EMPIRE COLLEGE OF LAW
EVIDENCE CLASS
FALL 2025
Prof. V. Dewan

MID-TERM EXAMINATION

INSTRUCTIONS

This examination is timed for 3 hours. It is closed-book. You are not permitted to use study aides, codes, case law, or online research of any kind.

ESSAY INSTRUCTIONS:

Read each essay carefully before beginning work. If the essay calls for the California Evidence Code (CEC) analysis, do not include a Federal Rules of Evidence (FRE) analysis; and vice versa.

If an essay prompt does not indicate whether the issues should be analyzed under CEC or FRE, assume you are to analyze both.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

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ESSAY QUESTION 1

Luis, a construction worker, died after falling from scaffolding at a high-rise project. His family has filed a wrongful death action in California state court against Titan Builders, Inc.

During trial, the following evidence issues arise:

A coworker, **Witness A**, testifies that the day before the accident, Luis told him the scaffolding had been shaking all week, and that Titan's supervisor told Luis to "shut up and deal with it."

A bystander, **Witness B**, recorded cellphone video of the scaffolding collapse. The video also captures a passerby shouting, "That thing was about to fall for days!"

Titan calls an **expert engineer** who intends to testify that the collapse was caused by Luis ignoring safety instructions. The expert's opinion is based on reviewing photographs of the site and OSHA reports that have not been admitted into evidence.

The plaintiffs seek to introduce an **internal Titan email** from one supervisor to another, stating: "Our scaffold supplier warned us about defects last month, but I didn't want to pay for replacements."

Plaintiffs move to compel testimony from Titan's **in-house counsel** regarding management's knowledge of prior scaffold failures. Counsel refuses, claiming privilege.

Identify and analyze all evidentiary issues raised under the **California Evidence Code (CEC)**.

Discuss the admissibility of each item of evidence, addressing both major issues and any sub-issues that may arise.

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ESSAY QUESTION 2

Patricia sues Dr. Nguyen, a psychiatrist, in California state court for malpractice, alleging that his negligent treatment caused her husband, Mark, to commit suicide.

During trial, the following evidence disputes arise:

Patricia seeks to testify that "Mark often told me Dr. Nguyen never listened to him and just prescribed pills."

Patricia also offers Mark's handwritten **journal entries**, where Mark wrote: "Dr. Nguyen ignored my cries for help" and "I feel abandoned by my doctor."

Patricia calls an **expert psychiatrist** to testify that Dr. Nguyen's care fell below the standard of care. The expert plans to rely heavily on published medical articles and another psychiatrist's prior deposition testimony from a different lawsuit.

Dr. Nguyen calls his **assistant**, who testifies that she overheard Patricia telling Mark after one session, "Don't forget, we need to make this doctor look bad so we can sue." Patricia denies making the statement.

Patricia subpoenas Dr. Nguyen's **therapy notes**, but he refuses to produce them, citing patient-physician privilege.

Identify and analyze all evidentiary issues under the **California Evidence Code (CEC)**. Discuss the admissibility of each item of evidence, addressing both major issues and any relevant sub-issues.

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ESSAY QUESTION 3

Defendant Jordan is on trial in federal court for armed bank robbery. The prosecution and defense raise the following evidentiary disputes:

A bystander, **Witness A**, testifies that immediately after the robbery, another unidentified customer shouted, "That's Jordan — I went to high school with him!"

The government offers **security footage** of the robbery. The video also records a teller yelling, "Don't shoot — I know you've done this before!"

Police recovered a **handwritten note** at the scene reading, "Give me the money or people will die." An FBI handwriting expert will testify that the handwriting matches Jordan's.

The defense calls Jordan's **mother**, who testifies, "Jordan is a peaceful person who would never rob a bank."

In rebuttal, the prosecution seeks to introduce evidence that Jordan was convicted two years ago of assault with a deadly weapon.

The prosecution calls a **ballistics expert** who testifies that the shell casing found at the bank matches a firearm recovered from Jordan's apartment. The expert relied in part on data from another analyst's report that was not admitted.

