1. The correct answer is B. The defendant's testimony, while it would normally be considered irrelevant, is admissible as curative evidence to respond to the previously admitted irrelevant evidence about his quarreling with his wife. A court may, but does not have to, admit irrelevant evidence if the evidence is curative and rebuts the previously admitted irrelevant evidence and the curative evidence is not prejudicial.

2. The correct answer is D. The doctor/patient privilege is held by the patient, not the physician. Only the patient, or a lawyer acting on his behalf, has the right to invoke and waive the privilege. The patient's attorney, if he is acting on the patient's behalf and is allowed to speak by the trial judge, may invoke the patient's privilege and would be the best basis for excluding the evidence.

3. The correct answer is C. Leading questions are generally not permitted if they are asked on direct examination of a disinterested eye witness. Answer A is incorrect because leading questions are permitted on cross-examination, regardless of whether the witness is an expert or not. Answer B is incorrect because leading questions are much more likely to be permitted by the court if the witness is a child. Answer D is incorrect because leading questions are permitted to be asked on preliminary matters that do not require testimony about the facts at issue. Leading questions on direct examination of a disinterested witness are the least likely of the examples to be permitted if there is an objection.

4. The correct answer is C. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition is admissible as a present sense impression; this is an exception to the hearsay rule. The witness's descriptive statement was made as the witness was perceiving the patron's condition, which is what makes it admissible here as a present sense impression.

5. The correct answer is B. Prior inconsistent statements, given by a witness who is subject to cross examination on the stand, can be used both as an impeachment and as substantive evidence if they were given under oath and under penalty of perjury. Because the patron's testimony at the trial is inconsistent with his sworn testimony from the deposition, the statement from the deposition is admissible to impeach the patron's current testimony. The statement is also admissible as substantive evidence as a prior inconsistent statement.

6. The correct answer is B. Prior inconsistent statements, given by a witness who is subject to cross examination on the stand, can be used both as an impeachment and as substantive evidence if they were given under oath and under penalty of perjury. Because the patron's testimony at the trial is inconsistent with his sworn testimony from the deposition, the statement from the deposition is admissible to impeach the patron's current testimony. The statement is also admissible as substantive evidence as a prior inconsistent statement.

7. The correct answer is D. Subsequent remedial measures taken after an event are not admissible to prove negligence or culpable conduct. The house rules limiting the amount of drinking done in the establishment are remedial measures taken to reduce the risk of events like those in the plaintiff's suit, and are inadmissible. Admitting such evidence would discourage people from attempting to remedy potential problems.

8. The correct answer is A. The owner's statement that the patron was drunk when he left the bar is admissible as an admission by a party opponent. Although the offer to pay medical expenses itself would be inadmissible, the accompanying statement that the patron was drunk is an admission separate from the offer to pay medical expenses, and is admissible against the owner.

9. The correct answer is A. The recording can be authenticated by the testimony of a lay witness who, through first-hand knowledge, is familiar with the defendant's voice. However, the testimony of the witness in answer A is the least likely to provide a sufficient basis for admitting the recording. The witness's knowledge of the defendant's voice in answer A is based solely on the hearsay statement of the defendant's brother. The witness in answer A has no first-hand knowledge of the defendant's voice.

10. The correct answer is B.

11. The correct answer is D. Before the bystander can properly invoke the right against self-incrimination, the judge must believe that there is some reasonable possibility that the witness will incriminate herself. The privilege against self-incrimination does not allow a witness to avoid testifying whenever she wishes; there must be a reasonable belief that the testimony would be incriminatory.

12. The correct answer is C. Because the defendant is on trial for armed robbery, evidence of his commission of other crimes is inadmissible against him because it is much more prejudicial than probative. The fact that the defendant had illegal substances on his person when he was arrested has very little probative value on the issue of whether or not he committed the armed robbery, and it is highly prejudicial to the defendant.

13. The correct answer is D. The defendant had no reason to respond to the bartender's statement and so his lack of response does not constitute an admission. Evidence of the defendant's lack of response does not constitute a nonverbal admission because it was not intended by the defendant to be an assertion or adoption of the bartender's statement.

14. The correct answer is C. The sketch amounts to an out-of-court statement of an unavailable witness and is inadmissible as hearsay not within any exception. The sketch is a statement by the teller that the man depicted committed the robbery, and, since the teller is unavailable to testify, the sketch should be found to be inadmissible.

15. The correct answer is C. The defendant's prior statement to the police that he had never been in the bank is an out-of-court statement that is being offered for the truth of the matter asserted - that he had never been in the bank. It should be found to be inadmissible as hearsay not within any exception.

16. The correct answer is A. Evidence of prior crimes is admissible to impeach the testimony of a witness if the crime is a felony or a crime of dishonesty. The defendant's prior conviction for tax fraud is admissible to attack the credibility of his testimony, and a question regarding his prior conviction is proper.

17. The correct answer is B. The investigator's testimony about his prior inquiry concerning the plaintiff is admissible, without producing the inquiry letter or proving its unavailability, because the investigator's testimony that the initial inquiry letter was sent authenticates the defendant's letter under the reply-letter doctrine. Under that doctrine, while the contents of the original letter are irrelevant and do not have to be proven, evidence that the inquiry letter was sent suffices to authenticate the reply letter.

18. The correct answer is D. Preliminary questions concerning the admissibility of evidence shall be determined by the court. It is up to the judge to determine whether the investigator can testify as to the authenticity and contents of the libelous letter. Since the libelous letter is the one that's authenticity and contents are being challenged, the plaintiff must prove the content of the writing by using the original letter, if available. However, other evidence of the contents of the letter would be admissible only if the judge finds that the original letter is unavailable.

19. The correct answer is B. A defendant is permitted to put in evidence of his good character, if relevant to the charge, to attempt to prove he is innocent. The witness's testimony as to the defendant's reputation as a "peaceable man" is admissible to prove he is not guilty of murder. The correct answer is A. The defendant's statement to the witness describes the defendant's current mental condition, that being his intention to visit relatives in a distant state. The statement should be admissible under the 'then existing mental condition' exception to the hearsay rule.

20. The correct answer is A. The defendant's statement to the witness describes the defendant's current mental condition, that being his intention to visit relatives in a distant state. The statement should be admissible under the 'then existing mental condition' exception to the hearsay rule.

21. The correct answer is A. Questions regarding familial relations between a witness for the defense and the defendant are proper to probe for the possible existence of bias or the witness's motive to lie. Answer B is incorrect because the witness is being called to testify to an alibi, not to give reputation evidence. In addition, answer B is incorrect because a relative of the defendant is not automatically incompetent to give evidence of reputation. Answer C is incorrect because questions regarding a witness's prejudice, bias, or motive to lie can be raised at any time and are proper regardless of whether those issues were raised on direct examination. Answer D is incorrect because the existence of a familial relationship between a witness and a defendant is probative of the issue of whether the witness has any bias or motive to lie, and is thus relevant.

22. The correct answer is B. Because there is no implication of bias simply because a witness was on a jury that previously acquitted the defendant, the question is improper. The witness's service on a jury at the defendant's earlier trial, even if the jury acquitted the defendant, has nothing to do with any potential bias or motive to lie that the witness may have. In order to prevent the jury from speculating about the other case, or drawing improper conclusions about the witness' prior jury service, the question should not be allowed.

23. The correct answer is B. Re-direct examination must be permitted only if there were significant new matters raised on cross-examination. Answer A is incorrect because, although the extent of re-direct is in the sound discretion of the court and the court may permit re-direct on some minor matters, the court is only required to permit re-direct on matters that were not discussed on direct. A court may limit re-direct examination at its discretion, but must allow it to reply to new and significant matters raised on cross-examination. Not every matter raised in cross-examination must be permitted to be questioned about in re-direct, only those that raise significant new issues.

24. The correct answer is A. Evidence of other crimes, while generally not admissible, can be admitted to prove certain things, one of them being the criminal's identity. In this question, because the gun was very unusual, and because the defendant was in possession of the same type of gun within a week after the offense against the clerk, the evidence of the robbery of the witness is admissible to establish the identity of the robber by establishing an identifiable characteristic of the crime.

25. The correct answer is D. The physician's affidavit is an out-of-court statement that is being offered for the truth of the matter asserted and should be inadmissible as hearsay not within any exception.

26. The correct answer is A. The passenger's statement that he suffered from a recurrence of an old back injury is a statement that is being offered against the passenger to show he was not injured in the accident. The passenger's statement is an admission by a party opponent and is thus not hearsay.

27. The correct answer is B. Confidential communications between an attorney and client made during legal consultation are privileged, and the production of them will not be required. The report of the company's general manager was made at the request of the company's attorney in preparation for trial and is a confidential communication protected by the attorney-client privilege.

28. The correct answer is D. Evidence of a person's character is inadmissible to prove the individual acted in conformity with such character on a particular occasion. The defendant's reputation in the community as a "dare-devil" is inadmissible to prove he acted negligently on this occasion.

29. The correct answer is C. The brother's failure to object to the man's statement and his silence after being implicated are inadmissible because the brother had no duty or responsibility to respond to the man's statement.

30. The correct answer is B. The brother's affidavit is an out-of-court statement that is being offered for the truth of the matter asserted, namely that the grantor may have been mentally incompetent. The brother's affidavit is thus hearsay, does not fall within any exception, and is inadmissible.

31. The correct answer is B. The defendant's statement is admissible because it was voluntarily given and was not the product of a custodial interrogation..

32. The correct answer is D. A non-expert who is familiar with the handwriting in question is permitted to give an opinion as to the identity of the handwriting. Handwriting is one of the areas in which courts will accept testimony regarding a lay person's opinion, if the opinion is based on the perception of the witness and the opinion would be helpful to the trier of fact.

33. The correct answer is D. Evidence of falls, or lack thereof, in the week prior to the plaintiff's fall are inadmissible because they are not relevant to the determination of whether the lessee exercised due care on this particular occasion. The fact that the floor had been recently waxed, along with the fact that a large amount of time had elapsed between the non-incidents and the plaintiff's fall, emphasizes the irrelevance of the previous week's non-incidents.

34. The correct answer is A. Evidence of subsequent remedial measures are inadmissible to prove negligence or defect. However, they are admissible as proof of ownership or control over the property. The introduction of subsequent remedial measures is limited to a few exceptions, including proof of control. In the question, the defense that the hotel owner raised was that he retained no control over the hallway, so evidence that the hotel owner had the vinyl taken up and replaced is relevant to prove the hotel owner's ownership and control over the property in question.

35. The correct answer is D. The color of the defendant's sweater is a collateral matter of no real relevance to the issues in the case. The defendant's witness's testimony would be providing extrinsic evidence on a purely collateral matter and should be ruled to be inadmissible. Answer A is incorrect because the color of the defendant's sweater is not a material fact to the issues in the case.

36. The correct answer is B. The police officer's testimony is admissible as an admission by a party opponent. The defendant's statement is an admission that he was going 40 m.p.h. at the time of the accident and is being offered against the defendant to show he was negligent by exceeding the posted speed limit. As such, it is an admission by a party opponent and admissible.

37. The correct answer is C. The passenger's statement that "we should have had our lights on" to the bystander is an out-of-court statement being offered for the truth of the matter asserted. As such, it is hearsay, and does not fall into any exception to the hearsay rule and it is thus inadmissible.

38. The correct answer is A. The witness' statement that "that car doesn't have any lights on" was a statement describing the condition of the vehicle and was made while the witness was perceiving that condition. Although the statement was made out of court and is being offered for the truth of the matter asserted and is thus hearsay, it fits the present sense impression exception to the hearsay rule and is admissible.

