

Empire College School of Law  
Evidence Examination  
Professor Bruce Kinnison  
Fall Mid-term  
December 10, 2009

### **QUESTION 1 - 1 HOUR**

Ace and Bob were arrested for robbing and raping Victoria. Bob was given immunity to testify for the prosecution in the case that was filed against Ace. At the preliminary hearing, Bob testified that he and Ace were sailors on leave and picked up Victoria. They believed her to be a prostitute because their friend Chad told them that she was reputed to be one. After they paid for and had sex with her, Victoria asked for extra money. They refused, had sex with her again without her consent, then took the money they had given her as well as the contents of her purse. They then left. Ace's hearsay objection to Chad's statement was overruled.

Evidentiary issues at the trial was as follows: Bob shipped out after the prelim and was in the middle of the Indian Ocean when Ace's trial started. The Navy laughed when the prosecutor tried to serve them with a subpoena for Bob the week before trial. The prosecution moved to read and introduce a transcript of Bob's prelim testimony at the trial.

Victoria testified that she was not a prostitute, and that Ace and Bob raped her then robbed her of the money from her purse. Afterwards, Bob taunted her by saying that sailors have a girl in every port and that she was his. She was so upset that she had not called the police immediately after the attack. On cross, Ace asked her whether she had falsely reported being groped and robbed by Dan the year before when he would not pay for sex with her.

The prosecution moved to introduce certified court dockets indicating that Ace had pleaded guilty to soliciting a prostitute and indecent exposure five years earlier.

The prosecution called Frank to testify that he talked to Victoria the week after the incident. She tearfully told him that some sailors had mugged her. Frank suggested that she call the police

In his defense, Ace sought to call Fran to testify that, an hour before the incident with Ace and Bob, Victoria told her that she was a drug addict and needed money to support her habit.

Ace also called Dan to testify that he had been arrested the year before for felony groping and robbery of Victoria. He was innocent and charges were never filed. The police told him that the reason for the no filing was that they determined that Victoria had been lying.

As advocates for each party, advance all appropriate theories to introduce the evidence and make all appropriate objections. As the trial judge, discuss the rulings you will make including limiting jury instructions, and the reasons for them. Answer according to the general principles we've covered in class, and point out any significant differences between California and federal law. Assume court documents may be sufficient to show conduct underlying the conviction.

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## QUESTION 2 - 1 HOUR

Paul drove his Corvair SUV off road one day, tipped over on a steep hill and was seriously injured. His passenger Ron was killed in the crash. In either a federal or a California court, Paul sued the manufacturer for negligence and in strict liability, alleging a design defect. The evidence at trial was as follows:

1. Paul called Ed the expert to testify that the Corvair SUV tended to roll over on steep hills similar to the one Paul had been injured on. Since Paul's accident, the Corvair had widened the vehicle's wheel base and installed a roll bar to reduce SUV rollovers and injuries suffered when SUV's did roll over.
2. Paul moved to introduce a government report on vehicle safety which made a finding of fact that the Corvair SUV Paul had been driving was unsafe at any speed based on its tendency to tip over in high winds and on steep hills.
3. Paul called Wally, one of the first people to arrive at the accident scene. Wally heard Irving, an insurance adjuster employed by Corvair who was dispatched to the scene by Corvair, say, "Not another rollover! When is Corvair going to learn?"
4. Corvair called Sam, Ron's brother, to testify that he talked to Ron just before the accident. Ron told him that Ron and Paul were going to intentionally roll the SUV. They were both well insured but were despondent after losing their jobs and wanted to provide for their families if they were killed.
5. Corvair called Skip to testify that Sam told him that he had staged a traffic accident five years earlier at a time Sam was out of work; he had lived off his insurance policy for months.

As advocates for each party, advance all appropriate theories for admission of evidence and make all appropriate objections. As the trial judge, discuss the rulings you will make and the reasons for them. Answer according to the general principles we've covered in class, and point out any significant differences between California and federal law.