The defense subpoenas the prosecution's **lead FBI case agent** to testify about investigative errors. The government objects, citing law enforcement privilege and arguing that disclosure would compromise ongoing investigations.

Identify and analyze all evidentiary issues under the **Federal Rules of Evidence (FRE)**. Discuss the admissibility of each item of evidence, addressing both major issues and any relevant sub-issues.

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ID:	(Student ID)
Exam Name:	Evidence-ECL-F25-Dewan-os
Exam Date:	Dec 8, 2025
File Name:	_Evidence-ECL-F25-Dewan-os_20251208_final.xmdx
Exam Length:	181 minutes (Started @Dec 8, 2025, 6:30 PM; Ended @Dec 8, 2025, 9:32 PM)
Downloaded:	Dec 7, 2025, 6:14 PM
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GRADE	_____

Total Number of Words in this Exam = 3277
Total Number of Characters in this Exam = 19708
Total Number of Characters in this Exam (No Spaces, No Returns) = 16440

presence of the jury. It is likely that the judge will find that the engineer may testify, but if they want to be able to discuss how they formed the opinion, the photographs and reports must be submitted into evidence first.

Titan Internal Email 5/10

The plaintiffs want to introduce an internal email between two Titan supervisors implying that they knew about the defects, but did not want to pay for it to be replaced. The first objection the defense would raise is that this is **hearsay** (supra) The email is an out-of-court statement because it was not made in court during the time of the trial, and is being offered for the truth because the plaintiff is trying to show that Titan knew of the problem and did not want to fix it, leading to the decedent's death. The plaintiffs will likely attempt to admit this under the **business records exception** to hearsay. Under this exception, the document (the email) must be something that is a record kept in the routine practice of the business. Here, it is unlikely that the court will consider this a business record as it is merely an email between supervisors. The plaintiff would also need to bring someone in to testify as to the authenticity of the email. The defense will again raise a **352** objection that this email is unduly prejudicial to Titan as it is attempting to show that they knew and purposely did not want to pay to fix it. For these reasons, it is unlikely that the email will be admissible.

Missing party of P. state. This is huge.

In-House Counsel

15/15

The plaintiffs want to move to compel Titan's in-house counsel to testify against their own client. The defense will object citing **attorney-client privilege.** The communications between an attorney and their client (in this case Titan) are privileged. The defense will have to show the relationship between the in-house counsel and Titan. It is likely that Titan's in-house counsel will not testify.

2) TOTAL 48/55 = 87%

Patricia's Testimony

Patricia wants to testify that the decedent, her husband, told her the defendant did not "listen to him and just prescribed pills." The defense will object to this statement because it is **hearsay**. Hearsay is an out-of-court statement offered for the truth of the matter. Here the statement that the decedent made is out-of-court, because it was not said in court, it was said prior to his death. Patricia is bringing this statement to court to show that Dr. Nguyen did not properly care for her husband, which is offering the statement for the truth of the matter. The plaintiff will try to admit this statement using a hearsay exception, but none will apply. The defense will also object to the statement under **CEC 352** claiming that this is unfairly prejudicial to Dr. Nguyen. Under CEC 352, admissible evidence may be excluded if its probative value is substantially outweighed by a danger of one or more of the following: unfairly prejudicial, misleads the jury, confuses the issue, undue delay, wastes time, needlessly presents cumulative evidence. This statement is also likely to be objected to because it attempts to talk about the **ultimate issue**. For these reasons, it is unlikely that the statement will be admissible.

Mark's Handwritten Journal Entries

Patricia also wants to admit the decedent's handwritten journal entries. The first objection the defense will raise is that these fall under **hearsay** (supra), however the plaintiff will attempt to admit the journal entires under the **family records hearsay exception**. This exception allows statements to be admitted if they are in something that a family book would keep (in this case, the journal), it is in the writing of a family member, and it is about the subject in dispute. Here, the journal is something that the family would normally keep. The facts also tell us that the journals are in the decedent's own handwriting, and the entries are relevant with the matter at hand. It is likely, that these entries will be admitted under this hearsay exception. The defense could object under the **rule of completeness** to ensure that all of the journal entries are admitted. Under the rule of completeness, if one party admits a part of a written or recorded statement, then the adverse party may require the remainder of the evidence to be admitted to ensure fairness. The defense could also object on **352** that it is unfairly prejudicial to their client. It is likely that these journal entries will be admissible.

