This is a 50 minute quiz consisting of 25 multiple choice and short answer questions. The Federal Rules of Evidence are applicable. Closed book and closed rules. Answer the short answer questions briefly in the space provided. Some of the multiple choice responses are in the form (for example): a) sustained; b) sustained because H is a party. Choose the specific response if your reason for sustaining is the reason in the response. Otherwise choose the general response.

Write the last four digits of your SS # in the space provided above and on the back of the quiz. Watch your time!

1) State v. X and Y for the murder of V and the theft of V's car and money. After being arrested and interrogated for twelve hours without food or water, X confessed that he and Y threw V over a cliff, beat him to death with rocks, and stole his car and money. X now claims that he did not commit the crime and only confessed to end the interrogation. X moves to have the confession suppressed as involuntary.

i) the judge must decide this issue as a preliminary matter out of the hearing of the jury;

ii) the judge must apply a beyond a reasonable doubt standard in deciding the voluntariness of the confession
iii) X may testify at the hearing on voluntariness without being subject to cross-examination on other issues in the case.

iv) if the judge decides the confession is voluntary D's counsel may still urge the jury to disregard the confession as unreliable.

a) all of the above are correct.
b) (i), (ii), and (iii) are correct.
c) (i), (iii), and (iv) are correct.
d) (i), (ii), and (iv) are correct.
e) (iv) only is correct.

2) Assume that the judge rules that X's confession is admissible against X, but not against Y, in the joint trial of X and Y. The judge proposes to instruct the jury to consider X's confession only against X. Y objects on constitutional grounds. Admitting the confession with a limiting instruction:

a) is constitutional because it is assumed that juries will comply with limiting instructions.
b) will violate Y's constitutional rights.
c) will violate Y's constitutional rights unless Y testifies.
d) will violate Y's constitutional rights unless X testifies.

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3) The principal witness against X and Y is Z, a 15 year old girl who was present when X and Y allegedly killed V and stole his car and money. The prosecution struck a deal with V by which V pled...
guilty to misdemeanor assault in juvenile court and was placed on
home arrest for 30 days. Part of the agreement was for Z to
testify truthfully against X and Y. Juvenile records are
ordinarily sealed. The attorneys for X and Y would seek to
impeach Z's testimony by proving the plea agreement and the
juvenile adjudication. The plea agreement and adjudication is:

a) admissible to prove Z's bias

b) admissible to prove Z's character for untruthfulness

c) admissible for the reasons in both (a) and (b)

d) inadmissible

4) When arrested Y told the detective he would make a statement
if he could be assured that he would not be charged as a
persistent felon. The detective called the chief prosecutor who
promised that Y would not be charged as a persistent felon if he
made a truthful statement about the homicide. In reliance on the
detective's statement to this effect, Y then confessed that he
helped X kill V. However, when Y discovered that he would be
facing the death penalty anyway he moved to suppress his
statement to the detective. Should the statement be suppressed?
Why or why not?

5) The prosecution offers photos of V's body, taken when it was
discovered at the bottom of the quarry a week after the homicide.
The photos show V's head beaten in, apparently with blood-stained
rocks visible in the photos. The defense moves to exclude the
photos. The judge should:
a) admit the photos

b) admit the photos unless the prejudicial effect on X and Y substantially outweighs the probative value to the state

c) exclude the photos unless the probative value to the state outweighs the prejudicial effect on X and Y

d) exclude the photos

6) The prosecutor would offer these photos through a police detective who observed the scene before the body was removed. He did not take the photos. Can the photos be introduced through the detective? If so what are the foundation questions?

7) After the detective testifies on direct the attorneys for X and Y ask to examine any statement that he made relevant to his testimony. Assume the detective made a report covering the matters that he testified to but that he did not look at the report while testifying. The defense lawyers are:

a) entitled to see the detective's report

b) entitled to see the report if the detective used it to refresh his recollection prior to testifying

c) entitled to the report if the detective used it to refresh recollection prior to testifying if the court determines in its discretion it is necessary in the interests of justice

d) not entitled to see the report
8) Six months before the murder Y had a shoulder operation. Part of Y's defense is that he lacked the strength to throw V over the cliff and inflict the wounds on V's body. Y has elected not to take the stand and be subject to cross-examination. Y wishes to show the jury the scar on his left shoulder and the atrophy of the muscles in his left shoulder and arm. If you were judge would you permit this over the prosecutor's objection? Why or why not?

9) State v. D for knowingly possessing stolen property. On March 15 a VCR stolen on March 10 was found in D's apartment. Assume the following statutory presumption: "Possession of recently stolen property shall be prima facie evidence of knowledge that said property was stolen." The state requests the following jury instruction,

"It is presumed that the possessor of recently stolen property knows that said property has been stolen. This presumption is, however, subject to rebuttal and you should not convict unless you are satisfied beyond a reasonable doubt that the defendant knew the property to be stolen."

Should the instruction be given? Why or why not?

10) Bar fight culminating in D striking V with a broken beer bottle. State v. D for assault. D claims that he used the beer bottle because he thought V was pulling a knife. V claims that he had no knife and denies starting the fight. In its case in chief the state calls V to testify that D started the fist fight and struck him with the bottle. D then took the stand to testify that V started the fight and he struck V with the bottle because he thought V was going for a knife.
On cross examination the prosecutor seeks to question D about a two year old conviction for sexual abuse in the first degree, in which D pled guilty to sexually fondling his 12 year old stepdaughter. Sexual abuse in the second degree is a class D felony, punishable by up to five years in the county jail. D was sentenced to six months, which he served. The question is:

a) admissible

b) admissible if the judge finds that probative value outweighs prejudicial effect to D

c) not admissible if the judge finds, pursuant to FRE 403, that prejudicial effect to D substantially outweighs probative value

d) inadmissible

11) D calls W, his friend, who would testify she was present and saw V start the fight and go for his knife. W would further testify that before the fight she told D that V "always carries a knife." Over the prosecutor's objection this testimony should be admitted to prove:

i) V's violent character

ii) V's intent

iii) D's fear of V:

a) (i) and (iii)

b) (ii) and (iii)
c) (iii) only

d) none of the above

12) On cross-examination the prosecutor's asks W whether she was drinking at the time of the fight. W replied that she was. The prosecutor asked what she was drinking and W replied "Red Dog beer." Should the prosecutor be permitted to call Bartender as a rebuttal witness to testify that he does not serve Red Dog beer? Why or why not?

