

Narrative Answer Questions [total weight is two-thirds of the examination]

Assume the Federal Rules of Evidence apply in all cases unless otherwise indicated.

This section contains three questions. The weight of each question is stated below.

Question 1 [three-fifths (60 percent) of the narrative answer portion of the examination]

[Even if the facts sound familiar to you, consider only the facts provided in the question, not anything you may recall from popular culture.]

Okay, here's the situation, according to the police:

The parents of Prince, a 16-year-old resident of the State of Fisher, went away for a week's vacation, and they inadvertently left behind the keys to their brand new Porsche automobile. Despite knowing he was not allowed to use the Porsche, Prince—who had only recently obtained a license to drive—decided to take the car for a spin. Prince's driving lessons had involved the family's other car, a ten-year-old Ford Escort.

While cruising his neighborhood one Sunday morning, he spotted an attractive passerby and, after honking the car horn to capture her attention, convinced her to take a ride with him. A few minutes later, the passenger encouraged Prince to drive fast, saying, "Speed turns me on." He complied, accelerating to 90 miles per hour. Concurrently, the passenger began to open her shirt, exposing part of her chest, which may explain how Prince failed to notice the police car whose driver soon pulled him over. After his arrest, Prince learned that his passenger—whom Prince previously thought was 18 years of age—was actually a 12-year-old runaway whom police promptly reunited with her parents.

The local prosecutor charges Prince with various offenses, including car theft, reckless driving, and endangering the welfare of a child. He and his parents (who cut their vacation short to retrieve their son from jail) seek a forthright assessment of Prince's legal jeopardy. In particular, they wish to know if the following evidence would be admissible at trial:

- (1) To support the defense theory that Prince was not driving nearly as quickly as the police claims, Prince's mother is prepared to testify that Prince is a careful child unlikely to act in a reckless manner. She is prepared to support her claim by describing how Prince always looks both ways before crossing the street and never enters a car without buckling his seat belt.
- (2) The prosecution wishes to offer evidence that Prince was suspended from his high school last year (for two days) after being caught repeatedly chewing gum in class.

- (3) The prosecution wishes to offer testimony by a professor of mechanical engineering who specializes in the design of fast cars. He would testify that driving 90 miles per hour on a city street is extremely dangerous.
- (4) The prosecution wishes to offer testimony by the mother of the girl who rode in Prince's car. She would testify that her daughter is kind, generous, and diligent.
- (5) The defense wishes to ask the girl's mother about an incident during which the mother was fired from her job after being accused of embezzling money.
- (6) The prosecution wishes to show that Prince's parents had an automobile insurance policy that covered all drivers in the household, including Prince, along with evidence that Prince was aware of the policy's existence.
- (7) Prince wishes to testify that had things gone as planned, he would have returned the Porsche to his parents' garage before they returned from vacation, in the hope that they would never have learned of his use of the car.
- (8) Prince wishes to testify that in his opinion, he was driving around 60 miles per hour when he first noticed the police car.
- (9) The prosecution wishes to introduce the police report prepared by the officer who arrested Prince. In particular, one portion reads: "Radar gun indicated speed of 90 m.p.h." The officer cannot remember the details of Prince's conduct (such as the speed of Prince's car) but is prepared to authenticate the report.
- (10) The defense wishes to offer testimony from a passerby who saw the traffic stop at which Prince was arrested. The passerby would testify that when the girl exited the car, she did not seem upset or distressed.
- (11) The defense wishes to offer testimony from the same passerby about what the arresting officer said to Prince. Specifically, the passerby is prepared to testify that the officer said, "How could someone like you afford a car like this?" Further, the passerby recalls that after Prince produced evidence that his parents owned the car, the officer said, "Well, that won't help you very much."

[Question 2 begins on the next page.]

Question 2 [one-fifth (20 percent) of the narrative answer portion of the examination]

Delilah Decedent has died, and there is a dispute related to her estate. In particular, Kent Kadish has produced what he claims is Decedent’s will, and the document leaves the entire estate to Kent. Decedent’s daughter believes the will is fake. In the alternative, the daughter argues that Decedent was incompetent when she executed it.

You represent Kadish.

- (1) You have the disputed document. What might you do to prove that it is real?
- (2) You have a letter sent by Decedent on the same day that the will was allegedly executed. The letter was mailed to Decedent’s high school classmate in California, and it concerns boring things like what Decedent did during the previous week, such as getting her car’s oil changed. Is the letter admissible in the will dispute case?

Question 3 [one-fifth (20 percent) of the narrative answer portion of the examination]

You are a clerk to the chief justice of your state, and your state has not yet enacted rules of evidence. The state legislature has recently enacted a law authorizing the state’s supreme court to codify the state’s evidence law into written rules.

Today your boss sent you an email message, which reads:

With respect to the use of deposition testimony at trial, some of my fellow justices believe that we should adopt a rule identical to the one in the Federal Rules of Evidence. Others believe that we should adopt a rule similar to that of Missouri.

For your reference, I will quote the relevant portion of the Missouri statute, which provides:

“Any part of a deposition that is admissible under the rules of evidence applied as though the deponent were testifying in court may be used against any party who was present or represented at the taking of the deposition or who had proper notice thereof. Depositions may be used in court for any purpose.”

What do you think we should do?

Provide the text of your response to the Chief.

[END OF NARRATIVE ANSWER SECTION.]

[END OF EXAMINATION.]