

Empire College School of Law
Professor Bruce Kinnison
Evidence Midterm Examination
Monday, December 5, 2011

QUESTION 1
(One hour)

Ace is accused of murdering Vic with a shotgun. At trial, the prosecution seeks to introduce evidence of Vic's telling his girlfriend Gina, two months before the killing, that he was afraid of Ace, his lifelong friend. The defense wants to offer that later, on the day he was killed, Vic called Wendy and told her that he couldn't stand the tension with Ace any more; he would do one more bank robbery with Ace and "whack" him afterwards.

The prosecution also seeks to introduce the following: the day following the murder, when the police came to Ace and wife Wendy's house to arrest Ace, Wendy asked the police why they were arresting her husband. They responded that it was for murdering Vic with a shotgun. Wendy said "He had it coming", but gave Ace a very quick "dirty look". Ace said nothing.

Finally, the DA offered evidence that, pursuant to a search warrant the police searched Ace's house and seized several rifles and handguns, as well as growing marijuana from the garage. They also took a volume titled, "Grief Counseling: How to Cope with Losing Your Best Friend" from his bookcase.

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. Wendy was unavailable to testify at trial.

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QUESTION 2
(One hour)

Pat was one of the campers at an Occupy California demonstration. Though he had been non-violent, he refused to obtain a permit from the state to continue camping and refused to leave his campsite, located on the state capitol lawn, when police came to eject non-permitted campers. While moving Pat's tent, Ollie, a state police officer, accosted Pat and caused him to be seriously injured. Pat sued California.

At the trial, Pat sought to introduce Ollie's blurted statement to a newspaper reporter immediately after the incident that he hadn't intended to use as much force as he did, but he was under orders to clear the grounds and wanted to be as strong as the rest of the police. He felt peer pressure to rid the grounds of the scum and deter them from returning. Pat testified to the above at an earlier lawsuit brought by another camper, but claimed forgetfulness when called to testify in Pat's case. Pat also sought to introduce Ollie's former testimony.

Further, Pat offered a police report prepared by Detective Don, who was investigating the confrontation between the campers and the police. Don interviewed Pat shortly after the incident, and before Pat went to the emergency room. Pat told Don that his head hurt, he felt dizzy and that he had just awakened after passing out. He believed that he had been hit on his head several times by a night stick. Don took the statement and told Pat to get to the hospital.

Finally, Pat sought to call ten "campers", each from a different Occupy California site. Each camper would testify that when state police cleared their campsites, the police used night sticks to club non-resisting campers.

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.