39. The correct answer is C. The attorney-client privilege covers confidential communications between an attorney and client made during the legal consultation, and those communications are inadmissible in cases with third party claimants. The litigant's attempt to introduce the owner's statements made during the legal conference violates the attorney client privilege, and the driver's testimony as to statements made by the owner at the conference is inadmissible.

40. The correct answer is A. Although the owner's communications at the joint consultation conference were confidential as to outside sources, they were not confidential as to the driver. Since the driver and the owner are now adverse parties, statements made by the owner at the joint consultation are not privileged as to the driver, and the court should rule the investigator's testimony admissible.

41. The correct answer is C. Placing a speed governor in the truck is the taking of a subsequent remedial measure to avoid future accidents. It is in favor of public policy to encourage the taking of remedial measures, regardless of the actual fault involved in the initial accident. Evidence of taking such remedial measures, if introduced to show negligence or culpable conduct, should be ruled inadmissible.

42. The correct answer is A. The passenger’s written statement is an out-of-court statement that is being offered for the truth of the matter asserted. Unless it is specifically excluded from the definition of hearsay, the passenger’s statement would be inadmissible under the hearsay rule. If the passenger’s statement is an admission by a party opponent, it would be admissible. The passenger’s statement would be admissible as an admission by a party opponent if the passenger is an agent of Mammoth and the statement concerned a matter within the scope of the agency.

43. The correct answer is A. The driver of the car's statement admitting fault is being introduced against him and is admissible as a admission by a party opponent. Admissions by a party opponent are specifically defined as an exception to the hearsay rule.

44. The correct answer is D. A witness may refer to collateral documents - that is documents that have no probative value for the issues in the trial - without providing the documents themselves. Here, the witness is not attempting to prove the contents of the newspaper article; instead, he is testifying about the date of the conversation. Because the newspaper is collateral, it need not be produced.

45. The correct answer is B. Statements that may otherwise be inadmissible as hearsay can be used to impeach testimony already given from the declarant. Although the deceased's statement that an old enemy had stabbed him would normally be inadmissible hearsay, it can be used to impeach his later statement that the defendant was the one who stabbed him. Although the declarant is deceased, his admissible statement that the defendant was the killer can still be impeached by one of the declarant's prior inconsistent statements.

46. The correct answer is A. The farmer's testimony regarding his use of the telephone directory for an outgoing call, his use of the telephone system, and the speaker identifying himself as the equestrian, provides sufficient authentication for the telephone call to allow its entry into evidence.

47. The correct answer is A. To authenticate a photograph in order to introduce it into evidence requires the proponent to establish that the photograph fairly and accurately portrays the scene it represents. If the farmer testifies that the photograph fairly and accurately portrays the condition of the cornfield after the damage was done, it should be admitted into evidence.

48. The correct answer is C. The stock clerk's written report is an out-of-court statement that is being offered for the truth of the matter asserted - that the plaintiff fell and was not hit by the cart. Thus, it is hearsay. The stock clerk's written report does not fall within any of the exceptions to the hearsay rule and is inadmissible. Answer B is incorrect because the accident report is the type of business record that the department store keeps in the regular course of business, but quotes the stock clerk's own statement about the accident. A business record that quotes parties or witnesses is generally not within the exception because the person being quoted in the report is under no duty to accurately convey information about the incident. Answer D is incorrect because the stock clerk's availability as a witness is not the best choice for the rationale of the judge when ruling on the admissibility of the report. Further, whether the stock clerk is available or not, the report is still hearsay and inadmissible.

49. The correct answer is A. Evidence of a peaceful, non-violent character, if presented in the form of reputation evidence, is relevant to show the unlikelihood of attacking another without provocation. The former employer's testimony of the defendant's reputation in the community for peacefulness is admissible.

50. The correct answer is B. By asserting self-defense, the defendant puts his character at issue. Thus, the prosecution may inquire as to the employer's general knowledge of the defendant's reputation on cross-examination. In addition, specific acts of misconduct may be used to determine the employer's knowledge and the basis of the defendant's reputation.

51. The correct answer is A. Evidence of a relevant, specific trait of character of the alleged victim can be offered by the accused to attempt to show that the victim was the aggressor in this case. The defendant's friend's testimony that the plaintiff had a reputation for a specific, relevant trait, in this case a reputation for lawbreaking and violence, is admissible to support the defendant's theory of self defense by showing that the plaintiff was the aggressor.

52. The correct answer is D. The policy reflected in the rules of evidence encourages settlement negotiations, and pursuant to that policy, offers to settle claims are inadmissible at trial. Answer A is incorrect because, although an offer to settle may include an admission, the offer is still not admissible in court. Answer B is incorrect because it is a misstatement of the applicable law and ignores the policy and rule against admitting settlement offers into evidence. Answer C is incorrect because an offer to settle is an admission that the opposing claim may be justified, and the offer to settle is inadmissible, not because it's irrelevant, but because of the public policy to encourage settlement of claims.

53. The correct answer is C. The passenger's statement is an out of court declaration that is being offered for the truth of the matter asserted - that the driver had been drinking. As such, it is hearsay and inadmissible because it does not meet the criteria for any exception to the hearsay rule.

54. The correct answer is A. It is permissible to allow a witness to view almost any item, even if it is hearsay itself, if it would aid the witness in remembering something that he has admitted forgetting on the stand. The passenger's letter to his sister can be used for the limited purpose of refreshing his recollection of the events of the accident to aid in his testimony.

55. The correct answer is C. The coroner's testimony that, in her opinion, the victim died from poisoning, should be admitted as expert testimony. Because the coroner has specialized knowledge that will assist the trier of fact, and she is state-certified and qualified to render an opinion, her testimony should be admitted. The coroner's testimony was the product of reliable principles and methods, and she followed the accepted medical practice in arriving at her opinion.

56. The correct answer is B. The witness, had she answered the cross-examination question, would have incriminated herself in criminal wrongdoing and subjected herself to possible criminal sanctions. By refusing to answer the question, the witness properly invoked her rights under the Fifth Amendment against self-incrimination, and she cannot be forced to answer the question. Since her refusal to testify was proper, the court can find that there was no meaningful cross-examination possible and could order that her testimony from direct examination be stricken.

57. The correct answer is B. The defendant's plea of guilty to driving while intoxicated is an admission that she was, in fact, intoxicated when the accident occurred. As an admission, the record of the defendant's conviction can be admitted as proof of the defendant's intoxication. Answer A is incorrect because a prior conviction for driving while intoxicated is inadmissible to prove character. Answer C is incorrect because the defendant did not need to be tried for the charge before the conviction can be used as an admission. Her plea of guilty to the charge is an admission against a party opponent and can be used against her in the civil case. Answer D is incorrect because the plea of guilty is an admission by a party opponent, which is specifically defined as non-hearsay.

58. The correct answer is C. Subsequent remedial measures, including the removal of a tree, are generally inadmissible to show negligence. However, they can be introduced into evidence to prove ownership or control over the property in question. The defendant's cutting down of the tree can be used at trial, not to prove negligence, but to prove the defendant owned and had control over the tree.

59. The correct answer is A. The witness' refusal to testify, despite a court order, is sufficient to show that the witness is unavailable for the purposes of the hearsay rule. Because of the unavailability, the witness' former testimony at the preliminary hearing can be used under the former testimony exception to the hearsay rule. At the preliminary hearing, the defendant's attorney had the opportunity to develop the testimony through cross-examination, so the witness's testimony is admissible. Answer C is incorrect because the witness agreed to testify at the earlier hearing and thus has already waived any privilege against self-incrimination. In addition, the defendant cannot claim the privilege for the witness. Answer D is incorrect because the testimony at the preliminary examination, while it may be hearsay, is admissible under the former testimony exception to the hearsay rule.

60. The correct answer is B. Witnesses are competent to testify as to items within their first-hand knowledge. The contractor can testify to the amount of pipe, workers, and number of hours spent on the job because these items are based on his first-hand knowledge. The fact that there may be other written evidence on this issue does nothing to preclude the contractor from testifying to items within his first-hand knowledge.

61. The correct answer is B. Since the defendant's grand jury testimony was the only evidence garnered by the police that led to the friend's testimony, having the friend testify at trial would violate the original grant of use immunity to the defendant. The only evidence identifying the defendant as one of the bank robbers is the testimony of the friend. The friend's testimony was only discovered as a result of the defendant's testimony at the grand jury. Since the defendant had been granted immunity, any evidence that is found solely as a result of the defendant's testimony is inadmissible.

62. The correct answer is B. The videotape is relevant evidence on the issue of whether the defendant was intoxicated, and it is more probative than prejudicial. If a proper foundation is laid, there is no reason to exclude the videotape from evidence.

63. The correct answer is C. Prior inconsistent statements given by a witness who is subject to cross examination on the stand can be used both for impeachment and as substantive evidence if the prior statements were given under oath and under penalty of perjury. Since the witness's testimony at the trial is inconsistent with her sworn testimony at the deposition, the statement at the deposition is admissible to impeach the witness's current testimony. The statement at the deposition is also admissible as substantive evidence to show the light was yellow.

64. The correct answer is A. Specific instances of the conduct of a witness, if probative of truthfulness or untruthfulness, can be inquired into on cross-examination of the witness to show the witness's character trait of untruthfulness. The witness's filing a false insurance claim involves untruthful conduct and, consequently, the defendant should be allowed to ask the witness about it.

65. The correct answer is C. The driver's statement is an out-of-court statement that is being offered for the truth of the matter asserted -- that the blue convertible driven by the defendant was involved in the hit-and-run accident. Thus, the driver's statement is hearsay, and, since it does not meet the requirements of any exception to the hearsay rule, it should be excluded.

66. The correct answer is D. Offers to compromise a claim, which was disputed as to either validity or amount, are not admissible to prove liability for or invalidity of the claim. Evidence of conduct or statements made in compromise negotiations is also inadmissible. The defendant's letter constituted an offer to compromise regarding the claim and, pursuant to public policy of promoting settlements, is inadmissible.

67. The correct answer is A. Prior convictions of a defendant who takes the stand can be used to impeach his testimony if the probative value of the impeachment outweighs the prejudicial effect to the defendant. Since the prior crime (burglary) is punishable by a sentence of more than a year, the conviction can be used to impeach the defendant's testimony. However, since burglary is not a crime involving dishonesty, the court must make a finding that the probative value of the impeachment outweighs the prejudicial effect to the defendant. Answer C is incorrect because whether the crime involves dishonesty or a false statement is not the only factor the court will consider when determining admissibility.

68. The correct answer is B. A witness, qualified to testify as an expert, is allowed to give an opinion based on the facts or data in the particular case, and those facts or data can be made known to the expert at or before the hearing or trial. There is no requirement that an expert hear the facts or evidence prior to the trial. The physician should be allowed to testify.

69. The correct answer is D. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, may not be proved by extrinsic evidence. Offering testimony that the witness once perpetrated a hoax on the police is attempting to prove specific incidents of misconduct with extrinsic evidence, and is thus inadmissible.

70. The correct answer is A. The proposed testimony of the defendant's wife would invoke the adverse spousal privilege, a privilege that only exists in the wife's discretion. The witness spouse, in this case the defendant's new wife, alone has a privilege to refuse to testify adversely against her husband, and she may be neither compelled to testify nor foreclosed from testifying. The choice is hers.

71. The correct answer is A. Although the witness was permitted by the court to testify as to his opinion, the plaintiff is permitted to challenge the witness's qualifications because the challenge is relevant to the weight given to the witness's opinion.

72. The correct answer is A. Although a lay witness can offer an opinion to identify and authenticate handwriting, the familiarity with the handwriting must have not been acquired for purposes of the litigation. A non-expert who familiarized himself with the defendant's signature in preparation for trial is not allowed, under the rules of evidence, to authenticate the defendant's signature.

