

QUESTION 1

(One hour)

Ace is accused of robbing and murdering Vic with a firearm. Policeman Peter came upon Vic, who was lying in a parking lot, clearly in pain. Vic, surprisingly lucid, said that he thought he might die, but wanted to make sure that Ace was brought to justice. Vic described the robbery, and in particular that Ace said, just before shooting his handgun, “Three down, one to go.” Vic said nothing more, and died three days later.

Two days after the shooting, Peter arrested Walt, who had driven Ace away from the crime scene. Walt told Peter that Ace had asked him for a ride so that Ace could “collect a debt.” Walt stated that Ace frequently went outside the law to coerce people into paying money they owed, but insisted that he had no idea Ace was carrying a gun. Walt felt that he had done nothing wrong, though he did concede that Ace gave him a \$50 bill for “gas money” as Walt drove away. Walt disappeared after making the statement.

At trial, the prosecution seeks to introduce evidence of Vic’s and Walt’s statements to Peter.

The prosecution also wants to offer testimony from officer Mike that he had contacted Walt twice in the past five years. On each occasion, Walt was driving away from a robbery scene and, after he was contacted, told Mike that he had merely driven people to and from what he thought was an innocuous location for an innocuous reason. Walt was surprised to learn that the people were in fact robbers and their purpose was in fact a robbery. In each instance the officers found in Walt’s possession \$50 bills consistent with the denominations taken in the robbery. Ace had been found in the car both times with Walt, but both had been released without charges being filed.

The defense seeks to offer testimony from Dan to the effect that two years earlier Dan witnessed Vic attacking a pedestrian for no apparent reason. No charges were ever filed.

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.

QUESTION 2

(One hour)

Pat was estranged from her husband Harry who was having an affair with Alice. She sued Alice for alienation of affection.

At trial, Pat called Harry to the stand and asked him whether he had gone with her to a Sonoma County judge five years earlier, said “I do” when the judge asked him whether he would take Pat to be his wife, and heard the judge pronounce the two of them husband and wife. Harry objected that the questions called for inadmissible hearsay.

Pat testified over objection that both she and Harry said “I do” to the key question at their wedding, and the judge pronounced them husband and wife. She offered no paperwork concerning that wedding, but offered properly certified records of Harry’s earlier marriage to Gwen.

In her defense, Alice testified that Harry had told her that Harry had never been officially married to Pat; they had lived together “common law”. Alice called Harry, who testified that he was drunk on his alleged wedding day with Pat and remembered nothing except that the following week he’d had a vicious hangover. He believed that they had never been officially married. Alice also called Bob, who was the best man at Pat and Harry’s wedding. He confirmed that Harry had been drunk enough so that Bob had to stand behind Harry at the ceremony to keep him from falling over. He also heard Harry say, “I don’t”, when the judge asked him the key question. Finally, Alice called Judge Jerry, who had presided over the Pat-Harry wedding. Jerry testified that he’d been drinking with Harry prior to the ceremony, and didn’t remember any part of it.

On rebuttal, Pat called Ted, Bob’s best friend, who testified that after the ceremony, Bob told him that it had been the loveliest wedding he’d ever attended, and he was sure that Pat and Harry would live happily ever after.

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 a brief statement of 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.