

Question 1

While driving through a mostly deserted shopping district, Ronny swerved erratically onto the sidewalk and his car struck and killed three shoppers. The doctor who examined Ronny in preparation for the trial said that he was willing to testify that Ronny exhibited symptoms of a mild stroke. During the trial for one of the deaths, the state called the Sonya, a shopkeeper and only surviving witness to the accident, who testified that Ronny appeared to be reading a map when he swerved off of the main road. After the state rested, and the defense concluded its cross, the judge asked Sonya what direction she was facing at 6:00 p.m. when the wreck occurred. She replied that she was facing west, and that the sun was just beginning to set and made it difficult for her to see in that direction. Did the judge commit a reversible error in posing this question to the witness?

- a) No. The jury would not have been aware of the witness's potential perception problem without the question.
- b) No. Judges are permitted to pursue any line of questioning they wish with any witness.
- c) Yes. Judges may only question those witnesses that they call themselves.
- d) Yes. This question does not further the interests of justice.

Question 2

During a civil trial in Florida, the plaintiff sought to introduce impeachment evidence of a prior felony conviction concerning a defense witness that the witness denied having. The defense attorney objects to introduction of the evidence. The impeachment evidence

- a) is admissible if it satisfies the express provision in the applicable Florida statute requiring that the probative value of the prior offense must not exceed its prejudicial effect.
- b) is not admissible because the witness is not the accused in a criminal case as required under the applicable Florida statute.
- c) is likely admissible if it satisfies a relevancy balancing test.
- d) is not admissible because Florida law does not permit introduction of evidence of a prior conviction for impeachment purposes.

Question 3

When Steve was 15 years old, a delinquency adjudication was entered against him in Florida for his participation in a robbery. Eight years later, Steve is now a witness in a civil trial in Florida. The opposing party wishes to introduce evidence of Steve's juvenile adjudication for impeachment purposes. The judge

- a) should admit the evidence provided that the probative value outweighs the prejudicial value.
- b) may admit the evidence because 10 years have not passed since the adjudication.
- c) cannot admit the evidence because more than 5 years have passed since the adjudication.
- d) cannot admit the evidence for impeachment purposes.

Question 4

Dennis was charged with the sexual battery of Patricia in Florida. The prosecutor intends to prove that Dennis raped Patricia in the parking lot of a bar. Dennis alleges that Patricia consented to the sexual activity at issue in the case. During a criminal trial on the matter, Dennis sought to introduce evidence of two separate and specific instances of prior consensual sexual activity between Patricia and another man named Joe. The judge

- a) should not admit the evidence under any circumstances.
- b) should admit the evidence because the defendant has raised a defense of consent, which is sufficient to permit introduction of evidence of the prior consensual sexual activity of the victim.
- c) should not admit the evidence because specific instances of prior consensual sexual activity between a victim and another man who is not the defendant is not permitted under Florida's Rape Shield Law.
- d) should admit the evidence if it is first established to the judge in a proceeding in camera that the evidence tends to establish a pattern of conduct or behavior on the part of Patricia that is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.

Question 5

A customer was walking in a grocery store in Florida in the afternoon when she slipped on a large puddle of vegetable oil that had spilled in the aisle when a jug of oil fell from a shelf and broke open. An employee of the store had previously picked up the broken jug that morning, but neglected to clean up the oil. The customer was seriously injured in the fall due to a rare bone disease that caused her hip, leg, and elbow to fracture when she fell. After she fell, the manager of the grocery store said, "I should have made sure that the spill was cleaned up hours ago." The customer sued the grocery store based on a claim of negligence, and during a trial on the matter, she attempted to introduce the manager's statement through the testimony of a person who overheard the manager's statement. Which one of the following statements is correct under Florida law?

- a) The statement is admissible as a statement of confession under the confiteor doctrine.
- b) The statement is not admissible because hearsay is not admissible during a trial as substantive evidence.
- c) The statement may be admissible as an admission of a party opponent, which is non-hearsay.
- d) The statement may be admissible as an admission of a party opponent, which is an exception to the hearsay rule.