Patricia's Expert Psychiatrist

13/15

Patricia wants to call an expert psychiatrist to testify that the doctor's care fellow below the standard of care. The first objection that the defense will raise is that there should be a **preliminary hearing** to determine if the psychiatrist is qualified to testify and if their methodology is appropriate. In a preliminary hearing, a judge determines preliminary questions regarding a witness's qualifications, accuracy, and voluntariness of statements. Either party may request a preliminary hearing, but the preliminary hearing must be conducted outside the presence of the jury. An **expert** can testify, but they must be **qualified** to do so. Their special knowledge must assist the trier of fact, they also must base their opinion on enough relevant facts, reliable methods of testing, and reliable application of those methods of testing (***Daubert***). In California, an expert may use **case-specific evidence** to form their opinion, but they may not talk about this case-specific evidence in front of the jury unless is has been independently admitted prior to the expert's testimony (Sanchez). The judge will need to determine if the methods for which the psychiatrist came to their opinion is based off enough facts, and reliable methods of testing. Here, the psychiatrist plans to use published medical articles and the testimony of another expert psychiatrist in a different lawsuit. The medical articles will probably be sufficient methods for forming their opinion because they are published and therefore are considered reliable, but the defense will likely object to the prior testimony of a different expert in a different lawsuit because it is not relevant to this case, and wastes time (352). They might argue that instead of this expert, that Patricia should have had the other expert testify instead. It is likely that the judge will allow the expert psychiatrist to testify but not about the prior deposition testimony from another expert in a different testimony.

Dr. Nguyen's Assistant's Testimony

The defense wants to introduce testimony from Dr. Nguyen's assistant that she overheard Patricia tell the decedent that they "need to make the doctor look bad so they can sue." The first objection the plaintiff will raise is that this statement is **hearsay**. The statement was made out-of-court because it was made before the decedent died and the statement is being offered for the truth of the matter, whether the doctor was negligent in their care of the decedent. The plaintiff will

15/15 INTERESTING!

argue that this statement cannot be let in because she has a spousal privilege with the decedent. This however is likely not enough because she would have said it in front of other people, making the statement no longer privileged. One exception that the defense could raise is that the statement was an **opposing party statement**. An opposing party statement is not barred by hearsay if the person making the statement was made by a co-conspirator during a co-conspiracy. It is likely that this statement will be inadmissible.

Good!! yes

Missing character and analysis

Dr. Nguyen's Therapy Notes

10/10

Patricia wants to Dr. Nguyen's therapy notes to be produced at trial. Dr. Nguyen objected citing **doctor-patient privilege.** This might not bar Dr. Nguyen from producing his therapy notes though because the decedent is dead and he now owes no duty to keep the information privileged. His notes are also being used in a medical malpractice case, which they would be use to defend himself. Therefore, even though he had a relationship and a duty to the decedent while they were alive, he now does not owe that duty and will likely have to produce the therapy notes.

Good

3)

Witness A 40/85 = 47%

10/15

Witness A is to testify about a statement they heard another unidentified person identify Jordan, the defendant. The first objection that the defense will make is that the statement is **hearsay**. Hearsay is an out-of-court statement offered for the truth of the matter. Here, the statement was made out-of-court because it was made immediately after the robbery and is being made for the truth of the matter, showing that Jordan was the armed robber. Furthermore, this statement has **multiple levels of hearsay** which are required to each have their own exception to be admissible. The first level of hearsay, is the unidentified customer that shouted the original statement that the armed robber was Jordan. The defense will argue that this level of hearsay is admissible under either the **Present Sense Impression (PSI) exception** or the **Excited Utterance exception**. In both of these exceptions, the declarant (person who made the statement) had to make the statement at or shortly thereafter the incident occurred. Here, the facts tells us that Witness A heard the customer make this statement immediately after the robbery,

