have seen the accident and said V was merely using the swing in a normal fashion the "way children do." In rebuttal, D called X, an adult who suffered from Down's Syndrome. As a result, X had difficulty speaking and X's attention jumped from one subject to another. X would testify that V was twisting the swing and then dropping on the swing seat. Pandora objected that X was incompetent and could not be clearly understood.

127. T or F W is incompetent because of being a resident mental patient.
128. T or F W is incompetent having been diagnosed as psychotic.
129. T or F X is a competent witness.
130. T or F As a result of Daubert v. Merrell Dow, federal judges now give greater deference to the degree of acceptance of scientific evidence by the relevant scientific community than was given prior to the Daubert decision.

George (Questions 131 and 132)

George, charged with drug trafficking, initially entered a plea of not guilty. Later, he changed his plea to guilty. At the plea hearing, George admitted he distributed one ounce of cocaine powder. The court accepted George's plea. A month later, prior to sentencing, George withdrew his guilty plea, which the court allowed. At trial George testified he did not distribute cocaine. On cross-examination the prosecutor asked George, "Isn't it true that at a hearing in this very courtroom you admitted to the judge that you did in fact distribute one ounce of cocaine?" Defense counsel objected and requested a mistrial. The court overruled the objection. George admitted he had made the statement but insisted he had been coerced into doing so. In closing argument, the prosecutor referred to George's admission as "conclusive proof" of the defendant's guilt because "the defendant himself admitted under oath that he distributed cocaine."

131. T or F The prosecutor's question was improper.
132. T or F The prosecutor's statement at closing argument was improper.

Frank (Questions 133 - 135)

Frank was charged with the sexual assault and rape of Lucinda on November 6. Lucinda was kicked and beaten in the incident. A medical doctor examined her shortly afterwards and found evidence of sexual intercourse, bruising and other physical injuries. Frank denied the charge, claiming that although he and Lucinda had been romantically involved for more than a year, they had not been together on the day in question. Consistent with this defense, Frank notified the court prior to trial that he intended to present evidence at trial regarding Lucinda's sexual behavior with several other men. Frank based this evidence on several conversations he had with Lucinda during which Lucinda acknowledged she was still occasionally "seeing 3 or 4" of her former boyfriends, and that at least 2 of these men had been physically abusive toward Lucinda while engaging in sexual relations with her. Frank also notified the court that he intended to offer evidence that he and Lucinda had consensual sexual relations many times in the year preceding November 6. The judge held a hearing in open court outside the presence of the jury to consider Frank's request. At the conclusion of the hearing, the court allowed Frank to present evidence of specific instances of Lucinda's alleged sexual behavior with other men, but disallowed as irrelevant any evidence as to prior sexual activity between Frank and Lucinda. The judge reasoned that because Frank denied that the incident occurred consent was not at issue.

133. T or F The judge was correct in finding that Frank's prior sexual history with Lucinda was irrelevant.
134. T or F The court's hearing was proper.
135. T or F The court was wrong in its ruling allowing evidence regarding Lucinda's past sexual activity with other men.
136. T or F At common law it was not permissible for a party to impeach his own witness.

Which of the following may be permissible methods of rehabilitating a witness who has been impeached on cross-examination.

137. A) further explanation of answers given to questions on cross-examination.
- B) prior consistent statements.
- C) testimony from other witnesses that in their opinion the witness has testified truthfully at trial.
- D) all of the above
- E) A and B

138. T or F If a writing is used to refresh a witness' memory, opposing counsel is entitled to inspect the writing and have it admitted as evidence.

If a doctor testifies to a diagnosis that is based on an x-ray, must the proponent produce the x-ray in its original form or will a verified copy suffice?

139. A) The original x-ray must be produced.
- B) A verified copy will be sufficient.

If one party presents expert testimony that is not countered by opposing expert testimony, is the fact-finder required to accept that testimony as conclusive?

140. A) Yes.
- B) No.

141. T or F Federal Courts recognize an informant's privilege.

142. T or F In a trial in Washington, D.C. involving the validity of Larry King's marriage to a woman in South Carolina, Mr. King seeks to introduce the certificate of his marriage bearing a South Carolina seal. The certificate alone is self-authenticating.

143. T or F Coach R. Majerus sues the University of Utah for breach of contract. (He claims the school has failed to include complimentary snacks on road games.) To prove his claim, coach offers a photocopy of the contract without any explanation as to the existence of the original. Under the best evidence rule the coach's photocopy is inadmissible.

A letter purporting to be written by Stockton to Malone says "in response to your December 20 fax, we're making good progress preparing your order of 32 postal delivery trucks." It has already been established that Stockton sent a fax to Malone on December 20 regarding the status of Malone's order. Under these circumstances, must the letter be independently authenticated?

144. A) Yes.
B) No.

P sues D for breach of contract. Each party proffers a different document as the original of their transaction and provides authenticating evidence in support of his position.

145. A) Assuming each party has satisfied Rule 901, the trial judge should let the case go to the jury.
B) The trial judge may deny admissibility of P's purported contract under Rule 104(b) if he finds that P has not demonstrated the contract's authenticity by clear and convincing evidence.
C) The trial judge should promote underlying competency policies by deciding the preliminary factual question.
D) None of the above.

Burglary (Questions 146 -149)

D is on trial for burglary in the first degree, a crime requiring proof of “nighttime entry” into a residence. The pertinent statute defines nighttime as “after sunset.” W, witness for the prosecution, testified that the burglary occurred on November 30, 1995, at approximately 5:45 p.m. No other evidence was introduced concerning whether D’s entry had been accomplished at “nighttime.” In ruling on a defense motion to dismiss at the conclusion of the prosecution’s case, the court may:

146. A) take judicial notice of legislative fact to correct the record.
- B) take judicial notice under an exception to the best evidence rule.
- C) take judicial notice of the time of sunset as a readily verifiable fact.
- D) deny judicial notice because the time of sunset is not indisputable common knowledge in the area.
- E) none of the above.

If the court were to take judicial notice that sunset occurred at 5:25 p.m., it should instruct the jury as follows:

147. A) Sunset on November 30, 1995, occurred at 5:25 p.m.
- B) I find that sunset on November 30, 1995, occurred at 5:25 p.m. This is conclusive fact.
- C) I have taken judicial notice that on November 30, 1995, sunset occurred at 5:25 p.m. You may, but are not required to, find that sunset on November 30, 1995, occurred at that time.
- D) None of the above.

At D’s trial, the prosecution offers the testimony of a fingerprint expert to establish that D’s prints were “lifted” from the scene of the crime. The scientific validity of identification through fingerprints:

148. A) is admissible under the best evidence rule.
- B) may be the subject of judicial notice.
- C) is only admissible if a foundation is established through expert testimony.
- D) is only admissible if testimony is offered by a consensus of experts.
- E) is immaterial.

P and D enter into contractual arrangement. Upon reaching oral agreement, both place their respective signatures on an original contract and on a photocopy. P retains the photocopy. During subsequent litigation, P seeks to introduce the photocopy into evidence.

149. A) The photocopy is admissible as hearsay.
- B) The photocopy is admissible as a recorded recollection.
- C) The photocopy is admissible as a duplicate original.
- D) The photocopy is admissible as a duplicate, but only once the absence of the original has been explained.
- E) The photocopy is barred by the best evidence rule.

150. T or F The federal rules of evidence contain rules ending in zero.