

Evidence Final Issue Outline  
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### **Essay #1**

Mace: Q1: relevance, character evidence, limited purpose absence of consent, knowledge of M premises

Q2: character evidence, lay opinion, mercy rule, foundation, invitation to explain setting up prior inconsistent statement admissible as hearsay exception in CA as well as impeachment in CA and FRE, opponent argue no mercy rule through hearsay, denial of right to present defense, *Chambers v Mississippi*, 352/403

Q3: character evidence for impeachment, specific acts amounting to moral turpitude (CA), involving dishonesty, limited purpose, invitation to explain future inconsistency.

Drunk loss of memory: precludes impeachment by inconsistent statements unless court finds that memory loss was feigned

Ollie: not graded.

Lou: attorney-client privilege, whether Lou's belief of disclosure being necessary to prevent crime likely resulting in GBI or death was reasonable, admissibility of fact of phone call, hearsay/nonhearsay re content of phone call, 352/403

Art: psychotherapist-patient privilege, identity of patient protection, right of privacy, hearsay, 352/403

Ed: lay/expert opinion, foundation for expertise, whether matter is a subject for expert opinion; watching trial as basis for testimony, judge's role as gatekeeper, opinion outside area of expertise, 352/403, *Chambers v Mississippi*

## Essay #2

Wendy: Q1: spousal privileges not to be called when spouse is a party and not to testify against spouse; confidential marital communications; holders of privileges; waiver of privileges; hearsay; state of mind re future plans; nonhearsay; character evidence; limited purpose for knowledge, common plan, motive and intent

Q2: confidential marital communication; must be between spouses, presumption of confidentiality; reasonable expectation of privacy; hearsay; party admission exception.

Q3: confidential marital communication; no waiver; holder, crime/fraud exception

Vic's offer to reconcile: confidential marital communication; presumption of confidentiality; expectation of privacy; exception for seeking to defraud the court?

Dr Ken: expert opinion; qualifications of expert in particular field where testimony is sought; propriety of judge's remarks, effectively making the judge a witness; disqualification of judge as witness; duty of judge to qualify expert based on testimony, not personal experience; effect of absence of other experts in the field, lack of academic publications; *Kelly* new scientific evidence, general acceptance in relevant scientific community test; *Daubert/Sargon* duty of judge to ensure reliability/reliability of principles and methods/absence of speculation; reasonable reliance/*Daubert* criteria tests.