

**QUESTION 1**  
**(One hour)**

Pat tripped in a pothole located on some empty property next to Dan's apartment house, breaking his leg. He sued only Dan for negligence.

At the trial, Pat offered evidence showing that Dan had planted a large flower garden on the parcel, erected a fence around the garden and repaired the pothole after the incident. Pat also offered witnesses who owned two other pieces of property. Within the last ten years they had ejected Dan from their properties after he had planted gardens and erected tool sheds on them. Another witness was neighbor Ned. A week after Pat's accident Dan told Ned that he'd noticed the pothole before the accident and intended to repair it when he had some free time. Dan also told Ned that he'd always considered Pat to be a bad neighbor and had previously "laid traps" for him, though none had succeeded in injuring Pat.

Dan defended with county recorder office records indicating that the property belonged to Wally, who didn't live in the area. Dan also sought to call Ivan, a private investigator, to testify that he had interviewed Wally after Pat's accident; Wally admitted owning the parcel. Since the interview Wally had moved with no forwarding address. Ivan had checked with hospitals, law enforcement and DMV but had been unable to locate Wally. Dan also produced Pat's medical records which indicated that Pat told the janitor who told the ER doctor, "I saw the pothole all along, but something came over me. I had the feeling that if I put my foot over the hole that I would walk on air and not be hurt."

As an advocate for each party, advance all appropriate theories to introduce the evidence and make all appropriate objections. As the trial judge, explain the rulings you will make including limiting admissibility, 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.

**QUESTION TWO**  
(One hour)

Ace is charged with the murder of Vic.

At trial, the prosecution called pathologist Dr. Tom to testify that Vic died from strangulation. Tom had never seen Vic's body and did not conduct the autopsy. As Vic had been cremated immediately after the autopsy and without pictures being taken, Tom relied on a report prepared by Detective Dan. Dan had been the lead detective on the case as well as the county coroner, and was present at the autopsy. He had been told by Doctor Claire, who had performed the autopsy, that she found the cause of death to be strangulation, probably from a rope. Dan incorporated Claire's statement into his report. After the autopsy but without preparing a report, Claire disappeared, allegedly to relocate in Uganda to heal mountain gorillas which had been injured by poachers. At trial Tom would testify that his opinion regarding strangulation was based on Claire's statement, Dan's police report concerning the crime scene and appearance of Vic's body, and Tom's own considerable experience and training.

Other prosecution evidence included Cowboy Bob to testify that the previous year he had given Ace a class in roping calves. The class included Bob's teaching Ace how to tie appropriate knots, throw a rope around the calf's neck, pull it tight then throw the calf to the ground. After the class he had loaned Ace a rope "for practice." Ace had never returned it.

Defense evidence included Ace's father Fred, who testified that, after Bob's class, Ace had told him that he hated the class, hated Bob, hated the roping and would never do anything like that again. At the time, Ace told Fred that he had thrown Bob's rope into the garbage as it was unworthy of being recycled.

Finally, the defense called Mary to say that she'd lived next to Ace for 20 years and had never seen him use a rope. She volunteered that she thought he was a "mellow guy." The prosecution sought to cross examine her by showing her records of Ace's criminal record which showed arrests for misdemeanor battery and petty theft, and convictions for felony perjury and robbery. When Mary said that she knew nothing about Ace's past record, the prosecution sought to introduce it into evidence. Mary did testify that on the day of Vic's death, Ace wore blue jeans, a cowboy-style shirt and a ten gallon hat.

As an advocate for each party, advance all appropriate theories to introduce the evidence and make all appropriate objections. As the trial judge, explain the rulings you will make including limiting admissibility, 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 Dr. Tom and Dr. Claire are qualified experts with many years of forensic experience.