

22. Upon objection by Reva's attorney, the cross-examination is
- (A) objectionable, because it deals with subject matter not dealt with on direct examination
 - (B) objectionable, because Reva's employment records would be the best evidence of his damages
 - (C) permissible, because its prejudicial effect is substantially outweighed by its probative value on the issue of damages
 - (D) permissible, because it deals with a relevant matter that is not collateral to the issue being litigated

Question 23 is based on the following fact situation:

Douglas was indicted for the murder of Matthew by poison. At trial, the prosecutor calls the county coroner, Dr. Xavia, who is a board-certified pathologist, to testify that, in accord with good practice in her speciality, she has studied microphotographic slides, made under her supervision by medical assistants, of tissue taken from Matthew's corpse and that it is Xavia's opinion, based on that study, that Matthew died of poisoning. The slides have not been offered in evidence.

23. Dr. Xavia's opinion should be
- (A) excluded, because the cause of death is a critical issue to be decided by the trier of fact
 - (B) excluded, because her opinion is based on facts not in evidence
 - (C) admitted, because Xavia followed accepted medical practice in arriving at her opinion
 - (D) admitted, because her opinion is based on matters observed pursuant to a duty imposed by law

Question 24 is based on the following fact situation:

Patrick sued Shawn for personal injury alleged to have been caused by Shawn's negligence. A major issue at trial was whether Patrick's disability was caused solely by trauma or by a preexisting condition of osteoarthritis.

Patrick called Dr. Jones, who testified that the disability was caused by trauma. On cross-examination, Dr. Jones testified that a medical textbook entitled Diseases of the Joints was authoritative and that she agreed with the substance of passages from the textbook that she was

directed to look at, but that the passages were inapplicable to Patrick's condition because they dealt with rheumatoid arthritis rather than with the osteoarthritis that Post was alleged to have.

Shawn then called his expert, Dr. Smith, who testified that, with reference to the issue being litigated, there is not difference between the two kinds of arthritis. Shawn's counsel then asks permission to read to the jury the textbook passages earlier shown to Dr. Jones.

24. The judge should rule the textbook passages
- (A) admissible only for the purpose of impeaching Jones
 - (B) admissible as substantive evidence if the judge determines that the passages are relevant
 - (C) inadmissible, because they are hearsay not within any exception
 - (D) inadmissible, because Jones contended that they are not relevant to Patrick's condition

Question 25 is based on the following fact situation:

At the trial of Harold for a murder that occurred in Oakdale, the prosecution called Sandra, who testified that she saw Harold kill the victim. Harold believed that Sandra was in another state, engaged in the illegal sale of narcotics, on the day in question. On cross-examination by Harold, Sandra was asked whether she had in fact sold narcotics in that state on that date. Sandra refused to answer on the ground of self-incrimination.

The judge, over the prosecutor's objection, ordered that if Sandra did not testify, her direct testimony should be stricken. The order to testify or have the testimony stricken can best be supported on the basis that

- (A) Sandra had not been charged with any crime and, thus, could claim no privilege against self-incrimination
- (B) Sandra's proper invocation of the privilege prevented adequate cross-examination
- (C) the public interest in allowing an accused to defend himself or herself outweighs the interest of a non-party witness in the privilege
- (D) the trial record, independent of testimony, does not establish that Sandra's answer could incriminate her.

Question 26 is based on the following fact situation:

George was prosecuted for armed robbery. At trial, George testified in his own behalf, denying that he had committed the robbery. On cross-examination, the prosecutor intends to ask George whether he had been convicted of burglary six years earlier.

