1. X-- A plaintiff sued a defendant for breach of contract. The court admitted testimony by the plaintiff that the defendant and his wife quarreled frequently, a fact of no consequence to the lawsuit. The defendant seeks to testify in response that he and his wife never quarreled. The court

A. must permit the defendant to answer if he had objected to the plaintiff's testimony.

B. may permit the defendant to answer, whether or not he had objected to the plaintiff's testimony.

C. may permit the defendant to answer only if he had objected to the plaintiff's testimony.

D. cannot permit the defendant to answer, whether or not he had objected to the plaintiff's testimony.

2. X-- A physician, who was called as a witness by a defendant, was asked to testify to statements made to the physician by her patient for the purpose of obtaining treatment. Which of the following is the best basis for excluding evidence of the patient's statements in a jurisdiction with a doctor-patient privilege?

A. An objection by the physician asserting her privilege against disclosure of confidential communications made by a patient.

B. An objection by the plaintiff's attorney on the grounds of the doctor-patient privilege.

C. A finding by the trial judge that the patient had left the office without actually receiving treatment.

D. The assertion of a privilege by the patient's attorney, present at the trial as a spectator at the patient's request, and allowed by the trial judge to speak.

3. A leading question is LEAST likely to be permitted over objection when

A. asked on cross-examination of an expert witness.

B. asked on direct examination of a young child.

C. asked on direct examination of a disinterested eyewitness.

D. related to preliminary matters such as the name or occupation of the witness.

4. The plaintiff sues a bar for injuries suffered in an automobile accident caused by a patron of the bar. The plaintiff claims that the patron was permitted to drink too much liquor at the bar before the accident.

A witness, who was present at the bar on the night of the incident, testified that on the night of the accident the patron was drunk. The witness then proposed to testify about his remark to his companion on just how drunk the patron appeared. The witness's remark to his companion is

A. admissible as an excited utterance.

B. admissible as a prior consistent statement.

C. admissible as a statement by the witness regarding a condition he observed, made while he was observing it.

D. inadmissible if there was no evidence that the witness had expertise in determining intoxication.

5. The plaintiff sues a bar for injuries suffered in an automobile accident caused by a patron of the bar. The plaintiff claims that the patron was permitted to drink too much liquor at the bar before the accident.

The bar called the patron to testify and expected him to say that he was sober when he left the bar; however, on direct examination the patron testified that he may have had a little too much to drink at the bar. The bar now seeks to confront the patron with his statement made on deposition that he was sober when he left the bar. Which of the following is true concerning this statement?A. It may be used only to refresh the patron's recollection.

B. It is admissible for impeachment and as substantive evidence that the patron was sober.

C. It is inadmissible, because the bar cannot impeach its own witness.

D. It is inadmissible, because it is hearsay not within any exception.

6. The plaintiff sues a bar for injuries suffered in an automobile accident caused by a patron of the bar. The plaintiff claims that the patron was permitted to drink too much liquor at the bar before the accident.

The bar called the patron to testify and expected him to say that he was sober when he left the bar; however, on direct examination the patron testified that he may have had a little too much to drink at the bar. The bar now seeks to confront the patron with his statement made on deposition that he was sober when he left the bar. Which of the following is true concerning this statement?

A. It may be used only to refresh the patron's recollection.

B. It is admissible for impeachment and as substantive evidence that the patron was sober.

C. It is inadmissible, because the bar cannot impeach its own witness.

D. It is inadmissible, because it is hearsay not within any exception.

7. The plaintiff sues a bar for injuries suffered in an automobile accident caused by a patron of the bar. The plaintiff claims that the patron was permitted to drink too much liquor at the bar before the accident.

The plaintiff offers evidence that, after the accident, the manager of the bar established house rules limiting all customers to two drinks per hour, with a maximum limit of four drinks per night. This evidence is

A. admissible to show that the prior conduct of the bar was negligent.

B. admissible to show that the bar was aware of the need for taking precautionary measures.

C. inadmissible, because subsequent measures by an employee are not binding on the bar.

D. inadmissible, because its admission would discourage the taking of such remedial measures.

8. The plaintiff sues a bar for injuries suffered in an automobile accident caused by a patron of the bar. The plaintiff claims that the patron was permitted to drink too much liquor at the bar before the accident.

The plaintiff offers evidence that, after the accident, the owner of the bar visited him at the hospital and, offering to pay all of the plaintiff's medical expenses, said, "That's the least I can do after letting the patron leave the bar so drunk last night." The statement that the patron was drunk when he left the bar on the night of the accident is

A. admissible as an admission by the owner of the bar that the patron was drunk when he left the bar.

B. admissible as a factual admission made in connection with an offer of compromise.

C. inadmissible as hearsay not within any exception.

D. inadmissible as a statement made in connection with an offer to pay medical expenses.

9. In a narcotics conspiracy prosecution against the defendant, the prosecutor offers in evidence a tape recording of a telephone call allegedly made by the defendant. A lay witness is called to testify that the voice on the recording is the defendant's. Her testimony to which of the following would be the LEAST sufficient basis for admitting the recording?

A. She had heard the same voice on a similar tape recording identified to her by the defendant's brother.

B. She had heard the defendant speak many times, but never over the telephone.

C. She had, specifically for the purpose of preparing to testify, talked with the defendant over the telephone at a time after the recording was made.

D. She had been present with the defendant when he engaged in the conversation in question but had heard only the defendant's side of the conversation.

10. A plaintiff sued a defendant on a product liability claim. A friend testified for the plaintiff. On cross-examination, which of the following questions is the trial judge most likely to rule improper?

A. "Isn't it a fact that you are the plaintiff's close friend?"

B. "Isn't it true that you are known in the community as 'Lush' because of your addiction to alcohol?"

C. "Didn't you fail to report some income on your tax return last year?"

D. "Weren't you convicted, seven years ago in this court, of obtaining money under false pretenses?"

11. In an action to recover for personal injuries arising out of an automobile accident, the plaintiff called a bystander to testify. Claiming the privilege against self-incrimination, the bystander refused to answer a question as to whether she was at the scene of the accident. The plaintiff moves that the bystander be ordered to answer the question. The judge should allow the bystander to remain silent only if

A. the judge is convinced that she will incriminate herself.

B. there is clear and convincing evidence that she will incriminate herself.

C. there is a preponderance of evidence that she will incriminate herself.

D. the judge believes that there is some reasonable possibility that she will incriminate herself.

12. The prosecution, in its case in chief, offers evidence that when the defendant was arrested one day after the crime, he had a quantity of heroin and a hypodermic needle in his possession. This evidence should be

A. admitted to prove the defendant's motive to commit the crime.

B. admitted to prove the defendant's propensity to commit crimes.

C. excluded, because its probative value is substantially outweighed by the danger of unfair prejudice.

D. excluded, because such evidence may be offered only to rebut evidence of good character offered by the defendant.

13. The defendant is tried for armed robbery of a bank.

The prosecutor offers the testimony of a bartender that when he saw the money in the defendant's wallet, he said "You must have robbed a bank," to which the defendant made no reply. This evidence is

A. admissible to prove that the defendant's conduct caused the bartender to believe that the defendant robbed the bank.

B. admissible as a statement made in the presence of the defendant.

C. inadmissible, because it would violate the defendant's privilege against self-incrimination.

D. inadmissible, because the defendant had no reason to respond to the bartender's statement.

14. A defendant is tried for armed robbery of a bank.

At the request of police, the teller who was robbed prepared a sketch bearing a strong likeness to the defendant, but the teller died in an automobile accident before the defendant was arrested. At trial the prosecution offers the sketch. The sketch is

A. admissible as an identification of a person after perceiving him.

B. admissible as past recollection recorded.

C. inadmissible as hearsay not within any exception.

D. inadmissible as an opinion of the teller.

15. X-- A defendant is tried for armed robbery of a bank.

The defendant testified on direct examination that he had never been in the bank that had been robbed. His counsel asks, "What, if anything, did you tell the police when you were arrested?" If his answer would be, "I told them I had never been in the bank," this answer would be

A. admissible to prove that the defendant had never been in the bank.

B. admissible as a prior consistent statement.

C. inadmissible as hearsay not within any exception.

D. inadmissible, because it was a self-serving statement by a person with a substantial motive to fabricate.

16. A defendant is tried for armed robbery of a bank.

On cross-examination of the defendant, the prosecutor asks him whether he was convicted of tax fraud the previous year. The question is

A. proper to show that the defendant is inclined to lie.

B. proper to show that the defendant is inclined to steal money.

C. improper, because the conviction has insufficient similarity to the crime charged.

D. improper, because the probative value of evidence is outweighed by the danger of unfair prejudice.

17. A plaintiff sued a defendant for a libelous letter received by an investigator. The authenticity and contents of the letter are disputed. The plaintiff's attorney asks the investigator to testify that, a week before receiving the libelous letter, he had written to the defendant inquiring about the plaintiff. The testimony is

A. admissible provided this inquiry was made in the regular course of the investigator's business.

B. admissible without production of the inquiry letter or the showing of its unavailability.

C. inadmissible unless the plaintiff's attorney has given the defendant notice of the investigator's intended testimony.

D. inadmissible unless the inquiry letter itself is shown to be unavailable.

18. A plaintiff sued a defendant for a libelous letter received by an investigator. The authenticity and contents of the letter are disputed. The investigator, if permitted, will testify that, "I received a letter that I cannot now find, which read: 'Dear investigator, You inquired about [the plaintiff]. We fired him last month when we discovered that he had been stealing from the stockroom. [The defendant].'" The testimony should be admitted in evidence only if the

A. jury finds that the investigator has quoted the letter precisely.

B. jury is satisfied that the original letter is unavailable.

C. judge is satisfied that the investigator has quoted the letter precisely.

D. judge finds that the original letter is unavailable.

19. A defendant was tried for the July 21 murder of a victim. In his case in chief, the defendant called his first witness to testify to the defendant's reputation in his community as a "peaceable man." The testimony is

A. admissible as tending to prove the defendant is believable.

B. admissible as trying to prove the defendant is innocent.

C. inadmissible, because the defendant has not testified.

D. inadmissible, because reputation is not a proper way to prove character.

20. A defendant was tried for the July 21 murder of a victim.

The defendant called a witness to testify that on July 20 the defendant said that he was about to leave that day to visit relatives in a distant state. The testimony is

A. admissible, because it is a declaration of present mental state.

B. admissible, because it is not hearsay.

C. inadmissible, because it is irrelevant.

D. inadmissible, because it is hearsay not within any exception.

21. A defendant was tried for the July 21 murder of a victim.

The defendant called a witness to testify to his alibi. On cross-examination of the witness, the prosecution asked, "Isn't it a fact that you are the defendant's first cousin?" The question is

A. proper, because it goes to bias.

B. proper, because a relative is not competent to give reputation testimony.

C. improper, because the question goes beyond the scope of direct examination.

D. improper, because the evidence being sought is irrelevant.

22. X--A defendant was tried for the July 21 murder of a victim.

The defendant called a witness to testify to his alibi. On cross-examination of the witness, the prosecutor asked, "Weren't you on the jury that acquitted the defendant of another criminal charge?" The best reason for sustaining an objection to this question is that

A. the question goes beyond the scope of direct examination.

B. the probative value of the answer would be outweighed by its tendency to mislead.

C. the question is leading.

D. prior jury service in a case involving a party renders the witness incompetent.

23. Re-direct examination of a witness must be permitted in which of the following circumstances?

A. To reply to any matter raised in cross-examination.

B. Only to reply to significant new matters raised in cross-examination.

C. Only to reiterate the essential elements of the case.

D. Only to supply significant information inadvertently omitted on direct examination.

24. A clerk was held up at gun point with an unusual revolver with a red painted barrel while she was working in a neighborhood grocery store. A defendant is charged with armed robbery of the clerk.

The prosecutor calls a witness to testify that, a week after the robbery of the clerk, he was robbed by the defendant with a pistol that had red paint on the barrel. The witness' testimony is

A. admissible to establish an identifying circumstance.

B. admissible to show that the defendant was willing to commit robbery.

C. inadmissible, because it is improper character evidence.

D. inadmissible, because its probative value is substantially outweighed by the danger of unfair prejudice.

25. A bus passenger sued the transit company for injuries to his back from an accident caused by the company's negligence. The company denies that the passenger received any injury in accident.

The passenger's counsel seeks to introduce an affidavit he obtained in preparation for trial from a physician, who has since died. The affidavit avers that the physician examined the passenger two days after the company's accident and found him suffering from a recently incurred back injury. The judge should rule the affidavit

A. admissible as a statement of present bodily condition made to a physician.

B. admissible as prior recorded testimony.

C. inadmissible, because it is irrelevant.

D. inadmissible, because it is hearsay, not within any exception.

26. A bus passenger sued the transit company for injuries to his back from an accident caused by the company's negligence. The company denies that the passenger received any injury in accident. The company calls an observer to testify that right after the accident, the passenger told him that he had recently suffered a recurrence of an old back injury. The judge should rule the observer's testimony

A. admissible as an admission of a party opponent.

B. admissible as a spontaneous declaration.

C. inadmissible, because it is irrelevant.

D. inadmissible, because it is hearsay, not within any exception.

27. An automobile driver sues a company for injuries suffered when the automobile driver's car collided with one of the company's trucks. The company's general manager prepared a report of the accident at the request of the company's attorney in preparation for the trial and delivered the report to the attorney. The automobile driver demands that the report be produced. Will production of the report be required?

A. Yes, because business reports are not generally privileged.

B. No, because it is a privileged communication from client to the attorney.

C. No, because such reports contain hearsay.

D. No, because such reports are self-serving.

28. A plaintiff brought an action against the defendant for injuries received in an automobile accident, alleging negligence in that the defendant was speeding and inattentive. The plaintiff calls a witness to testify that the defendant had a reputation in the community for being a reckless driver and was known as a "dare-devil." The witness' testimony is

A. admissible as habit evidence.

B. admissible, because it tends to prove that the defendant was negligent at the time of this collision.

C. inadmissible, because the defendant has not offered testimony of his own good character.

D. inadmissible to show negligence.

29. A man and his brother were arrested for holding up a gas station. They were taken to police headquarters and placed in a room for interrogation. As a police officer addressing both of them started to give the Miranda warnings prior to the questioning, the man said, "Look, my brother planned the damned thing and I was dumb enough to go along with it. We robbed the place--what else is there to say?" The brother said nothing. The brother was escorted into another room and a full written confession was then obtained from the man.

