

QUESTION 1
(One hour)

Ace is charged with raping Velma. At trial, the prosecution called the bartender on the night of the alleged assault to say that he had observed Ace being rude to Velma, and at her request, kicked Ace out of the bar. On his way out, Ace turned toward Velma and said, "I'll see you later."

The prosecution also called Wanda to testify that, five years earlier, Ace dropped his pants and exposed himself to her. Ace was convicted of misdemeanor indecent exposure from that incident.

The prosecution sought to introduce evidence of that conviction, as well Ace's other convictions for larceny and selling cocaine.

Ace did not testify, but in his defense called Fred to testify that Velma had made a similar false complaint against Fred two years before. The police had questioned him, then dropped the investigation after concluding that Velma's report was not credible.

Ace also sought to call Harry, Velma's husband. Harry was willing to testify as follows: before trial Velma told him that on the night of the alleged rape, though she had previously told him that she had been at the library; she admitted that she really she had had a beer with a friend. Velma would not identify the friend to Harry or any other details.

At trial, Velma asserted all applicable privileges.

As the attorneys for each side, make all appropriate arguments regarding the introduction of evidence, objections and claims of privilege. As the trial judge, make rulings on the legal points raised and briefly explain your reasons. Answer the question according to the general principles we've discussed in class, and point out any significant differences between California and federal law.

QUESTION 2
(One hour)

Dan hired Dr. Tom, a psychotherapist, to help him with his personal problems. One day they came across each other at a park. Tom said hello, then Dan responded that something was bothering him. They sat down at a secluded picnic table and Dan blurted out that he was thinking about burning down his next door neighbor's house. In response to Tom's question about how Dan currently felt about the neighbor, Dan responded that the neighbor, Paul, was an awful person who lived in an awful house, and neither should be allowed to exist any longer. Tom replied that Dan had been making the same complaints since the start of their therapy, five years earlier, and Tom thought it was healthy that Dan let out some more steam. Tom didn't notify either the police or Paul of Dan's outburst.

Dan next contacted his lawyer, Larry, and told him the same thing. Larry responded by asking whether Paul would be home when Dan expected to burn the house. Dan replied that Paul was going on a vacation during the following week and Dan would start the fire after Paul had gone. Larry notified neither the police nor Paul.

Paul's house burned to the ground during Paul's vacation. The next day, Dan contacted both Tom and Larry for advice on how to avoid responsibility for the fire that he'd set. Dan spoke to nobody else about the incident.

Paul sued Tom, Dan and Larry for the loss of his home and negligence. At the trial, Paul sought to question Tom and Larry about their conversations with Dan concerning the fire as well as any communications they'd had with him about earlier fires. As it happened, Dan had lived in a house that had burned under mysterious circumstances three years earlier. Dan collected on his homeowners insurance policy, which was in excess of the market value of the house. Dan had talked to both Tom and Larry after the incident.

Paul also called Walt who, on the night of the fire, walked by Paul's burning house. Walt, who for purposes of this question was almost 6 years old both at the time of the fire and when he testified, told his mother that he's seen "a big fire, and a red man running away." His mother, Meg, testified to confirm Walt's statements, add that she'd previously seen Dan wearing a red sweatshirt while working in his yard, and knew that Dan sometimes used the nickname, The Human Torch.

As advocates for each party, make all appropriate objections and claims of privilege. As the trial judge, discuss the rulings you would make and briefly, the reasons for and against the admission of the evidence. Answer according to the general principles we've discussed in class, and point out any significant differences between California and federal law.