1)

Q1 80
Q2 75
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======== Start of Answer #1 (1123 words) ========

1) Introduction of the written evidence Wally gave Ron

The opponent will object on the grounds of hear say. That this was a statement made by a declarant out of court to prove the truth of the matter asserted. And that Wally who write down the statement is unavailible and the defendant will not have a chance to cross examine him. The proponent seeing to introduce this eveidence will state that it is not a statement used for the truth of the matter asserted but was used to aid the police officers in investigating the robbery. The opponent will argue that the statement is testiomonial becuase it was in preperation of a police investigation, and that it would violate the confrontation clause. The confrontation clause states that if there is a testimonial statement (a statement to police or a government offical for the purposes of an investigatio) and if the witness is unavalible and the defendent gets a opportunity to cross examine then the declarant must testify. The propnent will state that this is non testiomnial becasue it wasn't a statement regarding the defendant at all, only a tip from a bystander which is helping the police. It is also relevent because it shows why the police were able to find Ace and Bob. The opponent will ask the judge to condier 352 which states the judge will weigh the evidence and if the probative value is out oweighed by the prejudicial value then the evidence will be inadmissable. In this case the judge will most likley over rule the objection based on the fact that the evidence doess go to to show the truth of the matter that A & B robbeed vic but rather it was information by an eye witness given to the police to help them in their investigation.

2) Introduction of the lineup and Vic's dissaperance.

The opponent will object that this shows bad character evidence. Character evidence is the quality and nature of a person and that they act within their certain triats or attributes. In this case the opponent is going to say that introducing this evidence will show that the juury will assume that becuase of the line up that he is the type of person that would make someone dissapear for indentifying them in the lineup. The proponent

will argue that they are not showing that the defendant has a predisposition to do or not do something, but rather using the character evidence for a non character purpose. They are trying to show that this evidence shows motive because Vic dissaperaed 3 days after making the ID. The opponent will argue that that is prejudicial and will make the Jury form a bias against the defendant and will request that if the judge allows the evidence, it should be for a limited purpose to only show possible motive and not that his client is guilty of making V dissapear. THe judge will most likely overrule the objection, but will give the jury the limited purpose instruction.

3) Ace's prior testimony

The opponet will object based on hearsay grounds because this was a statement made outside of this trial. The proponent will counter that it was an in court statement, and because the declarent who made the statement is in court today he can testify to what he said. The proponent will also argue that they want to impeach A to attack his credability on the stand. The opponent will object by saying that the prosecution does not have any evidence that A was lying or made an inconsistent statement. The jusdge will most likley sustain, however if the prosecution has a information that shows A statement was no accurate they would be able to impeach A regarding his prior testiomy. In this fact pattern it doesn't state whether or not there is contrary evidence that could be used to impeach A.

4) Bob's statement to Ron

The prosecution will object based on hearsay. This comment is made out of court, by a declarant for the truth of the matter asserted. Furthermore Bob is refusing to cooperate so he can be considered unavailble. The defense will argue that because of the mercy rule A is allowed to put on evidence that could exculpate him from the crimes. They will also say that not allowing this testimony will depriive A of a fair trail and fair defense. The judge will over rule the objection because the defense is allowed to put on a affirmative defense, and the prosecution will have the opportunity to cross

examine Ron.