73. The correct answer is B. The length of time which the witness has been employed by the roofing company has no relevance to any of the issues in the case. The defendant's witness's testimony, which would only amount to impeachment of the plaintiff's witness's testimony on a non-important, collateral issue, would be providing extrinsic evidence on a purely collateral matter and should be ruled to be inadmissible.

74. The correct answer is C. A prior statement by a witness, if that witness is testifying and available for cross-examination, is not hearsay and is admissible, if it is one of identification of a person made after perceiving the person. The bank teller's prior identification of the defendant in a lineup is admissible as a prior identification by the witness.

75. The correct answer is D. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except when the trait of character offered by an accused is pertinent to the charge the accused is facing. The defendant's attempt to introduce evidence of his good character for truth and veracity is inadmissible because truth and veracity is not a pertinent trait in a aggravated assault case when the defendant is not testifying.

76. The correct answer is B. Statements made for purposes of medical diagnosis or treatment, and statements describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment, are an exception to the hearsay rule and are admissible. The plaintiff's statement to his treating physician, although hearsay, described his medical history and the lack of any symptoms or pain, and would be admissible.

77. The correct answer is B. It is permissible to allow a witness to view almost any item, even if the item contains hearsay, if the item would aid the witness in remembering something that he has admitted to forgetting on the stand. The attorney's handwritten notes taken at a pre-trial interview with the witness could be properly used to attempt to refresh the witness's recollection regarding the identity of the fourth person at the meeting.

78. The correct answer is A. An admission by a party opponent can take the form of any statement that is adopted by the party opponent, and the admission is specifically excluded from the definition of hearsay. In this case, by responding to interrogatories with a reference to the Insulations Manufacturer's Annual Journal, the defendants adopted the information in the journal. With this adoptive admission, the journal is admissible as an admission by a party opponent.

79. The correct answer is B. The evidence that Wade and Dexter are partners in a business operation is relevant and admissible to show Wade's potential bias or motive to lie on Dexter's behalf. Answer A is incorrect because the evidence is being presented to determine Wade's bias toward Dexter, not to prove Wade has a bad character. In addition, specific instances of the conduct of a witness, such as gambling operations, for the purpose of attacking or supporting the witness' character for truthfulness may not be proven by extrinsic evidence. Answer C is incorrect because criminal conduct does not have to be shown only by admission or record of conviction, direct firsthand knowledge can also be used. In addition, the evidence is admissible on the issue of Wade's potential bias and motive to lie for Dexter. Answer D is incorrect because evidence of bias or motive to lie does not have to be done on cross-examination, extrinsic evidence of bias is admissible.

80. The correct answer is A. The attorney-client privilege extends to confidential communications between an attorney and client during a legal consultation. Information about hours billed, however, is not a confidential communication and is not subject to the privilege.

81. The correct answer is B. Statements of fact concerning personal or family history contained in family Bibles are an exception to the hearsay rule. The woman's Bible listing is a family history contained in a family Bible and is admissible as a family record.

82. The correct answer is C. An incoming telephone call can be authenticated by the identification of the voice, whether heard firsthand or through mechanical or electronic transmission or recording, or by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker. The best argument the businessowner can make is that the telephone call is authenticated by her ability to testify that she recognized the defendant's voice as that of the person on the telephone.

83. The correct answer is A. Because one of the major issues in the case is to determine whether or not the plaintiff is a thief, the plaintiff's character trait for thievery is essential. In cases in which character or a trait of character of a person is an essential element, proof may be made of specific instances of that person's conduct. Evidence that the plaintiff stole a ring on a prior occasion should be admissible to prove that essential element.

84. The correct answer is B. The police offcer's testimony is admissible only to impeach the testimony of the eyewitness. Prior inconsistent statements, even if they are hearsay, can be used to impeach the testimony of a witness.

85. The correct answer is A. Evidence of a prior conviction may be used to impeach a witness if it is a crime of dishonesty and less than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction. If Dalton was released from prison 12 years ago, the conviction should not be used. Answer D is incorrect because the pendency of an appeal does not render evidence of a conviction inadmissible. The trial court's best reason for refusing to allow the prosecutor to inquire about the prior conviction is if it happened outside the time limits put on the use of the convictions.

86. The correct answer is B. The defendant's statement to police officer is admissible as impeachment to the defendant's statement that he shot in self-defense. It is also admissible as substantive evidence that the defendant did not act in self-defense under the admission by a party exception to the hearsay rule. A prior inconsistent statement, in this case the original claim to the police officer that the shooting was an accident, is admissible to impeach the defendant's trial testimony. In addition, his statement to the police officer is an admission by a party opponent and thus specifically excluded from the definition of hearsay.

87. The correct answer is C. Evidence of offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury. Dyer's statement to Paul that he would pay for Paul's hospital bill is inadmissible. Answer A is incorrect because, although the offer to pay the bills may have been meant as an admission, it was not an explicit admission of liability and is inadmissible. The rules of evidence follow the public policy determination that supports giving assistance to the injured without the payment being considered an admission. Answer B is incorrect because, although it is debatable that the statement may have been an excited utterance, it would still be inadmissible because it is an offer to pay medical expenses. C is a better answer.

88. The correct answer is B. The plaintiff's statement to the emergency room doctor that the defendant attacked him is an out-of-court statement that is being offered for the truth of the matter asserted -- that the defendant did attack the plaintiff. As such, it is hearsay and not admissible under any exception to the hearsay rule.

89. The correct answer is A. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. However, evidence of other crimes can be admitted to show opportunity, intent, preparation, or plan. The crime against the witness occurred at the same location, involved the same method of restraint of the victim, used the same method to attempt to kill the victim, and occurred only a few days earlier than the homicide. The witness's testimony would be admissible to prove the defendant had the same opportunity, preparation, and plan in both cases, and could be used to prove that the defendant is the killer. Answer D is incorrect because the witness's testimony is highly probative on the issue of the defendant's guilt, and its probative value outweighs the prejudicial effect it may have.

90. The correct answer is B. Preliminary questions concerning the admissibility of evidence shall be determined by the court. In making its determination, the court is not bound by the rules of evidence except those with respect to privileges. The admissibility of the note should be determined by the judge, and he is permitted to consider the affidavit. Answer A is incorrect because the judge is permitted to consider the affidavit even if it were considered hearsay. Answer C and D are incorrect because matters regarding the admissibility of evidence are for the judge, and only the judge, to rule on.

91. The correct answer is A. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, may not be proven by extrinsic evidence. Testimony from a former employer that the witness submitted a false expense report is extrinsic evidence that is being sought to be admitted to attack the witness's character for truthfulness and is thus inadmissible. Answer D is incorrect because a witness's bias or motive to lie can be shown through extrinsic evidence. The defendant's former cell mate's testimony that the witness asked for money in return for testimony favorable to the defendant would be admissible to show the witness's bias and motive to lie.

92. The correct answer is B. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Because lie detector results are inadmissible in this jurisdiction, the trial court should grant the motion to strike the testimony referring to inadmissible evidence.

93. The correct answer is D. The main issue at trial is to make a determination of what the police officer heard over the police radio. All three items of evidence the defendant is seeking to admit (the police officer's testimony, the police dispatcher's testimony, and the note) are relevant and admissible to that issue. The police officer can testify as to what he believed he heard. The police dispatcher can testify as to what he read over the radio. The note the police dispatcher read from is admissible to show what the police officer heard. They are all forms of relevant evidence to aid the fact finder in its determinations. None of these forms should be considered hearsay, because they are not admitted for the truth of the matter asserted - what the armed robber actually looked like - but rather to show their effect on the listener, the police officer. Additionally, the police dispatcher's testimony, since it is not a document, is not subject to exclusion under the best evidence rule. All three of these items of evidence are relevant, and there are no reasons for their exclusion from evidence.

94. The correct answer is A. A statement made by a party's employee concerning a matter within the scope of the employment, and made during the existence of the relationship, is excluded from the definition of hearsay as a vicarious admission of a party opponent. Because the statement the plaintiff is seeking to testify about was made by an executive assistant who was working on copyright matters, the statement is admissible.

95. The correct answer is D. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of an accused person in order to show action in conformity therewith. The prosecutor is seeking to introduce evidence that the defendant robbed two other stores in order to prove that the defendant robbed this particular store; this evidence is inadmissible. The probative value of the other robberies is substantially outweighed by the danger of unfair prejudice to the defendant.

96. The correct answer is C. The business records themselves would be admissible under the business records exception to the hearsay rule; however, the office manager's testimony regarding his examination of the records would be another level of hearsay that does not fall within any exception. Records, either originals or duplicates, must themselves be admitted into evidence rather than having the office manager testify about what his review of the records were. The office manager's statement as to what the records contained would be inadmissible hearsay because the testimony would be an out-of-court statement - the records - that was being offered for the truth of the matter asserted.

97. The correct answer is B. The jury may, but is not required to, find that the notice was received. The plaintiff's presumption under the mail box rule, that a properly addressed, stamped and mailed notice reached its destination, imposes on the party against whom it is directed (here, the defendant) the burden of presenting evidence to rebut or meet the presumption. In response to the presumption under the mail box rule, the defendant testified that she never received the notice. The jury is thus empowered to judge the credibility of both sides and can, but is not required to, find that the notice was received.

98. The correct answer is A. The chart is admissible as a record of regularly conducted activity. The chart is a record of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, that was kept in the course of a regularly conducted business activity. In addition, it was the regular practice of that business to making medical records in order to maintain a memorandum, report, record or data compilation. Although the resident may not be able to recall which physician gave him the information, the resident knew that the statement was made. Therefore, the document is admissible.

99. The correct answer is D. As a general rule, whether a privilege applies in federal court is governed by the federal common law as it has been interpreted by the courts of the United States in the light of reason and experience. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which state law supplies the rule of decision, whether a privilege applies shall be determined in accordance with state law. Since this case arose out of a violation of the federal civil rights law, the court should apply the federal common law in determining the propriety of the physician-client privilege. At common law, the federal courts do not recognize a physician-client privilege, so the claim of privilege should be rejected.

100. The correct answer is C. The victim's statement to the witness that the defendant was the assailant is an out-of-court statement that is being offered for the truth of the matter asserted - that the defendant assaulted the victim - and is thus hearsay. Of the four answers, choice C is the most likely to allow for the admission of the statement. The victim's statement will be admissible if it was a statement relating to a startling event or condition made while the victim was under the stress of excitement caused by the event or condition. If, immediately after being assaulted, the victim telephoned her husband and identified the defendant as the assailant, her statement should be admissible under the excited utterance exception to the hearsay rule.

101. The correct answer is D. In all cases in which evidence of character or a trait of character of a person is admissible but not essential, such as in this case, proof of that trait of character may be made by testimony regarding reputation or by testimony in the form of opinion. Specific instances of conduct can only be used on cross-examination. Because the defendant's honesty is not an essential element of the charge, the prosecutor cannot use specific incidents of conduct to show that the defendant is guilty. However, the prosecutor could have inquired about relevant specific instances of misconduct on cross-examination of the defendant's witness. Answer A is incorrect because, even though the "door" may have been opened regarding the defendant's honesty, the prosecutor cannot use specific incidents of misconduct to rebut the character evidence testimony given by the defendant's witness, except in cross-examination.

102. The correct answer is B. Hypothetical questions that do not include all clearly significant facts at issue in a case are irrelevant. Since the plaintiff omits any reference to the horseback riding accident, even though he admitted it occurred, any response to the hypothetical by the physician will be irrelevant to the determination of the cause of the injury.

