1) Q1 85

======== Start of Answer #1 (1520 words) ======== Q2 80

**Will the prosecution be able to admit evidence of Vic's (V) statement that regarding the robbery and Ace's (A) comment that there were "three down and one to go."**

**Objection - Hearsay.** Hearsay is an out of court statement offered for the truth of the matter asserted.

The prosecution will argue that this is a dying declaration on the part of A. A dying declaration is an exception to the hearsay rule if the statement is made with present knowledge, and the declarant is in immediate fear of impending death. Under the Federal Rules, the Declarant must be unavailable, but not so under CA rules (not really an issue here as V is unavailable in that he is dead). However, a Dying Declaration may only be admissible to the cause and circumstances of his death. A will argue that it took V three days to die and it death was not imminent. However, a dying declaration is taken from the view of the declarant and V had been shot and "thought he might die." Lucid or know, he did end up eventually dying from his injuries indicating they were serious and his fear was justified.

A will argue that the statement to "three down, one to go." should be excluded from a dying declaration, as (1) it does not go to the cause and circumstance of his death and (2) it is multiple hearsay in that V was testifying to what A allegedly said. In order for multiple hearsay to come in, there must be an exception for each level. P will argue this is an admission on the part of A and should come in nand via the dying declaration, should come in. However, it is unlikely that this will qualify as an admission, it is too vague. P will argue that the "three down, one to go" goes to show a common plan. In

that A and W were committing similar acts over the past five years (see below.) This statement connects the three acts and should therefore be admissible.

A will then argue it is unconstitutional to introduce a testimonial statement unless the defendant has to opportunity to cross-examine the declarant, under oath, in front of the fact finder unless the declarant is deemed unavailable to testify, and there has been a prior opportunity to cross-examine. While A is clearly unavailable in the sense that he is dead, he has not be properly cross-examined, However, here the prosecution will argue that the statement of Ace (A) is not testimonial in that Policeman Peter (PP) came upon his in the midst of an ongoing emergency, injured in the parking lot. Nothing in the facts says that PP elicited the statements from V, he volunteered them while PP was rendering aid.

The objection will be over-ruled and the entirety of the statement is likely to come in under a dying declaration, and to show a common plan (see below under W).

**Will the prosecution be able to bring in evidence of Walt's (W) statement that he gave A a ride away from the scene but didn't know what he was doing.**

**Objection - Hearsay, supra. I**

The prosecution may will argue that it this is a co-conspirator declaration and that it should come in under that exception. However, for a co-conspirator declaration, the statement must be made during the commission of and in the furtherance of the conspiracy. A will argue that the robbery was finished when W made his statement implicating A. However, there was still "one to go" so the prosecution will argue the

conspiracy was likely ongoing and therefore the statement was made during the commission. A will argue lack of foundation. The prosecution will then likely argue that the fact that A and W were linked to two other robberies in similar situations is enough to show a sufficiency standard (CA) that the conspiracy existed. Federally, with the statement and the acts in concert, it will likely reach the needed preponderance standard.

The prosecution will also argue the statement is relevant to show a common plan in that two times in the past year, Walt was contacted driving away from the scene, with A after a robbery and $50 was found in Walt's possession. Both times he denied wrong-doing. In order for common plan to come in the acts must be sufficiently linked. Here it appears that the acts are part of a plan to commit four robberies (three down, one to go) and the this statement shows they were acting in conformity of that plan. This could also be used to show intent, in that each of the past events ended in robbery. A will argue there was no arrest, so the acts shouldn't come in. However an arrest is not required so long as the jury finds the past acts occurred to a preponderance standard they can come in.

Finally, W' statement could likely come in to show intent and motive on the part of A in that he stated that A wanted "to collect a debt".

All of these limited purposes could lead to the admission of the evidence.