26. The question concerning the burglary conviction is
- (A) proper if the court finds that the probative value for impeachment outweighs the prejudice to George
 - (B) proper, because the prosecutor is entitled to make this inquiry as a matter of right
 - (C) improper, because burglary does not involve dishonesty or false statement
 - (D) improper, because the conviction must be proved by court record, not by question on cross-examination

Question 27 is based on the following fact situation:

A grand jury was investigating a bank robbery. The only information known to the prosecutor was a rumor that Trudie might have been involved. The grand jury subpoenaed Trudie. She refused to answer questions about the robbery and was granted use immunity. She then testified that she and Susan had robbed the bank. The grand jury indicted both Trudie and Susan for the bank robbery. The prosecutor permitted Susan to enter a plea to a lesser offense in exchange for Susan's agreement to testify against Trudie. The prosecutor had no evidence as to the identity of the robbers except the testimony of Susan and Trudie.

At Trudie's trial, her objection to Susan being permitted to testify should be

- (A) sustained, because the prosecutor may not bargain away the rights of one codefendant in a deal with another
- (B) sustained, because Susan's testimony was acquired as a result of Trudie's grand jury testimony
- (C) overruled, because the police suspected Trudie even before she testified in the grand jury hearing
- (D) overruled, because a witness cannot be precluded from testifying if her testimony is given voluntarily

Question 28 is based on the following fact situation:

Jeff and Rob were arrested for holding up a convenience store. They were taken to police headquarters and placed in a room for interrogation. A police officer addressing both gave them the Miranda warnings prior to questioning. Jeff then said, "Look, Rob planned the damned thing and I was dumb enough to go along with it. We robbed the place—what else is there to say?" Rob said nothing. Rob was escorted into another room and a full written confession was then obtained from Jeff.

If Rob is brought to trial on an indictment charging him with robbery, the fact that Rob failed to object to Jeff's statement and remained silent after Jeff had implicated him in the crime should be ruled

- (A) admissible because his silence was an implied admission by Rob that he had participated in the crime
- (B) admissible because a statement of a participant in a crime is admissible against another participant
- (C) inadmissible because, under the circumstances, there was no duty or responsibility on Rob's part to respond
- (D) inadmissible because whatever Jeff may have said has no probative value in a trial against Rob

Question 29 is based on the following fact situation:

In a suit attacking the validity of a deed executed seventeen years ago, Plaintiff alleges mental incompetency of Robin, the grantor, and offers in evidence a properly authenticated affidavit of Jonathon, Robin's brother. The affidavit, which was executed shortly after the deed, stated that Jonathon had observed Robin closely over a period of weeks, that Robin had engaged in instances of unusual behavior (which were described), and that Robin's appearance had changed from one of neatness and alertness to one of disorder and absentmindedness. The judge should rule Jonathan's affidavit

- (A) inadmissible as opinion
- (B) inadmissible as hearsay, not within any exception
- (C) admissible as an official document
- (D) admissible as an ancient document

Question 30 is based on the following fact situation:

On the morning of May 20th, a case of Lite Beer was stolen from a Budweiser truck as it was parked outside of the Regal Beagle. Hugh was subsequently charged with theft of the beer. At trial, to prove that the beer was on the truck, Timothy, the Budweiser shipping manager, was called by the prosecution to testify. Timothy testified that he did not have firsthand knowledge of the contents of the truck on that particular day. Thereupon, the prosecuting attorney asked Timothy the following question, "Did you not receive a shipping invoice listing the contents on the truck for that particular delivery?" Timothy replied, "Yes, as part of my business responsibilities, I did receive from the shipping clerk a shipping invoice listing the merchandise on the truck." Timothy then produced the invoice and identified it as the one in question.

30. If the prosecuting attorney offers the invoice as an exhibit, the trial judge should
- (A) admit the invoice only because it is recorded recollection
 - (B) admit the invoice only because it is a record of regularly conducted business activity
 - (C) admit the invoice because it would qualify as both recorded recollection and a record of regularly conducted business activity
 - (D) exclude the invoice because it is a hearsay not within any recognized exception

Question 31 is based on the following fact situation.

Paul sues Outlet Warehouse for personal injuries, alleging that while shopping he was knocked to the floor by a merchandise cart being pushed by Goofy, a stock clerk, and that as a consequence his back was injured.