103. The correct answer is B. The defendant's wife's statement is an out-of-court statement that is being offered for the truth of the matter asserted - that the defendant killed the victim - so it is hearsay. However, the statement related to a startling event or condition made while the wife was under the stress of excitement caused by the event or condition, and is thus admissible as an excited utterance. Therefore, the witness's testimony is admissible.

104. The correct answer is A. A witness may be properly questioned about any bias or motive to lie the witness may have. The defendant's counsel is permitted to inquire into whether the stepdaughter may have a bias or motive to lie about the abuse since the defendant had punished her shortly before the complaint of the abuse.

105. The correct answer is B. Because the friend is unavailable for trial, his statement to his girlfriend is admissible under the statement against interest exception to the hearsay rule. The friend's statement was so far contrary to his pecuniary or proprietary interest that it tended to subject the friend to possible criminal liability, and a reasonable person in the friend's position would not have made the statement unless he believed it to be true. Because the friend is unavailable for trial, the statement can be admitted as a statement against interest.

106. The correct answer is B. The friend's statement to his cell mate is a prior inconsistent statement to his earlier testimony that he saw the man commit the burglary. The friend's statement is admissible to impeach his earlier statement.

107. The correct answer is C. Although a lay witness is allowed to offer an opinion to identify and authenticate handwriting, to do so, the witness's familiarity with the handwriting must have not been acquired for purposes of the litigation. A non-expert who familiarized himself with the defendant's writing for the purpose of authenticating it at trial was acting in preparation for trial, and is not allowed, under the rules of evidence, to authenticate the letter.

108. The correct answer is A. The victim's statement to her father that she loved the defendant and could never hurt him is admissible as a statement of a then-existing mental or emotional condition. The witness's testimony is being introduced to show the victim's existing emotional and mental state when she made the statement, and is admissible as an exception to the hearsay rule.

109. The correct answer is D. The attorney-client privilege covers confidential communications made during a legal consultation between an attorney and client. However, if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud, the privilege does not apply. Because the defendant sought the lawyer's advice to aid in the plan to commit the crime of obstructing justice, there is no valid attorney-client privilege. Answer C is incorrect because the attorney does not need to know of the illegal purpose before the privilege will be found not to apply. The attorney's ignorance of his client's purpose is irrelevant.

110. The correct answer is C. Evidence of other crimes or acts are not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. The fact that the defendant had obtained duplicate insurance of the burned property is relevant because it shows the defendant's motive for committing the arson. Any minor prejudicial effect of the evidence of duplicate insurance would be outweighed by the probative value of the evidence. The defendant's threat to kill his ex-wife if she testifies is also relevant, admissible evidence. The threat to kill his wife is being offered as proof of the defendant's plan and knowledge, and his consciousness of his guilt and his attempts to stop the introduction of evidence against him. Both the defendant's obtaining duplicate insurance and threatening to kill his ex-wife are admissible into evidence. Answers A, B, and D are incorrect because both the duplicate insurance and the threat to kill his ex-wife are admissible.

111. The correct answer is A. The son's testimony concerning his mother's statement that she planned to write her next novel under the pen name of Roberta Rector is not hearsay and is admissible as circumstantial evidence that Roberta Monk was on the plane. Although it is an out-of-court statement, Roberta's statement is not being offered for the truth of the matter asserted -- that Ms. Monk planned to write her next novel using the pen name Roberta Rector. Instead, the statement is being offered to show that the person on the plane named Roberta Rector was, in fact, Roberta Monk. Since the statement is not being offered for the truth of the matter asserted, it is admissible as relevant evidence. Answer B is incorrect because the statement is not an admission, and it is not from a party to the suit.

112. The correct answer is C. Before an item of evidence can be admitted into evidence, it must be authenticated. There are certain documents and types of documents that are self-authenticating. These self-authenticating documents do not need a supporting witness before they can be admitted. A document purporting to be a memo from a company, even if on letterhead, is not a self-authenticating document, and is least likely of the examples to be admitted without a supporting witness.

113. The correct answer is C. Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or undue delay, waste of time, or needless presentation of cumulative evidence. Only answer C does not deal with any of those considerations, and instead deals with the exclusion of evidence based on potential discovery violations. Answer A is incorrect because juror confusion of the issues is a consideration in determining whether to exclude relevant evidence. Answer B is incorrect because unfair prejudice on the part of the jury is also a consideration in determining whether to exclude relevant evidence. Answer D is incorrect because waste of time and needless presentation of trivial evidence is also a consideration in determining whether to exclude relevant evidence.

114. The correct answer is A. A court may take judicial notice of a relevant fact whether a party requests it or not. Answer B is incorrect because a court can take judicial notice of a fact that is not subject to reasonable dispute, and the plaintiff would not have to provide any information to the court before it can take judicial notice. Answer C is incorrect because there is no burden shifting in cases involving judicial notice. Answer D is incorrect because, in civil cases, the court shall instruct the jury to accept as conclusive any fact judicially noticed. The jury is required to accept a judicially noticed fact as conclusive on the issue. Because the identity of the capital of a state is a fact not subject to reasonable dispute, the judge can take judicial notice of it, even if neither party requests it.

115. The correct answer is B. Specific instances of a witness's misconduct, for the purpose of attacking or supporting the witness's character for truthfulness, may not be proved by extrinsic evidence. They may, however, if probative of the witness's character for truthfulness or untruthfulness, be inquired into on cross-examination of the witness. The witness's creation of a false affidavit is probative of his character for truthfulness and bears on his credibility. The plaintiff's counsel's questioning of the witness is proper. Answer A is incorrect because the question is admissible as to the witness's credibility and not to his standard for judgment of reputations. Answer C is incorrect because a witness's character for truthfulness or untruthfulness cannot be proven by extrinsic evidence of specific instances. However the instances can be asked about in cross-examination. Answer D is incorrect because it is a misstatement of law. Any witness may be impeached.

116. The correct answer is D. The best evidence rule only applies to writings, recordings and photographs, and the plaintiff's robot is none of those. The plaintiff, since he has personal knowledge of the appearance, can testify as to the appearance of the model without having to introduce the model into evidence. Answers A, B, and C are incorrect because those requirements only apply for the introduction of writings, recordings, and photographs into evidence.

117. The correct answer is B. Preliminary questions concerning the qualification of a person to be a witness shall be determined by the court. In making its determination, the court is not bound by the rules of evidence except those with respect to privileges. The letter, although hearsay, may be considered by the judge in determining whether the witness is qualified as an expert.

118. The correct answer is C. In civil actions and proceedings, whether a presumption should be applied is determined in accordance with the state law whose substantive law is applied to the case. Answer A is incorrect because the state whose substantive law is being applied in the case determines whether the presumption should be applied. Answers B and D are incorrect for the same reason.

119. The correct answer is A. The dog's behavior of drawing attention to the defendant's briefcase was not hearsay and is admissible as evidence of the defendant's guilt. Hearsay is an out-of-court statement that is being offered for the truth of the matter asserted. A statement is either an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion. Because the dog is not a person, its reactions to the defendant's briefcase do not amount to a statement. Answer B is incorrect because the witness's testimony does not rely on hearsay; it is a description of what the dog did and what, in his expert opinion, that meant. Answer C is incorrect because the witness's testimony is not hearsay. Answer D is incorrect because the reactions of dogs, if the dogs are properly trained in the detection of illicit substances, are admissible.

120. The correct answer is A. Because one of the main issues in the case is whether or not the plaintiff is a thief (and consequently whether the defendant's letter to the employer was true), the plaintiff's character trait for thievery is essential. In cases in which character or a trait of character of a person is an essential element, proof may be made by showing specific instances of that person's conduct. Evidence that the plaintiff stole money from a former employer on a prior occasion is admissible to prove that the plaintiff is a thief.

121. The correct answer is A. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. By establishing that the defendant dropped a plastic bag, and that, after only a few minutes, the police officers returned to the same spot and found a plastic bag, the prosecution has introduced sufficient evidence for a finding that the bag was the one the defendant dropped. The objection should be overruled.

122. The correct answer is C. The requirement of authentication or identification as a condition to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. By severely limiting the number of people who knowingly could call and threaten the witness, there is sufficient evidence to support a finding that the telephone call is what the witness claims it to be.Answer A is incorrect because self-identification on an incoming telephone call is insufficient evidence to allow for the admission of the telephone call against the defendant

123. The correct answer is C. When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported by any evidence that would be admissible if declarant had testified as a witness. The witness's testimony that the bystander had told him that the defendant went through a yellow light is admissible only for the purpose of impeaching the bystander's earlier statement that the defendant ran a red light.

124. The correct answer is A. The passage in the text is admissible both as the basis of the witness's opinion and as substantive evidence as to the proper standard of care. The passage is admissible under the learned treatise exception to the hearsay rule. The witness established the text as a reliable authority in his direct testimony, and, to the extent relied upon by the witness in direct examination, the passage contained in the text is admissible as substantive evidence of the proper standard of care. In addition, the passage can be used as the basis of his opinion.

125. The correct answer is A. The attorney-client privilege is broken if the communications involved are not intended to be or do not remain confidential. If the defendant played the audiotape for his father to get his reaction, the communication is no longer confidential and the attorney-client privilege will not apply. Answer B is incorrect because, even if the lawsuit alleged criminal behavior by the defendant, the privilege remains in effect. Only if the communication contains ongoing criminal activity or a plan to commit a future crime or fraud will the crime-fraud exception break the attorney-client privilege. Answer C is incorrect because whether or not the audiotape contains inconsistent statements is irrelevant to determining whether those statements are protected under the attorney-client privilege. Answer D is incorrect because the attorney-client privilege extends beyond the death of the client.

126. The correct answer is D. The tenant's statement to the witness is an out-of-court statement that is being offered for the truth of the matter asserted -- that the tenant had told the manager about the tear in the carpet. The statement, which contains hearsay within hearsay, does not meet the requirements of any exception to the hearsay rule and is inadmissible.Answer A is incorrect because the tenant's statement is not being offered to prove the carpet was defective, it is being offered to prove that the tenant noticed it was defective, that he told the manager about it, and that the manager had notice that the carpet was defective. In addition, if the witness's testimony is being used to prove the carpet was defective, it would still be inadmissible as hearsay. The tenant's statement would still be offered for the truth of the matter asserted, which is that the carpet was torn. Answer B is incorrect because the tenant's statement, whether offered to prove that the carpet was defective or to prove notice on the part of the defendant, is still being offered for the truth of the matter asserted and is inadmissible hearsay, not within any exception. Answer C is incorrect for the same reasons.

127. The correct answer is A. The defendant's wife's testimony at the prior hearing, if relevant to the bankruptcy fraud case, is admissible under the former testimony exception to the hearsay rule. Testimony given as a witness at another hearing of the same or a different proceeding, if the party against whom the testimony is now offered had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination, is admissible. Here, although the testimony was in a separate proceeding, the defendant had the opportunity and motive to cross examine his wife about the testimony, and the mere fact that he didn't use all he could have on cross examination does not make the testimony inadmissible. In addition, the defendant is still allowed to raise his impeachment issues in his current bankruptcy fraud case, to impeach the prior testimony, so there is no prejudice.

128. The correct answer is B. The state issued motor vehicle registration is admissible to show the vehicle was the defendant's and for the inference that he knew what was in the trunk. State issued motor vehicle registrations are self-authenticating documents that are admissible under the public records and records of regularly conducted business exceptions to the hearsay rule. Answer A is incorrect because the vehicle registration is not a statement made by the defendant; it is made by the state. In addition, it is not a statement against interest. Answer C is incorrect because the motor vehicle registration is self-authenticating. Answer D is incorrect because the registration meets the requirements for the public records exception to the hearsay rule.