Question 6

A man was charged with sexual battery in Florida. Three weeks before the trial, the prosecutor provided notice to the defense that the prosecutor intended to offer evidence at the trial of the

defendant's prior conviction for lewd or lascivious molestation, which had occurred six years before the sexual battery charges arose. During the trial, the prosecutor sought to introduce the prior conviction. The defendant objected to introduction of the evidence and argued that it was being offered to show that concerning his current charge he acted in conformity with the evidence of the prior crime. The judge

- a) should overrule the objection and permit the introduction of the evidence because the defendant is charged with a sexual offense.
- b) should overrule the objection and permit the introduction of the evidence because evidence of a prior conviction for a sexual offense is always admissible in any criminal trial.
- c) should sustain the objection and not permit the introduction of the evidence because the defendant is not charged with lewd or lascivious molestation.
- d) should sustain the objection and not permit the introduction of the evidence because the prior offense occurred more than five years ago, which exceeds the five-year limitation for introduction of prior criminal acts.

Question 7

During a trial on a civil matter in Florida court, the plaintiff sought to introduce a record of business activity into evidence. The record is from activity in a foreign jurisdiction, though it is a record of regularly conducted business activity. Which one of the following statements is correct?

- a) The record is not admissible and cannot be admissible under any circumstance because it is a foreign record.
- b) The record is not admissible and cannot be admissible under any circumstance because the trial is not a criminal trial.
- c) The record is admissible under the facts stated in the question as a record of regularly conducted business activity.
- d) The record may be admissible if the plaintiff provides a foreign certification attesting that certain elements are fulfilled.

Question 8

The prosecutor in a criminal trial intends to offer statements made by a six-year old child victim that are relevant to proving the prosecutor's case against the defendant. The statements include descriptions of the defendant's separate acts of (1) child abuse, (2) sexual abuse, and (3) child neglect. The child victim will not be testifying in the case. Which one of the following statements is correct?

- a) The three statements may be admissible provided certain hearing and evidentiary elements are satisfied.
- b) Only the statement of sexual abuse may be admissible in the criminal trial.
- c) The three statements are admissible as evidence under the facts presented.
- d) The statement of child abuse and the statement of child neglect are admissible, but the statement of sexual abuse is not admissible because the child is unavailable to testify.

Question 9

Andrea was the star witness for the prosecution in a case charging Bartholomew with theft of a collectable automobile. She testified on direct that she was walking down Main Street at 4:15 p.m. on Saturday March 3 when she saw Bartholomew break the driver's side window, reach through it and open the door, presumably hotwire the car, and drive off. On cross, the defense attorney would like to question Andrea about her statement during deposition that at 4:10 she was arriving at the downtown light rail station two miles away, and that she did not walk down Main Street until 4:25, well after she claims to have seen Bartholomew take the car. What, if anything, must the defense do before it can ask this question?

- a) The defense must show the statement to Andrea as or after it asks the question.
- b) The defense must show the statement to Andrea if the prosecution requests.
- c) The defense is not required to show Andrea the statement but must disclose it to the counsel for the prosecution.
- d) The defense is not allowed to show the recorded form of the statement because it would be inadmissible extrinsic evidence.

Question 10

During a criminal trial in a Florida court, a witness for the prosecutor made a statement that was inconsistent with a prior statement made by the witness. The witness denied making the prior inconsistent statement. The defendant then sought to provide extrinsic evidence of the prior inconsistent statement. Which one of the following statements is correct?

- a) The extrinsic evidence is inadmissible because it is hearsay.
- b) The extrinsic evidence is inadmissible because the witness denied making the prior inconsistent statement.
- c) The extrinsic evidence is admissible because the witness denied making the prior inconsistent statement.
- d) The extrinsic evidence is admissible and would be admissible even if the witness had not been provided an opportunity to explain or deny the prior statement.

Question 11

Wanda worked for Mildred as a housekeeper and assistant. Mildred is 90 years old. During the course of Wanda's employment, she convinced Mildred to have her appointed as a guardian. Wanda then sold Mildred's home to Wanda's boyfriend for a fraction of its value. Wanda also manipulated Mildred into giving her valuable jewelry. Ultimately, Wanda was arrested and charged with exploitation of an elderly person. The prosecutor intends to introduce hearsay statements made by Mildred that describe the exploitation. The statements

- a) are inadmissible because they are hearsay.
- b) are inadmissible under these facts by virtue of the fact that Mildred is elderly and statements by elderly persons are deemed reliable under the doctrine of *mortis factum*.