NO THERE IS ONLY ONE LEVEL

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ID:	(Student ID)
Exam Name:	Evidence-ECL-F25-Dewan-os
Exam Date:	Dec 8, 2025
File Name:	_Evidence-ECL-F25-Dewan-os_20251208_final.xmdx
Exam Length:	181 minutes (Started @Dec 8, 2025, 6:30 PM; Ended @Dec 8, 2025, 9:32 PM)
Downloaded:	Dec 7, 2025, 7:15 PM
Uploaded:	Dec 8, 2025, 9:32 PM
GRADE	_____

Total Number of Words in this Exam = 4316
Total Number of Characters in this Exam = 25946
Total Number of Characters in this Exam (No Spaces, No Returns) = 21655

TOTAL: 60/65 = 92%

1)

1. Witness A Testimony 15 P./15

A **witness is deemed competent to testify** unless they cannot understand the obligation to tell the truth or cannot convey relevant information. A witness must have personal knowledge and must make an oath or affirmation to tell the truth.

Here, the facts are limited and do not indicate any uncertainties with A's competency. A appears to be providing relevant information regarding the event and assuming he was sworn in, is deemed competent to testify. A also has personal knowledge of the conversation that he had with Luis ("L").

Evidence is relevant if it has any tendency to make a fact more or less probable and that fact is of consequence to the case. **Relevant evidence is admissible** unless excluded by law or CEC 352.

A is testifying about a statement from L that directly ties into the claim for wrongful death. The statement is relevant because it discusses the scaffolding being shaky all week, and was a day before L died after falling from said scaffolding. Accordingly, the testimony is relevant. However, A's testimony is likely to be objected to by Titan Builder's ("T") attorneys for hearsay.

Hearsay is an out of court statement offered for the truth of the matter asserted. Here, A is offering testimony about a statement from L, a statement which was an out of court statement, and A is offering it to show some fault on the side of T, making it offered for the truth of the matter. Accordingly, this testimony is subject to hearsay. However, just because a statement is hearsay, does not not mean it cannot become admissible by one of the many **hearsay exceptions**. Hearsay includes many exceptions, including but not limited to present sense impression, excited utterance, state of mind, past recollection recorded, business records, etc. Here, the facts do not give any indication that the statement from L falls under a specific exception. It is more likely than not that L's lawyers will try to admit this statement under the facet of party opponent statement.

A statement may be admissible as a **party opponent statement** if it was made by the opposing party, adopted by the opposing party, authorized by the opposing party, or made by an employe or agent of the opposing party within the scope of their relationship. The facts here tell us the one of T's supervisor's told L to "shut up and deal with it." As T's supervisor, this a statement made by an employee/agent within the scope of their relationship. The statement is likely admissible under party opponent statement. T's lawyers can still make an objection under CEC 352.

Under CEC 352, **relevant evidence may be excluded** if it's probative value is substantially outweighed by the dangers of one ore more of the following occurring: (1) **unfair prejudice**, (2) **confuses the issues**; (3) **misleads the jury**; (4) **undue delay**; (5) **wastes time**; or (6) **needlessly presents cumulative evidence**. Here, if the testimony is allowed, it could be unfairly prejudicial to T and mislead the jury into thinking these are the type of orders T gives it's supervisors in how to handle safety complaints by employees. However, taking the facts as they are, it is more likely than not that the testimony and statement are admissible.

2. Witness B Video Evidence.

Relevant evidence and **hearsay** supra.

B wants to introduce a cell phone video footage of the scaffolding collapsing. Assuming this evidence was hashed out in motions in limine and a ruling was made to admit the video into evidence, the contents of the video may still be subject to hearsay. Here, there is a statement in the video by a bystander. Even if the video is admitted into evidence, this particular piece of the video is still subject to objection for being hearsay. L's lawyers may try to allow this testimony in under ~~**present sense impression (PSI)**~~ or excited utterance.