129. The correct answer is A. The defendant is seeking to testify that he had provided larger amounts to the plaintiff than was indicated in the ledger. That testimony is based on the defendant's firsthand knowledge; he was the one who handed the plaintiff the money. The defendant can testify as to how much money was there, and his testimony is admissible.

130. The correct answer is A. Preliminary questions concerning the admissibility of evidence shall be determined by the court. Both sides are permitted to present evidence and argument about the admissibility of the evidence, and the hearing should be conducted outside of the presence of the jury. Answer B is incorrect because, in jury cases, evidentiary hearings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury. The jury should not be present for the evidentiary hearing. Answer C is incorrect because the jury should not be present and the determination is to be done by the judge. Answer D is incorrect because both sides, not just the proponent of the evidence, must be permitted to present evidence and arguments about the admissibility of evidence. In addition, the standard the judge should use in ruling on the admissibility in Answer D is incorrect.

131. The correct answer is D. Since the issue in the case is very specific to the facts of the case, a judgment for another plaintiff against the factory, even if the facts are substantially similar, is inadmissible in this case. It is completely irrelevant to the determination of whether the driver's auto part was manufactured by the factory that some other plaintiff in some other case obtained a judgment against the factory.

132. The correct answer is C. Although federal courts do recognize a psychiatrist-patient privilege, the defendant's statement to the nurse that he planned to shoot the President was not confidential and was not made to obtain treatment. Therefore, the statement is unprivileged and the nurse should be allowed to testify about the statement.

133. The correct answer is A. The prosecutor's statement to the witness is not being offered for the truth of the matter asserted -- that the state will drop the charges against the witness. Rather, it is being offered to show the witness's belief and state of mind while testifying. If the witness believes that the state will drop the charges, he clearly has a motive to lie on the stand, and he can be properly impeached with the prosecutor's promise to him.

134. The correct answer is D. A juror may not testify about a verdict, deliberations, or mental process in reaching a verdict. However, a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. If the jury obtained inadmissible and prejudicial information from a clerk that the defendant had been accused of fraud in several recent lawsuits, the defendant's motion for a new trial will most likely be granted.

135. The correct answer is B. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. However, other crimes evidence can be admitted to show identity, intent, preparation, or plan. The evidence the prosecutor seeks to admit is that the exact same man, the defendant, had presented a forged prescription from the exact same doctor, for the exact same drug, on the exact same day. That evidence would be admissible to prove the identity, which the defendant called into question by his testimony, of the person who obtained the Percodan at the drugstore.

136. The correct answer is A. The tape recording of the wife's reading of the license plate number is an out-of-court statement that is being offered for the truth of the matter asserted. However, the tape recording is a statement describing or explaining an event or condition made while the wife was perceiving the event or condition. She was recounting what her husband was saying. The husband's statements to his wife were also statements describing or explaining an event or condition made while the husband was perceiving the event or condition - the reading of the license plate from the vehicle. The tape recording is admissible because both statements, the husband's to his wife and the wife's into the recording, meet the criteria of the present sense impression exception to the hearsay rule. Answer B is incorrect because the statements are hearsay.

137. The correct answer is C. The witness's membership in the church would be relevant and admissible to ascertain whether she has any possible bias or motive to lie for the defendant church.

138. The correct answer is C. The wife's proposed testimony could lead to her invoking the adverse spousal privilege, a privilege against testifying against her husband. That privilege, however, only exists at the wife's discretion. The witness spouse, in this case the defendant's wife, alone has a privilege to refuse to testify adversely against her husband; she may be neither compelled to testify nor foreclosed from testifying. The choice is hers.

139. The correct answer is B. The anonymous letter is being offered against the defendant and is an admission by him that he knows he owes back taxes. The letter is admissible as an admission by a party opponent.

140. The correct answer is C. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion. The witness's testimony is being offered as evidence of the defendant's bad character. There is an exception that allows the prosecution to use character evidence, but only if the evidence is being used to rebut character evidence introduced by the defendant. Because the defendant did not introduce any character evidence intended to prove that he is a nonviolent, peaceful person, the prosecution is not permitted to introduce evidence intended to prove the defendant's violent character.

141. The correct answer is A. The husband's statement taking fault for the accident, at the time it was made, tended to subject the husband to civil liability, and would render invalid any claim he had against the driver. A reasonable person in the husband's position would not have made the statement unless he believed it to be true. The statement is admissible under the statement against interest exception to the hearsay rule. Answer C is incorrect because the husband's statement is being offered to prove he was at fault for the accident, not to prove what was in his mind when he died. In addition, the statement is a statement of memory or belief to prove the fact remembered or believed - that he was at fault. As such, it is specifically excluded from the definition of a statement of then existing mental state and is inadmissible.

142. The correct answer is A. The defendant's letter to his sister describes the defendant's current mental condition - that when he wrote the letter, he intended to go to visit his sister on March 5. The statement should be admissible under the then existing mental condition/state of mind exception to the hearsay rule.

143. The correct answer is B. The memoranda prepared by the employees are out-of-court statements that are being offered for the truth of the matter asserted - that these instances of confusion occurred. As such, they are hearsay, and they do not meet the requirements of any exception. The memoranda should be excluded from evidence.

144. The correct answer is C. The attorney-client privilege will cover confidential communications made during a legal consultation between an attorney and client. However, if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud, the privilege does not apply. The defendant's letter explicitly states that the deed she is seeking should be back-dated to avoid the tax law. Because the services sought by the defendant from her attorney were for the commission of tax fraud, the communication will not be privileged and the production of the letter should be required.

145. The correct answer is A. Specific instances of misconduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness. The expert witness's false testimony in his divorce proceeding is probative of his character for truthfulness or untruthfulness, and can be inquired into upon in cross-examination.

146. The correct answer is A. Evidence that the vice president's bank deposits consisted of more money than he legally earned has the tendency to make embezzlement more probable than it would be in the absence of that evidence. The banker's testimony is relevant, circumstantial evidence to show the vice president's guilt, and is admissible.

147. The correct answer is B. The tape recording is admissible to impeach the witness's testimony that the defendant fired the plaintiff for frequent absenteeism. However, the tape recording contains out-of-court statements that are being offered for the truth of the matter asserted - that the defendant fired the plaintiff because of his race. As such, it is hearsay. Since it does not meet the requirements of any exception to the hearsay rule, the tape is inadmissible as substantive evidence. Answer A is incorrect because prior inconsistent statements are inadmissible as substantive evidence unless they were given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition.

148. The correct answer is A. The witness has testified that he now has insufficient recollection to enable him to testify fully and accurately, but that he once had knowledge of the license plate number. The witness has also testified that the tape recording is a record, which he adopted when the matter was fresh in his memory, in which the witness's knowledge of the license plate number is correctly contained. The tape recording is therefore admissible under the recorded recollection exception to the hearsay rule.

149. The correct answer is D. The defendant store was not a party to the prior criminal trial and its attorney was never afforded the opportunity to develop the guard's testimony by direct, cross, or redirect examination. The defendant store, against whom the guard's testimony is sought to be admitted, was not a predecessor in interest to the prosecutor, and the prosecutor did not have the motive to cross examine the guard's testimony regarding the defendant store's involvement in the crime. For these reasons, the guard's testimony at his criminal trial does not meet the requirements of the prior testimony exception to the hearsay rule and is inadmissible. Answer C is incorrect because the defendant store was not able to develop the guard's prior testimony through cross examination. The guard's testimony does not meet the requirements of the prior testimony exception to the hearsay rule and is inadmissible.

150. The correct answer is D. The deceased's statement to his wife that the defendant told him that the defendant was going to blow the deceased's head off one of these days is an out-of-court statement that is being offered for the truth of the matter asserted - that the defendant threatened the deceased. This statement is thus hearsay and is inadmissible because it does not meet the requirements for any exception to the hearsay rule. Answer A is incorrect because the hearsay statement is the deceased's statement to his wife. The defendant's statement to the deceased may be admissible to show the defendant's state of mind, but the deceased relaying that statement to his wife is another level of hearsay that has no exception and is thus inadmissible. Therefore answer B is incorrect. Answer C is incorrect because the statement is inadmissible because it is hearsay, not because it is improper evidence of a prior bad act. The prior bad act of threatening the deceased, if not hearsay, would be admissible to show the defendant's motive. However, it is hearsay, and thus inadmissible.

151. The correct answer is B. The defendant's statement to the witness describes the defendant's current mental condition, which was that she intended to go spend the next three days in State B. The statement is admissible under the then-existing mental condition exception to the hearsay rule. Statement of future plans falls within the hearsay exception for then-existing state of mind.

152. The correct answer is B. The relevancy of the woman's statement to the plaintiff is conditioned on the showing that the woman had actual or apparent authority to act for the defendant. If the woman did not have actual or apparent authority to act for the defendant, the statement would be irrelevant to the plaintiff's case against the defendant and it should not be admitted. However, the statement is admissible subject to the introduction of evidence sufficient to support a finding that the woman had actual or apparent authority to act for the defendant.

153. The correct answer is C. Evidence of other acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes such as intent and absence of mistake or accident. The defendant's prior arguments and near-beatings of his father are admissible to prove that the killing of his father was not accidental, and was, in fact, intentional.

154. C is the correct answer. As the defendant, the doctor's offer to the plaintiff is not hearsay. The out-of-court offer to pay medical expenses is an admission of a party opponent that the plaintiff could try to use as evidence of the doctor's liability. It is not admissible, however. Federal Rule of Evidence 409, as a policy matter, states that the use of any offer or promise to pay the medical expenses of an injured party is inadmissible to prove liability for that injury. Thus, A is incorrect.

155. The correct answer is A. Evidence of the plaintiff's wife's intoxication while she was driving is relevant and admissible to show the possible cause or causes of the accident. Answer B is incorrect because the plaintiff's wife's intoxication at the time of the accident is not character evidence; it is evidence of her factual, bodily state at the time of the accident. It is relevant because her intoxication may have caused the accident. Answer C is incorrect because the evidence of the wife's intoxication at the time of the accident is not character evidence. Answer D is incorrect because evidence of the wife's intoxication is probative on the issue of the cause of the accident, and is not unfairly prejudicial.

156. The correct answer is B. On the issue of notice, the letter copy is not being offered for the truth of the matter asserted – i.e. what the proposed expenditures beyond the original estimates were. The letter copy is being offered to show that the plaintiff sent the letter, not the actual contents of the letter; therefore, it is not hearsay. In addition, evidence of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the organization on a particular occasion was in conformity with the routine practice.

157. C is the correct answer.

158. The correct answer is B. The deceased man's statement to the police officer is an out-of-court statement that is being offered for the truth of the matter asserted - that the deceased man loaned the defendant $10,000. As such, it is hearsay, and it is inadmissible because it does not meet the requirements for any exception to the hearsay rule.

159. The correct answer is B. Every person is competent to be a witness, as long as the person meets the requirements of having personal knowledge and taking the oath to testify truthfully. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. In addition, before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness's conscience and impress the witness's mind with the duty to do so. If there is a sufficient basis for believing the son has personal knowledge and understands his obligation to testify truthfully, the son's testimony should be admitted.

160. The correct answer is D. No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone. The expert's testimony is inadmissible because, by opining that the defendant had been in fear for her life at the time of the killing, it expresses an opinion concerning the defendant's mental state.