- c) are potentially admissible if the trial court conducts a hearing outside of the presence of the jury, and finds that the statements are reliable and, either Mildred testifies or she is unavailable to testify and other corroborative evidence exists.
- d) are potentially admissible if the trial court conducts a hearing in the presence of the jury, and finds that the statements are reliable and that Mildred is unavailable to testify.

Question 12

After a trial concluded in Florida and the jury returned its verdict, a juror was summoned to testify for an inquiry concerning whether the juror misunderstood the court's instructions to the jury during the trial. It is undisputed that the matter being questioned inheres in the verdict. Which of the following statements is correct?

- a) The juror may testify on the matter under the exception under the Florida rules that permit jurors to testify on matters concerning the validity of a verdict.
- b) The juror is incompetent to testify on the matter, and the Florida Evidence Code provides no express exception to permit the testimony.
- c) The juror is incompetent to testify on the matter because it does not fall under the enumerated exceptions in the Florida Evidence Code that permit juror testimony about matters relative to jury deliberations.
- d) The juror may testify on the matter because there is no prohibition under Florida law, unlike Federal law, preventing a juror from testifying on matters relative to jury deliberations.

Question 13

A journalist in Florida was subpoenaed to testify regarding the identity of a person who provided information to the journalist when the journalist was gathering news for a news article in a Florida newspaper. The journalist obtained the information while being employed as an investigative journalist for the Florida newspaper. The information provided by the person to the journalist does not concern evidence of a crime.

- a) The journalist has a qualified privilege to not reveal the source's identity or disclose the information that the journalist acquired from the source while gathering news.
- b) The journalist has an absolute, unqualified privilege to not reveal the source's identity or disclose the information that the journalist acquired from the source while gathering news.
- c) The journalist must reveal the source's identity and disclose the information provided because the journalist has been subpoenaed.
- d) The journalist does not have any privilege to not disclose the information because the information does not concern a crime.

Question 14

The parties in a civil case in Florida stipulated that the judge, who was presiding over the action, could testify to provide evidence on a purely formal matter to facilitate the trial of the action. The agreement of the parties regarding the judge's testimony

- a) is lawful because the judge will provide evidence on a formal matter to facilitate the trial of the action.
- b) is lawful because Florida has adopted the Federal Rule concerning judicial testimony.
- c) is unlawful because a judge is incompetent to testify as a witness in a case over which the judge is presiding.
- d) is unlawful because the testimony does not concern an informal matter.

Question 15

A man was charged with the murder of his girlfriend. The prosecutor intended to prove that the man murdered his girlfriend at his apartment shortly after 1:00 p.m. on May 20. During a trial on the matter, the prosecutor called a witness to testify that the girlfriend told the witness during lunchtime on the day of the murder that she was going to go to her boyfriend's apartment after lunch and tell him that she was breaking up with him because she had been seeing someone else. The man objected to the testimony. The testimony

- a) may be admissible under a hearsay exception to show that the girlfriend went to the man's apartment.
- b) is not admissible for any purpose because it is an out of court statement offered to prove that the girlfriend went to the man's apartment.
- c) is not admissible only to the extent that it is offered to show that the girlfriend went to the man's apartment.
- d) is not admissible because it does not contain a statement by the defendant as a statement against interest.

Question 16

During a criminal case in Florida, the prosecutor sought a patient's medical records. A valid subpoena was issued for the records with proper notice. The physician from whom the records are sought is concerned that the records are privileged and cannot be disclosed without the patient's written permission. Which one of the following statements is correct?

- a) The records cannot be disclosed because the traditional physician-patient privilege provided in the Florida Evidence Code applies.
- b) The records may be disclosed without written authorization by the patient because a valid subpoena has been issued with proper notice.
- c) The records may be disclosed because it is a criminal, rather than a civil, case.
- d) The records can be disclosed because there is no protection provided for medical records in Florida.

