

## Courtroom Evidence Practice Exam

1. Which of the following correctly describes what a jury may do if evidence is suppressed?
- A. The jury may fully consider evidence that is suppressed.
  - B. The jury may not consider evidence that is suppressed.
  - C. The jury may consider evidence that is suppressed, but cannot give it the same, full consideration as other evidence.
  - D. The jury may not consider evidence that is suppressed, but the lawyers may refer to it as “evidence in the case.”

**Correct Answer:** B. A suppression hearing is held in the presence of the judge. The jury is not present. If the evidence is suppressed, that means that the evidence is not admissible and the jury will not know about that evidence. Since the evidence is not admitted, the lawyers cannot refer to it in the case.

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2. What occurs after there is an objection to evidence at a trial?
- A. Because there is an objection, the evidence will not be admitted.
  - B. Because there is an objection, the evidence will be admitted.
  - C. If the judge sustains the objection, the evidence will be admitted.
  - D. If the judge overrules the objection, the evidence will be admitted.

**Correct Answer** D. When there is an objection to evidence, the judge must rule on the objection. When an objection is sustained (the judge agrees to the objection), the evidence will not be admitted. If the judge sustains the objection (agrees to the objection,) the evidence is not admitted. A jury cannot consider evidence when the judge sustains an objection.

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3. The U.S. Government is prosecuting a murderer who killed some doctors. During the trial, the AUSA plans to offer a weapon, found at the scene and registered to the defendant. In order to get the weapon admitted into evidence, the AUSA must:

- A. Offer the testimony of a witness that the weapon was recovered at the scene.
- B. Offer a picture of the weapon to save time.
- C. Not offer the murder weapon unless the defendant takes the stand and admits that it is his weapon.
- D. Not offer the murder weapon since the only way to get the rifle admitted is through the testimony of an expert witness.

**Correct Answer:** A. A the party offering an item into evidence is required to lay a foundation for it. A proper foundation consists of evidence, usually in the form of testimony, that the item is what the party offering it claims it to be. In this case, a foundation is laid through the testimony of a witness who can testify from personal knowledge that the exhibit being offered in court is the one they saw, seized, or collected. Answer B is not correct, because, while the photo might be admitted, it won't get the weapon admitted. Answer C is incorrect because it is not a requirement that the defendant take the stand and admit it is his weapon. In fact the defendant has the right not to take the stand and testify. Answer D is incorrect because it is not a requirement that an expert testify in order to lay a foundation for this evidence.

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4. Evidence was seized during the execution of a search warrant. If a chain of custody is properly prepared for the item, does that eliminate the need to lay a foundation?

- A. Yes, a proper chain of custody satisfies all admissibility requirements.
- B. Yes, provided that the person who seized the evidence is the first person on the chain of custody form.
- C. No, a foundation is still required.
- D. No, the seizure of the evidence must be attested to by a corroborating witness.

**Correct Answer:** C. For physical evidence to be admissible in court, there must be a showing that it is authentic, that is, some evidence the item is what its proponent claims it to be. In court, the process of authenticating the evidence is called "laying the foundation." A foundation is laid by the AUSA based on facts collected by officers and agents. A foundation can be laid in two ways. The first way is to have a witness testify as to their personal knowledge. In the case of seized evidence, this will usually be the officer who first seized the evidence. The other method of authentication is through self-authentication for public records and reports or business records. Even when a proper foundation is laid, it is still necessary to be able to fend off claims of alterations to the evidence or mishandling. That is the purpose of the chain of custody. Answer C is the correct answer because even if the chain of custody is correct, a foundation must still be laid in court. Answer A is incorrect because a chain of custody does not satisfy authentication requirements. Answer B is incorrect because even though the first person on the chain of custody is usually the person who seized the evidence (and would lay the foundation in court), the foundation must still actually be laid in court with that witness testifying. Answer D is incorrect because there is no rule that the seizure of evidence must be attested to by a corroborating witness.

