

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

Ace and Bob were accused of robbing, then murdering Vic in a separate incident several months later. Each defendant had a separate lawyer, and the trials were severed. Bob was convicted of both charges in the first trial. At Ace's separate guilt trial, after he had pleaded not guilty and not guilty by reason of insanity, the prosecution sought to introduce evidence that included the following:

Wally saw the robbery and wrote down the license plate number on the back of a bindle containing heroin that he pulled from his pocket. After telling Ron only that he hoped he wouldn't get into trouble for the drugs, Wally gave him the bindle with writing that ultimately corresponded to Bob's car's license plate. Pat used the writing to track down the car and locate Ace and Bob. Wally disappeared before trial.

A few weeks after the robbery, Vic looked at a photo lineup officer Ron had assembled, then told Ron that he identified Ace as his robber. Three days after the robbery preliminary hearing, Vic went missing; his body was never found.

Ace testified at Bob's separate trial that Vic was alive and well, living in Bhutan and studying Buddhism.

At the guilt phase of Ace's trial, the prosecution offered all the above evidence, including Ace's testimony

Ace called Ron to testify that, when Ron arrested him, Bob told Ron that he had committed the crime and not Ace. Bob, who was serving a life sentence, refused to cooperate.

At the sanity phase of the trial, Ace called two psychiatrists who opined that Ace was legally insane at the time of the acts.

In rebuttal, the prosecution called psychologist Dr Gee, who had examined Ace for the defense after a confidential court appointment. Dr Gee had written a report to Ace's lawyer, indicating that, though there were diminished capacity issues, Ace was sane and in fact confessed to the doctor that he had robbed and killed Vic. Out of the jury's presence, the prosecutor explained that Gee's report had been included in mitigating material Ace's lawyer had provided to attempt a plea bargain. Ace's lawyer said that he never intended to provide Gee's report, but conceded that he had never checked the material that his inexperienced assistant had sent to the prosecution.

As the attorney for each side, make all appropriate arguments regarding the introduction of evidence and claims of privilege. As the trial judge, make rulings on the legal points raised and briefly explain your reasons. Answer the question according to the general principles we've discussed in class, and point out any significant differences between California and federal law. Assume that jury would be instructed not to consider the robbery incident in the murder trial unless the court found an appropriate legal theory justifying admission. Don't discuss Ace's doctors' testimony.

**QUESTION 2**  
**(One hour)**

Same traffic accident as the midterm. Pat sued Dan for the injuries he had suffered, as well as emotional distress.

It turned out that Dan's wife Wendy was riding in the truck with him. Later, Wendy told her lifelong best friend Flora that, at the time of the accident, Dan was driving way too fast and an oncoming moving van blinked its high beams before Dan reached the intersection. The flash blinded Wendy, and she heard Dan scream "I can't see" just before the crash. She did tell Flora that Dan was familiar with the road and routinely drove through the stop sign without coming to a complete stop.

Pat called Wendy at the trial. She was separated from Dan, and said she was willing to testify truthfully. She did in fact testify that she was riding with Dan in the truck when he got into an accident. Wendy changed her mind, though, when Pat asked her whether Dan was driving too fast, and refused to answer the question. She also refused to answer his question whether, after the accident, Dan asked her to say that she was asleep in the truck during the entire incident.

Pat's next witness was Flora, called to testify to Wendy's statements and to opine that Dan was a miserable driver, lousy husband and notorious liar. On cross, Dan asked Flora whether she considered herself to be a truthful person, and had she been convicted of grand larceny and drug sales, both felonies.

In his defense, Dan called Dr. Ted, the emergency room doctor who treated Pat, to testify that Pat told him that he had fallen asleep at the wheel again just before the crash, and asked whether Dr. Ted might prescribe some medication that would help Pat with his narcolepsy. He also requested that the judge take judicial notice that, "a person suffering from narcolepsy may experience daytime naps, which occur with little warning and may be physically irresistible." Assume that the quote is a true statement for the purpose of this question.

Dan also moved to introduce Pat's psychiatric records, which indicated that Pat had been treated over the previous twenty years for his frequently accusing others of hurting him, as his way of getting sympathy from the rest of this uncaring world.

As advocates for each party, make all appropriate objections and claims of privilege to the above evidence. As the trial judge, discuss the rulings you would make and briefly, the reasons for and against the admission of the evidence. Answer according to the general principles we've discussed in class, and point out any significant differences between California and federal law.