If the brother is brought to trial on an indictment charging him with robbery, the fact that he failed to object to the man's statement and remained silent after the man had implicated him in the crime should be ruled

A. admissible, because his silence was an implied admission by the brother that he had participated in the crime.

B. admissible, because a statement of a participant in a crime is admissible against another participant.

C. inadmissible, because, under the circumstances, there was no duty or responsibility on the brother's part to respond.

D. inadmissible, because whatever the man may have said has no probative value in a trial against the brother.

30. In a suit attacking the validity of a deed executed fifteen years ago, the plaintiff alleges mental incompetency of the grantor, and offers into evidence a properly authenticated affidavit of the grantor's brother. The affidavit, which was executed shortly after the deed, stated that the brother had observed the grantor closely over a period of weeks, that the grantor had engaged in instances of unusual behavior (which were described), and that the grantor's appearance had changed from one of neatness and alertness to one of disorder and absentmindedness. The judge should rule the brother's affidavit

A. inadmissible as opinion.

B. inadmissible as hearsay, not within any exception.

C. admissible as an official document.

D. admissible as an ancient document.

31. The police, answering a complaint about noise, arrived at the defendant's apartment and found the defendant's wife dead on the living room floor. One of the officers turned to the defendant and said "What happened?" The defendant replied, "She was a bitch and I took care of her." At the defendant's trial his statement should be ruled

A. admissible, because the statement was part of the res gestae.

B. admissible, because the statement was made at the scene, was essentially volunteered, and was not a product of a custodial interrogation.

C. inadmissible, because the statement is ambiguous and not necessarily incriminatory.

D. inadmissible, because the defendant was effectively in police custody and should have been given the Miranda warnings.

32. A defendant has denied his purported signature on a letter which has become critical in a breach of contract suit between the defendant and the plaintiff. At trial, the plaintiff's counsel calls a teacher who testifies that she taught the defendant mathematics in school ten years earlier, knows his signature, and proposes to testify that the signature to the letter is that of the defendant. The defendant's counsel objects. The trial judge should

A. sustain the objection on the ground that identification of handwriting requires expert testimony and the teacher does not, per se, qualify as an expert.

B. sustain the objection on the ground that the best evidence of the defendant's handwriting would be testimony by a person who had examined his writing more recently than ten years ago.

C. overrule the objection on the ground that a schoolteacher qualifies as an expert witness for the purpose of identifying handwriting.

D. overrule the objection on the ground that a layman may identify handwriting if she has seen the person in question write, and has an opinion concerning the writing in question.

33. A plaintiff sued for injuries she sustained in a fall in a hotel hallway connecting the lobby of the hotel with a restaurant located in the hotel building. The hallway floor was covered with vinyl tile. The defendants were the owner of the hotel building and the lessee of the restaurant. The evidence showed that the hallway floor had been waxed approximately an hour before the plaintiff slipped on it, and although the wax had dried, there appeared to be excessive dried wax caked on several of the tiles. The hotel owner's defense was that the hallway was a part of the premises leased to the lessee of the restaurant over which he retained no control. The lessee denied negligence and alleged contributory negligence.

The lessee offered to prove, through the restaurant manager, that in the week immediately preceding the plaintiff's fall, at least 1,000 people had used the hallway in going to and from the restaurant, and the manager had neither seen anyone fall nor received reports that anyone had fallen. The trial judge should rule this evidence

A. admissible, because it tends to prove that the plaintiff did not use the care exercised by reasonably prudent people.

B. admissible, because it tends to prove that the lessee was generally careful in maintaining the floor.

C. inadmissible, because the manager's testimony is self-serving.

D. inadmissible, because it does not bear on the issue of the lessee's exercise of due care on this specific occasion.

34. A plaintiff sued for injuries she sustained in a fall in a hotel hallway connecting the lobby of the hotel with a restaurant located in the hotel building. The hallway floor was covered with vinyl tile. The defendants were the owner of the hotel building and the lessee of the restaurant. The evidence showed that the hallway floor had been waxed approximately an hour before the plaintiff slipped on it, and although the wax had dried, there appeared to be excessive dried wax caked on several of the tiles. The hotel owner's defense was that the hallway was a part of the premises leased to the lessee of the restaurant over which he retained no control, and the lessee denied negligence and alleged contributory negligence.

If the plaintiff offered to prove that the day after she fell, the hotel owner had the vinyl tile taken up and replaced with a new floor covering, the trial judge should rule the evidence

A. admissible, because it is relevant to the issue of whether the hotel owner retained control of the hallway.

B. admissible, because it is relevant to the issue of awareness of the unsafe condition of the hallway at the time of the plaintiff's fall.

C. inadmissible, because there was no showing that the new floor covering would be any safer than the old.

D. inadmissible, because to admit such would discourage a policy of making repairs to prevent further injury, regardless of fault.

35. A plaintiff sued a defendant for injuries the plaintiff received in an automobile accident. The plaintiff claims the defendant was negligent in (a) exceeding the posted speed limit of 35 m.p.h., (b) failing to keep a lookout, and (c) crossing the center line. A bystander, the plaintiff's eyewitness, testified on cross-examination that the defendant was wearing a green sweater at the time of the accident. The defendant's counsel calls another witness to testify that the defendant's sweater was blue. The defendant's witness' testimony is

A. admissible as substantive evidence of a material fact.

B. admissible as bearing on the bystander's truthfulness and veracity.

C. inadmissible, because it has no bearing on the capacity of the bystander to observe.

D. inadmissible, because it is extrinsic evidence of a collateral matter.

36. A plaintiff sued a defendant for injuries the plaintiff received in an automobile accident. The plaintiff claims the defendant was negligent in (a) exceeding the posted speed limit of 35 m.p.h., (b) failing to keep a lookout, and (c) crossing the center line.

The defendant testified on his own behalf that he was going 30 m.p.h. On cross-examination, the plaintiff's counsel did not question the defendant with regard to his speed. Subsequently, the plaintiff's counsel calls a police officer to testify that, in his investigation following the accident, the defendant told him he was driving 40 m.p.h. The police officer's testimony is

A. admissible as a prior inconsistent statement.

B. admissible as an admission.

C. inadmissible, because it lacks a foundation.

D. inadmissible, because it is hearsay not within any exception.

37. X--A plaintiff sued a defendant for $100,000 for injuries received in a traffic accident. The defendant charges the plaintiff with contributory negligence and alleges that the plaintiff failed to have his lights on at a time when it was dark enough to require them.

The defendant calls a bystander to testify that the passenger, who was riding in the plaintiff's automobile and who also was injured, confided to him at the scene of the accident that "we should have had our lights on." The bystander's testimony is

A. admissible as an admission of a party opponent.

B. admissible as a declaration against interest.

C. inadmissible, because it is hearsay, not within any exception.

D. inadmissible, because it is opinion.

38. X--A plaintiff sued a defendant for $100,000 for injuries received in a traffic accident. The defendant charges the plaintiff with contributory negligence and alleges that the plaintiff failed to have his lights on at a time when it was dark enough to require them.

The defendant offers to have a bystander testify that he was talking to a witness when he heard the crash and heard the witness, now deceased, exclaim, "That car doesn't have any lights on." The bystander's testimony is

A. admissible as a statement of present sense impression.

B. admissible, because the witness is not available to testify.

C. inadmissible as hearsay, not within any exception.

D. inadmissible, because of the Dead Man's Statute.

39. An owner and his employee, a driver, consult an attorney about a motor vehicle collision resulting in a suit by the litigant against the owner and the driver as joint defendants. The attorney calls his investigator into the conference to make notes of what is said, and those present discuss the facts of the collision and owner's insurance. The owner thereafter files a cross-claim against the driver for indemnity for any damages obtained by the litigant.

The litigant calls the driver to testify in litigant's case in chief to admissions made by the owner in the conference. On objection by the owner, the court should rule that the driver's testimony is

A. admissible, because of the presence of persons in the conference other than the attorney and the owner.

B. admissible, because the driver is an adverse party in the lawsuit.

C. inadmissible, because of the attorney-client privilege.

D. inadmissible, because the best evidence is the investigator's notes of the conference.

40. X-- An owner and his employee, a driver, consult an attorney about a motor vehicle collision resulting in a suit by the litigant against the owner and the driver as joint defendants. The attorney calls his investigator into the conference to make notes of what is said, and those present discuss the facts of the collision and the owner's insurance. The owner thereafter files a cross-claim against the driver for indemnity for any damages obtained by the litigant. The driver calls the investigator in his defense against the cross-claim. He seeks to have the investigator testify to an admission made by the owner in the conference. On objection by the owner, the court should rule the investigator's testimony

A. admissible, because the attorney-client privilege does not apply, in suits between those conferring with him, to joint consultations with an attorney.

B. admissible, because the attorney-client privilege does not apply to testimony by one who does not stand in a confidential relationship with the person against whom the evidence is offered.

C. admissible, because the conference was not intended to be confidential, since it concerned anticipated testimony in open court.

D. inadmissible, because the owner has not waived the attorney-client privilege.

41. The driver of a car and three passengers were injured when their car was struck by a truck owned by Mammoth Corporation and driven by a Mammoth employee. A second Mammoth employee was riding in the truck. The issues in this case include the negligence of the Mammoth employee in driving too fast and failing to wear glasses, and the negligence of the driver of the car in failing to yield the right of way.

The car driver's counsel proffers evidence showing that shortly after the accident, Mammoth Corporation put a speed governor in the truck involved in the accident. The judge should rule the proffered evidence

A. admissible as an admission of a party.

B. admissible as res gestae.

C. inadmissible for public policy reasons.

D. inadmissible, because it would lead to the drawing of an inference on an inference.

42. The driver of a car and three passengers were injured when their car was struck by a truck owned by Mammoth Corporation and driven by a Mammoth employee. A second Mammoth employee was riding as a passenger in the truck. The issues in this case include the negligence of the Mammoth employee in driving too fast and failing to wear glasses, and the negligence of the driver of the car in failing to yield the right of way.

The car driver's counsel seeks to introduce the written statement from the Mammoth truck’s passenger that the Mammoth employee had left his glasses (required by his operator's license) at the truck stop when they had left five minutes before the accident. The judge should rule the statement admissible only if

A. The driver of the car first proves that the truck passenger is an agent of Mammoth and that the statement concerned a matter within the scope of his agency.

B. The driver of the car produces independent evidence that the Mammoth employee who was driving was not wearing corrective lenses at the time of the accident.

C. The truck passenger is shown to be beyond the process of the court and unavailable to testify.

D. the statement was under oath in affidavit form.

43. The driver of a car and three passengers were injured when their car was struck by a truck owned by Mammoth Corporation and driven by a Mammoth employee. A second Mammoth employee was riding in the truck. The issues in this case include the negligence of the Mammoth employee in driving too fast and failing to wear glasses, and the negligence of the driver of a car in failing to yield the right of way. Mammoth's counsel seeks to have a sheriff testify that while he was investigating the accident he was told by the driver of a car, "This was probably our fault." The judge should rule the proffered evidence

A. admissible as an admission of a party.

B. admissible, because it is a statement made to a police officer in the course of an official investigation.

C. inadmissible, because it is a mixed conclusion of law and fact.

D. inadmissible, because it is hearsay, not within any exception.

44. X--In a contract suit between a plaintiff and a defendant, the plaintiff testifies that he recalls having his first conversation with the defendant on July 3. When asked how he remembers the date, he answers, "In the conversation, [the defendant] referred to a story in that day's newspaper announcing my daughter's engagement." The defendant's counsel moves to strike the reference to the newspaper story. The judge should

A. grant the motion on the ground that the best evidence rule requires production of the newspaper itself.

B. grant the motion, because the reference to the newspaper story does not fit within any established exception to the hearsay rule.

C. deny the motion on the ground that the court may take judicial notice of local newspapers and their contents.

D. deny the motion on the ground that a witness may refer to collateral documents without providing the documents themselves.

45. The defendant is charged with the murder of the deceased. The prosecutor introduced testimony of a police officer that the deceased told a priest, administering the last rites, "I was stabbed by [the defendant]. Since I am dying, tell him I forgive him." Thereafter, the defendant's attorney offers the testimony of a friend that the day before, when the deceased believed he would live, he stated he had been stabbed by an old enemy, not the defendant. The testimony of the friend is

A. admissible under an exception to the hearsay rule.

B. admissible to impeach the dead declarant.

C. inadmissible, because it goes to the ultimate issue in the case.

D. inadmissible, because it is irrelevant to any substantive issue in this case.

46. In a trial between a farmer and an equestrian, an issue arose about the equestrian's ownership of a horse, which had caused damage to the farmer's crops. The farmer offered to testify that he looked up the equestrian's telephone number in the directory, called that number, and that a voice answered "This is [the equestrian] speaking." At this the farmer asked, "Was that your horse that tramped across my cornfield this afternoon?" The voice replied "Yes." The judge should rule the testimony

A. admissible, because the answering speaker's identification of himself, together with the usual accuracy of the telephone directory and transmission system, furnishes sufficient authentication.

B. admissible, because judicial notice may be taken of the accuracy of telephone directories.

C. inadmissible unless the farmer can further testify that he was familiar with the equestrian's voice and that it was in fact the equestrian to whom he spoke.

D. inadmissible unless the equestrian has first been asked whether or not the conversation took place and has been given the opportunity to admit, deny, or explain.

47. In a trial between a farmer and an equestrian, an issue arose about the equestrian's ownership of a horse, which had caused damage to the farmer's crops. The farmer seeks to introduce in evidence a photograph of his cornfield in order to depict the nature and extent of the damage done. The judge should rule the photograph

A. admissible if the farmer testifies that it fairly and accurately portrays the condition of the cornfield after the damage was done.