161. The correct answer is B. Because the plaintiff had personal knowledge of the brake shoe's condition, the plaintiff can testify to the condition of the shoe. Answer A is incorrect because the defendant's expert need not have examined the shoe before the plaintiff can testify about its condition. Answer C is incorrect because it is irrelevant that the brake shoe was produced and examined as part of settlement negotiations. Answer D is incorrect because the plaintiff does not need to establish that the disappearance was not his fault before the plaintiff can testify about its condition. A witness may testify to matters within his personal knowledge, and, because the item of evidence is not a writing, recording, or photograph, no other requirements are necessary.

162. The correct answer is B. The infrared photograph, once authenticated, can be identified by comparison by the trier of fact with the defendant. The photograph is admissible as substantive evidence and the jury should be allowed to compare the person in the photograph and the defendant.

163. The correct answer is D. Because there is no audiotape to be authenticated or identified, the victim can testify as to his personal knowledge. Although he cannot identify the caller's voice with absolute certainty, his testimony is still within his personal knowledge, so his opinion is relevant. The victim's uncertainty goes to the weight that should be given to his testimony, not to its admissibility.

164. The correct answer is C. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion. The police accident investigator's opinion was based upon sufficient facts, was the product of reliable principles and methods, and the investigator has applied the principles and methods reliably to the facts of the case. The testimony of the investigator, because he has sufficient expertise to express an opinion, is admissible.

165. The correct answer is C. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, may not be proved by extrinsic evidence. Whether the friend lied on his credit card application cannot be proven by extrinsic evidence, and the witness's testimony is inadmissible.

166. The correct answer is D. The witness's testimony that he had sold liability insurance on the plane to the defendant is admissible evidence to show the defendant's ownership or responsibility for the plane. Answer A is incorrect because the witness is not testifying to the content of the policy, only to its existence, and is not required to introduce the policy itself before he can testify. Answer B is incorrect because it misstates the standard for determining whether the witness's testimony is admissible. Answer C is incorrect because the existence of the policy is admissible and relevant to show the defendant's ownership or responsibility for the airplane, not his motivation to invest money in the airplane. It is the defendant's ownership of the plane that is at issue, and the witness's testimony is admissible as proof on that issue.

167. The correct answer is D. Preliminary questions concerning the admissibility of evidence shall be determined by the court. In making its determination, the court is not bound by the rules of evidence except those with respect to privileges. The judge may consider the affidavit, even though it is hearsay, in making its determination of the admissibility of the pedestrian's statements.

168. The correct answer is D. At the request of a party, the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses. Because the court in answer D did not exclude witnesses after the defendant had requested it, the court acted in error. Answer A is incorrect because the judge may, in the exercise of discretion, permit inquiry during cross-examination into additional matters as if on direct examination. Because the court has the discretion to allow the questioning in that manner, allowing the questioning is not error. Answer B is incorrect because, although ordinarily leading questions should be permitted on cross-examination, there is no requirement that the judge must allow the defendant's attorney to use leading questions on cross-examination of the defendant. Answer C is incorrect because matters affecting the credibility of the witness can be asked on cross-examination, regardless of whether they had been asked on direct examination. Only in answer D is there a requirement that the judge take an action, and to fail to do so would amount to error.

169. The correct answer is A. When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked, and, if attacked, may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Because the witness's friend's statement has been entered into evidence, the defendant is permitted to inquire into any possible bias or motive to lie that the friend has for the making of that statement. The fact that the friend may have beaten up the defendant the day before the accident is relevant to show that the friend has a dislike and bias against the defendant that may lead to his making a false statement.

170. The correct answer is B. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. The evidence the prosecution is seeking to admit is being offered only to show the defendant's bad character and that he was acting in conformity therewith. The evidence should be excluded. Answer A is incorrect because the defendant has not testified. In addition, even if the defendant takes the stand, the evidence cannot be inquired into on cross examination because only specific incidents probative on the issue of truthfulness or untruthfulness, which these prior bad acts are not, can be asked of the witness. Answer C is incorrect because evidence of other crimes, wrongs, or acts is not admissible character evidence when it is used in order to show action in conformity with those wrongs. Answer D is incorrect because although evidence may be admissible to prove identity, plan, or motive, none of the incidents the prosecution is seeking to introduce is relevant on any of those issues. There are no common elements, outside of their being instances of the defendant's bad character with a weapon, between the prior crimes and the current crime that would be relevant on the issue of identity, plan, or motive. The other incidents are only sought to be introduced to show the defendant's poor character, and the evidence of those incidents should be suppressed.

171. The correct answer is A. Although evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, there is an exception that allows the accused to offer evidence of a trait of character that is pertinent to the trial. In a case where the charge is murder, the accused's reputation in the community as being a peaceable person would be a pertinent trait and should be admissible if proposed by the accused. However, the accused's reputation in the community as a truthful person would not be pertinent to the murder charge, and should be inadmissible. Because the defendant has not testified, his reputation in the community as a truthful person would be irrelevant and inadmissible.

172. The correct answer is D. A judicially noticed fact must be one not subject to reasonable dispute, in that it is either generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Because the proof of conviction is subject to reasonable dispute, because the conviction is not generally known within the territorial jurisdiction of the federal court, and because the telephone call to the clerk of the state court, which is hearsay, can reasonably be questioned, judicial notice of the conviction is the least likely method available to prove the conviction.

173. The correct answer is D. Medical records are admissible as a record of regularly conducted activity. The medical records are reports or records of acts, events, conditions, opinions, and diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, and they are kept in the course of a regularly conducted business activity. The doctor's statement to the intern is a diagnosis made near the time of occurrence and the information was transmitted to the intern from the doctor. The entry reporting the doctor's diagnosis is admissible under the record of regularly conducted business activity exception to the hearsay rule.

174. The correct answer is D. The defendant, by not correcting the witness, by accepting the introduction, and by shaking hands with the witness, manifested an agreement with the seller's statement that the defendant was the seller's "partner in this." These actions will suffice for a finding that the defendant adopted the seller's statement, and the seller's statement that the defendant was his partner will be admissible as an adopted admission by a party opponent. The defendant does not need to verbally acknowledge the statement; the mere acceptance and some action on the part of the defendant will act as an adoption of the statement.

175. The correct answer is C. The witness's statement that the defendant was his source was an out-of-court statement that is being offered for the truth of the matter asserted - that the defendant was the source for the drugs. It is therefore hearsay; because it does not meet the requirements of any exception to the hearsay rule, it is inadmissible.

176. The correct answer is A. The witness's statement that he diligently searched all the records of the jail and found no record of the defendant is admissible under the absence of an entry from a public record exception to the hearsay rule. To prove the nonoccurrence or nonexistence of a matter of which a record was regularly made and preserved by a public office or agency, evidence in the form of testimony that a diligent search failed to disclose the record is admissible. Jail records are records regularly made and preserved by a public office or agency, and the witness's testimony about his diligent search of those records is admissible to prove the defendant was not in the jail when he claimed to be.

177. A is correct. Federal Rule of Evidence 803(18), the learned treatise exception, provides that if the court finds a publication to be a reliable authority, then "statements" may be read into evidence, but that the publication may not be received as an exhibit. Thus, the jury is not allowed to bring learned treatises into the jury room. There is a concern that if juries were allowed unrestricted access to the whole publication, they may rely on parts of the publication that are not germane to the case. Moreover, the intent of the rule is that juries need to be guided through the pertinent parts of the publication by the testifying experts.

178. Answer A is correct. Under Federal Rule of Evidence 608(b), a witness can be impeached with prior bad acts that bear upon truthfulness. B is incorrect because the incident's not leading to conviction is not the best reason to exclude this evidence; the best reason is that failing to stop at a stop sign has no bearing on truthfulness. As a general matter, a witness also can be impeached with evidence that contradicts a part of his testimony that bears on an important issue in dispute. However, in this case, the prior bad acts do not contradict the witness's testimony regarding his stopping on this particular occasion. Carelessness is a character trait, and evidence of a person's character is not admissible in a civil case to prove how that person acted on the occasion in question. Therefore, D is incorrect; a person can be acting carefully on one occasion and not another. So, the prior acts are not contradictory to the plaintiff's testimony that he was careful in this instance. If the plaintiff testified that he had never run a stop sign, then the prior acts would contradict his testimony.

179. Answer D is correct. The prosecutor is trying to prove what the defendant said, not what the transcript says. Accordingly, Federal Rule of Evidence 1003, the best evidence rule, is not relevant. It would be different, for example, if this were a contract and the parties differed over the wording of a clause in the contract. In this case, the copy of the transcript is properly used under Federal Rule of Evidence 612 to revive the officer's recollection.

180. Answer C is correct. Prior statements that are inconsistent with a witness's present testimony impeach the witness's credibility because they tend to show that the witness's trial testimony is not believable. The prior inconsistent statement was not made under oath, and so does not fit the exemption to the hearsay rule provided by Federal Rule of Evidence 801(d)(1)(A). There is no other hearsay exception that is satisfied under the facts. Therefore the statement is admissible only to impeach the witness and not for its truth.

181. Answer B is correct. This is a correct statement of federal common law, established by the Supreme Court in Trammel v. United States. If the witness and the defendant are married at the time of trial, the witness cannot be placed in contempt for refusing to testify against the defendant. The rationale for the rule is to preserve marital harmony, which would otherwise be damaged by one spouse testifying against the other.

182. Answer C is correct. This is evidence of "bias." It shows that the declarant had a motive to implicate the defendant falsely, because by doing so he would remove the defendant from the position that he wanted to have. Evidence of bias is considered important and, generally speaking, it is liberally admitted. Note that the gang member can be impeached even though he is not at trial to testify. Federal Rule of Evidence 806 allows parties to impeach a hearsay declarant in the same ways that would be permitted if the declarant were to testify. This is because a hearsay declarant is essentially a witness in the case.

183. D is correct. Federal Rule of Evidence 803(2) admits a hearsay statement that would otherwise be barred under Rule 802 where the statement "relat[es] to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." In this case, the assault was a startling event, and the victim made the statement immediately after the beating, trying to identify the perpetrator. Thus, all the admissibility requirements of Rule 803(2), the excited utterance exception, are met. Thus, answer D is correct, and answer A is incorrect.

184. D is correct. This is a party admission, admissible as a hearsay exemption under Rule 801(d)(2)(A). A statement made by a party cannot be excluded as hearsay when offered against him by the opponent. Moreover, the statement is probative. A person who makes a statement like this is likely to think he is at fault, and this is probative evidence that indeed he is at fault. Thus, answer D is correct, and answer B is incorrect, because the statement is not hearsay.

185. Answer C is correct. This instruction complies with Federal Rule of Evidence 201(g), which states that in a criminal case, "the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed." A judicially-noticed fact in a criminal case allows the court to instruct on a permissible inference, but nothing more.

186. Answer A is correct. Federal Rule of Evidence 408 excludes "[e]vidence of conduct or statements made in compromise negotiations." Here, there is a dispute, and the manager's statement was made in an effort to settle that dispute. As such, the entire statement is protected under Rule 408.

187. D is correct. The certification is hearsay, but it qualifies under Federal Rule of Evidence 803(10), the hearsay exception for a certification offered to prove the absence of a public record. The certification is offered for the proper inference that if a license had been issued, it would have been recorded in the public record. Thus, the fact that there was no record found is probative evidence that a license was never issued. To be admissible, the certification must be prepared by a public official and must, on its face, indicate that a diligent search of the records was conducted. This certification satisfies the requirements of the exception. Thus, answer D is correct, and answer A is incorrect.