5. Despite his checkered past, Cynthia decided to marry Mark. On their honeymoon to Las Vegas, she saw him brazenly steal a vending machine with \$1,000 of postage stamps inside. Although he never talked to his wife about the crime, Mark's new family obligations led him to talk to his psychotherapist about the crime during therapy and confess it to his priest as well. After being caught, he told the whole story to the lawyer appointed to represent him at his initial appearance. Not liking that lawyer's advice, Mark fired her and hired another lawyer. On the morning of his federal trial, he sees his wife, his psychotherapist, his priest and his first lawyer entering the prosecution witness waiting room. Which witness is he least likely to be able to prevent from testifying by solely by applying the law of privileges?

- A. His wife.
- B. His psychotherapist.
- C. His priest.
- D. His first lawyer.

**Correct Answer:** A. (His wife.) Cynthia can refuse to testify against her husband. If Cynthia waives that privilege, she will be allowed to testify about what she saw (but not about what Mark may have told her.) Mark can prevent testimony about his admissions to his psychotherapist and his priest since he is the holder of these privileges. He can also prevent his first lawyer from testifying about their confidential communications, even though he later fired that lawyer.

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6. A 22-year-old son is visiting his mother and father. While sorting his laundry, his mother finds a suspicious vial of pills in his pants pocket. She takes them to the police. They do a field test that proves positive for cocaine, initiate a chain of custody document, and send it to the lab. The laboratory confirms the pills are tabletized cocaine. On the day of trial of the son for drug possession, which problem would be the hardest for the prosecutor to overcome?

- A. The mother's assertion of the parent-child privilege.
- B. The father's asserting of the spousal privilege to prevent the wife and mother from testifying to the circumstances surrounding her discovery of the cocaine.
- C. The mother's failure to appear at trial.
- D. The failure to produce documents relating to the original field test of the cocaine.

**Correct Answer:** C. The parent-child privilege is not recognized in federal court. The spousal privilege is not applicable on these facts. The loss of documentation concerning the original field test is problematic, but not fatal so long as chain of custody and laboratory confirmation of the cocaine can be established. But if the mother is not available to testify, a proper foundation for introduction of the drugs as being found in the son's clothing cannot be laid, and the case is likely to be dismissed.

7. George Gabs has been serving as a government informant for DEA on a federal cocaine trafficking case in California. George Gabs' information has been so reliable that DEA agents have successfully made a trafficking cocaine case against a network of fifteen defendants. During pretrial hearings, Defense counsel informs the judge that one of the pending defense motions before the court is to require the government to reveal the informant's identity so that defense counsel can adequately prepare a defense for trial. Who holds the privilege?

- A. As a government employee, the agent holds the privilege.
- B. The informant holds the privilege.
- C. The defense attorney holds the privilege.
- D. The AUSA holds the privilege on behalf of the U. S. Government.

**Correct Answer:** D. The government-informant privilege is different in two respects: (a) what is privileged is not the communication, but the identity of the informant and information that would reveal the informant's identity, and (b) the holder of the privilege is not the person who made the communication, but to whom the communication was made (the government). The government holds this privilege and the AUSA, on behalf of the government, is the one who decides whether or not to waive it. A judge may require the AUSA to reveal the informant's identify if that would be helpful and relevant to the defense's case. If the judge decides that the informant's identity should be revealed, the AUSA must either do so or dismiss the case. Since the agent is not the holder of the privilege, answer A is incorrect. Since the informant is not the holder of the privilege, answer B is incorrect. Since the defense attorney is not the holder of the privilege, answer C is incorrect.

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8. Officer Jones is on-duty when a citizen walks up and says, "Officer, a friend told me there are some people trying to break into a building down the street." May the officer lawfully use the information she received from the citizen?

- A. No, because what the friend said is hearsay.
- B. No, because the reports of citizens on the street are unreliable.
- C. Yes, she may consider the information because the hearsay rule applies only at trials.
- D. Yes, she may consider the information because even though it is hearsay, there is an exception that applies.

**Correct Answer C.** With the exception of privileges (like the attorney-client privilege, for example) the rules of evidence apply only to trials. When an officer receives information on the street, he is not in trial and the hearsay rule does not apply.

