

QUESTION 1
(One hour)

In September of 2010, two young adults, Dan Dumbfounded, age 28, and Sam Silencio, age 29 are on trial for armed robbery and murder arising from the robbery of a 7-11 during which the clerk was shot to death. They had been stopped a few miles from town, driving a mint-green Buick Skylark convertible. The boys and the car matched the descriptions given by eye-witnesses to them fleeing the scene. There was no weapon found on either of the boys, or in the car. No Miranda warnings were given when they were stopped, and they agreed voluntarily to go back to the station with the officer to be questioned. The boys concede they were in the 7-11 just before being pulled over, but deny having committed the crimes.

At trial, the Sheriff testified in the prosecution's case as follows:

- 1) "When I told the boys back at the station that they were in a lot of trouble, Dan seemed not to care. He said: 'I didn't think it was really that big of a deal.' (The prosecutor offered this testimony as evidence of Dan's callousness, and therefore probative of his intent to commit the crime [assume intent to kill is an essential element of the murder charge].)
- 2) The Sheriff continued with his testimony: "And then, when I asked Dan when he shot the clerk, he said: 'I shot the clerk.'" The prosecutor offered this testimony to prove Dan shot the clerk.
- 3) Sam was sitting next to Dan during the questioning, and did not respond to either of these questions to Dan during the interrogation; nor did Sam say anything at all at any time prior to trial about what they (Sam or Dan) thought they were being stopped for. The prosecutor offered Dan's testimony in 1) and 2) against Sam; he also offered Sam's silence throughout against Sam and against Dan.

Witness Wally testified for the prosecution that when he started cooking his grits for breakfast, he looked out his kitchen window across the street and saw the boys drive up, get out of the car, and enter the 7-11. Then, five minutes later, after his breakfast had finished cooking, he looked out again and saw them jump in to their car in a hurry and drive off like a bat out of hell, screeching the tires.

On cross – examination, defense counsel asked Wally the following questions:

- 4) "Isn't it true that you have been married and divorced five times?"
- 5) "Isn't it true that you cheated on your taxes every year in a row during the 1990s?"
- 6) "Isn't it true that it always takes at least 15 minutes to cook grits?"

In the Defense case, Dan decides not to testify, but Sam testifies as follows:

- 7) “When Daniel said it wasn’t that big of a deal, he was talking about shoplifting. I realized a few miles down the road after leaving the 7-11 that I had inadvertently failed to pay for a coke I had in my jacket pocket, and that’s why we thought we were being pulled over.”
- 8) “Daniel did not agree that he shot the clerk. He said those words, but it was like he was questioning the Sheriff’s statement, and was said like in shock, like ‘I shot the clerk?!?’

Defense counsel also called Daniel’s Aunt Lisa, who testified on direct exam as follows:

- 9) “Daniel is such a nice boy; he wouldn’t hurt a flea. Every year at Christmas he volunteers at the Animal Protection Institute to care for homeless dogs and cats. You can ask anyone; the whole family would say so.”

Assume the above testimony by Lisa on direct was allowed. On cross examination, the prosecutor asks Lisa the following questions:

- 10) “Are you aware that Daniel has been convicted of felony cruelty to animals four different times in the past 12 years?” She answered that she was not.
- 11) “Isn’t it true that you were convicted several times in the 1990s for prostitution before marrying Daniel’s uncle?” She denied these convictions.
- 12) The prosecutor then offers to introduce the criminal record of all of Daniel’s past convictions.
- 13) The prosecutor then offers to introduce the criminal record of all Lisa’s past convictions.

Assume objections were made to all of the above testimony and to the offers to introduce evidence. Discuss fully what those objections should have been and how the court should have ruled on each. Answer according to the Federal Rules of Evidence, noting California law only if it substantially changes the outcome.

QUESTION 2
(One hour)

Mr. Peter Anklett was enjoying his daily mocha and scone at a local café owned by his friend, Bart Bistro, when a car driven by Ms. Taekin Tappan suddenly crashed through the exterior window-wall of the café, sending glass and debris flying across the room. The car had turned left directly into the café's parking area from the country road on which the café was located. The spaces themselves were perpendicular to the street and to the building, and were lined up so that cars parking in them had their fronts facing the window wall. See the diagram attached.

