

Question #1 – One Hour

Vic Tim and Dalbert Defendant grew up next door to one another. For years their families fought over the boundary lines of the properties. The bad feelings continued as Vic and Dalbert lived in the same houses as adults. On April 1, Vic and his wife Wilma were enjoying “Wheel of Fortune” which they watched every night at 7 pm, when the phone rang. Vic, who was upset because he was missing Vanna White turn the letters, answered the phone. Wilma heard him get more upset during the phone call and he yelled into the receiver, “Dalbert, I know it is you and I will get you before you can get me.”

On July 4, both Dalbert and Vic were lighting fireworks on the property line. Dalbert made a disparaging remark about the “size” of Vic’s sparkler. Vic asked Dalbert if he “wanted a piece of him” and a physical fight began. Vic, a very obese man, died of a massive heart attack brought on by the physical exertion of the fight. Dalbert is charged with criminally negligent homicide in a California State Court, the Honorable Secondyear Lawstudent, presiding.

During Dalbert’s trial the following events occurred:

1. Wilma testified about the April 1 telephone call.
2. During the defense cross-examination of Wilma, the defense offered a certified copy of Vic’s conviction for felony welfare fraud which occurred eight years prior to the trial date. (Vic received a sentence of 30 days county jail and 3 years probation.)
3. Dalbert claimed self-defense. He testified Vic had a reputation in the community for being a violent hot head. He also testified he knew Vic broke “a guy’s nose” in a fight 2 years before Vic died. Dalbert had also heard Vic swung a baseball bat at a man 1 year prior to the trial during a city league softball game.
4. Dalbert testified that Vic was a “known drunk” and he always drank at least a case of beer every Fourth of July.
5. In rebuttal, the prosecution offers a certified copy of Dalbert’s 3 year old misdemeanor conviction for Penal Code section 242, simple assault and possession of less than an ounce of marijuana in violation of 11357 of the Health and Safety Code.

Discuss the **evidentiary** issues that are presented. You are the Judge. Assume all proper objections are made. Rule on the objections and show your analysis. Answer according to California law.

Question #2 – One Hour

Paul, a second year law student and California resident, was driving to class listening to a commercially produced lecture on a CD. The lecturer was discussing the “Rule against Perpetuities”. While traveling through the signal light controlled intersection of Fourth Street and Main Street, Paul was involved in a collision with a large Hummer SUV driven by Charles, the chauffeur for Bill Windows, a billionaire, who lives in Washington State. Paul suffered a head injury when he struck the windshield of his 1965 VW Beetle. Paul has sued Bill Windows in a Federal District Court located in California. Paul alleges the accident was caused by Charles who was driving in the course and scope of his employment. Windows denies that Charles caused the accident and he further alleges Charles was not in the course and scope of his employment but was on a frolic and detour. Windows further alleges the accident was the result of Paul’s negligence.

At trial, the following occurred:

CHP Officer Blair Friendly testified when he arrived 10 minutes after the collision, Charles told him, “I was on my way to Stop and Rob Liquors to get my boss a pint of Maker’s Mark. He drinks a pint every night.” Officer Friendly testifies immediately after the accident Paul seemed dazed and confused. Paul told him he could not remember the accident and he was certain he would not survive “a life estate plus 21 years.”

Paul testifies that Officer Friendly’s report contains a statement from Aunt Bea Bystander that “the large SUV ran the red light.” Paul testifies that he clearly remembers he had the green light. He also testifies that, prior to trial Windows paid all of his medical bills and offered to settle the whole case for \$150,000.00. Paul rejected the settlement offer because he is claiming losses of many millions of dollars in lost income due to his brain injuries and the fact that he will never work as a lawyer.

Windows testifies that due to religious, health and personal reasons he does not drink alcoholic beverages. Charles testifies that at the time of the accident he was going to donate blood at the local blood bank. The blood was to be given to a child burn victim.

You are the Judge. Assume all proper objections were made. Rule on all objections using the appropriate rules of evidence and show your analysis. Discuss only the ***evidentiary*** issues that are presented.