188. B is correct. Under Federal Rule of Evidence 404(b), prior bad acts can be admitted to prove the defendant's conduct if offered for some purpose other than to show that the defendant is a bad person. In this case, the bad acts are very similar to the acts in dispute, and tend to show non-character purposes such as intent, knowledge, lack of accident, and modus operandi (i.e., that the defendant has a tendency to engage in particularized activity that sets her apart from others). Thus the bad acts can be offered as proof that the defendant committed the crime charged. In addition, Federal Rule of Evidence 609(a)(2) provides that evidence of a past conviction "shall be admitted" to impeach the credibility of a witness if the crime "involved dishonesty or false statement, regardless of the punishment." In this case, fraud convictions clearly involve dishonesty, and are therefore properly admitted to impeach the defendant. Accordingly, the convictions are admissible both to prove that the defendant committed the crime and to impeach the defendant. Thus, answer B is correct, and answers A, C, and D are incorrect.

189. Answer D is correct. The incident can be offered on cross-examination of the character witness, the proper purpose being to show that the witness's assessment of the defendant's character for honesty is not credible. The intent of the question is to test the witness's knowledge of the defendant's reputation on the one hand, and the quality of the community on the other. If the witness hasn't heard about the falsification, he might not be very plugged in to the community and so might be a poor reputation witness. On the other hand, if the witness answers "yes," then the jury might infer that the community in which the defendant has a reputation for complete honesty may be setting the honesty bar pretty low. In either case, the alleged falsification is probative impeachment whether or not it occurred. Note that the courts require that the cross-examiner must have a good faith belief that the event actually occurred before inquiring into the act on cross-examination. In this case, that good faith standard is met by the evidence presented at the sidebar conference that the defendant was disciplined in medical school. The question does not call for a statement that would be used for its truth. Therefore, it is not hearsay. Likewise, the alleged incident is not offered to prove income tax fraud. Rather, the intent of the question is to test the witness's knowledge of the defendant's reputation on the one hand, and the quality of the community on the other. If the witness hasn't heard about the falsification, he might not be very plugged in to the community and so might be a poor reputation witness. On the other hand, if the witness answers "yes," then the jury might infer that the community in which the defendant has a reputation for complete honesty may be setting the honesty bar pretty low. In either case, the alleged falsification is probative impeachment whether or not it occurred. Thus, answers A and B are incorrect.

190. B is correct. This is the standard of relevance applied by the judge in determining admissibility under Federal Rule of Evidence 401. Under that rule, evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

191. B is correct. In slander cases, where the defendant makes a statement that the plaintiff has an unsavory character, the plaintiff's character is considered "in issue" (i.e., an essential element of the claim or defense under the substantive law) in two respects. First, the plaintiff's actual character will determine whether the defendant was incorrect in his assessment, and thus liable for slander, because truth is a defense. Second, the plaintiff will allege that he is damaged by the statement, which is another way of saying that his true character has been besmirched. If, however, the plaintiff actually has a bad reputation anyway, then damages are limited. Thus, in slander cases like the one in this question, character evidence is relevant both to whether the plaintiff has a certain character trait and to the extent of damages. Under Federal Rule of Evidence 405, when character is "in issue" it can be proved by evidence of reputation, opinion, or specific acts. Thus, answer B is correct, and answers A, C, and D are incorrect.

192. Answer A is correct. The doctor's letter is not a business record under Federal Rule of Evidence 803(6) because it was not prepared in the ordinary course of regularly conducted activity. In addition, it cannot be admitted simply because an expert relies upon it. Rule 703 does allow an expert to rely on hearsay in reaching a conclusion, so long as other experts in the field would reasonably rely on such information. But the rule distinguishes between expert reliance on the hearsay and admitting the hearsay at trial for the jury to consider. Generally speaking, hearsay will not be admissible when offered only because the expert relied upon it. The probative value of the hearsay in illustrating the basis of the expert's opinion must substantially outweigh the risks of prejudice and confusion that will occur when the jury is told about the hearsay. That strict balancing test is not met in this case. There is no other exception that appears even close to being applicable (and none listed in the possible answers), so the letter is inadmissible hearsay. Answer C is incorrect. The letter is hearsay if offered to prove that the plaintiff's condition was as indicated in the letter. As explained above, Federal Rule of Evidence 703 does allow an expert to rely on hearsay in reaching a conclusion, so long as other experts in the field would reasonably rely on such information. Answer D is incorrect. The doctor's letter clearly does not qualify under Federal Rule of Evidence 803(6) as a business record. It is not a medical record prepared in the ordinary course of regularly conducted activity. Rather, it is a letter written by the doctor on an ad hoc occasion. Thus, the letter lacks the earmarks of regularity that are critical for admissibility under the business records exception to the hearsay rule.

193. Answer D is correct. The testimony is not barred by the hearsay rule or any other rule and is relevant on the issue of whether the wife survived the husband. Furthermore, the statement by the woman is not hearsay, because it is not being offered to prove the truth of the matter asserted. It is being offered to prove that the woman was alive at the time she made the statement and hence is relevant on the issue of whether she survived her husband, even if by only a few minutes. The witness's testimony is based on her perception and memory and thus satisfies Rule 701 of the Federal Rules of Evidence.

194. A is correct. Miranda warnings must be given before a confession made by a person under arrest can be admitted. Since the defendant contends that no Miranda warnings were given, she is entitled to a hearing on the issue. Under Rule 104(c) of the Federal Rules of Evidence, "[h]earings on the admissibility of a confession shall in all cases be conducted out of the hearing of the jury." Thus, Answer A is correct, and Answer B is incorrect.

195. Rule 605 of the Federal Rules of Evidence provides that a "judge presiding at the trial may not testify in that trial as a witness." Therefore, the judge will not be able to testify as to the defendant's statements, so long as the judge is still presiding over the defendant's trial. Thus, Answer D is correct.

196. Answer C is correct. Although this evidence is certainly not conclusive that the defendant committed arson (many people fully insure their houses), it is relevant to the issue of whether the defendant would have had a financial incentive to commit the arson. The defendant might be able to generate cash more quickly by burning down the house and collecting insurance proceeds than by attempting to sell the house. To be relevant under Rule 401 of the Federal Rules of Evidence, the evidence need only have "any tendency to make the existence of a fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Therefore, evidence that has only the slightest probative value can be admitted under this rule. Thus, Answer C is correct.

197. Answer B is correct. In a prosecution for battery, the defendant's character for peacefulness is a pertinent, relevant character trait under Rule 404(a)(1) of the Federal Rules of Evidence. Rule 405 allows the defendant to offer evidence of his reputation for peacefulness. However, the evidence of the defendant's truthfulness must be excluded. Under Rule 608(a), truthfulness is a relevant trait only to rehabilitate a witness whose character for truthfulness has been attacked, but there is no indication that such an attack has taken place here. Thus, Answer B is correct, and Answers A, C, and D are incorrect.

198. Answer A is correct. What the defendant said to the plaintiff, even in a private conversation, is an admission of a party-opponent and is admissible under Rule 801(d)(2)(A) of the Federal Rules of Evidence. The plaintiff has personal knowledge of what the defendant said and can testify about it. The fact that the audiotape might be better evidence of what the defendant actually said makes no difference. The best evidence rule applies only when a witness testifies about the content of a writing or recording. Here the plaintiff would not be testifying about the content of the audiotape but rather about what she personally heard.

199. Answer B is correct. The plaintiff's statement fits within Rule 803(4) of the Federal Rules of Evidence as a statement made for the purpose of medical diagnosis. This rule allows not only statements made to treating physicians, but also statements made to other doctors for evaluation or diagnosis. Here, the statement was made in response to a question by the treating orthopedist, and was made to explain how the plaintiff's injuries occured. Thus, Answer B is correct.

200. Answer A is correct. This statement meets the requirements of Rule 803(5) of the Federal Rules of Evidence, the past recollection recorded exception to the hearsay rule. The witness once had knowledge but now has insufficient recollection to testify fully and accurately about her investigation. She made the recording when the matter was fresh in her memory, and she has testified that the recording was an accurate reflection of her memory. Thus, Answer A is correct.

201. Answer C is correct. The report is admissible as a public record under Rule 803(8) of the Federal Rules of Evidence. The facts of the problem indicate that the fire marshal had a legal duty to report. The fact that the fire marshal issued the citation indicates that he observed gasoline being stored in the banquet hall. Thus, Answer C is correct, and Answer A is incorrect.

202. Answer D is correct. If a party destroys evidence, it is proper for the jury to draw an inference that the evidence was adverse to that party. It is also proper for the jury to draw an adverse inference in a civil case from a party's assertion of the privilege against self-incrimination. Thus, the court should allow the question to be asked, because it is proper regardless of how the defendant responds. Thus, Answer D is correct, and Answer B is incorrect.

203. Answer A is correct. This evidence has some probative value because it links the knife in defendant's possession to the type of knife that could have caused the victim's wound. The evidence is not very strong, because other knives could also have caused the wound. But how much weight to give to the evidence is a decision for the jury. Rule 401 of the Federal Rules of Evidence requires only that evidence have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Thus to be relevant, evidence need only have some probative value in establishing a fact. The Advisory Committee's Note to Rule 401 quotes the famous statement "A brick is not a wall," making the point that evidence is admissible even if it is only a single brick that is a part of a large wall of evidence establishing a party's case. Thus, Answer A is correct, and Answer B is incorrect.

204. Answer B is correct. This statement is admissible both to impeach the defendant's testimony as a prior inconsistent statement and as substantive evidence, because it is an admission of a party-opponent under Rule 801(d)(2)(A) of the Federal Rules of Evidence. Thus, Answer B is correct and Answers A and C are incorrect.

205. Answer A is correct. If a witness is declared hostile, the examining party may be allowed to examine the witness by leading questions. But a declaration that a witness is hostile does not mean that the cross-examination can go beyond the scope of direct. The rule governing the scope of cross-examination is the same for hostile and non-hostile witnesses. Thus, Answer B is incorrect.

206. Answer B is correct. Rule 701 of the Federal Rules of Evidence allows lay opinion testimony when it is rationally based on the perception of the witness and is helpful to the jury. Here the teller knew the signature of the bank customer on whose account the check was drawn. This knowledge made it possible for her to recognize the signature on the check as a forgery. Her testimony that the signature was a forgery is testimony that the signature on the check presented was different from the signature of the owner of the account (a signature she knows). Obviously the owner of the account would be a stronger prosecution witness than the teller in establishing that the signature was forged, but this doesn't mean that the teller would not be allowed to testify. Thus, Answer B is correct.

207. Answer C is correct. The statement is admissible as a present sense impression under Rule 803(1) of the Federal Rules of Evidence because it describes or explains an event or condition and was "made while the declarant was perceiving the event or condition, or immediately thereafter." It is also admissible under Rule 803(5) of the Federal Rules of Evidence because it is a record "concerning a matter about which a witness once had knowledge but now has insufficient recollection to testify fully and accurately," and it was made by the witness "when the matter was fresh in the witness' memory" and "reflect[s] that knowledge correctly." Thus, Answer C is correct and Answers A, B, and D are incorrect.

208. Answer A is correct. The attorney-client privilege applies only to confidential communications made for the purpose of facilitating legal representation of the client. The amount the defendant paid in legal fees does not qualify as such a communication. Fee arrangements and payments are generally outside the protection of the attorney-client privilege. Thus, Answer A is correct and

209. Answer B is correct. The U.S. Supreme Court has held it to be a violation of due process for a judge to give a mandatory jury instruction in a criminal case on an element of the charged crime. The instruction is unconstitutional because the phrase "shall be presumed" could be interpreted by the jury as shifting the burden of proof to the defendant or as requiring the jury to find an element of the charged crime, neither of which is permissible.

210. Answer A is correct. The notes are hearsay because they are out-of-court statements offered to prove the truth of the matter asserted, and they do not fit any hearsay exception.