A **PSI** statement is admissible despite hearsay if the **declarant made the statement while or immediately after perceiving an event,** describing what they observed. It requires personal perception and that it be made while or immediately after the event. Excited utterance is a statement made by the declarant in response to a startling event made while under the stress of excitement and the statement is related to the event. Here, both of these exceptions could apply to the statement because the bystander made the statement while the scaffolding was collapsing, and he was stating what he was perceiving at the time. It could constitute an excited utterance as well because it was made under the stress of excitement of watching the scaffold fall.

T's lawyers are still likely to object on 352 grounds as unduly prejudicial because the video could be unfairly prejudicial as it could inflame the jury. They could also challenge the chain of custody making an argument that the chain of custody was disrupted and the video is not reliable. However, under the current set of facts, it is more likely than not that the statement in the video is admissible.

3. Expert Testimony.

An **expert** may testify if qualified by knowledge, skill, training, experience, or education and their specialized knowledge assists the trier of fact. An expert's testimony must be based off **sufficient facts and data**, must use reliable methods, and those methods must have been applied reliably (***Daubert***). In civil cases, experts may opine on the **ultimate issue** (except as to intent), In California, an expert may not discuss **case specific hearsay** in front of the jury unless it has been admitted by some other means (***Sanchez***).

An expert can rely on material observed or made available to them, even if inadmissible so long as an expert in that field would reasonably rely on such material. An expert can also opine without disclosing all underlying facts unless the court says otherwise. They must disclose such underlying facts if asked on cross, and the foundation for the expert must be laid out on direct.

Relevance supra.

Here, the expert is an engineer. Although the facts are limited, an engineer is likely qualified to testify as to safety requirements for scaffolding, and he is not opining on the injury itself, rather the safety methods that could have prevented the injury. The facts also tell us that he reviewed photographs of the site and OSHA reports that have not been admitted into evidence. The expert can rely on this data, but has to be very careful not to discuss this data in front of the jury, unless it becomes addicted by some other means throughout the trial. It is likely that this expert opinion is admitted.

T's lawyers may try to find a way to challenge the experts methods or reliability as an expert, but the facts are silent as to what, if anything, could lead to a successful challenge.

4. Internal Email.

Hearsay supra. Party opponent statement supra.

A business record may be admissible despite hearsay if it is made at or near the time of the event, made during the regular scope of business, by a custodian of records or authorized agent that can attest to it's foundation and authenticity.

This email is hearsay because it is an out of court statement offered for the truth of the matter. L's lawyers will argue that this falls under a party opponent statement because it was between two supervisors within the scope of their employment. T's lawyers will likely argue to exclude the internal email claiming it is extremely prejudicial (352) and may try to make an argument for privilege. L's lawyers could try to get this in under conditional admittance subject to later proof, but would have to make sure they can get this fact in.

5. Compelling In-House Counsel Testimony.

Attorney client communications and work-product are subject to **privilege** and are generally not admissible. Privilege can be waived if there is an intentional disclosure but inadvertent disclosures are inadmissible if reasonable steps were taken to protect the privilege. There are no facts that indicate that there was an intentional waiver of privilege, and since there is a direct relationship between T's in-house counsel and T as attorney client, it is likely that the privilege is upheld and the testimony cannot be compelled.

2)

1. Patricia ("P") Testifying as to Mark's ("M") Statements

Evidence is relevant if it has any tendency to make a fact more or less probable and that fact is of consequence to the case. **Relevant evidence is admissible** unless excluded by law or CEC 352. Under CEC 352, **relevant evidence may be excluded** if it's probative value is substantially outweighed by the dangers of one ore more of the following occurring: (1) **unfair prejudice**, (2) **confuses the issues**; (3) **misleads the jury**; (4) **undue delay**; (5) **wastes time**; or (6) **needlessly presents cumulative evidence**.

Hearsay is an out of court statement offered for the truth of the matter asserted. However, just because a statement is hearsay, does not not mean it cannot become admissible by one of the many **hearsay exceptions**. Hearsay includes many exceptions, including but not limited to present sense impression, excited utterance, state of mind, past recollection recorded, business records, etc.