5) Prosecutions rebuttal witness

The opponent will object on the psychotherapist-patient privilge. This privilege states that any communication between a psychotherapist and a patient is privilged. The patient needs to be seeing the therapist in treatment. The opponent will state that this was a private confidential court appointment and the privilge should apply. The proponent will state that court appointed meetings with a psychotherapist are not privileged when the defend offers his state of mind as a defense, and furthermore the reports were sent to the proescution for a plea bargin which waived the privilege because the prosecution is a 3rd party that was not involved with the examination so by providing those findings opened the door for the prosecution to admitt them into evidence. The opponent will object on the work product doctrine. The work product doctrine is any reports, opinions, theories, an attorney makes in preperation for a trail is privileged and can not be admitted. There is absolute WPD which is any of the attorney's personal theroies and reports for trial this may never be admissable. And quailified which may or may not be admissible. Here the opponent will argue that it was his report he was using for trail and was sent by accident to the prosecution and should thereofre not be admissible. This would be a week argument and the proecution would come back with the fact that this was court ordered, it did not involve any of the defenses therioes, and that the defense disclosed it. The defense will state that the prosecution knew or should have known that they wouldn't have sent that report and therefore should have been obligated to send it back to the defense. The judge will order an in camera hearing and determine whether or not this is privileged information. The judge will most likley over rule the objection based in part by the fact that it was a court ordered examination, the defendent opened the door by making his state of mind an issue, and the fact that its really unclear whether the prosection knew if was a mistake and the defense should have checked their material.

W at trial:

First, W could have invoked spousal 1 in order to not appear to testify. Spousal Privilege 1 states that in a proceeding you can choose not to testify when a party adverse to your spouse calls you. She waives this when she appears to testify. Secondly, they are currently seperated. This may go to her motivation to waive spousal 1, but has no other bearing here. As long as they are legally married still, she retains that privilege, even though she does not choose to invoke it at the onset.

W testifies that she was in the truck when he got into the accident. However, she changes her mind and decides not to answer two of P's questions: was D driving too fast, and if after the accident D asked her to say she was asleep in the truck during the incident.

W will claim marital communications privilege in order to avoid answering these questions. She cannot invoke Spousal Privilege 2, as once she invokes 1, she has waived 2. Marital communication privilege (MCP) keeps confidential communications between spouses. It must be waived by both spouses, unlike Spousal Privilege, which only requires that the witness spouse waive. The first question is only about conduct: was D driving too fast. Although direct communications are privileged, this is not. It is merely a question about the conditions at the time of the incident and not protected.

On the other hand, the privilege would extend to the direct comment from D, who requested that W state she was asleep. There is an issue here however. There is an exception to the MCP, for crimes or fraud. THe privilege will keep confidential comments relating to a spouses crimes, such as I am going to kill him, or I just killed him. However, the crime/fraud exception does not extend to communications where one spouse is asking the other spouse to commit a crime. Since D is asking his wife to commit perjury, it is the same as a similar case where the husband asked his wife to destroy his letters from prison. This would not be covered by privilege.

W would need to answer both questions, over objection by D.

W's statements to F about D:

There are three statements W told F after the accident.

"Driving too fast, moving van blinked its high beams"

"D said "I can't see""

"D was familiar with the road, and routinely california stopped the sign"

If W was testifying to these facts, there would be no issue other than the MTC. However, she is not, they're being introduced by F.

D would object to F testifying to these three statements on the grounds that they are hearsay. D's statement "I can't see" is actually multiple levels of hearsay, as it was a statement to W, and then a statement from W to F. In order multiple hearsay to be allowed, you must have valid exception to each level.

The first level, from D to W is satisfied as it was an excited utterance, made with out reflection. It is also narrating his current state of mind. In order for the second hearsay level to be satisified, from W to F, W's statement to F must of occured while W as still under the stress and excitement of the crash. If she hadnt had time yet to reflect, then that step could too be an excited utterance. It could also be a contemporaneous statement, as she might be narrating to F what happened shortly after the crash. If this is satisfied for this statement, then the other two statements should fall within this exception as well. However, if W's statemtents to F occured at a much later of a time, the court might be disinclined to allow them.

In regards to D's statement "I cant see", D would next argue that it is protected by Marital Communications, and F cannot break the privilege. Since both spouses have to waive this, the fact that W told F, does not allow its introduction in court. D will not waive and the exact communication cannot come in. P could use this though, for the purposes of asking W some more questions if she hasnt been fully excused. He could ask her if she was blinded possibly.