B. admissible if the farmer testifies that the photograph was taken within a week after the alleged occurrence.

C. inadmissible if the farmer fails to call the photographer to testify concerning the circumstances under which the photograph was taken.

D. inadmissible if it is possible to describe the damage to the cornfield through direct oral testimony.

48. X-- A plaintiff sues a department store for personal injuries, alleging that while shopping she was knocked to the floor by a merchandise cart being pushed by a stock clerk and her back was injured as a result.

The stock clerk testified that the plaintiff fell near the cart but was not struck by it. Thirty minutes after the plaintiff's fall, the stock clerk, in accordance with regular practice at the department store, had filled out a printed form, "Employee's Report of Accident," in which he stated that the plaintiff had been leaning over to spank her young child and in so doing had fallen near his cart. Counsel for the department store offers in evidence the report, which had been given him by the stock clerk's supervisor.

The judge should rule the report offered by the department store

A. admissible as res gestae.

B. admissible as a business record.

C. inadmissible, because it is hearsay, not within any exception.

D. inadmissible, because the stock clerk is available as a witness.

49. A defendant, who was charged with the crime of assaulting the plaintiff, admitted striking the plaintiff but claimed to have acted in self-defense when he was attacked by the plaintiff, who was drunk and belligerent after a football game.

The defendant offered testimony of a former employer that he had known and who had employed the defendant for twelve years and knew the defendant's reputation among the people with whom he lived and worked to be that of a peaceful, law-abiding, nonviolent person. The trial judge should rule this testimony

A. admissible, because it is relevant to show the improbability of the defendant's having committed an unprovoked assault.

B. admissible, because it is relevant to a determination of the extent of punishment if the defendant is convicted.

C. not admissible, because whether the defendant is normally a person of good character is irrelevant to the specific charge.

D. not admissible, because it is irrelevant without a showing that the former employer was one of the persons among whom the defendant lived and worked.

50. X-- A defendant, who was charged with the crime of assaulting the plaintiff, admitted striking the plaintiff but claimed to have acted in self-defense when he was attacked by the the plaintiff, who was drunk and belligerent after a football game.

On cross-examination of the defendant's employer, the state's attorney asked the employer if he had heard that the defendant often engaged in fights and brawls. The trial judge should rule the question

A. not objectionable, because evidence of the defendant's previous fights and brawls may be used to prove his guilt.

B. not objectionable, because it tests the employer's knowledge of the defendant's reputation.

C. objectionable, because it seeks to put into evidence separate, unrelated offenses.

D. objectionable, because no specific time or incidents are specified and inquired about.

51. A defendant, who was charged with the crime of assaulting the plaintiff, admitted striking the plaintiff but claimed to have acted in self-defense when he was attacked by the plaintiff, who was drunk and belligerent after a football game.

The defendant's friend was called to testify that the plaintiff had a reputation among the people with whom he lived and worked for lawbreaking and frequently engaging in brawls. The trial judge should rule the testimony

A. admissible to support the defendant's theory of self-defense, touching on whether the defendant or the plaintiff was the aggressor.

B. admissible if the friend testifies further as to specific acts of misconduct on the plaintiff's part of which the friend has personal knowledge.

C. inadmissible on the question of the defendant's guilt because the defendant, not the plaintiff, is on trial.

D. inadmissible, because the friend failed to lay a proper foundation.

52. The driver of an automobile ran into and injured a pedestrian. With the driver in his car were his wife and another passenger. A passerby saw the accident and called the police department, which sent a sheriff to investigate. All of these people were available as potential witnesses in the case brought by the pedestrian against the driver. The pedestrian alleges that the driver, while drunk, struck the pedestrian who was in a duly marked crosswalk. The pedestrian's counsel wishes to prove that after the accident the driver went to the pedestrian and offered $1,000 to settle the pedestrian's claim. The trial judge should rule this evidence

A. admissible as an admission of a party.

B. admissible as an admission to show the driver's liability, provided the court gives a cautionary instruction that the statement should not be considered as bearing on the issue of damages.

C. inadmissible since it is not relevant either to the question of liability or the question of damages.

D. inadmissible, because even though relevant and an admission, the policy of the law is to encourage settlement negotiations.

53. X--The driver of an automobile ran into and injured a pedestrian. With the driver in his car were his wife and another passenger. A passerby saw the accident and called the police department, which sent a sheriff to investigate.

All of these people were available as potential witnesses in the case brought by the pedestrian against the driver. The pedestrian alleges that the driver, while drunk, struck the pedestrian who was in a duly marked crosswalk.

The pedestrian's counsel wants to have the sheriff testify to the following statement made to him by the passenger, out of the presence of the driver: "We were returning from a party at which we had all been drinking." The trial judge should rule this testimony

A. admissible as an admission of a party.

B. admissible as a declaration against interest.

C. inadmissible, because it is hearsay, not within any exception.

D. inadmissible, because it would lead the court into nonessential side issues.

54. The driver of an automobile ran into and injured a pedestrian. With the driver in his car were his wife and another passenger. A passerby saw the accident and called the police department, which sent a sheriff to investigate.

All of these people were available as potential witnesses in the case brought by the pedestrian against the driver. The pedestrian alleges that the driver, while drunk, struck the pedestrian who was in a duly marked crosswalk.

On the evening of the day of the accident, the passenger wrote a letter to his sister in which he described the accident. When the passenger says he cannot remember some details of the accident, the pedestrian's counsel seeks to show him the letter to assist him in his testimony on direct examination. The trial judge should rule this

A. permissible under the doctrine of present recollection refreshed.

B. permissible under the doctrine of past recollection recorded.

C. objectionable because the letter was not a spontaneous utterance.

D. objectionable because the letter is a self-serving declaration in so far as the witness is concerned.

55. A defendant was indicted for the murder of the victim by poison. At trial, the prosecutor calls the county coroner, who is a board-certified pathologist, to testify that, in accord with good practice in her specialty, she has studied microphotographic slides, made under her supervision by medical assistants, of tissue taken from the victim's corpse and that it is the coroner's opinion, based on that study, that the victim died of poisoning. The slides have not been offered in evidence.

The coroner's opinion should be

A. excluded, because the cause of death is a critical issue to be decided by the trier of fact.

B. excluded, because her opinion is based on facts not in evidence.

C. admitted, because the coroner followed accepted medical practice in arriving at her opinion.

D. admitted, because her opinion is based on matters observed pursuant to a duty imposed by law.

56. At the trial of a defendant for a murder that occurred in a city, the prosecution called a witness who testified that she saw the defendant kill the victim. The defendant believed that the witness was 600 miles away in a small town, engaged in the illegal sale of narcotics, on the day in question. On cross-examination by the defendant, the witness was asked whether she had in fact sold narcotics in the small town on that date. The witness refused to answer on the ground of self-incrimination. The judge, over the prosecutor's objection, ordered that if the witness did not testify, her direct testimony should be stricken. The order to testify or have the testimony stricken can best be supported on the basis that

A. The witness had not been charged with any crime and, thus, could claim no privilege against self-incrimination.

B. The witness's proper invocation of the privilege prevented adequate cross-examination.

C. the public interest in allowing an accused to defend himself or herself outweighs the interest of a non-party witness in the privilege.

D. the trial record, independent of testimony, does not establish that the witness' answer could incriminate her.

57. Cars driven by the plaintiff and the defendant collided, and the defendant was charged with driving while intoxicated in connection with the accident. She pleaded guilty and was merely fined, although under the statute the court could have sentenced her to two years in prison. Thereafter, the plaintiff, alleging that the defendant's intoxication had caused the collision, sued the defendant for damages. At trial, the plaintiff offers the properly authenticated record of the defendant's conviction. The record should be

A. admitted as proof of the defendant's character.

B. admitted as proof of the defendant's intoxication.

C. excluded, because the conviction was not the result of a trial.

D. excluded, because it is hearsay, not within any exception.

58. A plaintiff sued a defendant for damages for injuries that the plaintiff incurred when a badly rotted limb fell from a curbside tree in front of the defendant's home and hit the plaintiff. The defendant claimed that the tree was on city property and thus was the responsibility of the city. At trial, the plaintiff offered testimony that a week after the accident, the defendant had cut the tree down with a chainsaw. The offered evidence is

A. inadmissible, because there is a policy to encourage safety precautions.

B. inadmissible, because it is irrelevant to the condition of the tree at the time of the accident.

C. admissible to show the tree was on the defendant's property.

D. admissible to show that tree was in a rotted condition.

59. X-- The defendant, charged with murder, was present with her attorney at a preliminary examination when a witness, who was the defendant in a separate prosecution for concealing the body of the murder victim, testified for the prosecution against the defendant. When called to testify at the defendant's trial, the witness refused to testify, though ordered to do so. The prosecution offers evidence of the witness' testimony at the preliminary examination. The evidence is

A. admissible as former testimony.

B. admissible as past recollection recorded.

C. inadmissible, because it would violate the witness' privilege against self-incrimination.

D. inadmissible, because it is hearsay, not within any exception.

60. A building contractor sued a defendant for failure to pay on a small cost-plus construction contract. At trial, the contractor, who personally supervised all of the work, seeks to testify to what he remembers about the amount of pipe used, the number of workers used on the job, and the number of hours spent grading.

The defendant objects on the ground that the contractor had routinely recorded these facts in notebooks which are in the contractor's possession.

The contractor's testimony is

A. admissible as a report of regularly conducted business activity.

B. admissible as based on first-hand knowledge.

C. inadmissible, because it violates the best evidence rule.

D. inadmissible, because a summary of writings cannot be made unless the originals are available for examination.

61. A grand jury was investigating a bank robbery. The only information known to the prosecutor was a rumor that the defendant might have been involved. The grand jury subpoenaed the defendant. He refused to answer questions about the robbery and was granted use immunity. He then testified that he and his friend had robbed the bank. The grand jury indicted both the defendant and his friend for the bank robbery. The prosecutor permitted the friend to enter a plea to a lesser offense in exchange for the friend's agreement to testify against the defendant. The prosecutor had no evidence as to the identity of the robbers except the testimony of the friend and the defendant.

At the defendant's trial, his objection to the friend's being permitted to testify should be

A. sustained, because the prosecutor may not bargain away the rights of one codefendant in a deal with another.

B. sustained, because the friend's testimony was acquired as a result of the defendant's grand jury testimony.

C. overruled, because the police suspected the defendant even before he testified in the grand jury hearing.

D. overruled, because a witness cannot be precluded from testifying if his testimony is given voluntarily.

62. X-- The defendant is tried on a charge of driving while intoxicated. When the defendant was booked at the police station, a videotape was made that showed him unsteady, abusive, and speaking in a slurred manner. If the prosecutor lays a foundation properly identifying the tape, should the court admit it in evidence and permit it to be shown to the jury?

A. Yes, because it is an admission.

B. Yes, because its value is not substantially outweighed by unfair prejudice.

C. No, because the privilege against self-incrimination is applicable.

D. No, because specific instances of conduct cannot be proved by extrinsic evidence.

63. In a plaintiff's negligence action against a defendant arising out of a multiple-car collision, a witness testified for the plaintiff that the defendant went through a red light. On cross-examination, the defendant seeks to question the witness about her statement that the light was yellow, made in a deposition that the witness gave in a separate action between a man and a woman. The transcript of the deposition is self-authenticating.

On proper objection, the court should rule the inquiry

A. admissible for impeachment only.

B. admissible as substantive evidence only.

C. admissible for impeachment and as substantive evidence.

D. inadmissible, because it is hearsay, not within any exception.

64. A plaintiff sued a defendant for battery. At trial, the plaintiff's witness testified that the defendant had made an unprovoked attack on the plaintiff. On cross-examination, the defendant asks the witness about a false claim that the witness had once filed on an insurance policy. The question is

A. proper, because the conduct involved untruthfulness.

B. proper provided that the conduct resulted in conviction of the witness.

C. improper, because the impeachment involved a specific instance of misconduct.

D. improper, because the claim form would be the best evidence.

65. While crossing Spruce Street, a pedestrian was hit by a car that she did not see. The pedestrian sued the defendant driver for her injuries. At trial, the pedestrian calls a police officer to testify that, ten minutes after the accident, a driver stopped him and said, "Officer, a few minutes ago I saw a hit-and-run accident on Spruce Street involving a blue convertible, which I followed to the drive-in restaurant at Oak and Third," and that a few seconds later the police officer saw the defendant sitting alone in a blue convertible in the drive-in restaurant's parking lot.

The police officer's testimony about the driver's statement should be

A. admitted as a statement of recent perception.

B. admitted as a present sense impression.

C. excluded, because it is hearsay, not within any exception.

D. excluded, because it is more prejudicial than probative.

66. X-- A plaintiff sued a defendant for injuries suffered by the plaintiff when their automobiles collided. At trial the plaintiff offers into evidence a properly authenticated letter from the defendant that says, "Your claim seems too high, but, because I might have been a little negligent, I'm prepared to offer you half of what you ask. The letter is

A. admissible as an admission by a party-opponent.

B. admissible as a statement against pecuniary interest.

C. inadmissible, because the defendant's statement is lay opinion on a legal issue.

D. inadmissible, because the defendant's statement was made in an effort to settle the claim.

67. X--A defendant was prosecuted for armed robbery. At trial, the defendant testified on his own behalf, denying that he had committed the robbery. On cross-examination, the prosecutor intends to ask the defendant whether he had been convicted of burglary six years earlier. The question concerning the burglary conviction is

A. proper, if the court finds that the probative value for impeachment outweighs the prejudice to the defendant.

B. proper, because the prosecutor is entitled to make this inquiry as a matter of right.

C. improper, because burglary does not involve dishonesty or false statement.

D. improper, because the conviction must be proved by court record, not by question on cross-examination.

68. In a plaintiff's personal injury action, a physician who had no previous knowledge of the matter sat in court and heard all the evidence about the plaintiff's symptoms and conditions. The physician is called to give her opinion whether the plaintiff's injuries are permanent. May the physician so testify?