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9. The prosecution in a robbery case is trying to prove that the defendant is the person who robbed the victim. Which one of the following is an example of circumstantial evidence to prove this point?

- A. The victim testifies, “The defendant stuck a gun in my face and demanded money.”
- B. A witness testifies, “I saw the defendant point a gun at the victim.”
- C. A police officer testifies, “I asked the defendant if he robbed the victim and the defendant said yes.”
- D. A witness testifies that the defendant’s gun was found near the scene of the robbery soon after the robbery occurred.

**Correct Answer:** D. Answers A through C are all direct evidence. In other words, they tend to prove the matter in question directly without the use of an inference or deduction. Answer D is circumstantial evidence. It does not prove the robbery directly, but may do so indirectly through an inference that if the defendant’s gun was found near the robbery scene soon after the robbery, the defendant might have been the robber.

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10. Joe Madman entered the First National Bank of Florida to commit an armed robbery. He was dressed in all black and wearing a red bandanna which covered the lower portion of his facial area during the robbery. He rushed up to the bank teller and demanded, “Give me all your money. Put it in my bag now or I’ll blow your head off!” The teller could see he had a black Glock pointed at her head. The teller recognized his distinct voice immediately. Not only was he a regular customer, but he also sang in the church choir with her. After Joe Madman was apprehended, he was tried for armed robbery. At trial will the bank teller be able to testify she recognized the defendant’s voice?

- A. Yes, because she is familiar with it. Her lay witness testimony is acceptable.
- B. No, because she is not allowed to give her opinion since she is not an expert.
- C. Yes, but only if Madman testifies at trial.
- D. No, because identifications can not be based upon voice recognition.

**Correct Answer:** A. A lay witness can give an opinion when: (a) the opinion is rationally based on the witness’ perception and personal knowledge, (b) the opinion is helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue, and (c) the opinion is not one that is based on scientific, technical, or other specialized knowledge. Some examples of a proper lay witness opinion include: identification of handwriting, and voices, provided that the witness is sufficiently familiar with them. A lay witness could also testify as to a person’s emotional conditions.

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11. Susie is on trial for forging prescriptions for oxycontin, a controlled substance. The nurse that works as office manager for the doctor, whose prescription pad was stolen by Susie, is one of the prosecution's main witnesses. In order to prove that it is Susie's handwriting which appears on the forged prescriptions, the prosecutor calls her brother, Tom, who is to testify that he is familiar with Susie's handwriting, and the writing on the prescription is definitely his sister's. Is this testimony admissible?

- A. Yes, because, the witness has sufficient familiarity with his sister's handwriting.
- B. No, because, the witness must be qualified as an expert.
- C. Yes, because, anyone may testify as to handwriting.
- D. No, because the witness is the defendant's brother and he may be biased.

**Correct Answer:** A. A lay witness may give an opinion only when (a) the opinion is rationally based on the witness' perception and personal knowledge, (b) the opinion is helpful to a clear understanding of the witness' testimony or the determination of a fact is issue, and (c) the opinion is not one that is based on scientific, technical, or other specialized knowledge. Identification of handwriting, if the witness has sufficient familiarity with that handwriting, is a good example of proper lay witness opinion. Here, it is not necessary that the witness be qualified as an expert, so answer B is incorrect. Answer C is incorrect because the witness who testifies as to the handwriting must be familiar with it. Answer D is incorrect because even though a witness can still testify, the witness' bias can be explored on cross-examination.

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12. Tom Jones and Bob Smith kidnapped a young eight year old girl who was walking to school. After being arrested, Bob Smith told the investigators that the kidnapping was Tom's idea. At trial Bob changes his story and claims that the eight year old girl begged them for a ride, and that he didn't pay attention to how Tom treated the child. The prosecution may lawfully:

- A. Attack Bob's credibility with his prior inconsistent statements to the investigators.
- B. Attack Bob's credibility since he was not in a position to observe the events.
- C. Not attack Bob's credibility since he is testifying under oath during the trial.
- D. Not attack Bob's credibility since he is obviously confused about the events.