211. Answer D is correct. Although FRE 411 generally bars evidence of liability insurance to prove negligence or wrongful conduct, it contains an exception allowing the use of such evidence to prove bias. The fact that the witness is an adjuster for the defendant's insurance company is a legitimate ground for impeachment for bias. Thus, Answer A is incorrect. Furthermore, the witness's employment by the insurance company is therefore not collateral. Thus, Answer B is incorrect.

212. Answer B is correct. When a criminal defendant seeks to prove his good character under FRE 404(a)(1), FRE 405(a) allows proof only by reputation evidence or opinion evidence, not by specific instances of conduct.

213. Answer C is correct. The statement is against the friend's interest because it could subject him to civil or criminal liability. The friend is unavailable, so the statement satisfies FRE 804(b)(3).

214. Answer C is correct. This is an example of impeachment by contradiction. The evidence of the prior cocaine purchase directly contradicts the defendant's testimony on direct examination that he would never possess drugs and is admissible for that purpose. Thus, Answer C is correct. Furthermore, evidence of a prior cocaine purchase is not collateral, because it directly contradicts the defendant's testimony. Thus, Answer B is incorrect.

215. Answer C is correct. Under the Fifth Amendment to the Constitution, a witness cannot be compelled to testify against herself. A witness in a civil or criminal proceeding may refuse to give an answer that tends to connect the witness to the commission of a crime. The woman cannot be forced to reveal facts that could subject her to criminal prosecution. Thus, Answer C is correct. Although a person can waive the privilege against self-incrimination by voluntarily testifying about the incriminating matter, in this case, the woman did not testify about anything that was self-incriminating. Thus, Answer A is incorrect.

216. Answer C is correct. Hearsay is a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted. The letters are hearsay if they are offered to prove the assertions contained in them--that there were dangers in using the microwave and that other persons had been injured. The letters are admissible only if they are offered for the limited purpose of proving that the manufacturer was put on notice of possible dangers in using the microwave. Such notice supports the claim of negligence, because it suggests that the manufacturer should have investigated and taken action to protect future consumers. Accordingly, the objection should be overruled because a limiting instruction will suffice to limit the use of the letters to the issue of notice. Thus, Answer C is correct, and Answers A and B are incorrect.

217. Answer C is correct. The fact that the back problems arose after the accident is probative on the issue of whether the accident was the cause of the injury. Therefore, the evidence meets the standard of relevance, and the testimony should be allowed. Thus, Answer C is correct.

218. Answer C is correct. Photographs are often useful evidence in establishing disputed facts. However, under FRE 403, the judge always has the right to exclude such evidence if the danger of unfair prejudice substantially outweighs the probative value of the photograph. In this case, the photograph is admissible. The defendant has denied that the plaintiff's injuries were severe. Therefore, the plaintiff is entitled to show the severity of his injuries by introducing the photograph. The evidence relates directly to the appropriate amount of damages and is not unfairly prejudicial. Thus, Answer C is correct, and Answer D is incorrect.

219. Answer C is correct. FRE 801(d)(2)(D) provides that a statement is "not hearsay" if it is offered against a party and is "a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship." Here, the statement was made by the defendant's agent while the agent was still employed by the defendant. Furthermore, the statement concerned a matter within the scope of the agency. The agent stated he was sorry for his actions at the time of the accident, which occured while the agent was working with the scope of his employment. Thus, Answer C is correct.

220. Answer A is correct. FRE 612 provides that "if a witness uses a writing to refresh memory for the purpose of testifying, either (1) while testifying, or (2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness." Thus, Answer A is correct.

221. Answer D is correct. The hospital record itself is hearsay, but it qualifies as a record of regularly recorded conduct under FRE 803(6). The absence of an entry in such a record is admissible under FRE 803(7) to prove the nonoccurrence of a matter that would normally have been recorded if it had occurred. Thus, the absence of an entry can be used by the patient to establish that the medication was not administered. Thus, Answer D is correct, and Answer A is incorrect.

222. Answer A is correct. The statement is admissible only as a prior inconsistent statement to impeach the bystander. It contradicts the bystander's earlier statement, which suggested that the student was entirely at fault by standing up in the car. The testimony is not admissible as substantive evidence to prove the facts asserted in the statement, because it would be hearsay. Thus, Answer A is correct.

223. Answer B is correct. The computerized records are not a testimonial statement. The Crawford case specifically cites business records as an example of statements that are generally not testimonial. Thus, Answer B is correct.

224. Answer C is correct. Since the agent personally heard the conversation, he is not relying on the contents of the audiotape for his testimony. Therefore there is no violation of the best evidence rule. The agent is not attempting to prove the contents of the audiotape, only what he overheard. The conversation could, of course, also be proved by introducing the audiotape, and it can be argued that the audiotape is "better" evidence than the agent's testimony. Nonetheless, so long as the agent obtained his knowledge of the conversation from his own perception, and not by listening to the audiotape, the best evidence rule is not violated. Thus, Answer C is correct and Answer A is incorrect.

225. The correct answer is D. Subsequent remedial measures taken after an event are not admissible to prove negligence or culpable conduct. The house rules limiting the amount of drinking done in the establishment are remedial measures taken to reduce the risk of events like those in the plaintiff's suit, and are inadmissible. Admitting such evidence would discourage people from attempting to remedy potential problems.

226. The correct answer is B. A defendant is permitted to put in evidence of his good character, if relevant to the charge, to attempt to prove he is innocent. The witness's testimony as to the defendant's reputation as a "peaceable man" is admissible to prove he is not guilty of murder.

227. The correct answer is A. Evidence of other crimes, while generally not admissible, can be admitted to prove certain things, one of them being the criminal's identity. In this question, because the gun was very unusual, and because the defendant was in possession of the same type of gun within a week after the offense against the clerk, the evidence of the robbery of the witness is admissible to establish the identity of the robber by establishing an identifiable characteristic of the crime.

228. The correct answer is A. The passenger's statement that he suffered from a recurrence of an old back injury is a statement that is being offered against the passenger to show he was not injured in the accident. The passenger's statement is an admission by a party opponent and is thus not hearsay.

229. The correct answer is B. The brother's affidavit is an out-of-court statement that is being offered for the truth of the matter asserted, namely that the grantor may have been mentally incompetent. The brother's affidavit is thus hearsay, does not fall within any exception, and is inadmissible.

230. The correct answer is A. The farmer's testimony regarding his use of the telephone directory for an outgoing call, his use of the telephone system, and the speaker identifying himself as the equestrian, provides sufficient authentication for the telephone call to allow its entry into evidence.

231. The correct answer is D. Offers to compromise a claim, which was disputed as to either validity or amount, are not admissible to prove liability for or invalidity of the claim. Evidence of conduct or statements made in compromise negotiations is also inadmissible. The defendant's letter constituted an offer to compromise regarding the claim and, pursuant to public policy of promoting settlements, is inadmissible.

232. The correct answer is D. In all cases in which evidence of character or a trait of character of a person is admissible but not essential, such as in this case, proof of that trait of character may be made by testimony regarding reputation or by testimony in the form of opinion. Specific instances of conduct can only be used on cross-examination. Because the defendant's honesty is not an essential element of the charge, the prosecutor cannot use specific incidents of conduct to show that the defendant is guilty. However, the prosecutor could have inquired about relevant specific instances of misconduct on cross-examination of the defendant's witness. Answer A is incorrect because, even though the "door" may have been opened regarding the defendant's honesty, the prosecutor cannot use specific incidents of misconduct to rebut the character evidence testimony given by the defendant's witness, except in cross-examination.

233. The correct answer is A. The victim's statement to her father that she loved the defendant and could never hurt him is admissible as a statement of a then-existing mental or emotional condition. The witness's testimony is being introduced to show the victim's existing emotional and mental state when she made the statement, and is admissible as an exception to the hearsay rule.

234. The correct answer is C. Evidence of other crimes or acts are not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. The fact that the defendant had obtained duplicate insurance of the burned property is relevant because it shows the defendant's motive for committing the arson. Any minor prejudicial effect of the evidence of duplicate insurance would be outweighed by the probative value of the evidence. The defendant's threat to kill his ex-wife if she testifies is also relevant, admissible evidence. The threat to kill his wife is being offered as proof of the defendant's plan and knowledge, and his consciousness of his guilt and his attempts to stop the introduction of evidence against him. Both the defendant's obtaining duplicate insurance and threatening to kill his ex-wife are admissible into evidence. Answers A, B, and D are incorrect because both the duplicate insurance and the threat to kill his ex-wife are admissible.

235. The correct answer is C. Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or undue delay, waste of time, or needless presentation of cumulative evidence. Only answer C does not deal with any of those considerations, and instead deals with the exclusion of evidence based on potential discovery violations. Answer A is incorrect because juror confusion of the issues is a consideration in determining whether to exclude relevant evidence. Answer B is incorrect because unfair prejudice on the part of the jury is also a consideration in determining whether to exclude relevant evidence. Answer D is incorrect because waste of time and needless presentation of trivial evidence is also a consideration in determining whether to exclude relevant evidence.

236. The correct answer is D. The best evidence rule only applies to writings, recordings and photographs, and the plaintiff's robot is none of those. The plaintiff, since he has personal knowledge of the appearance, can testify as to the appearance of the model without having to introduce the model into evidence. Answers A, B, and C are incorrect because those requirements only apply for the introduction of writings, recordings, and photographs into evidence.

237. The correct answer is A. The passage in the text is admissible both as the basis of the witness's opinion and as substantive evidence as to the proper standard of care. The passage is admissible under the learned treatise exception to the hearsay rule. The witness established the text as a reliable authority in his direct testimony, and, to the extent relied upon by the witness in direct examination, the passage contained in the text is admissible as substantive evidence of the proper standard of care. In addition, the passage can be used as the basis of his opinion.

238. The correct answer is B. The deceased man's statement to the police officer is an out-of-court statement that is being offered for the truth of the matter asserted - that the deceased man loaned the defendant $10,000. As such, it is hearsay, and it is inadmissible because it does not meet the requirements for any exception to the hearsay rule.

239. A is correct. Federal Rule of Evidence 803(18), the learned treatise exception, provides that if the court finds a publication to be a reliable authority, then "statements" may be read into evidence, but that the publication may not be received as an exhibit. Thus, the jury is not allowed to bring learned treatises into the jury room. There is a concern that if juries were allowed unrestricted access to the whole publication, they may rely on parts of the publication that are not germane to the case. Moreover, the intent of the rule is that juries need to be guided through the pertinent parts of the publication by the testifying experts.

240. Answer A is correct. This statement meets the requirements of Rule 803(5) of the Federal Rules of Evidence, the past recollection recorded exception to the hearsay rule. The witness once had knowledge but now has insufficient recollection to testify fully and accurately about her investigation. She made the recording when the matter was fresh in her memory, and she has testified that the recording was an accurate reflection of her memory. Thus, Answer A is correct.

241. Answer C is correct. The fact that the back problems arose after the accident is probative on the issue of whether the accident was the cause of the injury. Therefore, the evidence meets the standard of relevance, and the testimony should be allowed. Thus, Answer C is correct.

242. Answer C is correct. Photographs are often useful evidence in establishing disputed facts. However, under FRE 403, the judge always has the right to exclude such evidence if the danger of unfair prejudice substantially outweighs the probative value of the photograph. In this case, the photograph is admissible. The defendant has denied that the plaintiff's injuries were severe. Therefore, the plaintiff is entitled to show the severity of his injuries by introducing the photograph. The evidence relates directly to the appropriate amount of damages and is not unfairly prejudicial. Thus, Answer C is correct, and Answer D is incorrect.

243. Answer B is correct. The computerized records are not a testimonial statement. The Crawford case specifically cites business records as an example of statements that are generally not testimonial. Thus, Answer B is correct.