Goofy testified that Paul fell near the cart but was not struck by it. Forty-five minutes after Paul's fall, Goofy, in accordance with regular practice at Outlet, had filled out a printed form, "Employee's Report of Accident—Outlet Warehouse," in which he stated that Paul had been leaning over to spank his young child and in so doing had fallen near his cart. Counsel for Outlet offers in evidence the report, which had been given him by Goofy's supervisor.

31. The judge should rule the report offered by Outlet
- (A) admissible as *res gestae*
 - (B) admissible as a business record

- (C) inadmissible, because it is hearsay, not within any exception
- (D) inadmissible, because Handy is available as a witness

Question 32 is based on the following fact situation:

Janet Jenkins was driving home after attending the opening night performance of the musical *Cats* at the Shubert Theatre. Janet was turning her automobile into her driveway at about midnight when she stopped to light a cigarette. It was a dark and rainy evening and Janet didn't realize that the rear of her car extended out into the east-bound lane of Hope Avenue. As she was lighting her cigarette, her car was struck by a vehicle driven by Dennis Darwin. The front bumper of Dennis' car rammed into the rear bumper of Janet's car, causing it to overturn. Janet was seriously injured in the collision.

Janet sued Dennis to recover for the injuries she suffered in the accident. At trial, Janet called Olivia Octagon, a neighbor, to testify. Olivia testified that she was outside walking her dog when the accident occurred. She further testified that she saw Dennis' car "going at least seventy miles per hour" when he crashed into Janet. Olivia denied making any contrary statements regarding the accident.

During Dennis' case, Dennis called Patrolman Pete, the police officer who investigated the accident, to testify. Pete testified that Olivia made a statement to him that he (Pete) had passed on to the other officer, who ultimately wrote up the official police report. Thereupon, Pete identified the police report, described how it was formulated and kept, and said that he had signed the report without reading it. He also testified that he had no independent recollection of Olivia's statements following the accident. In the report, Olivia is quoted as saying that Dennis was traveling at twenty miles per hour.

32. If Dennis offers the portion of the police report into evidence to impeach Olivia, the evidence will be
- (A) admissible, as a business record to impeach Olivia
 - (B) admissible, as Pete's recorded recollection to prove the speed of Dennis' vehicle
 - (C) inadmissible, because it is hearsay on hearsay
 - (D) inadmissible, because Pete did not verify that Olivia's statement was correctly recorded before he signed the accident report

Questions 33–35 are based on the following fact situation:

India ran into and injured Paulena, a pedestrian. With India in her car were Greg and Georgetta. Petunia saw the accident and called the police department, which sent Sheriff Saul to investigate.

All of these people are available as potential witnesses in the case of *Paulena v. India*. Paulena alleges that India, while drunk, struck Paulena who was in a duly marked crosswalk.

33. Paulena's counsel wants to introduce testimony from Sheriff Saul concerning a discussion between Sheriff Saul and Petunia at the police station after the accident, when Petunia excitedly exclaimed, "Paulena ran out in the street and was not in the crosswalk!" Sheriff Saul duly recorded the statement in an official police report. The trial judge should rule Sheriff Saul's oral testimony
- (A) admissible as a spontaneous utterance
 - (B) admissible as based on past recollection recorded
 - (C) inadmissible because Petunia has not been shown unavailable as a witness
 - (D) inadmissible under the excited utterance exception because it can be a product of reflection and deliberation
34. Paulena's counsel wants to introduce testimony of Sheriff Saul that at the police station India told Sheriff Saul, "I think this was probably my fault." The trial judge should rule this testimony
- (A) admissible as a part of the *res gestae*
 - (B) admissible as an admission of a party
 - (C) inadmissible because it includes a conclusion of law which the declarant was not qualified to make
 - (D) inadmissible because it constitutes an opinion rather than an admission of specific facts
35. Paulena's counsel wishes to prove that after the accident India went to Paulena and offered \$5,000 to settle Paulena's claim. The trial judge should rule this evidence
- (A) admissible as an admission of a party

- (B) admissible as an admission to show India's liability, provided the court gives a cautionary instruction that the statement should not be considered as bearing on the issue of damages
- (C) inadmissible since it is not relevant either to the question of liability or the question of damages
- (D) inadmissible because even though relevant and an admission, the policy of the law is to encourage settlement negotiations

Question 36 is based on the following fact situation:

While crossing Broad Street, DaWanda was hit by a car that she did not see. DaWanda sued Daniel for her injuries.