13) Assume that the prosecutor is permitted to ask D about the conviction in (10) and the conviction is admitted by D. W would testify as a character witness that:

i) D has a reputation as a peaceful person

ii) D has a reputation as a truthful person

Which of the above is admissible over proper objection

a) both (i) and (ii)

b) (i) only

c) (ii) only

d) neither (i) nor (ii)

14) After W's direct examination the prosecutor would seek to ask W if she gave a false name when checking into a motel two weeks before trial. The question should be:

a) allowed
b) allowed in the discretion of the court if there is a good faith basis for the question

c) disallowed because W's character for truthfulness is not in issue

d) disallowed because the motel incident occurred after the fight in the bar

15) Assume that the prosecutor is permitted to ask the question in (14) and W answers "no." Prosecutor would offer Motel Clerk to testify that two weeks before trial Defendant and W, each of whom is married to another person, checked into the motel at 1:00 in the afternoon as "Mr. and Mrs. Bridge," were given a room which they occupied until 5:00 pm, and that the bed had been used. This evidence should be:

a) admitted

b) admitted because adultery is immoral

c) excluded as character evidence

d) excluded as extrinsic evidence of a collateral matter

19) On the facts of (17) assume that after suit was filed D, who had no insurance, offered $10,000 in settlement of P's claim. P wishes to testify to the offer and D's lack of insurance.

i) D's lack of insurance is admissible to show D's negligence

ii) D's offer of settlement is admissible as an admission of
liability

Which of the above is correct?

a) both (i) and (ii)

b) (i) but not (ii)

c) (ii) but not (i)

d) neither (i) nor (ii)

20) P v D, operator of a mall, for injuries sustained as a result of a fall in the mall parking lot. P alleges that the lighting in the mall was inadequate. D claims that, given the design of the parking lot, it was not possible to provide better illumination. P offers to testify that, six months after his fall, D installed additional lights in the parking area. This evidence is:

a) admissible to show D's control of the parking area

b) admissible to show the feasibility of additional lighting

c) admissible to show D's knowledge of the inadequate lighting

d) inadmissible

21) P sues D Hospital for complications arising from an operation performed by Dr. Morte. P alleges that Morte was negligent and that D was negligent in granting operating privileges to Morte. In support P alleges that Morte was an incompetent doctor and his incompetence was, or should have been known, to D. P offers evidence of six claims of
medical negligence against D arising out of operations performed by Morte in the year before P's operation. This evidence is:

i) admissible to show notice to D

ii) admissible to show D's incompetence

Which of the above is correct?

a) both (i) and (ii)

b) (i) but not (ii)

c) (ii) but not (i)

d) neither (i) nor (ii)

22) Fraud action by P against D involving misrepresentations allegedly made in connection with the construction of a house. To prove that the misrepresentations were made P calls W who was standing about 20 feet away at the time and who testifies that D made certain statements. On cross-examination D's counsel asks W if it isn't true that for ten years W has been the drummer for a heavy metal rock band called "Bad Mother." W denies this. D then calls X who would testify that he is a singer with the rock band and that W has been the drummer for ten years. This evidence is:

a) not admissible because whether W is a drummer in a rock band is collateral

b) not admissible because it is improper to show impairment of senses by extrinsic evidence

c) admissible to show impairment of W's hearing
d) admissible to show W's character

23) D sought Attorney's assistance in connection with a pyramid scheme to defraud investors. After listening to D describe his scheme Attorney declined the representation. Attorney then reported the matter to the Attorney General's office. The state has now subpoenaed Attorney to testify against D. The judge should rule that the conversation between D and Attorney testimony is not privileged for the following reasons:

i) A waived the privilege when he told the AG about the conversation;

ii) A declined to represent D;

iii) D sought A's help to perpetrate a fraud

a) all of the above reasons;

b) (i) and (iii) but not (ii)

c) (ii) and (iii) but not (i)

d) (iii) only

24) The Big Rivers utility company initiated an internal investigation into the cause of a fish kill downstream from its Rapid River plant. Attorney Alpha, a vice-president, was put in charge of the investigation. Monroe, a manager, gave a written statement to Alpha admitting that he diverted hot water directly into the river when the cooling ponds were full. Alpha made a written recommendation to Beta, the CEO, that Monroe be fired and
additional cooling ponds constructed immediately. Monroe was
fired. In a civil damages suit brought by the state against Big
Rivers:

i) Monroe's statement to Alpha was privileged when made

ii) Firing Monroe rendered his statement to Alpha non-
privileged

iii) Alpha's report to Beta is privileged only if the
cooling ponds are constructed as recommended

a) all of the above are correct

b) (i) and (iii) are correct

c) (i) only is correct

d) (iii) only is correct

25) Attorney Ann, outside attorney for Big Rivers, mistakenly
faxed Alpha's report to Beta (as described in (24) to the state's
attorney. Assuming that the report was privileged does Attorney's
mistake waive the privilege? Yes or no? State your rationale.