Question 17

The parties in a civil case in Florida stipulated that the judge, who was presiding over the action, could testify to provide evidence on a purely formal matter to facilitate the trial of the action. The agreement of the parties regarding the judge's testimony

- a) is lawful because the judge will provide evidence on a formal matter to facilitate the trial of the action.
- b) is lawful because Florida has adopted the Federal Rule concerning judicial testimony.
- c) is unlawful because a judge is incompetent to testify as a witness in a case over which the judge is presiding.
- d) is unlawful because the testimony does not concern an informal matter.

Question 18

During a criminal trial, the defendant took the stand to testify in his own defense. Later, the prosecution offered a witness in rebuttal to testify about the witness's opinion of the defendant's character relating to truthfulness. The defendant objected to the line of questioning. The judge

- a) should sustain the objection because opinion evidence may not be used to attack the credibility of a witness.
- b) should sustain the objection because neither reputation or opinion evidence may be used to attack the credibility of a witness.
- c) should overrule the objection because it is a criminal case.
- d) should overrule the objection because reputation or opinion evidence may be used to attack the defendant's credibility.

Question 19

After the parties presented their closing arguments in Florida, the presiding judge summarized the evidence presented to assist the jury, and the judge made several comments regarding the credibility of witnesses that had testified during the trial. The judge

- a) properly summarized the evidence but should not have commented on the credibility of witnesses.
- b) should not have summarized the evidence or commented on the credibility of witnesses.
- c) properly summarized the evidence and commented on the credibility of the witnesses.
- d) properly commented on the credibility of the witnesses but should not have summarized the evidence.

Question 20

During a criminal trial, the prosecution attempted to introduce a statement into evidence that was made out of court and offered for the truth of the matter asserted. The defendant objected to introduction of the statement because it did not fall under any of the specified exceptions to the hearsay rule in Florida. The statement

- a) is potentially admissible under Florida's "catch-all" exception to the hearsay rule.
- b) is likely not admissible.
- c) is not admissible because it is being offered in a criminal, rather than a civil, trial.
- d) is admissible only if a witness testifies that the witness heard the declarant make the statement.

Question 21

At a jury trial in a civil case in Florida, the defendant objected when the plaintiff offered opinion testimony from a lay witness. In response to the objection, the plaintiff showed that the witness was unable to accurately and adequately communicate about what he perceived without stating an opinion and that the opinions of the lay witness would not mislead the jury to the defendant's prejudice. It is undisputed that the opinion offered is not one that would require special knowledge, skill, experience, or training. How should the judge rule on the defendant's objection?

- a) The judge should overrule the objection because the witness is not able to adequately communicate his perceptions without giving his opinion, and the opinion would not mislead the jury to the defendant's prejudice.
- b) The judge should overrule the objection only because the Florida Rules, like the Federal Rules, condition lay opinion testimony on the witness's inability to communicate about perceptions.
- c) The judge should sustain the objection because the Federal Rules apply in this instance.
- d) The judge should sustain the objection because it is undisputed that the opinion offered is not one that would require special knowledge, skill, experience, or training.

Question 22

A defense witness in a civil case in Florida previously was convicted of a felony, but the witness received a pardon. Upon cross-examination, the plaintiff sought to introduce evidence of the conviction. The defense objected to introduction of the impeachment evidence solely on the basis that the witness received a pardon. Which one of the following statements is correct?

- a) The judge should overrule the objection because a pardon of the crime does not make the conviction for the crime inadmissible.
- b) The judge should overrule the objection and not permit the defense to introduce evidence of the pardon to rehabilitate the witness.
- c) The judge should sustain the objection because the witness was pardoned.
- d) The judge should sustain the objection because impeachment evidence of a prior conviction is not admissible in Florida.

Question 23

During a civil case in Florida, the plaintiff based his argument on a Florida statute, Federal statute, and a Florida case. The judge must take judicial notice of

- a) The Florida statute and case, but not the Federal statute.
- b) The Florida statute and case as well as the Federal statute.
- c) The Florida and Federal statutes only.
- d) The Florida statute only.