At trial, DaWanda calls Walter, a police officer, to testify that, ten minutes after the accident, a driver stopped him and said, "Officer, a few minutes ago I saw a hit-and-run accident on Broad Street involving a red convertible, which I followed to the drive-in restaurant at Prescott and Second," and that a few seconds later Walter saw Daniel sitting alone in a red convertible in the drive-in restaurant's parking lot.

36. Walter's testimony about the driver's statement should be
- (A) admitted as a statement of recent perception
 - (B) admitted as a present sense impression
 - (C) excluded, because it is hearsay not within any exception
 - (D) excluded, because it is more prejudicial than probative

Question 37 is based on the following fact situation:

Aaron is being tried in federal court for criminal conspiracy with Jason to violate federal narcotics law. At trial, the prosecutor calls Aaron's new wife, Annie, and asks her to testify about a meeting between Aaron and Jason that she observed before she married Aaron.

37. Which of the following is the most accurate statement of the applicable rule concerning whether Annie may testify?
- (A) The choice is Annie's.
 - (B) The choice is Aaron's.

- (C) Annie is permitted to testify only if both Annie and Aaron agree.
- (D) Annie is compelled to testify even if both Annie and Aaron object.

Question 38 is based on the following fact situation:

Holland, an insurance salesman, was a guest at the Tri-Star Hotel in Atlanta. After checking into the hotel, Holland was walking to his room when he slipped on the marble floor in the lobby and injured his back. At trial, Holland testified that although the marble floor had been waxed a few minutes before he fell, there was no sign posted warning guests of the dangerous condition.

In addition, Holland proposed to testify that after he fell, he went to the concierge's office and said to her, "I just slipped on the slick floor in the lobby and injured my back." Buffy, the concierge's, only response was, "I'm terribly sorry but I'm too busy to help you now."

38. Holland's proposed testimony regarding his meeting with the concierge should be
- (A) admitted, because it is a statement of physical condition
 - (B) admitted, because by not disputing Holland's assertion, Buffy's silence can be construed as an implied admission
 - (C) excluded, because Buffy could not reasonably be expected to admit or deny Holland's assertion
 - (D) excluded, because it contains improper lay opinion as to causation and medical condition

Question 39 is based on the following fact situation:

Trucks driven by Brenda and Roberta collided, and Roberta was charged with driving while intoxicated in connection with the accident. She pleaded guilty and was merely fined, although under the statute the court could have sentenced her to two years in prison.

Thereafter, Brenda, alleging that Roberta's intoxication had caused the collision, sued Roberta for damages. At trial, Brenda offers the properly authenticated record of Roberta's conviction. The record should be

- (A) admitted as proof of Roberta's character
- (B) admitted as proof of Roberta's intoxication

- (C) excluded, because the conviction was not the result of a trial
- (D) excluded, because it is hearsay not within any exception

Question 40 is based on the following fact situation:

Ken, charged with murder, was present with his attorney at a preliminary examination when Bert, who was the defendant in a separate prosecution for concealing the body of the murder victim, testified for the prosecution against Ken. When called to testify at Ken's trial, Bert refused to testify, though ordered to do so.

40. The prosecution offers evidence of Bert's testimony at the preliminary examination. The evidence is
- (A) admissible as former testimony
 - (B) admissible as past recollection recorded
 - (C) inadmissible, because it would violate White's privilege against self-incrimination
 - (D) inadmissible, because it is hearsay not within any exception

Question 41 is based on the following fact situation:

In 1987 two police officers in a squad car received a radio message from headquarters to be on the lookout for a large brown sedan occupied by a man and a woman who had just committed a bank robbery. An hour later they saw a car answering this description traveling down a main boulevard leading out of town. They had the car pull to the side of the road and walked over to the car. One of the officers told the occupants that they were under arrest for bank robbery. Thereupon John, the driver, suddenly put the car in gear and drove off. One officer clung to the car. The other officer pursued in the squad car. Unable to overtake the car and afraid he would lose sight of it in the heavy traffic, the officer fired, first a warning shot and then at the car. He struck Janelle, the passenger sitting next to John.