A. Yes, provided she first identifies the data on which her opinion is based.

B. Yes, because an expert may base her opinion on facts made known to her at the trial.

C. No, because she has no personal knowledge of the plaintiff's condition.

D. No, because permanence of injury is an issue to be decided by the jury.

69. In a tort action, a witness testified against the defendant. The defendant then called a friend to the stand, who testified that the witness had a bad reputation for veracity. The defendant then also called a second friend to testify that the witness once perpetrated a hoax on the police. The second friend's testimony is

A. admissible, provided that the hoax involves untruthfulness.

B. admissible, provided that the hoax resulted in conviction of the witness.

C. inadmissible, because it is merely cumulative impeachment.

D. inadmissible, because it is extrinsic evidence of a specific instance of misconduct.

70. A defendant is being tried in federal court for criminal conspiracy with another man to violate a federal narcotics law. At trial, the prosecutor calls the defendant's new wife and asks her to testify about a meeting between the defendant and the other man that she observed before she married the defendant. Which of the following is the most accurate statement of the applicable rule concerning whether the defendant's wife may testify?

A. The choice belongs to the defendant's wife.

B. The choice is the defendant's.

C. The defendant's wife is permitted to testify only if both the wife and the defendant agree.

D. The defendant's wife is compelled to testify even if both the wife and the defendant object.

71. X--In a civil suit by the plaintiff against the defendant, the defendant called a chemist as an expert witness and asked him a number of questions about his education and experience in chemistry. Over the plaintiff's objection that the witness was not shown to be qualified in chemistry, the trial court permitted the witness to testify as to his opinion in response to a hypothetical question. On cross-examination, the plaintiff asked the witness if he had failed two chemistry courses while doing his graduate work. The answer should be

A. admitted, because it is relevant to the weight to be given to the witness' testimony.

B. admitted, because specific acts bearing on truthfulness may be inquired about on cross-examination.

C. excluded, because the court has determined that the witness is qualified to testify as an expert.

D. excluded, because the witness's character has not been put in issue.

72. X-- In a contract suit by the plaintiff against the defendant, each of the following is an accepted method of authenticating the defendant's signature on a document offered by the plaintiff EXCEPT:

A. A non-expert who, in preparation for trial, has familiarized himself with the defendant's usual signature testifies that, in his opinion, the questioned signature is genuine.

B. The jury, without the assistance of an expert, compares the questioned signature with an admittedly authentic sample of the defendant's handwriting.

C. A witness offers proof that the signature is on a document that has been in existence for at least 20 years, that was in a place where it would be if it was authentic, and that has no suspicious circumstances surrounding it.

D. A witness testifies that the defendant admitted that the signature is his.

73. A plaintiff sued a defendant for nonpayment of a personal loan to the defendant, as evidenced by the defendant's promissory note to the plaintiff. The plaintiff called a witness to testify that he knows the defendant's handwriting and that the signature on the note is the defendant's. On direct examination, to identify himself, the witness gave his name and address and testified that he had been employed by a roofing company for seven years. During presentation of the defendant's case, the defendant called a witness to testify that she is the roofing company's personnel manager and that she had determined, by examining the company's employment records, that the witness had worked there only three years. The trial judge should rule that witness' testimony is

A. inadmissible, because it is not the best evidence.

B. inadmissible, because it is impeachment on a collateral question.

C. admissible as evidence of a regularly conducted activity.

D. admissible as tending to impeach the witness' credibility.

74. The defendant was prosecuted for bank robbery. At trial, the bank teller was unable to identify the defendant, now bearded, as the bank robber. The prosecutor then showed the bank teller a group of photographs, and the teller testified that she had previously told the prosecutor that the middle picture (concededly a picture of the defendant before he grew a beard) was a picture of the bank robber. The bank teller's testimony is

A. inadmissible, because it is hearsay, not within any exception.

B. inadmissible, because it is a violation of the defendant's right of confrontation.

C. admissible as prior identification by the witness.

D. admissible as past recollection recorded.

75. A defendant was charged with aggravated assault. At trial the defendant did not testify; however, he sought to offer opinion evidence of his good character for truth and veracity. This testimony should be

A. admitted, because a criminal defendant is entitled to offer evidence of his good character.

B. admitted, because a party's credibility is necessarily in issue.

C. excluded, because character is not admissible to prove conduct in conformity therewith.

D. excluded, because it is evidence of a trait not pertinent to the case.

76. An issue in a plaintiff's action against a defendant for causing the plaintiff's back injury was whether the plaintiff's condition had resulted principally from a similar occurrence five years before, with which the defendant had no connection. The plaintiff called his treating physician, who offered to testify that when she saw the plaintiff after the latest occurrence, the plaintiff had told her that before the accident he had been working full time, without pain or limitation of motion, in a job that involved lifting heavy boxes. The physician's testimony should be

A. admitted, because it is a statement of the plaintiff's then existing physical condition.

B. admitted, because it is a statement made for purposes for medical diagnosis.

C. excluded, because it is hearsay, not within any exception.

D. excluded, because the plaintiff is available as a witness.

77. A witness in a contract case testified on direct examination that four people attended a meeting. When asked to identify them, she gave the names of three but was unable to remember the name of the fourth person. The attorney who called her as a witness seeks to show her his handwritten notes of the part of his pretrial interview with her in which she provided all four names.

The trial court is likely to consider the showing of the notes taken as

A. a proper attempt to introduce recorded recollection.

B. a proper attempt to refresh the witness's recollection.

C. an improper attempt to lead the witness.

D. an improper attempt to support the witness's credibility.

78. X-- In a plaintiff's antitrust suit against manufacturers of insulation, the plaintiff's interrogatories asked for information concerning total sales of insulation by each of the defendant manufacturers in a particular year. **The defendants replied to the interrogatories by referring the plaintiff to the Insulation Manufacturers' Annual Journal for the information**. If at trial, the plaintiff offers the journal as evidence of the sales volume, this evidence is

A. admissible as an adoptive admission of the defendants.

B. admissible as a business record.

C. inadmissible, because it is hearsay, not within any exception.

D. inadmissible as lacking sufficient authentication.

79. Parmott sued Dexter in an automobile collision case. At trial, Parmott wishes to show by extrinsic evidence that Wade, Dexter's primary witness, is Dexter's partner in a gambling operation. This evidence is

A. admissible as evidence of Wade's character.

B. admissible as evidence of Wade's possible bias in favor of Dexter.

C. inadmissible, because criminal conduct can be shown only by admission or record of conviction.

D. inadmissible, because bias must be shown on cross-examination and not by extrinsic evidence.

80. An attorney sued a client for his fee, based on an agreed hourly rate. The client subpoenaed the attorney's time records for the days on which he purported to have worked for the client, in order to show that the attorney had billed an impossible number of hours to the client and others on those days. The client's subpoena provided that any information concerning the matters handled for other clients be deleted or masked. The attorney moved to quash the subpoena on the ground of attorney-client privilege. The subpoena should be

A. upheld, because the information about hours billed is not within the privilege.

B. upheld, because an attorney has no right to invoke his clients' privilege without instruction from the clients.

C. quashed, because an attorney is entitled to a right of privacy for the work product in his files.

D. quashed, because no permission was obtained from the other clients to divulge information from their files.

81. In litigation over the estate of a decedant who died intestate, a woman, who is eighteen years old, claimed to be the decedant's niece and entitled, therefore, to a share of his large estate. In support of her claim, the woman offered in evidence a Bible, properly identified as having belonged to the decedant's family, in the front of which was a list of family births, marriages, and deaths. The list recorded the woman's birth to the decedant's oldest sister.

To prove that the woman is the decedant's niece, the Bible listing is

A. admissible as an ancient document.

B. admissible as a family record.

C. inadmissible, because it is hearsay, not within any exception.

D. inadmissible, because there was no showing of firsthand knowledge by the one who wrote it.

82. A businessowner used aluminum brackets in her business. On the telephone listed as hers in the telephone book, the businessowner received a call in which the caller said, "This is [the defendant], the owner of a hardware company. We have a special on aluminum brackets this week at 30 percent off." The businessowner ordered brackets from the caller. When the brackets were never delivered, the businessowner sued the defendant for breach of contract. At trial, the defendant, who denies having made the telephone call, objects to the businessowner's testimony concerning it. When asked, the businessowner testifies that, aside from the telephone call, she had never heard the defendant speak until she met him in the judge's chambers before the trial and that, in her opinion, the voice on the telephone was the defendant's. The strongest argument for admission of the businessowner's testimony concerning the telephone call is that

A. the call related to business reasonably transacted over the telephone.

B. the call was received at a number assigned to the businessowner by the telephone company.

C. after hearing the defendant speak in chambers, the businessowner recognized the defendant's voice as that of the person on the telephone.

D. self-identification is sufficient authentication of a telephone call.

83. A plaintiff sued a defendant for slander, alleging that the defendant had publicly accused the plaintiff of being a thief. In his answer, the defendant admitted making the accusation, but alleged that it was a true statement. At trial, the defendant offers evidence that the plaintiff stole a ring worth $10,000 from a jewelry store.

Evidence concerning this theft should be

A. admitted, because specific instances of conduct may be proved when character is directly in issue.

B. admitted, because the plaintiff's action constituted a felony.

C. excluded, because character must be shown by reputation or opinion.

D. excluded, because its relevance is substantially outweighed by the danger of unfair prejudice.

84. A plaintiff sued a defendant for damages arising out of an automobile collision. At trial, the plaintiff called an eyewitness to the collision. The plaintiff expected the eyewitness to testify that she had observed the defendant's automobile for five seconds prior to the collision and estimated the defendant's speed at the time of the collision to have been 50 miles per hour. Instead, the eyewitness testified that she estimated the defendant's speed to have been 25 miles per hour. Without finally excusing the eyewitness as a witness, the plaintiff then called a police officer to testify that the eyewitness had told him during his investigation at the accident scene that the defendant "was doing at least 50."

The police officer's testimony is

A. admissible as a present sense impression.

B. admissible to impeach the eye witness.

C. inadmissible, because the plaintiff may not impeach his own witness.

D. inadmissible, because it is hearsay, not within any exception.

85. X-- Dalton is on trial for burglary. During cross-examination of Dalton, the prosecutor wants to inquire about Dalton's earlier conviction for falsifying a credit application. Which of the following facts concerning the conviction would be the best reason for the trial court's refusing to allow such examination?

A. Dalton was released from prison 12 years ago.

B. Dalton was put on probation rather than imprisoned.

C. It was for a misdemeanor rather than a felony.

D. It is on appeal.

86. A defendant was prosecuted for homicide. He testified that he shot in self-defense. In rebuttal, a police officer testified that he came to the scene in response to a telephone call from the defendant. The police officer offers to testify that he asked, "What is the problem here, sir?" and the defendant replied, "I was cleaning my gun and it went off accidentally." The offered testimony is

A. admissible as an excited utterance.

B. admissible to impeach the defendant and as evidence that he did not act in self-defense.

C. inadmissible, because of the defendant's privilege against self-incrimination.

D. inadmissible, because it tends to exculpate without corroboration.

87. Paul sued Dyer for personal injuries sustained when Dyer's car hit Paul, a pedestrian. Immediately after the accident, Dyer got out of his car, raced over to Paul, and said, "Don't worry, I'll pay your hospital bill." Paul's testimony concerning Dyer's statement is

A. admissible, because it is an admission of liability by a party opponent.

B. admissible, because it is within the excited utterance exception to the hearsay rule.

C. inadmissible to prove liability, because it is an offer to pay medical expenses.

D. inadmissible, provided that Dyer kept his promise to pay Paul's medical expenses.

88. In a civil action for personal injury, the plaintiff alleges that he was beaten up by the defendant during an altercation in a crowded bar. The defendant's defense is that he was not the person who hit the plaintiff. To corroborate his testimony about the cause of his injuries, the plaintiff seeks to introduce, through the hospital records custodian, a notation in a regular medical record made by an emergency room doctor at the hospital where the plaintiff was treated for his injuries. The notation is: "Patient says he was attacked by [the defendant]."

The notation is

A. inadmissible, unless the doctor who made the record is present at trial and available for cross-examination.

B. inadmissible as hearsay, not within any exception.

C. admissible as hearsay, within the exception for records of regularly conducted activity.

D. admissible as a statement made for the purpose of medical diagnosis or treatment.

89. X--The defendant was tried for the homicide of a girl whose strangled body was found beside a remote logging road with her hands taped together. After the defendant offered evidence of an alibi, the state calls a witness to testify that the defendant had taped her hands and tried to strangle her in the same location two days before the homicide but that she escaped.

The evidence is

A. admissible as tending to show that the defendant is the killer.

B. admissible as tending to show the defendant's violent nature.

C. inadmissible, because it is improper character evidence.

D. inadmissible, because it is unfairly prejudicial.

90. In a prosecution of the defendant for murder, the government seeks to introduce a properly authenticated note written by the victim that reads: "[the defendant] did it." In laying the foundation for admitting the note as a dying declaration, the prosecution offered an affidavit from the attending physician that the victim knew she was about to die when she wrote the note.

The admissibility of the note as a dying declaration is

A. a preliminary fact question for the judge, and the judge must not consider the affidavit.

B. a preliminary fact question for the judge, and the judge may properly consider the affidavit.

C. a question of weight and credibility for the jury, and the jury must not consider the affidavit.

D. a question of weight and credibility for the jury, and the jury may properly consider the affidavit.

91. X-- A defendant is on trial for the brutal murder of a victim. The defendant's first witness testified that, in her opinion, the defendant is a peaceful and nonviolent person. The prosecution does not cross-examine the witness, who is then excused from further attendance. Which one of the following is INADMISSIBLE during the prosecution's rebuttal?

A. Testimony by the witness's former employer that the witness submitted a series of false expense vouchers two years ago.

B. Testimony by a police officer that the defendant has a long-standing reputation in the community as having a violent temper.