However, A will argue that W's statement was testimonial and that any statement that would come in would be a violation of the confrontation clause, supra, unless the prosecution produces him to testify under oath. A will argue the statement was testimonial in that it was elicited after Walt was arrested for the purpose of the the investigation against them. Here the prosecution will argue that Walt is unavailable in that he left town. However, there is no evidence that he has been produced for cross-examination in the past, or that teh prosecution made any effort to procure his attendance at trial. He does not meet the qualifications of an unavailable witness.

The Judge will likely sustain the objection. In that W is accusing A of committing the crime, without giving A the opportunity to confront him in court.

**Will the prosecution be able to get in the statement by W that A is "frequently outside the law?"**

Objection: Inadmissible character evidence. See character evidence, infra. This goes directly to A's character is is likely to prejudice the jury in showing he usually acts in a certain way and that in this instance he was liekly also acting "outside the law". It is not probative for any reason other than to show A is a bad guy. The prosecution will argue it goes to intent, in that he would have had a criminal intent to act "outside the law." This arguemnt will fail.

Here the judge will sustain the objection.

**Will the prosecution be able to admit evidence of the past two instances with in the past five years involving Walt, robbery and $50.**

**Objection. Inadmissible character evidence.** Character evidence is generally inadmissible to show the defendant acted in conformity of the specified character trait on the charged occasion. However, it may be admissible for a limited purpose to show something other than character.

Here the prosecution will argue that the evidence will go towards the common plan,

supra. HEre, the details are almost identical, and the plan is likely ongoing. While W's statement's may not come in, evidence of the past two robberies may be admissible as the facts are sufficiently linked and it appears it is all part of an ongoing plan to collect on a debt. A will again argue lack of foundation as there was no arrest. He will further argue that the evidence should be excluded under 352 as it is unduly prejudicial and that the jury will not be able to limit the application of the evidence. However, in determining whether something is unduly prejudicial the judge must weigh the probative value against the prejudice. Here the past acts are highly probative in that the show motive, intent, common plan, among other things. This will not substantially outweigh the prejudice.

The judge will likely over-rule the objections and allow the evidence in. However, A will ask for and receive a limiting instruction that tells the jury they must find the prior acts occured beyond a preponderance of the evidence to consider them towards A and W's common plan.

**Will the Defense be able to admit evidence regarding V's past act of violently attacking a pedestrian for no reason.**

**Objection,** inadmissible character evidence, supra.

A defendant may admit character evidence of a victim to show that the victim acted in conformity with that trait during the charged incident and therefore the defendant's actions were justified. It does not matter whether the Defendant himself knew of this behavior prior to the incident. Therefore, the evidence will likely come in to show that A could have been acting in self-defense. However, the prosecution may rebut with good evidence about the victim and may, under federal rules bring in character evidence as to violence of V to rebut.

The judge will over-rule the objection and the evidence will come in.

======== End of Answer #1 ========

2)

**======== Start of Answer #2 (1148 words) ========**

**Will Pat's testimony that Harry said "I do" and the judge pronounce them man and wife be admissible?**

**Objection: Hearsay.** Hearsay is an out of court statement that goes to the truth of the matter asserted. Here the statement was made out of court, and whether P and H were married goes directly to the heart of the case. The statement could be hearsay. However, under the Verbal Acts doctrine, a statement that is material to the substantive law governing the action may be admitted as a hearsay exception (federally, an exemption). As the words "I do" and " I now pronounce you man and wife" go directly to whether a marriage was valid and occurred, they will likely be admitted under this exception.

The judge will over-rule the the objection and allow the statements in as Verbal Acts.

**Will the certified records of H's wedding to G be admitted into evidence?**

**Objection: Hearsay, supra. Also, Relevance.**

Here these may come in under an exception and they are business records, however H will argue they are not relevant. Relevant evidence is evidence that has a tendency in reason to prove or disprove a disputed fact. Here, the disputed fact is to P and H's marriage, not the marriage of G and H, unless of course H and G were never divorced (then it might be relevant, but that is not mentioned in the facts so it is probably safe to say that they were). P will argue that the document is admissible as it could go to H's habit of getting legally married. A Habit is an individual's typical response to a specific situation. It must be a repeated and semiautomatic. Here, one prior marriage is hardly enough to show a Habit on the part of H.