**Correct Answer:** A. A witness can be impeached by his prior inconsistent statements. B is incorrect because Bob has already given statements that showed he observed the events. C is incorrect because Bob can be impeached by prior inconsistent statements. D is incorrect because Bob can be impeached based upon his previous statements. A witness can also be impeached on the fact he is confused about the events to which he is testifying.

**13.** Fred Smith is the defendant in a trial for shoplifting. 6 years ago, Fred received a felony conviction for theft. Is this conviction admissible against Fred during the case in chief (the case on the merits)?

- A. Yes, because whether Fred testifies or not, the conviction is admissible to show that Fred is a thief.
- B. If Fred testifies, the prior conviction is admissible to impeach Fred.
- C. No, because convictions are admissible to impeach any witness except a defendant.
- D. Even if Fred testifies, the prior conviction is inadmissible because it is not relevant.

**Correct Answer:** B. One cannot use uncharged misconduct to show “the defendant did it before so he did it again.” This rule makes A an incorrect answer. If a witness - to include a defendant- testifies, they may be impeached to lessen their credibility (believability) in the eyes of the jury. One form of impeachment is a felony conviction that is 10 years old or less or any conviction for perjury or crimes of falsity. The type of offense for which a defendant was convicted does NOT have to be similar to the type of offense that is being tried; remember that “propensity” is not a basis for admissibility. Prior convictions are admissible to impeach because the fact that a person has been convicted of a felony, or making false statements, is a matter the jury may consider in deciding whether to believe the witness. For these reasons, B is the correct answer. C is incorrect because any witness who testifies, to include the defendant, can be impeached with a prior conviction that meets the criteria mentioned above. D is incorrect because evidence that may attack a witness’ credibility is relevant. Remember that arrests without a conviction, and juvenile adjudications, are not “convictions” for purposes of impeachment.

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**14.** Timmy Smith, a prominent local businessman, is on trial for kidnapping and raping two young girls from his neighborhood who were only ten years old. Timmy Smith owns a pest control business and has faithfully donated over one million dollars to the local church he has attended for the past five years. During his trial, the preacher of his church testifies that he has known the defendant for over ten years, and that he is not the type of man that would ever harm a child. What about the preacher’s testimony might be a basis for impeachment?

- A. The defendant has donated to the church.
- B. The preacher and the defendant are friends.
- C. The defendant is on trial for stealing.
- D. Both A and B.

**Correct Answer:** D. A witness may be biased for or against another witness or an issue in trial because the witness with a bias may tend to color or slant their testimony. Bias can arise when witnesses are members of similar groups such as attending the same church. Also, in this example, the defendant has contributed financially to the preacher’s church. The preacher’s credibility could be attacked based upon his bias towards the defendant.

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15. You and your partner investigated Sam Criminal for 2 years. Your partner compiled a lengthy investigative report. You did not make a report. You testify for the government at Sam Criminal's trial. During direct-examination you are asked the name of Sam Criminal's wife. At that moment, you can't remember her name. However, you do remember that the name of Sam Criminal's wife is in your partner's investigative report, and that the AUSA brought that report to the trial. Can your partner's investigative report be used to refresh your memory?

- A. No, because the information in the report is about Sam Criminal's wife, not the person on trial.
- B. No, because it was prepared by your partner, and not you.
- C. Yes, but only if your partner took an oath that the report is true.
- D. Yes, because anything can be used to refresh your recollection.

**Correct Answer:** D. Anything can be used to refresh recollection, regardless of whether it was prepared by the witness or not. A is incorrect because a witness may refresh their recollection regarding any subject on which they are questioned at trial. B is incorrect because it is acceptable to use your partner's report to refresh your memory even if you did not prepare the report. C is incorrect because anything can be used to refresh a witness' recollection. If a document is used it does not have to have been made under oath.

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16. Anna Smith is the mother of a child victim who was kidnapped and murdered five blocks from the family's residence. During the trial of her child's killer, Ms. Smith is asked to give the approximate date and time she first noticed her child missing. She can not remember, but the investigator has a copy of her phone records showing when the mother of the victim first called the police. Can the phone records be used to refresh Ms. Smith's memory?

