

General Instructions:

1. Do not write your name anywhere on this exam. Use the number provided to you by the Registrar.
2. This is a closed book exam. You are not permitted to use any materials other than the copy of the Federal Rules of Evidence that is being provided to you along with the exam.
3. Assume the Federal Rules of Evidence apply throughout. Where appropriate, you should cite and discuss the applicable Federal Rules of Evidence.
4. You may write directly on the exam, or use Electronic Blue Book.
5. This exam, which constitutes 30 % of your grade, will be scored out of 30 points.

Good luck!

PART A

Instructions: On these multiple choice questions select one and only one choice. There is no penalty for wrong choices as compared to blanks. No writing beyond your choices will be considered in grading these questions. Each of the five questions in this part is worth two points.

1. Plaintiff seeks to introduce at trial a portion of a letter the plaintiff claims the defendant wrote. Which of the following is INCORRECT?
 - A. If the judge rules the letter falls within a hearsay exemption under Rule 801(d)(2)(A), then the defendant may not argue to the jury in closing argument that he did not write the letter.
 - B. Even if the letter falls within a hearsay exemption under Rule 801(d)(2)(A), it may still be inadmissible.
 - C. If the letter is relevant only if the defendant in fact wrote it, then as a condition of its admissibility the plaintiff must introduce sufficient evidence from which the jury could find that the defendant wrote the letter.
 - D. If the judge admits the portion of the letter the plaintiff seeks to introduce, the defendant will not necessarily be allowed to introduce the remaining portions of the letter.

2. Plaintiff has sued the defendant, a media website, for libel based an article published on the website, in which the plaintiff was called “a child molester.” Which of the following is correct?
 - A. Defendant may not introduce evidence of a specific instance in which the plaintiff molested a child because evidence of a pertinent trait of character is limited to opinion and reputation.
 - B. At trial, evidence of a specific instance in which plaintiff molested a child is admissible under Rule 414.
 - C. The plaintiff may not introduce the article in question because the statement in which plaintiff is called a child molester is hearsay.
 - D. Introducing evidence of a specific instance in which the plaintiff molested a child is permitted by Rule 405(b).

3. Impeachment of a witness W is most likely to be permitted in which one of the following manners?
- A. Evidence of a felony burglary conviction 15 years prior to the trial date for which the witness received no jail time.
 - B. Testimony of another witness describing how W lied to a judge during a court hearing 5 years ago in a matter unrelated to the instant case.
 - C. Cross-examining W about a minor inconsistency in his account of the incident that forms the basis for the lawsuit.
 - D. Testimony of a witness who has never met W that, in the opinion of that witness, W is a liar.
4. David and Candice agree to rob a bank. Candice calls David, while David is inside the bank, and tells him, "I just drove up in the blue van. I'll pick you up as soon as you're done." This statement is recorded by the police, who are lawfully monitoring the conversation, and have had Candice and David under surveillance for weeks. David runs out of the bank and gets in the van, but the two are stopped driving away from the bank. Candice is later questioned at the police station and states in an unrecorded conversation, "I was just the driver. David robbed the bank all by himself." David is charged with bank robbery. There are no pretrial evidentiary hearings or any depositions in the case. At David's trial, Candice invokes her privilege against self-incrimination and refuses to testify. Which of the following is correct?
- A. Introducing the recorded statement is barred by Rule 802.
 - B. If a judge concludes that the unrecorded statement is not barred by Rule 403, then the statement is admissible.
 - C. Candice's unrecorded statement that David robbed the bank falls within a hearsay exception under Rule 804.
 - D. Introducing at trial Candice's unrecorded statement made at the police station that David robbed the bank is barred by the Confrontation Clause.

5. At a criminal trial, the prosecutor calls a police officer to testify to what the defendant's accomplice told the police about how the two of them committed a murder together. The accomplice has invoked her privilege against self-incrimination. The defense objects to the officer's testimony, "Judge, we object under Rule 802." Which of the following is INCORRECT?
- A. The accomplice's statement likely falls within a Rule 804 hearsay exception.
 - B. If the accomplice testified at a pretrial hearing, admission of her statement would not violate the Confrontation Clause.
 - C. If the accomplice did not testify at a pretrial hearing, admission of her statement would violate the Confrontation Clause.
 - D. If the accomplice did not testify at a pretrial hearing, the judge admits the statement at trial, and the defendant is convicted, an appellate court is likely to reverse the conviction because the defendant's Confrontation Clause rights were violated.