John was caught ten minutes later. Janelle died from the gunshot wound. John was taken to the police station.

The bank robbers had handed the teller a handwritten note, write out the words of the note and have his fingerprints taken. He was then, for the first time, allowed to telephone a lawyer, who thereafter represented him.

John was charged with the murder of Janelle.

41. The prosecution, after introducing the robbers' note to the teller, also offers in evidence John's writing of the words of the note at the request of the police. On appropriate objection, the court should rule this
- (A) admissible
 - (B) inadmissible, because he was not advised that his handwriting sample could be admitted into evidence against him
 - (C) inadmissible, because he was not advised of his right to refuse to give a handwriting sample
 - (D) inadmissible, because he had not been informed he had a right to have counsel present

Question 42 is based on the following fact situation:

Andrea was charged with false pretenses for allegedly issuing bad checks. At trial, the prosecuting attorney offered into evidence checks purportedly written by Andrea.

42. All of the following would constitute adequate authentication of the checks EXCEPT
- (A) testimony by the person who has been Andrea's bookkeeper for the last four years that the writing is Andrea's
 - (B) testimony by a police handwriting expert that the writing matches Andrea's on admittedly genuine exemplars
 - (C) comparison of the checks by the trier of fact with an admittedly genuine specimen of Andrea's handwriting made during police interrogation
 - (D) comparison of the checks by the police officer who made the arrest with an admittedly genuine specimen of Andrea's handwriting

Question 43 is based on the following fact situation:

In a trial between Pete and Bob, an issue arose about Bob's ownership of a dog, which had caused damage to Pete's garden.

43. Pete offered to testify that he looked up Bob's telephone number in the directory, called that number, and that a voice answered, "This is Bob speaking." At this Pete asked, "Was that your dog that tramped across my garden this afternoon?" The voice replied, "Yes." The judge should rule the testimony

- (A) admissible, because the answering speaker's identification of himself, together with the usual accuracy of the telephone directory and transmission system, furnishes sufficient authentication
- (B) admissible, because judicial notice may be taken of the accuracy of telephone directories
- (C) inadmissible unless Pete can further testify that he was familiar with Bob's voice and that it was in fact Bob to whom he spoke
- (D) inadmissible unless Bob has first been asked whether or not the conversation took place and has been given the opportunity to admit, deny, or explain

Question 44 is based on the following fact situation:

Lance and Loni had been engaged to be married. However, Loni broke off the engagement and started dating Lance's best friend, Gary. Late one night while Loni and Gary were in bed together, Loni received a telephone call. When she picked up the receiver, the caller said, "Is this Loni?" When Loni answered "Yes", the caller then said, "Do you know that Gary has been diagnosed as having AIDS?" On account of the telephone call, Loni became distraught and terminated her relationship with Gary. Thereafter, Loni found out that the call was a prank and Gary was not diseased.

Subsequently, Loni sued Lance for intentional infliction of mental distress, alleging that he was the person who placed the telephone call. During the jury trial, Loni seeks to testify that, in her opinion, Lance was the caller because although the caller disguised his voice, Lance is the only person known to her who is demented enough to make such a call.

44. Loni's proffered testimony should be
- (A) admitted, as a statement of a party
 - (B) admitted, as permissible lay opinion that will be helpful to the jury
 - (C) excluded, as lacking any probative value
 - (D) excluded, as impermissible character evidence

Question 45 is based on the following fact situation:

In a contract suit between Maxwell and Michael, Michael testifies that he recalls having his first conversation with Maxwell on August 8. When asked how he remembers the date, he answers, "In the conversation, Maxwell referred to a story in that day's newspaper announcing my daughter's engagement." Maxwell's counsel moves to strike the reference to the newspaper story.