When the crash occurred, Peter tried to dive out of the way, but the car's front bumper crushed Peter's left ankle. Fortunately, he was otherwise uninjured. After several months of unsuccessfully dealing with the insurance companies representing Bart Bistro and Ms. Tappan, Peter decided to hire an attorney to file suit. By the time of trial, he had fully recovered. His complaint was for negligence against both, and it sought a total of \$50,000.00 in compensation for his past medical bills for his ankle treatment and related physical therapy, his past lost wages during his recovery time, and general damages for pain and suffering from the day of the accident to two months prior to trial, which was when his doctors had released him from all further treatment.

Ms. Tappan claimed that this was just an accident, and that the car must have malfunctioned. Bistro claimed that he was not negligent, as he had no way to foresee such a strange accident or do anything to try to prevent it.

At the trial, in pre-trial motions in limine, both Bistro and Tappan defense attorneys moved to preclude introduction of any evidence of the following testimony obtained during depositions in the case:

- 1) That during pre-filing discussions, Bistro's insurance adjuster told Peter: "Look, I believe you, and I think \$50,000 is perfectly reasonable for your claim. But Tappan's adjuster is from the Midwest and doesn't agree."
- 2) That while on the floor of the café, Plaintiff overheard Bistro exclaim: "Not again!!??"
- 3) That when Bistro came up to Peter lying on the floor Peter said: "I can't believe this; I just started a new job and I don't have health insurance to cover this." Bistro responded: "I'm so sorry, man, this is horrible. I can help you with your medical bills, don't worry."
- 4) That two months after the accident, Bistro had repaired the building, and had installed new concrete-filled posts along the border between the parking spaces and the window wall to protect against future similar accidents.
- 5) That Bistro testified that two years prior to this accident, another car had crashed into the café building from the parking lot, but it was on a different wall from this accident and the car did not come all the way into the building. That prior crash caused only exterior damage to the building.

A. What objections should Plaintiff's counsel make to these motions in limine, and what rulings should the judge make? Explain your answers. Discuss fully; assume the above is all the information the judge has at the time the motions are heard.

Assume for purposes of the following questions that the court granted the motions in limine and excluded all of the evidence in 1 – 5 above.

Testimony at Peter's trial against Bistro and Tappan was then put on as follows:

- 6) Plaintiff called a doctor to testify to Peter's ankle injury, the treatments needed and their costs, along with the opinion that as of two months prior to trial, Peter had fully recovered.
- 7) The Defense attorney for Bistro called Bistro, who testified "I've never had anyone hurt in the café like this before, I can't believe it. I mean, who could have foreseen that a car would come all the way into the building like that? I had no way to stop a driver who can't stop her own car."
- 8) Defendant Bistro also calls an expert doctor who testifies: "I've reviewed all of Peter's medical history. His pain and suffering really comes from his long-existing lymphoma, which, while not painful, is still a great stressor for him."
- 9) Defendant Tappan testifies: "I have no explanation for why I couldn't stop the car; it's unique to my driving experience. The car must have malfunctioned."
- 10) On rebuttal, Plaintiff called witness Wanda Ringeye, who said that while standing outside the café while Peter was loaded in to the ambulance, she heard Tappan's husband say to Tappan: "I told you so; this is just like last week when you crashed into our garage." Ms. Tappan just shrugged at that comment.
- 11) Plaintiff calls an expert who testifies on the long-standing use and effectiveness of concrete-filled posts used in parking lots for stopping cars from crashing into buildings, and that it was feasible to have added them to the parking area in question prior to the accident.
- 12) Plaintiff's attorney requests the court to reconsider its rulings on the motions in limine as to items 2, 4, and 5, and offers to introduce evidence that Bistro installed concrete-filled posts after the accident.

B. Assume all of the testimony in 8, 10, and 11 above was objected to. How should the trial court rule and why? Discuss fully according to Federal Rules of Evidence, stating California law only if it substantially effects the outcome.

C. How should the court rule on Plaintiff's attorney's request of the Court to reconsider its rulings on items 2, 4, and 5 from the motions in limine? Discuss fully according to Federal Rules of Evidence, stating California law only if it substantially effects the outcome.