

Evidence Final Issue Outline
Bruce Kinnison
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Essay #1

Wilma: refusal to testify: privilege not testify against spouse, privilege not to disclose marital confidences. Privilege overridden by Ace's right to produce evidence? Hearsay, state of mind non-hearsay used circumstantially. If Wilma testifies, character evidence re V. Character evidence of V to exonerate Ace. Limited purpose to show V intent, corroborate A defense,

Ace's testimony: P questions re statements to Cy covered by dangerous patient (danger to property) and tort exception to privilege? P questions re statements to Lana are totally privileged.

Wilma's ability to prevent A from testifying to presumed confidential communications. Applicability of A's right to produce evidence.

Sam: character evidence; limited purpose intent, absence of mistake, conduct of V exonerating A; hearsay, non hearsay, limited purpose present state of mind and future intent.

Lana and Cy rebuttal: Cy to testify re tort and dangerous client/patient exceptions; Lana has privilege; no duty for either to notify; 352/403

Receipt for paint and sprayer: hearsay; inadmissible business record, no foundation laid by the business.

Essay #2

Ed expert testimony. Subject is beyond jury's knowledge and helpful to understanding issues. Qualifications of expert. CA: Kelly general acceptance test, but could judge find it based on peer review? Reasonable reliance test. Sargon applicability? FRE: does he need to disclose all info before testifying? Daubert determination of whether expert is reliable and has followed proper techniques. Better chance of expert testifying in federal court.

Bob: qualifications not shown, may be insufficient if he had not read scientific journals, may be crossed on relevant material he has read and perhaps on what he should have read,

Recess for Bob to read Ed's info: discretionary with judge; unnecessary if Bob is shown to be unqualified as expert; helpful to jury's understanding of the issue if Bob can evaluate Ed's info reasonably quickly

Phil's experts on loss of wages: CA: Kelly test if novel science; reasonable reliance if not; Sargon could disqualify expert opinion if its criteria aren't satisfied. Opinions admissible if criteria satisfied. FRE: Daubert as above.

Dan's experts: same criteria as above. Judge should decide admissibility only, not which opinion is more convincing.