SELECTED PORTIONS OF 1991 EVIDENCE EXAM OF PROFESSOR SOSNOV ALONG WITH ANSWERS.

Here are excerpts from the 1991 Evidence exam which was multiple choice.

FACT PATTERN FOR QUESTIONS 1-10

Freddie and Zelda conspire to kill Zelda's husband Tom. Freddie hires Harry to do the actual killing and pays him \$20,000 to do it and make it look like an accident. Harry tampers with Tom's car so that it loses a wheel while Tom is driving it, and he crashes into a telephone pole and is injured. Four days later he dies.

Harry is lawfully arrested after police learn of his involvement through informants. He makes a deal with the prosecution, the terms of which he pleads guilty to second degree murder and receives a 10 year sentence and agrees to testify against Freddie and Zelda. He thereby avoids the possibility of a first degree murder conviction which carries a sentence of life imprisonment.

Freddie and Zelda are on trial.

- 1. Harry is on the witness stand and states "Freddie advised me that he killed another guy this way in 1974 in Nevada."
 - A. This is inadmissible hearsay.
 - B. It is admissible as a statement against penal interest.
 - C. The statement is inadmissible because its relevance is outweighed by its unfair prejudicial effect.
 - D. The statement is admissible to prove Freddie knows how to kill people.

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- 2. Harry testifies concerning the agreement with Freddie and that Freddie told him "Zelda hates the guy and wants me so badly she will pay to have you kill him." Assume the prosecution is able to prove that on the day Harry says he got paid, Zelda, whom Harry never met before Tom's death, withdrew \$20,000 from the bank. Harry's statement offered against Zelda is:
 - A. Admissible as part of a co-conspirator's declaration.
 - B. Admissible to prove Zelda's state of mind.
 - C. Inadmissible because there is no proof of Zelda's participation in the conspiracy.
 - Inadmissible because it violates Zelda's rights under the Confrontation Clause.
- 3. Harry is asked on cross-examination if he knows what the sentence would be for first degree murder. This is:
 - A. Irrelevant since Harry is not on trial.
 - B. Relevant as tending to show Harry's possible bias and interest.
 - C. Inadmissible because it is not the best evidence of the statutory penalty for first degree murder.
 - D. Relevant, but its probative value is outweighed by unfair prejudice.
- 4. Zelda calls a witness to testify that Harry has a reputation in the community as a liar and perjurer. This is:
 - A. Admissible to demonstrate Harry's bad reputation for veracity.
 - B. Admissible only if Harry first places his character in issue.
 - C. Inadmissible as calling for an opinion based on hearsay.
 - D. Inadmissible because it is improper character evidence.

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- 5. Freddie asks Harry on cross-examination if it is not a fact that he stole money from his last job 6 months ago and then lied about it to his employer. Harry denies this and Freddie seeks to call as a witness his last employer, Carl. Carl will testify that 6 months earlier he saw Harry, while employed as a cashier, steal \$300 from the cash register, and that Harry then denied it when confronted. This is:
 - A. Admissible to demonstrate lack of honesty and therefore attack Harry's credibility.
 - B. Inadmissible as prohibited bad character evidence.
 - C. Inadmissible because it is prohibited extrinsic evidence probative of truthfulness or untruthfulness.
 - D. None of the above.
- 6. The prosecutor calls a nurse to the stand who will testify that a day before he died (suddenly going into cardiac arrest after appearing in the days before to be slowly recovering) Tom said, "That Zelda, I'll bet she did this to me."
 - A. Admissible as a state of mind exception to the hearsay rule.
 - B. Admissible as a dying declaration.
 - C. Admissible as an admission by a party.
 - D. Inadmissible hearsay.
- 7. Freddie testifies in his own defense. The prosecution seeks to introduce a conviction against Freddie for filing a false police report 9 years earlier. This is:
 - A. Admissible for purpose of attacking his credibility as a witness.
 - B. Inadmissible to attack his credibility because he is the defendant in a criminal case.
 - C. Admissible only if the court determines that its probative value outweighs its prejudicial effect to the accused.
 - D. Inadmissible prohibited evidence of bad character.

- 8. Dr. Q testifies that a pathology report he prepared indicates that Tom was not drunk when he was murdered. He says he does not remember what procedures led to that report's conclusion, and that he has not brought the report with him. This is:
 - A. Admissible as the testimony of an expert.
 - B. Admissible as a business record exception to the hearsay rule.
 - C. Inadmissible because of the best evidence rule.
 - D. Admissible as a past recollection recorded.
- 9. The prosecutor seeks to admit statements by Zelda with her lawyer present concerning her involvement in the crime which were made during plea discussions with the prosecuting attorney originally assigned to the case. Unable to reach a deal acceptable to both sides, Zelda chose to go to trial. These statements are:
 - A. Inadmissible as hearsay.
 - B. Inadmissible as a privileged lawyer-client communication.
 - C. Admissible as an admission by a party.
 - D. Inadmissible because the statements were made during plea discussions with a prosecuting attorney.
- 10. About an hour after Zelda was unexpectedly arrested, she made a statement to a detective stating that she knew nothing about the crime and was at home with her friend, Freddie, at the time. Her lawyer wishes to introduce this statement. This statement is:
 - A. Admissible as the statement of a co-conspirator.
 - B. Inadmissible hearsay.
 - C. Admissible as an admission by a party.
 - D. Admissible as an excited utterance exception to the hearsay rule.

HERE ARE SOME MORE TYPICAL QUESTIONS:

- 18. V, the victim of a murder, was the partner of D, the defendant. The partnership held a \$1 million life insurance policy on the life of each partner payable to the survivor. On the issue of whether D had a motive to murder V, v's wife would testify that shortly before his death V told her that he was going to speak to D about dissolving the partnership and canceling the insurance. This statement is:
 - A. Hearsay but admissible under the state of mind exception.
 - B. Hearsay but admissible under the present sense impression.
 - C. Inadmissible because unless the defense of self-defense is raised (not true here) the state of mind of the victim is irrelevant in a murder case.
 - D. Inadmissible because any probative value is outweighed by unfair prejudice.

- 19. In a robbery case, the police asked W, the cashier who was held up, to prepare a sketch of the person who robbed him. W has since died in an automobile accident. The sketch bears a remarkable resemblance to D. At D's trial the sketch is:
 - A. Hearsay but admissible as a prior identification.
 - B. Hearsay but admissible as past recollection recorded.
 - C. Hearsay but admissible as a present sense impression.
 - D. None of the above.



THE ANSWERS TO THE SAMPLE EXAM QUESTIONS ARE:

1. C 3. В 4. A 5. C 6. D 7. A 8. C 9. D 10. В 18. Α 19. D