

Empire College School of Law
Professor Bruce Kinnison
Evidence Final Examination
Spring 2010
Thursday, April 22, 2010

QUESTION 1
(One hour)

Ace is accused of the crime of robbing Vic. At trial, the prosecution called Ace's lawyer Lou who would testify that Ace had told him during one of their interviews that if Lou would send a certain book to Ace at the jail, through a certain online book company, Lou might be seeing Ace out of custody quicker than Lou expected.

The prosecution also sought to call Ace's wife Wendy to testify that Ace wore a red jacket before the robbery, the same jacket color worn by the robber. Wendy refused to testify and invoked all privileges, though she had testified to the grand jury which indicted Ace that he wore a red jacket on the day of the robbery. The prosecutor indicated that if the judge honored Wendy's request, the state would call the police officer who took Wendy's statement the day after the alleged robbery.

Ace sought to impeach Vic with the following:

1. Vic was convicted of the felonies of murder and burglary 9 years earlier. He was granted probation and the convictions were later expunged.
2. Vic cheated on his income tax the previous year. A criminal complaint against him had been filed, but he had not yet gone to court.
3. Vic had been convicted of misdemeanor theft three years earlier.

Ace attempted to offer evidence that, shortly, before the time of the robbery, Ace told Wendy that he and Vic were going to talk about the money Vic owed Ace. Consistent with the above, Wendy refused to testify and invoked all privileges.

As the trial judge, assume all objections and claims of privilege were made. Discuss the reasons for and against the admission of the evidence, and the rulings you would make. Answer according to the general principles we've discussed in class, and point out any significant differences between California and federal law.

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QUESTION 2
(One hour)

Phil bought a car from Dan who represented that it was in great mechanical shape. When Phil asked Dan whether he would trust his family with the car, Dan said, "How about those Giants!" Phil assumed at the time that Dan was a big baseball fan.

Phil was driving the car the week after he bought it when the steering went out on a country road, Phil lost control and crashed the car into the bushes which bordered the road. Seriously injured and in pain, Phil was taken to the hospital. While there, he told a security guard that he couldn't be sure why he crashed, since he'd been kissing his wife Kate at the time of the accident. Kate also went to the hospital for observation, where records showed that her blood alcohol level was high when she was brought in. Kate turned out not to be injured in the crash.

Phil sued Dan for pain and suffering, as well as fraud in the sale of the car.

At trial, Phil called Val, who had also bought a defective car from Dan, the year before Phil bought his defective car. Val was prepared to testify that Dan represented that his car was safe, but that the car caught on fire the day after she bought it. Val demanded and received her money back.

He also offered Dan's statement regarding the Giants.

Phil called his doctor Ron, hired by Phil's attorney, to testify that when Ron examined Phil, Phil complained of ongoing pain that had not let up since Phil got out of the hospital six months earlier.

Dan sought to introduce hospital records from Phil and Kate. The records indicated that the security guard had told a nurse about Phil's statement, and that she had put them in her notes.

Dan also called Ellie, who had been writing in her diary at the time of the accident. She wrote the following: "Saw the strangest sight just now, a car wobbling down the road, the driver kissing a chick and the car crashing into the bushes." When asked about the incident, Ellie couldn't remember anything about it, other than that she was writing in her diary. She didn't remember seeing a car.

As advocates for each party, make all appropriate objections and claims of privilege. As the trial judge, discuss the reasons for and against the admission of the evidence, and the rulings you would make. Answer according to the general principles we've discussed in class, and point out any significant differences between California and federal law.