C. Testimony by a neighbor that the witness has a long-standing reputation in the community as an untruthful person.

D. Testimony by the defendant's former cell mate that he overheard the witness offer to provide favorable testimony if the defendant would pay her $5,000.

92. The defendant was charged with stealing furs from a van. At trial, a witness testified that she saw the defendant take the furs. The jurisdiction in which the defendant is being tried does not allow in evidence lie detector results. On cross-examination by the defendant's attorney, the witness was asked, "The light was too dim to identify the defendant, wasn't it?" She responded, "I'm sure enough that it was the defendant that I passed a lie detector test administered by the police." The defendant's attorney immediately objects and moves to strike. The trial court should

A. grant the motion, because the question was leading.

B. grant the motion, because the probative value of the unresponsive testimony is substantially outweighed by the danger of unfair prejudice.

C. deny the motion, because it is proper rehabilitation of an impeached witness.

D. deny the motion, because the defendant's attorney "opened the door" by asking the question.

93. The plaintiff sued a police officer for false arrest. The police officer's defense was that, based on a description he heard over the police radio, he reasonably believed the plaintiff was an armed robber. A police radio dispatcher, reading from a note, had broadcast the description of an armed robber on which the police officer claims to have relied.

The defendant offers the following items of evidence:

I. The police officer's testimony relating the description he heard.

II. 130

III. The note containing the description the police dispatcher testifies he read over the radio.

Which of the following are admissible on the issue of what description the police officer heard?

A. I and II only.

B. I and III only.

C. II and III only.

D. I, II, and III.

94. A plaintiff sued a defendant for copyright infringement for using in the defendant's book some slightly disguised house plans on which the plaintiff held the copyright. The plaintiff is prepared to testify that he heard the defendant's executive copyright assistant say that the defendant had obtained an advance copy of the plans from the plaintiff's office manager.

The plaintiff's testimony is

A. admissible as reporting a statement of an employee of a party opponent.

B. admissible as a statement of a co-conspirator.

C. inadmissible, because it is hearsay not within any exception.

D. inadmissible, because there is no showing that the assistant was authorized to speak for the defendant.

95. X-- The defendant, charged with armed robbery of a store, denied that he was the person who had robbed the store. In presenting the state's case, the prosecutor seeks to introduce evidence that the defendant had robbed two other stores in the past year.

This evidence is

A. admissible, to prove a pertinent trait of the defendant's character and the defendant's action in conformity therewith.

B. admissible, to prove the defendant's intent and identity.

C. inadmissible, because character must be proved by reputation or opinion and may not be proved by specific acts.

D. inadmissible, because its probative value is substantially outweighed by the danger of unfair prejudice.

96. X-- A corporation sued a defendant for ten fuel oil deliveries not paid for. The defendant denied that the deliveries were made. At trial, the corporation calls its office manager to testify that the corporation's employees always record each delivery in duplicate, give one copy to the customer, and place the other copy in the corporation's files; that he (the office manager) is the custodian of those files; and that his examination of the files before coming to court revealed that the ten deliveries were made.

The office manager's testimony that the invoices show ten deliveries is

A. admissible, because it is based on regularly kept business records.

B. admissible, because the office manager has first-hand knowledge of the contents of the records.

C. inadmissible, because the records must be produced in order to prove their contents.

D. inadmissible, because the records are self-serving.

97. X-- During litigation on a federal claim, a plaintiff had the burden of proving that a defendant received a notice. The plaintiff relied on the presumption of receipt by offering evidence that the notice was addressed to the defendant, properly stamped, and mailed. The defendant, on the other hand, testified that she never received the notice.

Which of the following is correct?

A. The jury must find that the notice was received.

B. The jury may find that the notice was received.

C. The burden shifts to the defendant to persuade the jury of nonreceipt.

D. The jury must find that the notice was not received, because the presumption has been rebutted and there is uncontradicted evidence of nonreceipt.

98. X-- In a medical malpractice suit by a patient against his doctor, the patient seeks to introduce a properly authenticated photocopy of the patient's hospital chart. The chart contained a notation made by a medical resident that an aortic clamp had broken during the plaintiff's surgery. The resident made the notation in the regular course of practice, but had no personal knowledge of the operation, and cannot remember which of the operating physicians gave him the information.

The document is

A. admissible as a record of regularly conducted activity.

B. admissible as recorded recollection.

C. inadmissible as a violation of the best evidence rule.

D. inadmissible, because it is hearsay within hearsay.

99. X--The plaintiff sued the defendant for damages for physical injuries allegedly caused by the defendant's violation of the federal civil rights law. The incident occurred wholly within a particular state but the case was tried in federal court. The state code says, "The common-law privileges are preserved intact in this state." At trial, the defendant called the plaintiff's physician to testify to confidential statements made to him by the plaintiff in furtherance of medical treatment for the injuries allegedly caused by the defendant. The plaintiff objects, claiming a physician-patient privilege.

The court should apply

A. state law and recognize the claim of privilege.

B. federal law and recognize the claim of privilege.

C. state law and reject the claim of privilege.

D. federal law and reject the claim of privilege.

100. X-- In a prosecution of a defendant for assault, a witness is called to testify that the victim had complained to the witness that the defendant was the assailant. The witness's testimony is most likely to be admitted if the witness is

A. a doctor, whom the victim consulted for treatment.

B. a minister, whom the victim consulted for counseling.

C. the victim's husband, whom she telephoned immediately after the event.

D. a police officer, whom the victim called on instructions from her husband.

101. At the defendant's trial for stealing an automobile, the defendant called a character witness who testified that the defendant had an excellent reputation for honesty. In rebuttal, the prosecutor calls another witness to testify that he recently saw the defendant cheat on a college examination.

The prosecution witness's testimony should be

A. admitted, because the defendant has "opened the door" to the prosecutor's proof of bad character evidence.

B. admitted, because the cheating involves "dishonesty or false statement."

C. excluded, because it has no probative value on any issue in the case.

D. excluded, because the defendant's cheating can be inquired into only on cross-examination of the defendant's witness.

102. A plaintiff sued a defendant for damages for back injuries received in a car wreck. The defendant disputed the damages and sought to prove that the plaintiff's disability, if any, resulted from a childhood horseback riding accident. The plaintiff admitted to the childhood accident but contended it had no lasting effect. The plaintiff calls an orthopedist who had never examined the plaintiff and poses to the physician a hypothetical question as to the cause of the disability that omits any reference to the horseback riding accident. The question was not provided to opposing counsel before trial.

The best ground for objecting to this question would be that

A. the physician lacked firsthand knowledge concerning the plaintiff's condition.

B. the hypothetical question omitted a clearly significant fact.

C. hypothetical questions are no longer permitted.

D. sufficient notice of the hypothetical question was not given to opposing counsel before trial.

103. A defendant was prosecuted for the murder of a victim, whose body was found one morning in the street near the defendant's house. The state calls a witness, a neighbor, to testify that during the night before the body was found he heard the defendant's wife scream, "You killed him! You killed him!"

The witness' testimony is

A. admissible as a report of a statement of belief.

B. admissible as a report of an excited utterance.

C. inadmissible, because it reports a privileged spousal communication.

D. inadmissible on spousal immunity grounds, but only if the wife objects.

104. A defendant was prosecuted for sexually abusing his 13-year-old stepdaughter. The stepdaughter testified to the defendant's conduct. On cross-examination, defense counsel asks the stepdaughter, "Isn't it true that shortly before you complained that your stepfather abused you, he punished you for maliciously ruining some of his phonograph records?"

The question is

A. proper, because it relates to a possible motive for the stepdaughter to falsely accuse the defendant.

B. proper, because the stepdaughter's misconduct is relevant to her character for veracity.

C. improper, because the incident had nothing to do with the stepdaughter's truthfulness.

D. improper, because it falls outside the scope of direct examination.

105. A man and his friend were charged with conspiracy to dispose of a stolen diamond necklace. The friend jumped bail and cannot be found. Proceeding to trial against the man alone, the prosecutor calls the friend's girlfriend as a witness to testify that the friend confided to her that "[the man] said I still owe him some of the money from selling that necklace."

The witness' testimony is

A. admissible as evidence of a statement by party-opponent.

B. admissible as evidence of a statement against interest by the friend.

C. inadmissible, because the friend's statement was not in furtherance of the conspiracy.

D. inadmissible, because the friend is not shown to have firsthand knowledge that the necklace was stolen.

106. A man and his friend were charged with burglary of a warehouse. They were tried separately. At the man's trial, the friend testified that he saw the man commit the burglary. While the friend was still subject to recall as a witness, the man calls the friend's cellmate to testify that the friend said, "I broke into the warehouse alone because [the man] was too drunk to help."

The evidence of the friend's statement is

A. admissible as a declaration against penal interest.

B. admissible as a prior inconsistent statement.

C. inadmissible, because it is hearsay not within any exception.

D. inadmissible, because the statement is not clearly corroborated.

107. X--A plaintiff sues a defendant for breach of a promise made in a letter allegedly written by the defendant to the plaintiff. The defendant denies writing the letter.

Which of the following would NOT be a sufficient basis for admitting the letter into evidence?

A. Testimony by the plaintiff that she is familiar with the defendant's signature and recognizes it on the letter.

B. Comparison by the trier of fact of the letter with an admitted signature of the defendant.

C. Opinion testimony of a nonexpert witness based upon a familiarity acquired in order to authenticate the signature.

D. Evidence that the letter was written in response to one written by the plaintiff to the defendant.

108. In the prosecution of a defendant for murdering a victim, the defendant testified that the killing had occurred in self-defense when the victim tried to shoot him. In rebuttal, the prosecution seeks to call a witness, the victim's father, to testify that the day before the killing, the victim told her father that she loved the defendant so much she could never hurt him.

The witness's testimony is

A. admissible within the hearsay exception for statements of the declarant's then existing state of mind.

B. admissible, because the victim is unavailable as a witness.

C. inadmissible as hearsay not within any exception.

D. inadmissible, because the victim's character is not at issue.

109. X--The defendant is on trial for the crime of obstructing justice by concealing records subpoenaed May 1, in a government investigation. The government calls an attorney to testify that on May 3, the defendant asked him how to comply with the regulations regarding the transfer of records to a safe-deposit box in Mexico.

The testimony of the attorney is

A. privileged, because it relates to conduct outside the jurisdiction of the United States.

B. privileged, because an attorney is required to keep the confidences of his clients.

C. not privileged, provided the attorney knew of the concededly illegal purpose for which the advice was sought.

D. not privileged, whether or not the attorney knew of the concededly illegal purpose for which the advice was sought.

110. A defendant is on trial for arson. In its case in chief, the prosecution offers evidence that the defendant had secretly obtained duplicate insurance from two companies on the property that burned and that the defendant had threatened to kill his ex-wife if she testified for the prosecution.

The court should admit evidence of

A. The defendant's obtaining duplicate insurance only.

B. The defendant's threatening to kill his ex-wife only.

C. Both the defendant's obtaining duplicate insurance and threatening to kill his ex-wife.

D. Neither the defendant's obtaining duplicate insurance nor threatening to kill his ex-wife.

111. Roberta Monk, a famous author, had a life insurance policy with an insurance company. Her son was the beneficiary. The author disappeared from her residence in the city of Metropolis two years ago and has not been seen since. On the day that Roberta disappeared, Sky Airlines Flight 22 left Metropolis for Rio de Janeiro and vanished; the plane's passenger list included a Roberta Rector. The son is now suing the insurance company for the proceeds of his mother's policy. At trial, the son offers to testify that his mother told him that she planned to write her next novel under the pen name of Roberta Rector.

The son's testimony is

A. admissible as circumstantial evidence that Roberta Monk was on the plane.

B. admissible as a party admission, because Roberta Monk and her son are in privity with each other.

C. inadmissible, because Roberta Monk has not been missing more than seven years.

D. inadmissible, because it is hearsay not within any exception.

112. X--Which of the following items of evidence is LEAST likely to be admitted without a supporting witness?

A. In a libel action, a copy of a newspaper purporting to be published by the defendant newspaper publishing company.

B. In a case involving contaminated food, a can label purporting to identify the canner as the defendant company.

C. In a defamation case, a document purporting to be a memorandum from the defendant company president to "All Personnel," printed on the defendant's letterhead.

D. In a case involving injury to a pedestrian, a pamphlet on stopping distances issued by the State Highway Department.

113. Under the rule allowing exclusion of relevant evidence because its probative value is substantially outweighed by other considerations, which of the following is NOT to be considered?

A. The jury may be confused about the appropriate application of the evidence to the issues of the case.

B. The evidence is likely to arouse unfair prejudice on the part of the jury.

C. The opponent is surprised by the evidence and not fairly prepared to meet it.

D. The trial will be extended and made cumbersome by hearing evidence of relatively trivial consequence.

114. In contract litigation between the plaintiff and the defendant, a fact of consequence to the determination of the action is whether the plaintiff provided the defendant with a required notice at the defendant's branch office "in the state capital." The plaintiff introduced evidence that he gave notice at the defendant's office in the city of Capitan. Although Capitan is the state's capital, the plaintiff failed to offer proof of that fact.

Which of the following statements is most clearly correct with respect to possible judicial notice of the fact that Capitan is the state's capital?

A. The court may take judicial notice even though the plaintiff does not request it.

B. The court may take judicial notice only if the plaintiff provides the court with an authenticated copy of the statute that designates Capitan as the capital.

C. If the court takes judicial notice, the burden of persuasion on the issue of whether Capitan is the capital shifts to the defendant.

D. If the court takes judicial notice, it should instruct the jury that it may, but is not required to, accept as conclusive the fact that Capitan is the capital.