- A. No, the phone records were not made under oath.
- B. No, a witness can only use notes or documents he or she prepared to refresh memory
- C. Yes, because the jury will have the phone records in evidence anyway.
- D. Yes, because a witness can use any document to refresh memory, regardless of whether or not the witness prepared it.

**Correct Answer:** D. If a witness forgets a fact while testifying, their memory can be "refreshed." The rule is that "anything can be used to refresh a witness' memory." Sketches, photos, physical objects, reports, notes, and even "unofficial items" such as documents prepared by other LEOs or non-LEOs can be used. Documents or statements used to refresh memory do not have to be under oath. When a witness' memory is refreshed, the witness can then testify from memory. Answer A is wrong, because there is no requirement that the documents be made under oath. Answer B is wrong, because anything can be used to refresh a witness' memory including the notes or documents of others. Answer C is wrong, because the report or record used to refresh memory is neither read nor given to the jury as the witness will be testifying from their refreshed memory. The phone records will not be submitted as evidence, but rather will be used by the witness to refresh memory.

Students should note that while a document used to refresh memory will not be given to the jury, it will be shown to the defense counsel. The defense counsel can use other information in the document during cross-examination.

17. In order to use your notes during testimony to refresh your recollection, which is true regarding when the jury sees your notes?

- A. The jury must have received your notes at the start of the trial before you can use them.
- B. The jury must be given a copy of your notes immediately following your testimony.
- C. The jury must be given a copy of your notes before the conclusion of the evidence.
- D. It is irrelevant whether the jury ever sees a copy of your notes.

**Correct Answer:** D. Using notes to refresh recollection has nothing to do with whether the jury ever sees the notes. A copy of the notes may be offered into evidence for some other reason, but they will not be provided to the jury when they are only used to refresh witness recollection.

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18. You arrest Sam for fraud. After Sam waives his Miranda rights, Sam tells you, “Yes, I scammed that little old lady for all her life savings.” At trial and during the government’s case in chief, you are asked to tell the jury what Sam told you during the interview. The defense objects claiming the statement is hearsay. Is the statement admissible?

- A. No, because the statement is hearsay.
- B. No, because the government is required to call the defendant to testify in the matter.
- C. Yes, because the statement is not hearsay.
- D. Yes, because the statement is hearsay but subject to an exception.

**Correct Answer:** C. Statements and admissions of the defendant that are offered by the prosecution are excluded from the definition of hearsay. So, if a defendant makes an out of court statement that is offered in court, that statement is admissible and no exception is necessary. Statements and admissions of a defendant are not hearsay because the government is unable to call the defendant to the stand to have the maker of the statement testify. (On the other hand, if the defense offers the statement of the defendant, it is hearsay – because the defense can call the defendant to the stand.) Answer A is incorrect because, as stated above, the defendant’s statement is not hearsay. We hope you said B is incorrect; the government can NEVER call the defendant to the stand during a trial. D is incorrect because the defendant’s statement is not, by definition, hearsay and therefore an exception is not necessary.

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19. You are a uniformed officer on patrol and are called to a violent, domestic disturbance. When you arrive at the scene, you see a man and woman arguing. Suddenly, the woman appears to lunge at the man, stab the man with a shiny object, and then flees. As soon as the woman made the stabbing motion, the man jumps back and exclaims, "I can't believe she cut me!" You learn that the man and woman are not married. When the ambulance arrives, an EMT asks, "How did you get this cut?" The man replies, "I got stabbed with a knife." A knife is never found. After the woman is indicted, you learn that, unfortunately, the man is killed in an auto accident and obviously will not be able to testify at the trial. At the woman's trial for assault with a dangerous weapon, the prosecution offers the statement the victim made when stabbed and the statement to the EMT. Are these statements admissible?

- A. Both statements are admissible because reliable witnesses can testify they were in fact made.
- B. Both statements are admissible because, though hearsay, there are exceptions that apply.
- C. Neither statement is admissible because they are both hearsay and no exceptions apply.
- D. The statement when being stabbed is admissible, but the statement to the EMT is not because the EMT is not a physician.