Question 24

Paul calls Walter in his case in chief against Daniel. Walter provides testimony detrimental to Daniel's case. When Daniel presents his case, he calls Wanda to testify about Walter's reputation. Wanda testifies that "Walter has a reputation as a bully." A timely objection should be:

- a) Overruled, because reputation evidence is permitted to impeach a witness.
- b) Overruled, because Walter's testimony opened the door for Dan to attack his credibility.
- c) Sustained, because although reputation evidence is permitted to impeach a witness, this type of reputation evidence is not permitted.
- d) Sustained, because the testimony is not in the form of an opinion.

Question 25

Denise was texting on her cell phone while driving on a street in a town in Florida. Because she was texting, she did not see Peter, a pedestrian who was walking across the street. Denise hit Peter with her car, and Peter was seriously injured. While Peter was in a hospital receiving treatment for his injuries, Denise wrote him a letter in which she said, "I'm sorry for the pain you are going through. The accident was all my fault." Later, Peter sued Denise in a Florida court to recover for his injuries. During a trial on the matter, Peter sought to introduce the statements in the letter as evidence." Denise objected to introduction of the statements. The court

- a) should only admit into evidence Denise's statement that she is "sorry for the pain you are going through."
- b) should only admit into evidence Denise's statement that the "accident was all my fault."
- c) should admit the statements in their entirety as evidence.
- d) should not admit any of the statements as evidence.

Question 26

Plaintiff files a tort action against Defendant. At trial, Plaintiff seeks to question Defendant on cross-examination about a prior inconsistent written statement made by Defendant. Immediately, counsel for Defendant moves that either the statement be shown to the witness or that its contents be disclosed to the witness. The trial court should

- a) Deny the motion because Defendant is not entitled to disclosure of the statement.
- b) Grant the motion because Defendant is entitled to disclosure of the statement.
- c) Deny the motion if the interests of justice weigh against disclosure.
- d) Grant the motion if counsel for Defendant can demonstrate a special need for the document.

Question 27

All the following statements are correct except?

- a) A Florida court must take notice of an Alabama statute.

- b) A Florida court must take judicial notice of a Florida Supreme Court case.
- c) A Florida court can take judicial notice of an ordinance of the City of Sunrise.
- d) A Florida court can take judicial notice of certain types of adjudicative facts.

Question 28

Pendergrass was severely and permanently injured when the shopping cart that he was using at Glenn's Groceries overturned in the parking lot and deposited \$300 worth of canned goods on his legs. Georgiana testified in Glenn's case in chief that one of the employees who saw Pendergrass fall told her that Pendergrass staged the accident. Pendergrass's attorney objects to this testimony as hearsay. If the judge sustains the objection, and Pendergrass ultimately prevails, what action must Glenn's attorney take in order to potentially receive a reversal of the judgment on appeal?

- a) She must object on the record to the exclusion of the evidence.
- b) She must offer proof that the employee's testimony is hearsay.
- c) She need not do anything because the trial judge's ruling on admission of evidence cannot be reversed on appeal.
- d) She need not do anything as long as the judge was able to determine from the line of questioning what the testimony would have been had it been admitted.

Question 29

Prior to 1985, Michael was nothing more than petty criminal, occasionally arrested for minor burglaries and drug charges, but never imprisoned for longer than a year. In June of 1985, Michael was arrested and charged with sexual battery of a child of 14. Because of good behavior he was released early from prison in 1995. In 1996, he was accused of the same crime and sentenced to ten years. In late 2007, after a year out of prison, he was yet again arrested on the same charge, but this time the prosecution had a firm evidentiary basis for pursuing the claim. As part of its case in chief, the state intends to offer into evidence the 1985 and 1996 convictions, and nine days before the trial it sends a memo to the opposing counsel stating only: "We intend to offer into evidence several prior convictions associated with your client." If the defense objects at trial to the proffered evidence, how should the judge rule?

- a) He should not admit the evidence because of lack of notice.
- b) He might admit the evidence if it is not being offered for propensity purposes.
- c) He should admit the evidence unconditionally.
- d) He may admit the evidence, but he must also provide a limiting instruction to the jury.