

Empire College School of Law
Professor Kinnison
Evidence - Fall Midterm
December 4, 2008

QUESTION ONE
(One hour)

PEOPLE v. ACE

Ace and Bob are accused of strangling to death Victoria, Ace's girlfriend. At their joint trial Ned the undercover narc testified for the prosecution that the day after the killing Bob told him that Bob and Ace gave Victoria a lesson in manners. Bob did not testify at trial.

Ned also testified that later, a week after the murder, he arrested Bob and Ace together. When arrested, Bob angrily told Ace, "I knew this would never work. It was all your idea." In response Ace shrugged his shoulders but did not say anything.

The prosecution finally offered a report prepared by Saul, the Department of Justice scientist, indicating that he had followed proper procedures, had run a DNA test on saliva left at the crime scene and concluded that it was Ace's. DOJ is an independent agency that works closely with law enforcement.

In his defense, Ace called Irving the defense investigator. The week before trial Irving interviewed Walt, a prison inmate. Walt had said that he was jealous of Victoria, had talked Ace out of hurting her and killed her himself with Bob's assistance. Walt was serving 500 years to life in prison for other crimes and refused to testify.

Ace also called Jo to testify that Walt had strangled her ten years earlier but she fought him off.

Assume that all appropriate objections and motions to strike were made by the parties. As the trial judge, discuss the reasons for and against the admission of the evidence ONLY AGAINST ACE, and the rulings you would make. Answer according to the general principles we've discussed in class, and point out any significant differences between California and federal law. Do not discuss any second semester material. Assume for the purpose of this question that a conspiracy ends when its object is completed.

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QUESTION TWO
(One hour)

Dan owned a small taxi company. One of his employees was Ace. Dan assigned Ace to drive Paul to Reno. Along the way, Ace allegedly drove recklessly from Donner Pass down toward Donner Lake. Going around a curve much too fast, he apparently lost control of the car, spun off the road and crashed over a cliff. Paul was killed but Ace suffered only minor injuries.

Joe, Paul's son, sued Dan for, among other things, negligently hiring Ace. At trial Joe offered the following evidence:

1. Court records of Ace's two misdemeanor convictions for reckless driving from eight years earlier, and a DMV printout showing that Ace's driving privilege was suspended when Dan hired him two years earlier and had never been renewed. The convictions were based on pleas of no contest.

2. Dan's employment records indicating that he had fired Ace immediately after Paul was killed.

3. A transcript from Ace's jury trial for vehicular manslaughter of Paul where Officer Ollie, then on vacation in Bhutan, testified that witness Walt, who had died a week after Paul's death, excitedly told him that Walt had seen the whole thing moments earlier and that the car had been weaving all over the road before spinning out.

4. Ron, who rescued Ace from the wreckage of the car, to testify that Ace told him then that Dan had threatened to fire him if Ace did not arrive in Reno within four hours of his starting time.

Ace in his defense, sought to call Phil, who would testify that he had been talking to Paul fifteen minutes before the crash on a cell phone. Paul told him that he was so upset by Ace's driving that he was going to take over at Donner Pass and drive the rest of the way to Reno himself.

Assume both parties made appropriate objections to the above evidence. As the trial judge, rigorously discuss the reasons for and against the admission of the evidence, and the rulings you would make. Answer according to the general principles we've discussed in class, and point out any significant differences between California and federal law.