45. The judge should
- (A) grant the motion on the ground that the best evidence rule requires production of the newspaper itself
 - (B) grant the motion, because the reference to the newspaper story does not fit within any established exception to the hearsay rule
 - (C) deny the motion on the ground that the court may take judicial notice of local newspapers and their contents
 - (D) deny the motion on the ground that a witness may refer to collateral documents without providing the documents themselves

Questions 46-50 are based on the following fact situation:

Jodi Freaberg purchased a mattress from Big T's Furniture Store in Toledo. The mattress, manufactured by Catch-Some-Zees Co., had a defective spring which one of Catch-Some-Zees workers had not properly tied down. When Jodi slept on the mattress, she was wounded in the buttocks by the sharp point of the spring. Jodi sued Big T's for negligence and breach of warranty.

At trial, Jodi testified that Big T's salesman, Edward McQuick, assured her that Big T's inspected each mattress before delivery. Furthermore, Jodi testified that she remembered Edward telling her that "Big T's stands behind all of its mattresses with a lifetime guarantee."

46. She is then asked if McQuick made any other representations about the mattress. Jodi stated, "Yes, in fact, the day before the mattress was delivered, I received a letter from him thanking me for my patronage at Big T's. As I recall, he also made some assurances about Catch-Some-Zees mattresses." Jodi's attorney then asked, "What assurances were made in the letter?" Jodi's answer is
- (A) admissible, as an admission by a party
 - (B) admissible, as a declaration against interest if McQuick is unavailable to testify
 - (C) inadmissible, under the best evidence rule
 - (D) inadmissible, as hearsay not within any exception
47. Jodi's attorney next calls Carl Cunning to testify that he was injured from a protruding spring from a Catch-Some-Zees mattress which he purchased from Big T's three weeks before Jodi bought hers. Cunning also states that he notified Big T's about the mattress defect immediately after his injury. Upon objection by Big T's attorney, the trial judge should rule Cunning's testimony

- (A) admissible, to prove Big T's negligence, provided the court gives a cautionary instruction that Cunning's testimony should not be considered as bearing on the issue of damages.
 - (B) admissible, to prove that Big T's should have been aware of the spring defect inside its Catch-Some-Zee's mattresses
 - (C) inadmissible, because it is not probative of a fact in issue
 - (D) inadmissible, because it seeks to put into evidence separate, unrelated transactions with a third-party
48. On cross-examination Cunning admits that he is Jodi's former husband. Thereafter, on re-direct Jodi's attorney seeks to have Cunning testify that he and Jodi have not spoken to each other since their bitter divorce proceeding five years ago. Cunning's testimony is
- (A) admissible, under the family history exception to the hearsay rule
 - (B) admissible, because cunning's answer might rebut the inference of bias
 - (C) inadmissible, because it relates to a collateral matter
 - (D) inadmissible, because it is irrelevant to any substantive issue in the case
49. As its first witness Big T's calls Russell Hueman, president of the local Toledo Chamber of Commerce, to testify that Big T's has an excellent reputation for honesty and integrity in the business community. Hueman's testimony is
- (A) inadmissible, because it is character evidence
 - (B) inadmissible, because it is multiple hearsay
 - (C) admissible, because Big T's may elect to place its character in issue
 - (D) admissible, because it is relevant to show Big T's business reputation in the community
50. Next, McQuick testifies that Jodi never requested a warranty on the mattress. In rebuttal, Jodi's attorney calls Daniel Brutsky, Jodi's boyfriend, to testify that before Jodi drove to Big T's, she told him, "I'm not going to buy any mattress unless I get a lifetime warranty." Brutsky's testimony is
- (A) inadmissible, because it is hearsay not within any recognized exception
 - (B) inadmissible, because of the parol evidence rule

- (C) admissible, as an admission by a party
- (D) admissible, to show that Jodi requested a warranty