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## Evidence (1963)

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## I.

A and D were arrested by police and charged with the unlawful possession of narcotics. While in jail they jointly consulted an attorney X to seek release on a writ of habeas corpus. At the trial each claimed that the package of narcotics found in their joint possession belonged to the other and disclaimed knowledge of its contents. A took the stand and testified regarding the conversation with the attorney, including D's admission to the attorney that he would "take the blame." D did not object to this testimony. When A's counsel Y then called attorney X to testify regarding the joint consultation, D objected on the ground of the attorney-client privilege. What evidence questions are involved, and how should the court rule on each?

## II.

D was charged with shooting a man while robbing him. After a proper commitment by the Commissioner, D was faced with Miss W who was with him at the time of the crime. (Miss W is now in a mental hospital and has been found incompetent to testify.) An officer was permitted to testify that in D's presence she stated that D said he was going to take the man up the alley for a "roll" job. Thereafter, she said, D came running toward her saying he had shot the man. Thereupon, D stated that Miss W was lying and he would state exactly how it happened. He then said that Miss W had gone into the alley with him and had told him to pull the gun on the victim. When the man thought it was a toy gun D said he tried to eject a shell to show him it was real. In some manner the gun went off and killed the man. At the trial D went on the stand and repudiated his statement which had been written out and signed by him. The trial judge ruled that Miss W's statements were not evidence but could be considered by the jury for the purpose of putting in its true setting any statement made by D. The prosecution then put on the stand one M who testified that he could not tell whether the person emerging from the alley where the shooting occurred was male or female. The prosecution claimed surprise and was permitted to show M a statement. On inquiry from the judge M said it refreshed his recollection. He was then permitted to testify that he saw a tall colored fellow coming out of the alley, and also Miss W who ran up to him and said "Freddie shot a man." It is argued that the evidence of M should not have been received, or if received the jury should have been instructed that the evidence from the statement should have been received only on the question of the credibility of M. Discuss the evidence questions involved and state how they should be answered.

## III.

Defendant parked his car on the travelled portion of the highway near a curve while he went into a motor court to pick up his bags. The plaintiff's intestate proceeding in toward the parked car could not see it as he rounded the curve because of a snowbank, and struck a truck coming from the opposite direction headon twenty-five feet before he reached the parked car. The defendant heard the crash, saw the drivers get out and start arguing. He went upstairs, waited about ten minutes, returned hurriedly to his car with his bags and took off without talking with anyone. About three months after the accident the plaintiff's husband died from cancer. Two doctors testified in their opinion the injuries the husband received from the collision caused his cancer to spread and shortened his life. A doctor for the defendant testified a blow could not cause cancerous cells to spread. Plaintiff offered in evidence an official report prepared by one of the police officers investigating the accident which stated that the parked automobile contributed to the collision. The officers were available but did not testify. Defendant objected the report was hearsay and set forth a conclusion and the court excluded it, although plaintiff argued it was a business record under the Federal Business Records Act. During summation the defendant stated that no officer had said that the parked car was to blame. The plaintiff objected to this and the court then introduced the police report. In instructing the jury the court charged that the jury could consider the defendant's leaving the scene rather hurriedly without talking to anyone as evidence of a consciousness of liability. The defendant objected that this rule did not apply to civil cases. Discuss the points of evidence involved and state how you think the court should have decided them.

## IV.

Defendant in a criminal case took the stand and testified he knew one of the defendants in the case. The prosecution on cross-examination asked him whether he knew one of the other defendants, and whether or not he had stolen clothing from someone on August 19. Is the defendant required to answer these questions? Explain.

## V.

A doctor brings an action against an insane person for the recovery of fees due for treatment prior to the insanity. The doctor is put on the stand to testify the visits made and the treatment given. No further testimony is offered by the plaintiff and the defendant moves to strike the evidence, without offering any evidence. What ruling will the court make on the motion? Explain.