

QUESTION 1

One hour

Ace is accused of common law burglarizing twin brother Mace's house.

At trial, prosecutor Pete called Victim Mace who testified that his house had been broken into and valuable jewelry taken. On cross examination and over Pete's objection, Ace's lawyer Lara asked Mace the following:

1. Whether, after an argument, Mace had taken away Ace's key to Mace's house two years previously, and forbidden Ace to visit in the future.
2. Whether Ace is the type of person who would commit a serious crime. When Mace responded that obviously Ace was, since he was guilty of this crime, Lara asked, "did you ever tell Officer Ollie that Ace was the kind of person who only committed minor crimes.";
3. Whether Mace had committed four burglaries in the four years prior to Ace's alleged crime. When Mace denied having committed any of the burglaries, Lara asked him whether he had told Officer Ollie that he had;

When Mace said that he had been so drunk when he talked to Ollie that he didn't remember what he'd said, Lara called Ollie to testify that Mace had told him that Mace had committed all of the four burglaries in the previous four years and the only crimes Ace ever committed were minor.

Pete also called Lou, Ace's first lawyer, who testified about a conversation he'd had with Ace where Ace told him that Lou should not worry about preparing for trial. Ace said he had "plans" for his doctor, his lawyer and his "Indian chief" brother. After the conversation, Lou phoned Mace and Dr Dawn, Ace's psychotherapist, and told them that they were at risk. Pete also asked Lou about the words he used while warning Mace and Dr Dawn. At that point, Dawn's lawyer Art interjected that any professional relationship she might have had with any person was privileged and she objects to any communications to or from her concerning any patient including Ace, assuming without conceding that she had a professional relationship with him.

Lara called Officer Ed, a policeman who had watched several crime scene investigations while an officer and become interested in crime scene reconstruction, to testify that he'd listened to the trial testimony and seen and photographs of Mace's house, including the suspected point of entry, that had been introduced into evidence. Ed concluded that there was never an entry and further, that Mace had concocted a story about the entire burglary to avenge some real or imagined insult.

As advocates for each individual represented by counsel, make and respond to all objections and claims of privilege presented by the question. As the trial judge, discuss the reasons for and against the admission of the evidence, the rulings you would make and any limitations to admissibility. Answer according to the general principles we've discussed in class, and point out any significant differences between California and federal law.

Question 2
One Hour

On his way to work, Ace drove through a yellow light at an intersection. Vic, another motorist driving to work with his wife Wendy, was stopped at the same intersection on the perpendicular street, waiting to make a right turn. Vic thought he could beat Ace's car through the intersection and made the turn in front of Ace. Ace crashed into Vic's car and injured Vic. Wendy was uninjured. They sued Ace for negligence and his injuries. Ace, who was slightly injured himself, sued Vic for the same things.

Vic and Wendy separated before the trial. Vic additionally sued Ace for loss of consortium.

At the trial, Ace sought to call Wendy to testify that

1. Vic had told her before the drive that he was very late and had been told by coworkers that he was about to be fired for chronic tardiness, so he had to step on it.
2. After the accident Vic got out of the car, looked up to the sky and screamed, "Why me? I only wanted to save 10 seconds, and you punish me for cutting that guy off." Evidently Wendy was the only person to hear Vic.
3. Vic asked her after the crash to tell everyone that she hadn't been looking at the traffic light in the seconds before the accident.

Wendy was willing to testify, but Vic objected. During a recess from court, Vic told Wendy that he would reconcile with her if she refused to testify. Ace added Vic's last statement to his list of questions for Wendy.

Vic sought to call Dr. Ken, a social scientist specializing in marriage breakups, to testify that even solid marriages can be shattered by a single traumatic event, such as a traffic accident, especially if only one of the spouses was injured. Further, after interviewing Vic, he was of the opinion that Vic and Wendy had a very solid marriage which would have lasted forever but for the accident. Assume this evidence is relevant for the purpose of this question.

At a motion *in limine* before trial re his expertise, Ken testified that he had earned a Ph.D. in the administration of justice, had written a New York Times best selling book entitled, *Buckle Up, It Could Save Your Marriage*, and had lectured on the subject at Highway Patrol conventions throughout the country. Moreover, he stated that there was nobody else yet practicing in his field, but he'd received rave reviews from readers of his book and was teaching the subject at a major university. This would be his first appearance as an expert witness. At the end of the motion, the judge stated, "My wife and I happen to have read your book and were very impressed. We started to buckle our seatbelts before driving and, when we got into an accident, were uninjured. I believe you saved my marriage. The witness is qualified as an expert."

As an advocate for each party, briefly make all appropriate objections, motions to strike expert opinions and arguments to the above evidence. As the trial judge, discuss the process you would use in analyzing the evidence and the reasons for and against the admission of it. Additionally, discuss the judge's statements in qualifying the expert. Answer according to the general principles we've discussed in class, and point out any significant differences between California and federal law.