1973

Evidence: Final Examination (1973)

William & Mary Law School

FINAL EXAMINATION

EVIDENCE

Mr. Curtis

QUESTION #1:

A is on trial for criminal assault upon B. The prosecution calls B to the stand and B testifies that A struck him across the face with his fists with no provocation. The prosecution then introduces a record of a prior conviction of A for maiming. The prosecution then calls C who testifies that six months ago A told him, "I am going to beat the hell out of B." The prosecution then calls Police Sergeant D who testifies that upon complaint of B, he went to A's home to arrest him and that A, seeing D approach the house, climbed out a back window and fled. The prosecution then calls A's mother who testifies that A has always been a problem child with a violent temper and all his life has been provoking fights. Finally the prosecution introduces a photograph of B taken shortly after his bout with A; the photograph shows B with his nose moved 1/2 inch to the left of its normal position, his right eye swollen shut, and his mouth agape with 7 teeth missing.

(A) Discuss all matters fairly raised above.

(B) After the prosecution rests, the defense calls E who testifies that B had told him three weeks ago that he had instigated the fight with A. Is this testimony admissible over objection?

(C) Then the defense offers to prove that B has 3 convictions for burglary? Is this offer proper?

(D) The defense then calls F who testifies that A's mother is generally known to be an unfit mother and to have resented all her children. The defense also introduces evidence that A's mother has been convicted of child-beating and of fraudulently obtaining welfare payments. Discuss issues raised in this sub-paragraph.

(E) After the defense rests, the prosecution calls G who testifies that he believes A's mother was a good mother and provider. Is this testimony proper?

QUESTION #2:

As A crossed the railroad tracks of the C & O in Falmouth, Virginia, his car and the train collided. His car was a total loss and he suffered personal injury. He sued C & O, alleging no signals operating at the crossing, excessive speed by the train and no lookout by the engineer. The railroad alleged that A contributed to his own injury.

At trial, it was stipulated that there were no signals at the crossing at the time of the accident. In support of his claim that there should have been signals, A attempted to prove that boxcars on a side track blocked his view until he was 15 feet from the crossing and that the railroad had installed signals six months after the accident. A also attempted to show that the train was traveling at 35 m.p.h., that the headlight was not burning, and that the engineer made no attempt to stop the train until after impact. A also attempted to introduce a statement obtained by the C & O's claims investigation from W, an eyewitness to the accident, as well as a statement obtained by the same claims investigator from the engineer. W's statement read in part: "It was dark and the damn train didn't even slow down until it had hit poor A! The engineer's statement read in part: "I guess I was tired. I just didn't see the car. Anyway I've been trying to get the company to put a signal there for years--ever since Casey Jones had a similar accident there in '57."

A's only medical witness was a bone specialist, Sam Spock, who testified that he had examined A once and that he was totally disabled. A attempted to introduce Spock's medical records in which the following language appeared: "This patient was involved in a collision with a train which struck his car from the left. Patient estimates that train was traveling at 45 m.p.h. He complains of pain in the lower back, especially on the right side. X-rays show nothing inconsistent with patient's expression of pain."

C & O called the engineer who testified that the train was traveling 20 m.p.h. and that the car did not change speed for the last 100 feet before the crossing. He also stated that A had the odor of alcohol on him after the accident. On cross-examination, A asked the engineer whether there was a C & O company rule making 20 m.p.h. the maximum train speed through the crossing and whether he had made a statement immediately after the accident that some boxcars had blocked his view and that the railroad had good insurance coverage.

C & O also called Dr. Fink, the company physician, and attempted to ask him whether he had treated A several months after the accident for a sprained back suffered while slipping off a ramp in the Falmouth Station. Dr. Fink stated that A told him that his lower back hurt him and that it had been fine until the slip.

Discuss.

QUESTION #3:

Q. T. Victim was a patient in Merciless Hospital where he was being treated by Dr. Dare Tocill, a staff physician, for VD. Dr. Tocill negligently diagnosed Victim's ailment as psoriosis and prescribed Tegrin. As the result of Dr. Tocill's treatment, Victim became mortally ill. Shortly before Victim's death, Dr. Tocill visited him in his hospital room while Miss Nightingale, Victim's paramour, was visiting victim; Victim groaned and Dr. Tocill said to him, "Gee, I'm sorry. I didn't realize you were a dirty ole man. We all make mistakes. Please forgive me. I really blew this case. Hope you've made your will." Victim weakly told Dr. Tocill to get lost. After the doctor left, Victim rallied and said "That Dr. Tocill just told me the ghost is up. He has killed me." Victim then embraced Miss Nightingale and died.

Miss Nightingale, having qualified as Victim's executrix, has sued Dr. Tocill and the Merciless Hospital for Victim's wrongful death. She seeks to testify as to conversations in Victim's death room. Miss Nightingale also attempts to introduce an autopsy report of the State Medical Examiner of Victim's infected remains. That report contains the following language: "Private parts have excessive accummulation of Tegrin which is consistent with information obtained from Dr. Rex Morgan, Chief Resident of Merciless Hospital, that a staff physician had misdiagnosed cadaver's systems and applied Tegrin to tread VD. Cause of death was acute gonorrhea." The hospital has counterclaimed for $15,000, the amount of Victim's hospital bill which has not been paid. To prove the bill, the hospital calls Silas Marner, the hospital's deputy administrator, who presents a computer print-out which bears Victim's name and an itemization of charges for various hospital charges during Victim's last illness.

Miss Nightingale, after both sides rest requests a directed verdict on the wrongful death counts, arguing that res ipsa loquitur applied and that, since the defendants have not introduced any rebutting evidence on those counts, the defendants are not entitled to get to the jury. The court granted the motion as to Dr. Tocill but denied it as to the hospital on the ground that the hospital had put at least some evidence tending to show that Dr. Tocill was an independent contractor. Then Miss Nightingale asks for an instruction informing the jury of the res ipsa loquitur doctrine of presumed negligence.

Discuss.