

**QUESTION 1**  
**(One Hour)**

Chip and his girlfriend, Joanna, are employed by a successful small business that specializes in selling and installing shiplap siding in home remodel projects. Chip, who majored in accounting in college, manages and maintains the company's financial records; Joanna works mostly in the sales department, but sometimes is assigned to help with records and accounting. For more than a year, Chip has been embezzling small amounts of money from his employer. Recently, he revealed his scheme to Joanna, and enlisted her aid in advancing and covering up his theft. For several months thereafter, the embezzlement scheme works smoothly, but then a routine outside audit revealed discrepancies in the company's financial records. Both Chip and Joanna, whose relationship is increasingly acrimonious, fall under suspicion.

As the pressure mounts, Joanna calls Detective Clouseau from the fraud division who has been investigating the case. She reveals her own illegal activities and explains in detail (and from personal knowledge) exactly how Chip conceived the scheme, enlisted her aid, and made the false entries that allowed him to embezzle funds. Although Joanna agrees to testify against Chip, she is killed in an automobile accident prior to trial. The prosecutor offers her statements to Detective Clouseau who is present and willing to testify.

When the outside auditor discovered the accounting discrepancies, Joanna confided in her best friend, Waco, that she has been involved in an embezzlement scheme with Chip. Joanna also tells Waco exactly how Chip conceived and executed the theft, and how she and Chip tried to cover up their illegal activities. Because Joanna is unavailable at Chip's criminal trial, the prosecutor calls Waco.

Chip's trial is held in State Court in California.

What evidentiary issues are raised by the above facts? Discuss.

**QUESTION 2**  
**(One Hour)**

Dalbert has just purchased a new Tesla model \$\$\$ and is driving home from the dealership. He approaches a four-way intersection controlled by a stoplight, when the light turns from green to yellow. He steps on the accelerator but cannot get the car to go into "passing gear." The light turns red as he enters the intersection.

Pliney is approaching the intersection from Dalbert's right. She sees the light turn green, speeds up and a collision occurs in the middle of the intersection. Dalbert comes up to Pliney and says, "Gee, I am sorry that light turned yellow very quickly, but don't worry I have insurance."

A witness, Whitney, tells the investigating police officer that she was behind Dalbert and saw him run the red light. Another witness, Frank, who was convicted of grand theft larceny, a felony, 7 years ago, was driving behind Pliney and tells the police officer that Pliney had the green light. Later Frank tells an insurance investigator for Dalbert's insurance carrier that the light for Pliney was still red when she entered the intersection.

Pliney sues Dalbert for negligence and Tesla for negligence and strict liability. During discovery Tesla's engineer testifies at deposition that he has improved the passing gear on the model \$\$\$ since the accident, and Pliney learns that Dalbert has three prior speeding tickets within a year of the accident.

The parties attend a pre-trial mediation in an attempt to resolve the case. At the mediation, the Tesla representative says he really wants to settle the case because Tesla has had a lot of complaints about the passing gear in the model \$\$\$\$. The case does not settle.

At trial in a California state court, Pliney offers to call the engineer as a witness and offers to introduce the statement of the Tesla representative at mediation. Pliney offers the statement of Whitney, in the police report that she saw Dalbert run the red light, as a business record. Pliney also calls Frank who testifies that he cannot really remember, but he thinks Pliney had the green light when she entered the intersection. Dalbert confronts Frank with his statement to the insurance investigator that the light was still red when Pliney entered the intersection and asked Frank whether he is a convicted felon.

Pliney offers the statement that Frank made to the police officer, the statement that Dalbert made to her at the scene and the fact that Dalbert has three prior speeding tickets.

Assuming that appropriate objections were made to all offers of evidence set forth above, discuss all evidentiary issues that are raised by the facts and discuss any significant differences under the federal rules.