115. In an automobile negligence action by a plaintiff against a defendant, a bystander testified for the plaintiff. The defendant later called a witness, who testified that the bystander's reputation for truthfulness was bad. On cross-examination of the witness, the plaintiff's counsel asks, "Isn't it a fact that when you bought your new car last year, you made a false affidavit to escape paying the sales tax?" This question is

A. proper, because it will indicate the witness's standard of judgment as to reputation for truthfulness.

B. proper, because it bears on the witness's credibility.

C. improper, because character cannot be proved by specific instances of conduct.

D. improper, because one cannot impeach an impeaching witness.

116. X--A plaintiff sued a defendant for unlawfully using the plaintiff's idea for an animal robot as a character in the defendant's science fiction movie. The defendant admitted that he had received a model of an animal robot from the plaintiff, but he denied that it had any substantial similarity to the movie character. After the model had been returned to the plaintiff, the plaintiff destroyed it.

In order for the plaintiff to testify to the appearance of the model, the plaintiff

A. must show that he did not destroy the model in bad faith.

B. must give advance notice of his intent to introduce the oral testimony.

C. must introduce a photograph of the model if one exists.

D. need not do any of the above, because the "best evidence rule" applies only to writings, recordings, and photographs.

117. In the prosecution of a defendant for forgery, the defense objects to the testimony of a government expert on the ground of inadequate qualifications. The government seeks to introduce a letter from the expert's former criminology professor, stating that the expert is generally acknowledged in his field as well qualified.

On the issue of the expert's qualifications, the letter may be considered by

A. the jury, without regard to the hearsay rule.

B. the judge, without regard to the hearsay rule.

C. neither the judge nor the jury, because it is hearsay not within any exception.

D. both the judge and the jury, because the letter is not offered for a hearsay purpose.

118. In a federal court diversity action by a plaintiff against a defendant on an insurance claim, a question arose whether the court should apply a presumption that, where both husband and wife were killed in a common accident, the husband died last.

Whether this presumption should be applied is to be determined according to

A. traditional common law.

B. federal statutory law.

C. the law of the state whose substantive law is applied.

D. the federal common law.

119. A defendant is charged with possession of heroin. The prosecution witness, an experienced dog trainer, testified that he was in the airport with a dog trained to detect heroin. As the defendant approached, the dog immediately became alert and pawed and barked frantically at the defendant's briefcase. The defendant managed to run outside and throw his briefcase into the river, from which it could not be recovered. After the witness's experience is established, he is asked to testify as an expert that the dog's reaction told him that the defendant's briefcase contained heroin.

The witness's testimony is

A. admissible, as evidence of the defendant's guilt.

B. admissible, because an expert may rely on hearsay.

C. inadmissible, because it is based on hearsay not within any exception.

D. inadmissible, because of the unreliability of the reactions of an animal.

120. A plaintiff sued a defendant for libel. After the plaintiff testified that the defendant wrote to the plaintiff's employer that the plaintiff was a thief, the defendant offers evidence that the plaintiff once stole money from a former employer.

The evidence of the plaintiff's prior theft is

A. admissible, as substantive evidence to prove that the plaintiff is a thief.

B. admissible, but only to impeach the plaintiff's credibility.

C. inadmissible, because character may not be shown by specific instances of conduct.

D. inadmissible, because such evidence is more unfairly prejudicial than probative.

121.A defendant was charged with possession of cocaine. At the defendant's trial, the prosecution established that, when approached by police on a suburban residential street corner, the defendant dropped a plastic bag and ran, and that when the police returned to the corner a few minutes later after catching the defendant, they found a plastic bag containing white powder. The defendant objects to introduction of this bag (the contents of which would later be established to be cocaine), citing lack of adequate identification.

The objection should be

A. overruled, because there is sufficient evidence to find that the bag was the one the defendant dropped.

B. overruled, because the objection should have been made on the basis of incomplete chain of custody.

C. sustained, because the defendant did not have possession of the bag at the time he was arrested.

D. sustained, unless the judge makes a finding by a preponderance of the evidence that the bag was the one dropped by the defendant.

122. X-- A threatening telephone call that purports to be from a defendant to a witness is most likely to be admitted against the defendant if

A. the caller identified himself as the defendant.

B. the witness had previously given damaging testimony against the defendant in another lawsuit.

C. the witness had given his unlisted number only to the defendant and a few other persons.

D. the witness believes that the defendant is capable of making such threats.

123. In an automobile collision case brought by a plaintiff against a defendant, the plaintiff introduced evidence that a bystander made an excited utterance that the defendant ran the red light.

The defendant called a witness to testify that later the bystander, now deceased, told the witness that the defendant went through a yellow light.

The witness's testimony should be

A. excluded, because it is hearsay not within any exception.

B. excluded, because the bystander is not available to explain or deny the inconsistency.

C. admitted only for the purpose of impeaching the bystander.

D. admitted as impeachment and as substantive evidence of the color of the light.

124. A plaintiff sued a defendant for psychiatric malpractice and called another doctor as an expert witness. During the witness's direct testimony, the witness identified a text as a reliable authority in the field. He seeks to read to the jury passages from this book on which he had relied in forming his opinion on the proper standard of care.

The passage is

A. admissible, as a basis for his opinion and as substantive evidence of the proper standard of care.

B. admissible, as a basis for his opinion but not as substantive evidence of the proper standard of care.

C. inadmissible, because a witness's credibility cannot be supported unless attacked.

D. inadmissible, because the passage should be received as an exhibit and not read to the jury by the witness.

125. X-- In a suit by a plaintiff against a defendant, the plaintiff sought to subpoena an audiotape on which the defendant had narrated his version of the dispute for his attorney. Counsel for the defendant moves to quash the subpoena on the ground of privilege.

The audiotape is most likely to be subject to subpoena if

A. the defendant played the audiotape for his father to get his reactions.

B. the lawsuit involved alleged criminal behavior by the defevndant.

C. the defendant has been deposed and there is good reason to believe that the audiotape may contain inconsistent statements.

D. the defendant is deceased and thus unavailable to give testimony in person.

126. X-- A plaintiff sued a defendant for injuries received when she fell down a stairway in the defendant's apartment building. The plaintiff, a guest in the building, alleged that she caught the heel of her shoe in a tear in the stair carpet. The plaintiff calls a tenant to testify that another tenant had said to the plaintiff a week before the plaintiff's fall: "When I paid my rent this morning, I told the manager he had better fix that torn carpet."

The other tenant's statement, reported by the witness, is

A. admissible, to prove that the carpet was defective.

B. admissible, to prove that the defendant had notice of the defect.

C. admissible, to prove both that the carpet was defective and that the defendant had notice of the defect.

D. inadmissible, because it is hearsay not within any exception.

127. A defendant was prosecuted for bankruptcy fraud. The defendant's wife, now deceased, had testified adversely to the defendant during earlier bankruptcy proceedings that involved similar issues. Although the wife had been cross examined, no serious effort was made to challenge her credibility despite the availability of significant impeachment information. At the fraud trial, the prosecutor offers into evidence the testimony given by the defendant's wife at the bankruptcy proceeding.

This evidence should be

A. admitted, under the hearsay exception for former testimony.

B. admitted, because it is a statement by a person identified with a party.

C. excluded, because it is hearsay not within any exception.

D. excluded, because the defendant has the right to prevent use of his spouse's testimony against him in a criminal case.

128. A defendant was charged with possession of cocaine with intent to distribute. He had been stopped while driving a car and several pounds of cocaine were found in the trunk. In his opening statement, the defendant's counsel asserted that his client had no key to the trunk and no knowledge of its contents. The prosecutor offers the state motor vehicle registration, shown to have been found in the glove compartment of the car, listing the defendant as the owner.

The registration should be

A. admitted, as a statement against interest.

B. admitted, as evidence of the defendant's close connection with the car and, therefore, knowledge of its contents.

C. excluded, unless authenticated by testimony of or certification by a state official charged with custody of vehicle registration records.

D. excluded, as hearsay not within any exception.

129. A plaintiff sued a defendant for dissolution of their year-long partnership. One issue concerned the amount of money the plaintiff had received in cash. It was customary for the defendant to give the plaintiff money from the cash register as the plaintiff needed it for personal expenses. The plaintiff testified that, as he received money, he jotted down the amounts in the partnership ledger. Although the defendant had access to the ledger, he made no changes in it. The defendant seeks to testify to his memory of much larger amounts he had given the plaintiff.

The defendant's testimony is

A. admissible, because it is based on the defendant's firsthand knowledge.

B. admissible, because the ledger entries offered by a party opponent opened the door.

C. inadmissible, because the ledger is the best evidence of the amounts the plaintiff received.

D. inadmissible, because the defendant's failure to challenge the accuracy of the ledger constituted an adoptive admission.

130. A defendant is on trial for killing the victim. The prosecutor calls a witness to testify that after being shot, the victim said, "The defendant did it." Before the testimony is given, the defendant's lawyer asks for a hearing on whether the victim believed his death was imminent when he made the statement.

Before permitting evidence of the dying declaration, the judge should hear evidence on the issue from

A. both sides, with the jury not present, and decide whether the witness may testify to the victim's statement.

B. both sides, with the jury present, and decide whether the witness may testify to the victim's statement.

C. both sides, with the jury present, and allow the jury to determine whether the witness may testify to the victim's statements.

D. the prosecutor only, with the jury not present, and if the judge believes a jury could reasonably find that the victim knew he was dying, permit the witness to testify to the statement, with the defendant allowed to offer evidence on the issue as a part of the defendant's case.

131. X-- A driver sued a factory for injuries suffered in the crash of the driver's dune buggy, allegedly caused by a defective auto part manufactured by the factory. The factory claims that the part was a fraudulent imitation, not produced by the factory.

Which of the following is NOT admissible on the issue of whether the part was manufactured by the factory.?

A. The fact that the defective part bears the factory's insignia or trademark.

B. Testimony that the part was purchased from a parts house to which the factory regularly sold parts.

C. The part itself and a concededly genuine part manufactured by the factory (for the jury's comparison).

D. A judgment for another plaintiff against the factory in another case involving substantially similar facts.

132. A defendant was prosecuted in federal court for making threats against the President of the United States. The defendant was a voluntary patient in a private psychiatric hospital and told a nurse, shortly before the President came to town, that the defendant planned to shoot the President. The nurse reported the threat to FBI agents.

The defendant's motion to prevent the nurse's testifying is likely to be

A. successful, because the statement was made in a medical setting.

B. successful, because the nurse violated a confidence in reporting the statement.

C. unsuccessful, because the statement was not within any privilege.

D. unsuccessful, because the defendant had not been committed involuntarily by court order.

133. A defendant was charged with murder, and a witness testified for the prosecution. On cross-examination of the witness, the defendant seeks to elicit an admission that the witness was also charged with the same murder and that the prosecutor told her, "If you testify against the defendant, we will drop the charges against you after the conclusion of the defendant's trial."

The evidence about the prosecutor's promise is

A. admissible, as proper impeachment of the witness.

B. admissible, as an admission by an agent of a party-opponent.

C. inadmissible, because the law encourages plea-bargaining.

D. inadmissible, because the evidence is hearsay not within any exception.

134. A plaintiff sued a defendant for fraud. After verdict for the plaintiff, the defendant talked with a juror about the trial.

The defendant's motion for a new trial would be most likely granted if the juror is willing to testify that he voted for the plaintiff because he

A. misunderstood the judge's instructions concerning the standard of proof in a fraud case.

B. was feeling ill and needed to get home quickly.

C. relied on testimony that the judge had stricken and ordered the jury to disregard.

D. learned from a court clerk that the defendant had been accused of fraud in several recent lawsuits.

135. A defendant was charged with using a forged prescription from a doctor to obtain Percodan from a drugstore on May 1. At trial, the drugstore owner identified the defendant as the customer, but the defendant testified that he had not been in the store.

In rebuttal, the prosecutor calls two additional drug store owners to testify that, on May 1, a man they identified as the defendant had presented prescriptions for Percodan from a doctor at their drug stores.

The additional drug store owners' testimony is

A. admissible, to prove a pertinent trait of the defendant's character and the defendant's action in conformity therewith.

B. admissible, to identify the man who presented the prescription at the original drugstore.

C. inadmissible, because it proves specific acts rather than reputation or opinion.

D. inadmissible, because other crimes may not be used to show propensity.

136. A defendant is on trial for theft. At trial, the prosecutor called a husband and wife. They testified that, as they looked out their apartment window, they saw thieves across the street break the window of a jewelry store, take jewelry, and leave in a car. The wife telephoned the police and relayed to them the license number of the thieves' car as her husband looked out the window with binoculars and read it to her. Neither of them has any present memory of the number. The prosecutor offers as evidence a properly authenticated police tape recording of the wife's telephone call with her voice giving the license number, which is independently shown to belong to the defendant's car.

The tape recording of the wife stating the license is

A. admissible, under the hearsay exception for present sense impressions.

B. admissible, as nonhearsay circumstantial evidence.

C. inadmissible, because it is hearsay not within any exception.

D. inadmissible, because the wife never had firsthand knowledge of the license number.

137. The plaintiff sued a church for damages he suffered when the plaintiff crashed his motorcycle in an attempt to avoid a cow that had escaped from its corral. The cow and corral belonged to a farm that had recently been left by will to the church. At trial, the plaintiff seeks to ask the defendant's witness whether she is a member of that church. The question is

A. improper, because evidence of a witness's religious beliefs is not admissible to impeach credibility.

B. improper, because it violates First Amendment and privacy rights.

C. proper, for the purpose of ascertaining partiality or bias.

D. proper, for the purpose of showing capacity to appreciate the nature and obligation of an oath.

138. A defendant was charged with the sale of narcotics. The federal prosecutor arranged with the defendant's wife for her to testify against her husband in exchange for leniency in her case. At trial, the prosecution calls the wife, who had been granted immunity from prosecution, to testify, among other things, that she saw her husband sell an ounce of heroin.

Which of the following statements is most clearly correct in the federal courts?

A. The defendant's wife cannot be called as a witness over her husband's objection.

B. The defendant's wife can be called as a witness but cannot testify, over the defendant's objection, that she saw him sell heroin.

C. The defendant's wife can refuse to be a witness against her husband.

D. The defendant's wife can be required to be a witness and to testify that she saw her husband sell heroin.

139. A defendant is on trial for evading $100,000 in taxes. The prosecution offers in evidence an anonymous letter to the IRS, identified as being in the defendant's handwriting, saying, "I promised my mother on her deathbed I would try to pay my back taxes. Here is $10,000. I'll make other payments if you promise not to prosecute. Answer yes by personal ad saying, 'OK on tax deal.'"

