

Evidence Final Issue Outline
Bruce Kinnison
April 9, 2012

Essay #1

Phil: psychotherapist-patient privilege, exceptions for dangerous patient, non-therapeutic purpose, non-confidential setting vs patient's intent that the communication be private. Hearsay, party admission exception/exemption. Non-issue Tarasoff.

Ollie: Bill's statement: psychotherapist-patient privilege, eavesdropper doctrine, hearsay, admission, excited utterance, multiple hearsay and whether each level satisfied, confrontation, testimonial statement. Unavailability.

Wally re Vic statement: hearsay, dying declaration exception, whether statement related to cause or circumstances of death. 352/403.

Impeachment of Ace:

Arrest for battery: CA vs FRE, moral turpitude act vs act probative of lack of truthfulness.

Sufficiency of arrest without prosecution. Character evidence admissible for limited purpose of showing common plan.

Felony burglary conviction: CA vs FRE. Moral turpitude conviction vs act of dishonesty or false statement. Hearsay re records, exception for official records.

Ned: beaten up by Ace. Likely inadmissible for impeachment, common plan (with battery arrest). Admissibility of Ned testimony.

Wendy testimony: hearsay, spousal and marital privileges, exception for requesting spouse to enable other spouse to crime/fraud. No similar exception for right not to testify against spouse.

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Essay #2

Doctor Dan: Mouth of Truth. Expert opinion, deference to physicians' techniques. Scientific evidence: Kelly vs Daubert. Judge's duty to approve the technique before allowing the jury to consider it. If opinion permitted, effect of hypnosis on any testimony from Ace.

Ozzie testimony: Subsequent repair doctrine. Applicability where use of glasses was not clearly shown. Availability of privilege for optometrist. Availability of privilege where defendant's conduct arguably gave rise to the lawsuit. 352.

Mel the Mechanic: Expert opinion/Qualified work product. Attorney-client privilege applying/not applying to expert mechanic employed by party. Waiver where expert report contains no work product. Waiver by negligent/inadvertent communication to adverse party. Lay opinion re odor of alcohol.

Kathleen: Character evidence, inadmissibility when character is not in issue. Admissibility for non-character purpose, such as habit. Foundation for lay opinion testimony. Availability/non-availability to impeach Ace should Ace testify.