P seeks to testify to a hearsay statement. M's statements to P were out of court and P now seeks to introduce them for the truth of the matter. One issue with this testimony is that there is no quantifiable number of times this particular statement was made. P claiming that M "often"

TOTAL: 70/85 = 82%

3)

1. Witness A. 15/15

A **witness is deemed competent to testify** unless they cannot understand the obligation to tell the truth or cannot convey relevant information. A witness must have personal knowledge and must make an oath or affirmation to tell the truth.

Evidence is relevant if it has any tendency to make a fact more or less probable and that fact is of consequence to the case. **Relevant evidence is admissible** unless excluded by law or FRE 403. Under FRE 403, **relevant evidence may be excluded** if it's probative value is substantially outweighed by the dangers of one ore more of the following occurring: (1) **unfair prejudice**, (2) **confuses the issues**; (3) **misleads the jury**; (4) **undue delay**; (5) **wastes time**; or (6) **needlessly presents cumulative evidence**.

Hearsay is an out of court statement offered for the truth of the matter asserted. However, just because a statement is hearsay, does not not mean it cannot become admissible by one of the many **hearsay exceptions**. Hearsay includes many exceptions, including but not limited to present sense impression, excited utterance, state of mind, past recollection recorded, business records, etc. A present sense impression (**PSI)** statement is admissible despite hearsay if the **declarant made the statement while or immediately after perceiving an event,** describing what they observed. It requires personal perception and that it be made while or immediately after the event. **Excited utterance** is a statement made by the declarant in response to a startling event made while under the stress of excitement and the statement is related to the event. **State of mind** exception is admissible as the declarants then existing motive, intent, emotion, or physical condition, but statements of memory or belief cannot be used to prove past events.

Witnesses A's testimony is hearsay. The statement made by the unidentified customer was made during the robbery (outside of court) and is now being offered for the truth of the matter asserted (that Jordan committed the robbery). The prosecution will argue this statement should be admitted under either PSI, Excited Utterance, or State of Mind. For PSI, the prosecution will argue that the customer made the statement during the course of the robbery taking place (personal perception at the time of the event). The prosecution can also argue excited utterance, that the statement was made at the time of the robbery while the customer was under the stress of excitement, and the statement does relate to the event (robbery). The prosecution will argue state of mind because the statement covers the customer's then existing emotion to the event.

EXCELLENT!

The defense will likely timely and specifically object on the grounds of 403 and argue that this statement is unfairly prejudicial because it identifies the defendant based off Witnesses A's statement they overheard from an unidentified customer. The defense has no opportunity to confront the original declarant. However the declarant need not be present to testify. Nonetheless, it is likely that this testimony is subject to FRE 403 because it would be prejudicial to the defendant due to being identified by an unidentified customer.

2. Security Footage.

Evidence is relevant if it has any tendency to make a fact more or less probable and that fact is of consequence to the case. **Relevant evidence is admissible** unless excluded by law or

5/15

FRE 403. Under FRE 403, **relevant evidence may be excluded** if it's probative value is substantially outweighed by the dangers of one ore more of the following occurring: (1) **unfair prejudice**, (2) **confuses the issues**; (3) **misleads the jury**; (4) **undue delay**; (5) **wastes time**; or (6) **needlessly presents cumulative evidence**.

Nursing Auth. & Excited Ut.

Here, the security footage is relevant because it clearly relates to the bank robbery. However, just because the footage is admissible, it doesn't mean that portions of it's content cannot still be excluded. The statement by the teller is extremely prejudicial to Jordan ("J"). The facts are limited as to how the tell her had knowledge that J had done this before. Without establishing this knowledge, the statement is purely speculative. Because of this, it would be subject to FRE 403 and it will likely be inadmissible.