The letter is

A. admissible, as a statement of present intention or plan.

B. admissible, as an admission of a party opponent.

C. inadmissible, because it is an effort to settle a claim.

D. inadmissible, because the probative value is substantially outweighed by the risk of unfair prejudice.

140. X-- A defendant is charged with aggravated assault on a game warden. The defendant testified that, when he was confronted by the warden, who was armed and out of uniform, the defendant believed the warden was a robber and shot in self-defense. The state calls a witness to testify that a year earlier, he had seen the defendant shoot a man without provocation and thereafter falsely claimed self-defense.

The witness's testimony is

A. admissible, as evidence of the defendant's untruthfulness.

B. admissible, as evidence that the defendant did not act in self-defense on this occasion.

C. inadmissible, because it is improper character evidence.

D. inadmissible, because it is irrelevant to the defense the defendant raised.

141. X-- A plaintiff sued a driver for damages for the death of the plaintiff's husband, resulting from an automobile collision. At trial, the driver calls the husband's doctor to testify that the day before his death, the husband, in great pain, said, "It was my own fault; there's nobody to blame but me." The doctor's testimony should be admitted as

A. a statement against interest.

B. a dying declaration.

C. a statement of the husband's then existing state of mind.

D. an excited utterance.

142. A plaintiff sued a defendant for an assault that occurred March 5 in California. To support his defense that he was in Utah on that date, the defendant identifies and seeks to introduce a letter he wrote to his sister a week before the assault in which he stated that he would see her in Utah on March 5.

The letter is

A. admissible, within the state of mind exception to the hearsay rule.

B. admissible, as a prior consistent statement to support the defendant's credibility as a witness.

C. inadmissible, because it lacks sufficient probative value.

D. inadmissible, because it is a statement of belief to prove the fact believed.

143. Plaza Hotel sued Plaza House Hotel for infringement of its trade name. To establish a likelihood of name confusion, plaintiff Plaza Hotel offers a series of memoranda which it had asked its employees to prepare at the end of each day listing instances during the day in which telephone callers, cab drivers, customers, and others had confused the two names.

The memoranda should be

A. excluded, because they are more unfairly prejudicial and confusing than probative.

B. excluded, because they are hearsay not within any exception.

C. admitted, because they are records of regularly conducted business activity.

D. admitted, because they are past recollection recorded.

144. In a federal investigation of a defendant for tax fraud, the grand jury seeks to obtain a letter written January 15 by the defendant to her attorney in which she stated: "Please prepare a deed giving my ranch to the university but, in order to get around the tax law, I want it back-dated to December 15." The attorney refuses to produce the letter on the ground of privilege.

Production of the letter should be

A. prohibited, because the statement is protected by the attorney-client privilege.

B. prohibited, because the statement is protected by the client's privilege against self-incrimination.

C. required, because the statement was in furtherance of crime or fraud.

D. required, because the attorney-client privilege belongs to the client and can be claimed only by her.

145. X-- A plaintiff sued a defendant for breach of a commercial contract in which the defendant had agreed to sell the plaintiff all of the plaintiff's requirements for widgets. The plaintiff called an expert witness to testify as to damages. The defendant seeks to show that the expert witness had provided false testimony as a witness in his own divorce proceedings.

This evidence should be

A. admitted only if elicited from the expert witness on cross-examination.

B. admitted only if the false testimony is established by clear and convincing extrinsic evidence.

C. excluded, because it is impeachment on a collateral issue.

D. excluded, because it is improper character evidence.

146. X-- A corporation sued its former vice president for return of $230,000 that had been embezzled during the previous two years. Called by the corporation as an adverse witness, the vice president testified that his annual salary had been $75,000, and he denied the embezzlement. The corporation calls a banker to show that, during the two-year period, the vice president had deposited $250,000 in his bank account.

The banker's testimony is

A. admissible as circumstantial evidence of the vice president's guilt.

B. admissible to impeach the vice president.

C. inadmissible, because its prejudicial effect substantially outweighs its probative value.

D. inadmissible, because the deposits could have come from legitimate sources.

147. A plaintiff sued a defendant for illegal discrimination, claiming that the defendant fired him because of his race. At trial, the plaintiff called a witness, expecting him to testify that the defendant had admitted the racial motivation. Instead, the witness testified that the defendant said that he had fired the plaintiff because of his frequent absenteeism. While the witness is still on the stand, the plaintiff offers a properly authenticated secret tape recording he had made at a meeting with the witness in which the witness related the defendant's admissions of racial motivation.

The tape recording is

A. admissible as evidence of the defendant's racial motivation and to impeach the witness's testimony.

B. admissible only to impeach the witness's testimony.

C. inadmissible, because it is hearsay not within any exception.

D. inadmissible, because a secret recording is an invasion of the witness's right of privacy under the U.S. Constitution.

148. X-- At the defendant's trial for theft, a witness, called by the prosecutor, testified to the following: 1) that from his apartment window, he saw thieves across the street break the window of a jewelry store, take jewelry, and leave in a car, 2) that his wife telephoned police and relayed to them the license number of the thieves' car as the witness looked out the window with binoculars and read it to her, and 3) that he has no present memory of the number, but that immediately afterward he listened to a playback of the police tape recording giving the license number (which belongs to the defendant's car) and verified that she had relayed the number accurately.

Playing the tape recording for the jury would be

A. proper, because it is recorded recollection.

B. proper, because it is a public record or report.

C. improper, because it is hearsay not within any exception.

D. improper, because the witness's wife lacked first-hand knowledge of the license number.

149. A plaintiff's estate sued a defendant, a store, claiming that one of the defendant's security guards wrongfully shot and killed the plaintiff when the plaintiff fled after being accused of shoplifting. The guard was convicted of manslaughter for killing the plaintiff. At his criminal trial the guard, who was no longer working for the defendant, testified that the defendant's security director had instructed him to stop shoplifters "at all costs." Because the guard's criminal conviction is on appeal, he refuses to testify at the civil trial. The plaintiff's estate then offers an authenticated transcript of the guard's criminal trial testimony concerning the instructions of the defendant's security director.

This evidence is

A. admissible as a statement of an agent of a party-opponent.

B. admissible, because the instruction from the security director is not hearsay.

C. admissible, although hearsay, as former testimony.

D. inadmissible, because it is hearsay not within any exception.

150. A plaintiff sued a defendant for shooting her husband from ambush. The plaintiff offers to testify that, the day before her husband was killed, he described to her a chance meeting with the defendant on the street in which the defendant said, "I'm going to blow your head off one of these days."

The witness's testimony concerning her husband's statement is

A. admissible, to show the defendant's state of mind.

B. admissible, because the defendant's statement is that of a party-opponent.

C. inadmissible, because it is improper evidence of a prior bad act.

D. inadmissible, because it is hearsay not within any exception.

151. A defendant is on trial for robbing a bank in State A. She testified that she was in State B at the time of the robbery. The defendant calls her friend, a witness, to testify that two days before the robbery the defendant told him that she was going to spend the next three days in State B.

The witness's testimony is

A. admissible, because the statement falls within the present sense impression exception to the hearsay rule.

B. admissible, because a statement of plans falls within the hearsay exception for then-existing state of mind.

C. inadmissible, because it is offered to establish an alibi by the defendant's own statement.

D. inadmissible, because it is hearsay not within any exception.

152. A plaintiff sued a defendant for breach of contract. The plaintiff's position was that the woman, whom he understood to be the defendant's agent, said, "On behalf of [the defendant], I accept your offer." The defendant asserted that the woman had no actual or apparent authority to accept the offer on the defendant's behalf.

The plaintiff's testimony concerning the woman's statement is

A. admissible, provided the court first finds by a preponderance of the evidence that the woman had actual or apparent authority to act for the defendant.

B. admissible, upon or subject to introduction of evidence sufficient to support a finding by the jury that the woman had actual or apparent authority to act for the defendant.

C. inadmissible, if the woman does not testify and her absence is not excused.

D. inadmissible, because it is hearsay not within any exception.

153. A defendant is on trial for the murder of his father. The defendant's defense is that he shot his father accidentally. The prosecutor calls a witness, a police officer, to testify that on two occasions in the year prior to this incident, he had been called to the defendant's home because of complaints of loud arguments between the defendant and his father, and had found it necessary to stop the defendant from beating his father.

The evidence is

A. inadmissible, because it is improper character evidence.

B. inadmissible, because the witness lacks first-hand knowledge of who started the quarrels.

C. admissible to show that the defendant killed his father intentionally.

D. admissible to show that the defendant is a violent person.

154. A plaintiff is suing a doctor for medical malpractice occasioned by allegedly prescribing an incorrect medication, causing the plaintiff to undergo substantial hospitalization. When the doctor learned of the medication problem, she immediately offered to pay the plaintiff's hospital expenses. At trial, the plaintiff offers evidence of the doctor's offer to pay the costs of his hospitalization.

The evidence of the doctor's offer is

A. admissible as a nonhearsay statement of a party.

B. admissible, although hearsay, as a statement against interest.

C. inadmissible, because it is an offer to pay medical expenses.

D. inadmissible, because it is an offer to compromise.

155. A plaintiff sued an auto manufacturing company for his wife's death, claiming that a defective steering mechanism on the family car caused it to veer off the road and hit a tree when his wife was driving. The defendant claims that the steering mechanism was damaged in the collision and offers testimony that the deceased wife was intoxicated at the time of the accident. Testimony concerning the wife's intoxication is

A. admissible to provide an alternate explanation of the accident's cause.

B. admissible as proper evidence of the wife's character.

C. inadmissible, because it is improper to prove character evidence by specific conduct.

D. inadmissible, because it is substantially more prejudicial than probative.

156. X--A construction company sued a development company for money owed on a cost-plus contract that required notice of proposed expenditures beyond original estimates. The defendant asserted that it never received the required notice. At trial the plaintiff calls a witness, its general manager, to testify that it is the plaintiff's routine practice to send cost overrun notices as required by the contract. The witness also offers a photocopy of the cost overrun notice letter to the defendant on which the plaintiff is relying, and which he has taken from the plaintiff's regular business files.

On the issue of giving notice, the letter copy is

A. admissible, though hearsay, under the business record exception.

B. admissible, because of the routine practices of the company.

C. inadmissible, because it is hearsay not within any exception.

D. inadmissible, because it is not the best evidence of the notice.

157. A plaintiff sued a defendant under an age discrimination statute, alleging that the defendant refused to hire the plaintiff because she was over age 65. The defendant's defense was that he refused to employ the plaintiff because he reasonably believed that she would be unable to perform the job. The defendant seeks to testify that the plaintiff's former employer advised him not to hire the plaintiff because she was unable to perform productively for more than four hours a day.

The testimony of the defendant is

A. inadmissible, because the defendant's opinion of the plaintiff's abilities is not based on personal knowledge.

B. inadmissible, because the plaintiff's former employer's statement is hearsay not within any exception.

C. admissible as evidence that the plaintiff would be unable to work longer than four hours per day.

D. admissible as evidence of the defendant's reason for refusing to hire the plaintiff.

158. In a jurisdiction without a Dead Man's Statute, a deceased man's estate sued the defendant claiming that the defendant had borrowed $10,000 from the deceased man, which had not been repaid as of the man's death. The man was run over by a truck. At the accident scene, while dying from massive injuries, the man told a police offficer to "make sure my estate collects the $10,000 I loaned to the defendant "The police officer's testimony about the deceased man's statement is

A. inadmissible, because it is more unfairly prejudicial than probative.

B. inadmissible, because it is hearsay not within any exception.

C. admissible as an excited utterance.

D. admissible as a statement under belief of impending death.

159. A defendant is charged with murder in connection with a carjacking incident during which the defendant allegedly shot the victim while attempting to steal the victim's car. The prosecutor calls the victim's four-year-old son, whose face was horribly disfigured by the same bullet, to testify that the defendant shot his father and him. The son's testimony should be

A. admitted, provided the prosecutor first provides evidence that persuades the judge that the son is competent to testify despite his tender age.

B. admitted, provided there is sufficient basis for believing that the son has personal knowledge and understands his obligation to testify truthfully.

C. excluded, because it is insufficiently probative in view of the son's tender age.

D. excluded, because it is more unfairly prejudicial than probative.

160. While on trial for murdering her husband, a defendant testified that she acted in self-defense. The defendant calls an expert, a psychologist, to testify that under hypnosis the defendant had described the killing, and that in the expert's opinion the defendant had been in fear for her life at the time of the killing.

Is the expert's testimony admissible?

A. Yes, because the expert was able to ascertain that the defendant was speaking truthfully.

B. Yes, because it reports a prior consistent statement by a witness (the defendant) subject to examination concerning it.

C. No, because reliance on information tainted by hypnosis is unconstitutional.

D. No, because it expresses an opinion concerning the defendant's mental state at the time of the killing.

161. A plaintiff sued a defendant for injuries suffered in a car accident allegedly caused by brakes that had been negligently repaired by the defendant. At a settlement conference, the plaintiff exhibited the brake shoe that caused the accident and pointed out the alleged defect to an expert, whom the defendant had brought to the conference. No settlement was reached. At trial, the brake shoe having disappeared, the plaintiff seeks to testify concerning the condition of the shoe.

The plaintiff's testimony is

A. admissible, because the defendant's expert had been able to examine the shoe carefully.

B. admissible, because the plaintiff had personal knowledge of the shoe's condition.

C. inadmissible, because the brake shoe was produced and examined as a part of settlement negotiations.

D. inadmissible, unless the plaintiff establishes that the disappearance was not his fault.

162. A defendant is on trial for nighttime breaking and entering of a warehouse. The warehouse owner had set up a camera to take infrared pictures of any intruders. After an expert establishes the reliability of infrared photography, the prosecutor offers the authenticated infrared picture of the intruder to show the similarities to the defendant. The photograph is

A. admissible, provided an expert witness points out to the jury the similarities between the person in the photograph and the defendant.

