

QUESTION 1
(One hour)

Ace and Bob are accused of burglarizing Vic's house.

They were caught by police outside Vic's house, Bob with jewelry and cash in a pillow case from Vic's downstairs bed and Ace in a car parked in the driveway, motor running. *Bob immediately told Paul the policeman that he and Ace had heard that Vic owned some very fine art. Since Bob and Ace considered themselves to be connoisseurs and didn't want to be disturbed, they broke into the house at 2:00 am to view the collection.* Bob emphasized to Paul that he didn't take any of the art, but when Paul asked him to explain the pillow case and its contents, Bob could only say, "You got me there, Officer." Ace, who was being handcuffed a short distance away from Bob, said nothing at all. Paul checked the premises and noted that there were numerous paintings hanging in the living room.

At trial, prosecutor Dan first called Vic, to say that he didn't know Ace or Bob and hadn't given either permission to enter his house for any purpose. (This is background and not an issue to discuss on the exam.)

Next, Dan called Dahlia the police dispatcher, to testify about having received a call from Walt, Vic's house sitter, at 2:00 am. Walt, calling from an upstairs bedroom, told Dahlia that Vic was away on vacation and Walt had just seen the first floor lights go on as well as two figures in the living room. He thought he was being robbed, was upset and wanted immediate police assistance. After Paul arrived and nabbed the two, he showed them to Walt who was still frightened and speechless. Walt confirmed by pointing that they were the figures he'd seen in the living room.

Walt moved from the area before trial, leaving no forwarding address.

Dan next called Paul to testify about Walt's ID, his interrogation of Bob and also to testify about the contents of Dahlia's dispatch to him, which included, "go immediately to a burglary in progress at Vic's house. Suspects are possibly armed and dangerous and may be gang members."

Defense: Bob having asserted his right not to testify, Ace's lawyer Mike recalled Paul to testify to the first three sentences (above, in italics) of Bob's statement.

Mike also offered a certified transcript of Ace's college grades from Cal State University, showing that he had taken several art history and appreciation classes and had received A's in all of them. Included with the transcript was an art professor's note attached to one class, stating that "In all my years of teaching, Ace is the most outstanding student I've had. He lets nothing stand in the way of his quest for knowledge."

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. Other than confrontation, do not discuss any criminal procedure issues.

QUESTION 2

(One hour)

Pat worked for a large Hospital as a dietician. She had been there for 30 years and had received uniformly glowing performance evaluations. When Pat was 59 years old, Hospital hired a new mid-level manager, Mark, to be Pat's direct supervisor. Mark was critical of Pat from the outset. His written "coachings" on relatively trivial matters, never introduced at trial, eventually resulted in Pat's being fired. Pat sued Hospital for age discrimination and wrongful termination.

At trial, Pat's lawyer Lara called Kay, another manager had supervised Pat for 20 years before Mark arrived and who worked with Mark. Kay was to testify that over coffee at the Hospital Canteen, Mark told her that he didn't know why, but he favored young employees at work. Mark had been working for Hospital for six months when he made the remark.

Lara also sought for Kay to reveal that shortly thereafter, at a staff meeting, Kay heard Mark tell Pat that she was the worst employee at Hospital and "might sink us all if allowed to stay on." Pat, Kay and the rest of the staff were shocked, and Kay told Mark that he was wrong about Pat.

Further, a few months later, after Pat had been fired, Mark and Kay had coffee again. Mark abruptly said that he was feeling "dangerously frustrated about remaining alive", left the Canteen and drove his SUV into Pat's car which was parked in front of her home. Mark then drove to a deserted mountain road, where he suffered fatal injuries after his SUV smashed into a tree.

Pat also produced records, stipulated to have sufficient evidentiary foundation, from three of Mark's past employers. The records indicated that he had been fired for having made derogatory remarks about older fellow employees, such as how the managers should "clear out the dead wood," and "all dinosaurs except ours have been extinct for over 50 million years." Hospital did not have the records when they hired Mark.

Finally Pat called Kay to testify that during their 20 year relationship, she observed that Pat always followed Hospital protocol precisely.

Hospital objected to Kay's testimony as well as everything above on this page that Lara sought to present to the jury.

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.