

Empire College School of Law
Professor Kinnison
Evidence - Issue Outline
Final - Spring 2013

Essay #1

Bartender: lay opinion; character evidence for a non character purpose; Ace's hearsay exception for party admission or state of mind re future intention, or non-hearsay to show familiarity with Velma.

Wanda: character evidence admissibility for sex cases not applicable because prior act and conviction are not relevant. Neither are they relevant for impeachment of Ace's hearsay statements or applicable for impeachment of non hearsay.

Ace's other convictions: neither admissible under FRE, both may be admissible moral turpitude to impeach Ace's statement, if the statement is considered to be hearsay.

Fred's testimony re Velma's prior false complaint: admissible as a bad act or part of a common plan. Likely inadmissible where F 's testimony is based on hearsay, e.g, policy told F that W had made complaint and that they rejected it as not credible.

Harry testimony re Velma's inconsistent statement: barred by confidential marital communications privilege, held by Velma. May be admissible if court rules that state privilege claim is overridden by Ace's right to cross exam Velma.

Empire College School of Law
Professor Kinnison
Evidence - Issue Outline
Final - Spring 2013

Essay #2

Tom conversations with Dan:

First: privilege for effective diagnosis and treatment; privilege waived by meeting in public place? Exception for dangerous patient with objective standard and applicable to property.

Tom's duty to notify Dan and/or police?

Earlier fire: character evidence for non character purpose: knowledge, not common plan. Burden on Paul to show exception to privilege for crime/tort?

Second conversation: may be characterized as within scope of privilege, but exception where purpose is to escape criminal liability

Larry's conversations with Dan:

First conversation: within scope of L's services; no crime-fraud exception since L's services not sought to enable the crime; arguably no exception for dangerous client since danger is to property and not to people.

Prior incident also privileged with no exceptions unless L was consulted for help in defrauding the insurance company. Burden on Paul to show exception.

Second: within scope of L's services; no exception for avoiding criminal liability.

Walt's testimony:

Competency test must be passed; has personal knowledge; relevance on whether the fire he'd seen is the fire that burned Paul's building.

Meg's testimony:

Hearsay re Walt's statement; possible exception for spontaneous utterance though there little indication that W was excited; relevance re D wearing a sweatshirt; hearsay re D's nickname: admission which may not be excluded by 352/403 since it was D's creation and calling card.