D would object to the remaining two statements on the ground that they are bad character evidence. You cannot impugn somoenes character with prior specific instances in order to show their conformitiy with those traits now.

P would state that the fact that he is familiar with the road and california stopped the stop sign is not character evidence, its actually habit or custom.
D would respond that in order to be habit or custom it must be involuntary, and he must do it without thinking every time he comes to that stop sign. That is not the case.

In order for this to be admissible as habit or custom, the court must believe that routinely means almost every time. If that is the case, it will come in.

P would argue that familiarity with the show is being shown for a non character purpose under 1101(b), its just establishing that he knows the road well. That would be allowed in for that purpose.

The statement that D was driving too fast is not character in nature, P would argue that the statement is not made for the purpose that he is a bad driver, just that he was driving too fast at that point.

These three statements are likely hearsay, and will not come in. If W told them to F quickly enough and without reflection, they might then face the next level of challenges.

Then, D's specific comment will not be allowed, and the other two statements would be allowed for non-character purposes.

F also states that D was a miserable driver, a lousy husband and notorious liar

D would object, as this is all character evidence.

In civil cases, you may bring in reputation and opinion evidence in order to show character traits. These three statements all would be opinion evidence and allowed.

D would object that he being a lousy husband is not relevant.
P would argue it now is relevant because we have the testimony from W that D asked her to lie and say she was sleeping, so, although its not relevant for the accident, its relevant to support W's veracity.

On cross there would be an attempt to ask her about being convicted of grand larceny and drug sales. Under beagle this might be proper for drug sales, but I do not beleive that grand larceny is a moral turp crime. THis would be improper questioning. If she believes she is a truthful person would be allowed however. That question in of itself might not get D very far however, as generally speaking most people will say they are truthful, and that does not open the door for him to ask her out of the blue if she has been convicted.

Dr Ted testifies that Pat told him he fell asleep

P would object to this, as it is hearsay.
D would claim that it was made while still excited by the car crash. Further it was made for the purposes of treatment, so it should be allowed to come in.

Judicial Notice of "a person suffering from narcolepsy may experience daytime

naps, which occur with little warning and may be physically irresistible

Judicail notice occurs when an easily verifiable fact will be noticed by the court.

This is not an easily verificable fact. D would need to present an expert witness to support this conclusion. The mere fact taht he asked Dr. Ted to perscribe for his narcolepsy does not establish Dr. Ted as an expert either. Experts need specific training in an area in order to suppor their conclusions. Narcolepsy is not the sort of thing that an ER doctor is trained specifically in. P would object to any notion that he is a psych expert and can diagnose, or perscribe anything for narcolepsy.

This asking for drugs is also a hearsay statement and would also need to fall into an exception. If the statemtent that he fell alseep at the wheel was an excited utterance, or narration of events, that might be allowed. The asking for medication however, shows taht he is reflecting on the situation, thinking about options and the future. Further, there is specifically the danger that he is preparing for this case with both of these cases. Likely P will argue that both statements are not excited utterances and were with deliberation and thought. P will argue that no one in their right mind goes to the ER with serious injuries and is thinking about their need for more sleeping medciations.

I would likely agree that there is no indication that these were excited utterances and should not be allowed. I believe that D was setting up this defense and as such, the comments are too self serving and with too much deliberation to qualify.

Pat's Psych Records:

P will object on privilege.
D will state that P has made his mental state at issue in this case, and as such they are not privileged.
P will argue that his munchosen syndome should not be allowed because it is too

prejudicial.
D will argue that this is fraud, and the records establish that this should be allowed under the crime fraud exception.

P object that this is bad character evidence
D will argue that this is exempted under 1101(b), becuase it goes to show a common plan
P will argue that this is not common plan, and that the car accident and his previous issues are unrelated.

J: I would allow the records, but with a limiting instruction. It is important for the jury to have all the facts, but if the records from 20 years became duplicative, or just excessively prejudicial and not probative, I would shut them down.

======== End of Answer #2 ========

END OF EXAM