PART B

Instructions: In part (a), state whether the offered testimony is (or includes any) hearsay, as that term is defined in Rule 801(c). You should give a “yes” (the testimony is hearsay) or “no” (the testimony is not hearsay) answer, and then briefly explain your answer. If the offered testimony is (or includes any) hearsay, in part (b) state whether the offered testimony falls within a Rule 801(d) exemption or a Rule 803 or Rule 804 exception (and, therefore, is not excluded by Rule 802, the rule against hearsay). Here again, your answer should say “yes” (the testimony is not excluded by the rule against hearsay) or “no” (the testimony is excluded by the rule against hearsay), and you should then briefly explain your answer.

If the correct answer to part (a) is “no,” then part (b) will not be graded. I will read and grade your answer to (b) only if the correct answer to (a) is “yes.” If you think the answer to part (a) is “no,” you may choose to leave part (b) blank, but you will not be penalized for answering part (b) even if the correct answer to part (a) is “no.”

In answering the questions in this part of the exam, do not consider the Confrontation Clause or Rule 807.

Each of the five questions in this part is worth two points.

1. In an employment discrimination lawsuit, as proof that defendant David did not promote plaintiff Paula because of her gender, testimony that, at a company meeting, a witness Walter said to David, “You didn’t give that promotion to Paula because she is a woman” and that David remained silent when Walter made this statement.

(a)

(b)

2. As proof in a DWI case that Donald was the driver of car, testimony by a police officer that when he arrived at the scene of a recent accident, he found Donald and Paul standing near the car, and when he asked Paul if he (Paul) was the driver, Paul responded, “No. I was not the driver.”

(a)

(b)

3. As proof that a landlord was aware that the staircase going up to an apartment was in need of repair, testimony that a tenant called him and said, "The stairs are in terrible condition."

(a)

(b)

4. As proof that Jane was not at home at the time of a 10 AM shooting at her house on April 15, 2018, a time sheet from her place of employment on which she had written that she started working at 8 AM and finished working at 4:30 PM on April 15, 2018, offered in evidence through the company employee in charge of maintaining the time sheets.

(a)

(b)

5. As proof that Valerie was assaulted by Dean last year, testimony by a stenographer that, at a pretrial hearing, Valerie was asked if Dean hit her and she responded by nodding her head. The stenographer's testimony is offered after Valerie has testified at trial that Dean did not assault her.

(a)

(b)

Part C

Instructions: While the responses in this part will be graded primarily based on their substantive accuracy, and there is no limit on the length of your responses, the coherence and clarity of the responses, and avoiding discussion of irrelevant matters, will be considered.

There are five questions, each worth two points, all relating to the following fact pattern.

Dawn was driving home from a party with her friend Fiona. Distracted by the music and their conversation, Dawn did not, according to her friend Fiona, notice that a traffic light was red. Fiona claims she screamed, "Stop! It's red!" Dawn slammed on her brakes, skidded and struck Paulo, a pedestrian. When paramedics arrived, Paulo made a statement one of them recorded on his phone: "She was going so fast, so fast!" An "accident reconstruction expert," Elaine, relying on such facts as the police reports about Paulo and Fiona's statements, and measurements of skid marks and distances on the road, concluded that Dawn was driving 50 miles per hour as she went through the red light. The posted speed limit was 25. Paulo died from his injuries. Based on allegedly going through the red light and her speed, Dawn was charged with negligent homicide. She is tried in 2018.

1. At trial, the prosecution calls Fiona as a witness and intends to have her testify to what she told Dawn as Dawn was about to enter the intersection. Provide two separate reasons why this statement is relevant and explain whether the statement is admissible.
2. The defense seeks to examine Fiona about a 2007 conviction for Sale of Heroin, for which she served three years in prison. Write a short memorandum on the admissibility of this conviction.

