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Evidence (A): Final Examination (1972)

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Final Examination
Evidence (A)
Mr. Friend

1. Prosecution for arson. During the prosecution's case-in-chief, the prosecutor produces a witness who testifies that the defendant is known in his home town as a shiftless bum who lies, cheats, steals, and kicks dogs. Defendant's counsel subsequently produces defendant's own witnesses who testify that, in their opinion, defendant was a fine fellow, and they further testify that on several occasions they have personally observed instances of his gentle nature. The prosecutor then asked each of defendant's witnesses if they had heard that defendant had been arrested twelve times for arson. All of the above offers of evidence were objected to, but all were allowed to come in. Which, if any, of the three offers of evidence were properly admissible? Why?
2. Personal injury case. Plaintiff produces an eyewitness who testified that defendant ran the stop sign. Defendant counters by putting on the stand two members of defendant's car pool who, although they were not with him on the day of the accident, testify over objection that they have ridden to work with defendant several days each week for ten years, and that he is always a careful, cautious driver. Is this testimony admissible? Explain.
3. Prosecution for bigamy. Defendant takes the stand and attempts to testify that, prior to his second marriage ceremony, his first wife told him that they were finally divorced. A prosecution objection to this testimony is sustained, and defendant is convicted. On appeal, what result? Why?
4. Prosecution for robbery. Defendant contends that the alleged victim actually gave him the money voluntarily. The prosecution offers a witness who testifies that immediately after the incident the victim was pale, sweaty, and trembling uncontrollably, and that his voice quavered. Defendant objects. Should the evidence be excluded? Why?
5. Prosecution for robbery. Defendant was rounded up with several other suspects some twenty minutes after the robbery occurred. Within the hour, the police (a) required him to stand on a lighted stage with other suspects and (b) required the defendant and the other suspects to repeat the exact words spoken by the robber to his victim. Defendant's lawyer was not present, and no warnings were given. Defendant was identified as the robber.
 - (a) Was the line-up lawful?
 - (b) Was the voice identification lawful?Explain both answers.
6. Prosecution for murder. Defendant was treated courteously by the police who, before asking defendant any questions, advised him that he had the right to remain silent, that if he did answer any questions, his answers could be used against him, and that he had a right to have counsel present during questioning if he so desired. Defendant signed a written confession. At trial, the prosecutor sought to introduce the statement during his case in chief, but it was held inadmissible. Defendant subsequently took the stand and, having been wised up by his lawyer, exercised his constitutional right to lie under oath. The prosecutor then produced the statement again and used it to impeach the defendant.
 - (a) Was the confession admissible as part of the prosecution's case in chief?
 - (b) Was it admissible for impeachment purposes?
7. Prosecution for robbery. Police who saw defendant fleeing from the scene chased defendant to his own home and followed him into the house. They found him sitting quietly in a chair, reading the latest issue of "Amicus Curiae." Defendant was arrested on the spot and a search was made of the entire house. Loot from the robbery was found in a paper bag beneath the chair in which defendant was sitting when arrested. No warrant was ever obtained. At trial, the prosecutor attempts to introduce the loot as evidence. Is it admissible? Explain.
8. Prosecution for burglary. Prosecution puts defendant's wife on the stand to testify. She testifies that she was told by defendant that he did it, and that she and defendant secured a divorce after this conversation but before the trial. Prosecution then puts a witness on the stand who testifies that

he was lying in bed in the next apartment one night and, because of the thin walls, overheard defendant tell his wife that he did it. Is either witness' testimony admissible? Explain.

9. Personal injury action. After plaintiff testifies on his own behalf, defendant seeks to impeach him by introducing evidence that plaintiff was previously convicted in three other states of murder, robbery, and rape. The trial judge excluded the testimony. Was his ruling correct? Why?

10. Personal injury action. Plaintiff puts a witness on the stand who will testify that (a) defendant, about twenty minutes after the accident, in response to intense questioning by a bystander, stated that he had run the red light, and (b) defendant pleaded guilty in traffic court to a charge of running the red light and was convicted and fined for the offense. Is any of this testimony admissible? Explain.

11. Wrongful death action. Plaintiff testifies that she found the deceased lying in a pool of blood with a six-inch hole in his chest. Upon her cry, "Sam, are you all right?" the deceased replied, "Get an ambulance. Joe shot me." He subsequently expired from the effects of the wound. Judgment for plaintiff. On appeal, what result? Why?

12. Personal injury action. Witness for plaintiff freezes on the stand and can't remember a thing. Counsel for plaintiff produces (a) miscellaneous notes, (b) several diagrams, and (c) a number of photographs of the scene and shows them to the witness. After several minutes counsel returns the material to counsel table without establishing the authorship or accuracy of the material, and without exhibiting the material to the jury. Witness then, over objection, testifies in detail as to the accident. Judgment for the plaintiff. On appeal, what result? Why?

13. Prosecution for murder. Prosecution introduces evidence that a few hours before the murder, deceased stated to several friends that she was going out on the town for the evening with defendant. Defendant counters with witnesses who testify that the day before the shooting, defendant had stated to friends that he was very much in love with deceased. Which testimony, if any, is admissible? Explain.

14. Prosecution for speeding. The police officer testifies as follows:

Officer: We set up the radar set at 2:00 p.m. on June 24, 1971, about one mile west of Williamsburg on Interstate 64 in York County, Virginia. The weather was clear and dry. The radar was a Type 173, Mark VII, manufactured by the Fuzz Equipment Company of New York, New York. I have received seventeen hours formal training in radar operation at the State Police Academy and have had two years experience in operating this set. At 2:10 p.m., the defendant passed through the radar field westbound at the indicated speed of 88 miles per hour. He was immediately stopped by me and charged with speeding.

Counsel for Defendant: Officer, what frequency does the transmitter operate on?

Officer: I don't know.

Counsel for Defendant: What is the Doppler effect?

Officer: I don't know.

Can a conviction properly be obtained on this evidence?

15. Action for breach of contract. Plaintiff testifies that:

(a) On June 6, a man identifying himself as Defendant called him and offered to sell him 2,000 widgets.

(b) On June 7, plaintiff dialed a number listed in the yellow pages as belonging to defendant's company, and he was told by an unidentified male voice that the offer was still open, whereupon plaintiff accepted the offer. The voice promised to ship the widgets immediately.

- (c) On June 18, plaintiff wrote a letter to defendant, inquiring about the order, and received a letter back on June 26 on defendant's letterhead stationery, which referred to plaintiff's letter of June 18 and assured him that the 2,000 widgets were on the way. This letter was signed with a smudged rubber-stamp facsimile of defendant's signature.

Which of the above, if any is immediately admissible? Which of the above is not admissible without further foundation? Explain.
(Ignore questions of Contract Law.)