**Correct Answer B.** The hearsay rule states that if (1) a statement is made out of court and that statement is (2) offered in court and (3) the statement is offered for the truth of the matter asserted, then the statement is hearsay. Hearsay is inadmissible in court unless there is an exception. Here, the prosecutor wants the jury to hear the two statements that the victim made, and furthermore, wants the jury to believe the statements are true (that the victim was cut, and that he was cut with a knife.) Both of the statements are hearsay. The excited utterance exception applies to the statement about being cut. The law recognizes that statements made under emotional stress are unlikely to be fabricated. The excited utterance exception applies when: (a) the person making the statement experienced a startling event, (b) the statement was made while the person was under the stress or excitement caused by the event, and (c) the statement was about the startling event. The medical treatment exception applies to the statement made to the EMT. That exception applies when a person is speaking to health care providers about why they are sick or injured. The law recognizes that during such circumstances a person is unlikely to fabricate. The elements of this exception are: (a) a statement is made for the purposes of medical diagnosis or treatment, (b) the statement concerns medical history, past or present symptoms, pain, sensations, or the cause of the medical problem, and (c) the statement is pertinent to the diagnosis or treatment. If the person making the statement believes that the person they are speaking to is someone who is going to help them medically, the statement can qualify under this exception. The statement need not be made to a physician, but just someone from whom the speaker expects to receive medical treatment or diagnosis, including nurses, EMTs, or physicians. A is incorrect because it doesn't matter that a reliable witness can testify to the statement; the statement is still hearsay. C is incorrect because though the statements are hearsay, exceptions apply to both statements. D is incorrect because, as previously discussed, both statements though hearsay, have exceptions. Students should remember that there are many other hearsay exceptions that are outside FLETC training, and your AUSA will know of them. The officer's job is to document the facts and circumstances surrounding the making of any statements so if the prosecutor needs to use a hearsay exception, he or she will have the facts to do so.

20. In preparing for trial, the AUSA learns that the defendant is going to claim an alibi defense at trial saying he was not in town when the crime occurred. Your investigation revealed the defendant was in fact staying at Motel 6 in town at the time of the crime. You track down Francis, who is head registration clerk at the Motel 6, and she finds the registration for the defendant showing he stayed at the hotel the night of the crime. Francis doesn't have any personal knowledge of the transaction because she wasn't the clerk that night, Edward was. Francis can say that the registration form was prepared at the time of registration and has been kept in the cabinet all along. She signs an attesting certificate as a custodian to that fact. When the registration form and the certificate are offered in evidence, the defense objects for a lack of authentication. Is the form and certificate admissible?

A. No, because the government needs a witness with personal knowledge-Edward- to authenticate the document.

B. No, because a foundation can be laid by only a law enforcement officer.

C. Yes, because the authentication requirement does not apply to documents that have signatures.

D. Yes, because the AUSA can properly authenticate the documents.

**Correct Answer D:** The AUSA can properly authenticate the documents. Business records can be admitted as evidence as long as there is an attesting certificate signed by the custodian that: (1) the record was made at or near the time to which the record pertains by a person with knowledge of the matter, (2) the record was kept in the ordinary course of business, and (3) the business made such a record as a regular practice. There is no requirement that the custodian of records have made the entries in the record, and no requirement that Edward authenticate the document. The AUSA can lay a proper foundation (self-authentication) to have the documents admitted as business records if he has an attesting certificate described above. Answer A is incorrect because it is not necessary to have Edward testify about the records to have them properly authenticated. The Federal Rules of Evidence permits authentication of these records when accompanied by an attesting certificate signed by a custodian. The custodian of the records, Francis has prepared an attesting certificate as a custodian of the records. This is sufficient. B is incorrect because it is not necessary to have the testimony of a law enforcement officer to properly authenticate the evidence. C is incorrect, because the authentication requirement does apply to documents that have signatures.