The judge will likely sustain the objection ruling the evidence irrelevant.

**Will Alice's statement that P and H lived in a "common law" marriage be admissible?**

**Objection: Hearsay, supra.**

This is a statement that goes to the truth of the matter, and it was made by Harry out of court. However, A will argue that this goes to her knowledge and intent in that she did not know that they were legally married and therefore could not have had the requisite intent to commit the tort. As here culpability rests on what she knew or H and P's marriage, the evidence will likely be admissible to show her knowledge, or absence thereof, of Harry's marital state.

The judge will over-rule the evidence and let it in.

**Will Bob's statement that he heard Harry say, "I Don't" when the judge asked him the key question?**

**Objection, Hearsay, supra.**

Here A will argue that it goes towards H's intent to marry P and the knowledge of there marrigae in that he said he didn't want to marry her. However, P will argue A's knowledge is based on H's knowledge and he does not remember saying "I don't." Therefore, this statement does nothing to support his knowledge, and thereby A's knowledge, of the wedding.

Here the judge will liekly sustain the objection.

**Will Bob's statement that H was so drunk at the wedding that he had to prop up H be admissible?**

**Objection: Irrelevance, lack of foundation, unduly prejudicial**

Here P will argue that B says nothing of actually drinking with H and so he has no way of knowing if he was actually inebriated. Furthermore, she will argue it is 352 in that it will mislead the jury and be overly prejudicial. She is likely right. However, B is testifying to direct evidence, that he witnessed H's mental and physical state at the time of the wedding. Assuming that he will testify that H smelled of alcohol or that he actually drank with H, in order to provide foundation of personal knowledge, the evidence will be

admissible.

The judge will over-rule the evidence and it will come in.

**Will the testimony by the judge that he was drinking with Harry prior to the ceremony be admissible?**
**Objection:** Irrelevance.

Here A will argue that the evidence of the judge's inebriated state is irrelevant to whether they were legally married or not. Furthermore, if he did not remember any part of the ceremony, his testimony will not resolve any disputed issue as he cannot testify one way or the other. A will argue that it lends evidence that H was drinking too, and that the whole wedding was one big farce, if even the judge was hammered. She could argue it is relevant in that it goes to the intent (or lack thereof) of the parties and to explain why the judge might have pronounced them man and wife, even if H said, "I don't." This goes to credibility of B's testimony directly, and may help to rehabilitate him, see below. Any evidence that has a tendency in reason to support or impeach the credibility of a witness is admissible. Here, the judge not only confirms H was drinking, but gives a reasoning as to how a sham wedding could have occurred in the first place.

P will argue that the evidence should be excluded pursuant to Evidence Code 352 in that it is unduly prejudicial as the thought of a drunken judge (who drank so much he failed to remember the wedding) is sufficiently shocking to taint the jury's entire perception of the wedding. She will argue that even with a limiting instruction, the judge will not be able to limit the knowledge. However, the prejudice is not outweighed by the

probative value stated above and the evidence should come in.

Here the Court will likely over-rule and admit the evidence for the limited purposes state,

**Will the testimony by T regarding Bob's statement as to how lovely the ceremony was, be admissible.**
**Objection: Hearsay, supra.**

Here, P will argue that this is a prior inconsistent statement that contradicts T's testimony that the wedding was a drunkin' farce, and H said he didn't want to marry P during there vows. In CA prior inconsistent statements can come in for the truth of the matter and for impeachment. In federal court the prior inconsistent statement must have been sworn under oath to come in for the truth, however they are still admissible for impeachment with the proper instruction. Generally, the witness has to be given the opportunity to explain the inconsistencies, and so the proponent of the statement must ask that the witness remain subject to recall in order to admit the testimony through a later witness.

Assuming that P did this, the judge will over-rule the objection and allow the evidence (in Fed, he would add a limiting instruction that it is to be used for impeachment only.

======== End of Answer #2 ========
**END OF EXAM**