3. Handwritten Note.

15/15

Here, the note needs to be authenticated. Based off the facts, it doesn't appear that J has admitted to this note as something he created since there is an expert testifying to this. The defense can object to this note for lack of authenticity and questionability as to it's origins. They can further object on FRE 403 grounds that admitting the evidence will be prejudicial due to a lack of authenticity. However, it may still be conditionally admitted subject to later proof, which the prosecution has already set up by providing an expert.

An **expert** may testify if qualified by knowledge, skill, training, experience, or education and their specialized knowledge assists the trier of fact. . An expert's testimony must be based off **sufficient facts and data**, must use reliable methods, and those methods must have been applied reliably (***Daubert***). In criminal cases, an expert cannot opine on the ultimate issue, but in civil cases, objective opinions are allowed (except as to intent). The facts are limited in terms of the facts and data reviewed by the experty and the methods applied to the case. However, assuming the expert abides by the Daubert standards, it is likely that the expert's testimony is admissible to tie the note to J.

The prosecution could also attempt to admit the statement in the note as a party opponent statement. A statement may be admissible as a **party opponent statement** if it was made by the opposing party, adopted by the opposing party, authorized by the opposing party, or made by an employe or agent of the opposing party within the scope of their relationship. However, this is likely a stretch since there seems to be a dispute as to the creation of the note, and therefore, it is not 100% clear that it is a statement made, adopted, or authorized by J.

4. Testimony from J's Mother.

15/15

Character evidence is generally inadmissible to show propensity, but it can be admissible for non-propensity reasons such as to show motive, intent, or identity. In criminal cases, only the defendant can introduce "good" character evidence, but doing so opens the door for the prosecution to rebut with their own character evidence. Here, J is introducing his mother to testify that he is a peaceful person who would never rob a bank (all signs of "good" character). J has now oppened the door for the prosecution to rebut with their own character, which they do. The prosecution is also allowed to introduce evidence of prior convictions if they are relevant. Felonies are typically automatically allowed while misdemeanors are usually allowed for crimes of moral turpitude. J's lawyers will object that allowing the prior conviction will be extremely prejudicial to their client (403) and that propensity evidence is not allowed to show that J acted the same way on the occasion in question because of his past behavior/traits. However, they

Very good.

have opened the door for this evidence to come in. The prior conviction is relevant, and quite recent, as the facts indicate it was two years ago. Although the conviction is for assault with a deadly weapon and not armed robbery, it is still likely admissible for non-propensity purposes such as to show motive, intent, or identity. If the weapon used in the prior assault is the same weapon used in the bank robbery, it could show identity, making the introduction of the prior conviction admissible.

5. Ballistic's Expert. 10/15

An **expert** may testify if qualified by knowledge, skill, training, experience, or education and their specialized knowledge assists the trier of fact. . An expert's testimony must be based off **sufficient facts and data**, must use reliable methods, and those methods must have been applied reliably (***Daubert***). In criminal cases, an expert cannot opine on the ultimate issue, but in civil cases, objective opinions are allowed (except as to intent). An expert can rely on material observed or made available to them, even if inadmissible so long as an expert in that field would reasonably rely on such material. An expert can also opine without disclosing all underlying facts unless the court says otherwise. They must disclose such underlying facts if asked on cross, and the foundation for the expert must be laid out on direct.

WHAT ABOUT THE OTHER EXPERT'S REPORT?

If the analyst report is one that a reasonable expert in the field would reasonably rely on, then there is likely no issue since the material or data relied upon by the expert does not need to be admissible for the expert to give their opinion. Now, the expert has to be careful when testifying and can only disclose inadmissible facts or data to the jury if its probative value outweighs prejudicial effect. The bullets matching is extremely relevant to the subject matter of the case. It is likely this testimony is admitted.

6. Lead FBI case agent testimony. 10/10

Privileged communications, such as attorney client, spousal, clergy, psychotherapist patient are generally inadmissible. Here, law enforcement is claiming a privileged that is not one recognized by law. The fact that there were investigatory errors is completely relevant to making J's innocence more true. Accordingly, it is likely that the FBI case agent will be compelled to testify. The prosecution could still object as to FRE 403, but it is not likely that they will be successful.

END OF EXAM