**21.** Bobby Bazooka is being tried for federal firearms violations and has been previously convicted for the felony crime of armed robbery in Glynn County Superior Court. One of the charges pending against Bazooka in the criminal indictment is possession of a firearm by a convicted felon. The prosecutor seeks to have a certified copy of Bazooka's prior conviction for armed robbery admitted as evidence during the trial. Bazooka's defense attorney objects that the copy of the conviction has not been authenticated. The judge should:

- A. Not admit the certified copy of Bazooka's prior criminal conviction since it is clearly inadmissible hearsay.
- B. Not admit Bazooka's certified copy of prior criminal conviction since it is not relevant on the issues being tried in the case.
- C. Admit the certified copy of prior criminal conviction only if the original criminal indictment, guilty plea, and sentence are tendered as the best evidence.
- D. Admit Bazooka's certified copy of prior criminal conviction as a public record.

**Correct Answer:** D. The Federal Rules of Evidence permit public records and documents to be self-authenticating if they are accompanied by a seal or certified as correct by the custodian. Since the copy of the prior criminal conviction is certified by the clerk's office, it could be properly admitted as a public record. There is no requirement that the original indictment, plea, and sentence be offered as evidence. A certified copy will suffice as a public record. The certified copy of conviction certainly has a direct bearing on the issue being tried, that is, possession of a firearm by a convicted felon. The prosecution has the burden to prove beyond a reasonable doubt that the defendant is a convicted felon in order to convict the defendant.

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**22.** The Best Evidence rule requires that:

- A. A fact must have a tendency to prove or disprove a fact in issue to be admissible at trial.
- B. A fact is not admissible in trial unless the person offering the fact can prove it is the best evidence of that fact.
- C. A fact must prove something in issue directly, and not indirectly.
- D. To prove the contents of a writing, the original of that writing must be used if available.

**Correct Answer:** D. The Best Evidence Rule is best remembered as "the original document rule." This rule requires that if a party at trial wants to prove what a document says – like a letter, cancelled check, or a contract – the original of that document must be used. So, if in a fraud case the AUSA wants to prove that the victim received a letter that offered gold at \$25 per ounce, the AUSA would have to prove that with the use of the letter. (There are exceptions to the Best Evidence Rule that are beyond the scope of agent/officer training.) A is incorrect because that answer is the definition of relevance. B is incorrect because there is no such rule. C is incorrect because both direct and indirect (circumstantial) evidence is admissible.

23. Grannie Mae, an elderly grandmother, was taken advantage of by some con artists operating in Florida. The criminals sold her a fraudulent bond for \$15,000.00. The bond is actually a worthless piece of paper. The investigators on the mail fraud case contacted Grannie Mae in order to secure the original bond as evidence for the case. Grannie Mae insists that she will only provide the investigators with a copy of the original bond, because she wants to keep the original bond itself. The investigators obtained a copy of the worthless bond for evidence. Two weeks before the trial of the mail fraud case, the original bond burned up in Grannie Mae's house fire when she left the oven on all night. The copy of the bond is:

- A. Inadmissible because the original bond is required for it to be admissible.
- B. Inadmissible because the investigators should have safeguarded the original bond.
- C. Admissible because the original bond itself is unavailable, and a copy will be sufficient.
- D. Admissible because the best evidence rule only applies to writings not bonds.

**Correct Answer:** C. The Best Evidence Rule states that to prove the contents of a writing, the original writing itself must be admitted into evidence; witnesses are not permitted to testify what a document says over defense objection. If the document is available, it must be admitted into evidence. There are exceptions such as when all originals have been lost or are unobtainable, or the other side has the original and will not produce it. Duplicates include carbon copies, photocopies, or copies made from other techniques that accurately reproduce the original. Duplicates can be used when the original is lost or unobtainable. Answer A is incorrect because based on the Best Evidence Rule, if the original writing is lost or unobtainable, a copy can be used. Answer B is incorrect because even though it would be good investigative work to obtain the original bond, it is acceptable to use the copy in evidence since the original was lost in the fire. Answer D is incorrect because the Best Evidence Rule applies to any writing including bonds.

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