B. admissible, allowing the jury to compare the person in the photograph and the defendant.

C. inadmissible, because there was no eyewitness to the scene available to authenticate the photograph.

D. inadmissible, because infrared photography deprives a defendant of the right to confront witnesses.

163. A defendant is on trial for extorting $10,000 from a victim. At issue is the identification of the person who made a telephone call to the victim. The victim is prepared to testify that the caller had a distinctive accent like the defendant's, but that he cannot positively identify the voice as the defendant's. The victim recorded the call but has not brought the tape to court, although its existence is known to the defendant.

The victim's testimony is

A. inadmissible, because the victim cannot sufficiently identify the caller.

B. inadmissible, because the tape recording of the conversation is the best evidence.

C. admissible, because the defendant waived the "best evidence" rule by failing to subpoena the tape.

D. admissible, because the victim's lack of certainty goes to the weight to be given the victim's testimony, not to its admissibility.

164. A plaintiff sued a defendant for personal injuries suffered in a train-automobile collision. The plaintiff called an eyewitness, who testified that the train was going 20 miles per hour. The defendant then offers the testimony of an experienced police accident investigator that, based on his training and experience and on his examination of the physical evidence, it is his opinion that the train was going between 5 and 10 miles per hour.

Testimony by the investigator is

A. improper, because there cannot be both lay and expert opinion on the same issue.

B. improper, because the investigator is unable to establish the speed with a sufficient degree of scientific certainty.

C. proper, because a police accident investigator has sufficient expertise to express an opinion on speed.

D. proper, because the plaintiff first introduced opinion evidence as to speed.

165. At the defendant's trial for burglary, one of the defendant's friends supported the defendant's alibi that they were fishing together at the time of the crime. On cross-examination, the friend was asked whether his statement on a credit card application that he had worked for his present employer for the last five years was false. The friend denied that the statement was false.

The prosecutor then calls a witness, the manager of the company for which the friend works, to testify that although the friend had been first employed five years earlier and is now employed by the company, there had been a three-year period during which he had not been so employed.

The testimony of the witness is

A. admissible, in the judge's discretion, because the friend's credibility is a fact of major consequence to the case.

B. admissible, as a matter of right, because the friend "opened the door" by his denial on cross-examination.

C. inadmissible, because whether the friend lied in his application is a matter that cannot be proved by extrinsic evidence.

D. inadmissible, because the misstatement by the friend could have been caused by a misunderstanding of the application form.

166. A passenger is suing a defendant for injuries suffered in the crash of a small airplane, alleging that the defendant had owned the plane and negligently failed to have it properly maintained. The defendant has asserted in defense that he never owned the plane or had any responsibility to maintain it. At trial, the passenger calls a witness to testify that the witness had sold to the defendant a liability insurance policy on the plane.

The testimony of the witness is

A. inadmissible, because the policy itself is required under the original document rule.

B. inadmissible, because of the rule against proof of insurance where insurance is not itself at issue.

C. admissible to show that the defendant had little motivation to invest money in maintenance of the airplane.

D. admissible as some evidence of the defendant's ownership of or responsibility for the airplane.

167.X-- A pedestrian died from injuries caused when a driver's car struck him. The pedestrian's executor sued the driver for wrongful death. At trial, the executor calls a nurse to testify that two days after the accident, the pedestrian said to the nurse, "The car that hit me ran the red light." Fifteen minutes thereafter, the pedestrian died.

As a foundation for introducing evidence of the pedestrian's statement, the executor offers to the court the doctor's affidavit that the doctor was the intern on duty the day of the pedestrian's death and that several times that day the pedestrian had said that he knew he was about to die.

Is the affidavit properly considered by the court in ruling on the admissibility of the pedestrian's statement?

A. No, because it is hearsay not within any exception.

B. No, because it is irrelevant since dying declarations can only be used in prosecutions for homicide.

C. Yes, because, though hearsay, it is a statement of then-existing mental condition.

D. Yes, because the judge may consider hearsay in ruling on preliminary questions.

168. X-- A plaintiff sued a defendant for personal injuries arising out of an automobile accident.

Which of the following would be an ERROR?

A. The judge allows the defendant's attorney to ask the defendant questions on cross-examination that go well beyond the scope of direct examination by the plaintiff, who has been called as an adverse witness.

B. The judge refuses to allow the defendant's attorney to cross-examine the defendant by leading questions.

C. The judge allows cross-examination about the credibility of a witness even though no question relating to credibility has been asked on direct examination.

D. The judge, despite the defendant's request for exclusion of witnesses, allows the plaintiff's eyewitnesses to remain in the courtroom after testifying, even though the eyewitness is expected to be recalled for further cross-examination.

169. X-- A plaintiff is suing a defendant for injuries suffered in an automobile collision. At trial the plaintiff's first witness testified that, although she did not see the accident, she heard her friend say just before the crash, "Look at the crazy way old [defendant] is driving!" The defendant offers evidence to impeach the witness's friend by asking the witness, "Isn't it true that [the friend] beat up [the defendant] just the day before the collision?" The question is

A. proper, because it tends to show possible bias of the witness's friend against the defendant.

B. proper, because it tends to show the witness's friend's character.

C. improper, because the witness's friend has no opportunity to explain or deny it.

D. improper, because impeachment cannot properly be by specific instances.

170. X-- A defendant was charged with attempted murder of a victim in a sniping incident in which the defendant allegedly shot at the victim from ambush as the victim drove his car along an expressway. The prosecutor offers evidence that seven years earlier the defendant had fired a shotgun into a woman's house and that the defendant had once pointed a handgun at another driver while driving on the street. This evidence should be

A. excluded, because such evidence can be elicited only during cross-examination.

B. excluded, because it is improper character evidence.

C. admitted as evidence of the defendant's propensity toward violence.

D. admitted as relevant evidence of the defendant's identity, plan, or motive.

171. X-- At a defendant's murder trial, the defendant calls his first witness to testify that the defendant has a reputation in their community as a peaceable and truthful person. The prosecutor objects on the ground that the witness's testimony would constitute improper character evidence. The court should

A. admit the testimony as to peaceableness, but exclude the testimony as to truthfulness.

B. admit the testimony as to truthfulness, but exclude the testimony as to peaceableness.

C. admit the testimony as to both character traits.

D. exclude the testimony as to both character traits.

172. X-- In a federal civil trial, the plaintiff wishes to establish that, in a state court, the defendant had been convicted of fraud, a fact that the defendant denies. Which mode of proof of the conviction is LEAST likely to be permitted?

A. A certified copy of the judgment of conviction, offered as a self-authenticating document.

B. Testimony of the plaintiff, who was present at the time of the sentence.

C. Testimony by a witness to whom the defendant made an oral admission that he had been convicted.

D. Judicial notice of the conviction, based on the court's telephone call to the clerk of the state court, whom the judge knows personally.

173. A plaintiff sued a defendant for injuries sustained in an automobile collision. During the plaintiff's hospital stay, a staff physician examined the plaintiff's X-rays and said to the plaintiff, "You have a fracture of two vertebrae, C4 and C5." An intern, who was accompanying the doctor on her rounds, immediately wrote the diagnosis on the plaintiff's hospital record. At trial, the hospital records custodian testifies that the plaintiff's hospital record was made and kept in the ordinary course of the hospital's business.

The entry reporting the doctor's diagnosis is

A. inadmissible, because no foundation has been laid for the doctor's competence as an expert.

B. inadmissible, because the doctor's opinion is based upon data that are not in evidence.

C. admissible as a statement of then existing physical condition.

D. admissible as a record of regularly conducted business activity.

174. A defendant is on trial for participating in a drug sale. The prosecution calls a witness, an undercover officer, to testify that, when the seller sold the drugs to the witness, the seller introduced the defendant to the witness as "my partner in this" and the defendant shook hands with the witness but said nothing. The witness's testimony is

A. inadmissible, because there is no evidence that the seller was authorized to speak for the defendant.

B. inadmissible, because the statement of the seller is hearsay not within any exception.

C. admissible as a statement against the defendant's penal interest.

D. admissible as the defendant's adoption of the seller's statement.

175. X-- At a defendant's trial for sale of drugs, the government called a witness to testify, but the witness refused to answer any questions about the defendant and was held in contempt of court. The government then calls a police officer to testify that, when the witness was arrested for possession of drugs and offered leniency if he would identify his source, the witness had named the defendant as his source. The testimony offered concerning the witness's identification of the defendant is

A. admissible as a prior consistent statement by a witness.

B. admissible as an identification of the defendant by a witness after having perceived him.

C. inadmissible, because it is hearsay not within any exception.

D. inadmissible, because the witness was not confronted with the statement while on the stand.

176. In an arson prosecution the government seeks to rebut the defendant's alibi that he was in a jail in another state at the time of the fire. The government calls a witness to testify that he diligently searched through all the records of the jail and found no record of the defendant having been incarcerated there during the time the defendant specified.

The testimony of the witness is

A. admissible as evidence of absence of an entry from a public record.

B. admissible as a summary of voluminous documents.

C. inadmissible, because it is hearsay not within any exception.

D. inadmissible, because the records themselves must be produced.

177. X--In a civil trial for professional malpractice, the plaintiff sought to show that the defendant, an engineer, had designed the plaintiff's flour mill with inadequate power. The plaintiff called an expert witness who based his testimony solely on his own professional experience but also asserted, when asked, that the book Smith on Milling Systems was a reliable treatise in the field and was consistent with his views. On cross-examination, the defendant asked the witness whether he and the book's author were ever wrong. The witness answered, "Nobody's perfect." The defendant asked no further questions. The defendant called a second expert witness and asked, "Do you accept the book as reliable?" The second witness said, "It once was, but it is now badly out of date." The plaintiff requested that the jury be allowed to examine the book and judge for itself the book's reliability.

Should the court allow the jury to examine the book?

A. No, because the jury may consider only passages read to it by counsel or witness.

B. No, because the plaintiff's expert in testifying did not rely on the treatise but on his own experience.

C. Yes, because an expert has testified that the treatise is reliable.

D. Yes, because the jury is the judge of the weight and credibility to be accorded both written and oral evidence.

178. In a civil trial arising from a car accident at an intersection, the plaintiff testified on direct that he came to a full stop at the intersection. On cross-examination, the defendant's lawyer asked whether the plaintiff claimed that he was exercising due care at the time, and the plaintiff replied that he was driving carefully. At a sidebar conference, the defendant's lawyer sought permission to ask the plaintiff about two prior intersection accidents in the last 12 months where he received traffic citations for failing to stop at stop signs. The plaintiff's lawyer objected.

Should the court allow defense counsel to ask the plaintiff about the two prior incidents?

A. No, because improperly failing to stop on the recent occasions does not bear on the plaintiff's veracity and does not contradict his testimony in this case.

B. No, because there is no indication that failing to stop on the recent occasions led to convictions.

C. Yes, because improperly failing to stop on the recent occasions bears on the plaintiff's credibility, since he claims to have stopped in this case.

D. Yes, because improperly failing to stop on the recent occasions tends to contradict the plaintiff's claim that he was driving carefully at the time he collided with the defendant.

179. A defendant was charged with burglary. At trial, a police officer testified that, after the defendant was arrested and agreed to answer questions, the officer interrogated him with a stenographer present, but that he could not recall what the defendant had said. The prosecutor presented the officer with a photocopy of the stenographic transcript of the interrogation. The officer, after looking at it, was prepared to testify that he recalled that the defendant admitted to being in the area of the burglary. The defendant objected to the officer's testimony on the ground that it violated the "original document" rule (also known as the "best evidence" rule). Should the officer's testimony concerning the defendant's recorded confession be admitted?

A. No, because a photocopy cannot be used without a showing that the original is unavailable.

B. No, because the stenographer has not testified to the accuracy of the transcript.

C. Yes, because a photocopy is a duplicate of the original.

D. Yes, because the prosecutor is not attempting to prove the contents of the document.

180. In a civil trial for fraud arising from a real estate transaction, the defendant claimed not to have been involved in the transaction. The plaintiff called a witness to testify concerning the defendant's involvement in the fraudulent scheme, but to the plaintiff's surprise, the witness testified that the defendant was not involved and denied making any statement to the contrary. The plaintiff now calls a second witness to testify that the first witness had stated, while the two were having a dinner conversation, that the defendant was involved in the fraudulent transaction. Is the testimony of the second witness admissible?

A. No, because a party cannot impeach the party's own witness.

B. No, because it is hearsay not within any exception.

C. Yes, but only to impeach the first witness.

D. Yes, to impeach the first witness and to prove the defendant's involvement.

181. A defendant has plead not guilty to a federal charge of bank robbery. The principal issue at trial is the identity of the robber. The prosecutor calls the defendant's wife to testify to the clothing that the defendant wore as he left their house on the day the bank was robbed, expecting her description to match that of eyewitnesses to the robbery. Both the defendant and his wife object to her testifying against the defendant. Should the wife be required to testify?

A. No, because the defendant has a privilege to prevent his wife from testifying against him in a criminal case.

B. No, because the wife has a privilege not to testify against her husband in a criminal case.

C. Yes, because the interspousal privilege does not apply in criminal cases.

D. Yes, because the wife's viewing of the defendant's clothing was not a confidential communication.

182. At the defendant's trial for a gang-related murder, the prosecution introduced, as former testimony, a statement by a gang member who testified against the defendant at a preliminary hearing and has now invoked his privilege against self-incrimination.

If the defendant now seeks to impeach the credibility of the gang member, which of the following is the court most likely to admit?

A. Evidence that the gang member had three misdemeanor convictions for assault.

B. Testimony by a psychologist that persons with the gang member's background have a tendency to fabricate.

C. Testimony by a witness that at the time the gang member testified, he was challenging the defendant's leadership role in the gang.

D. Testimony by a witness that the gang member is a cocaine dealer.

183. A defendant was charged with aggravated assault. At trial, the victim testified that the defendant beat her savagely, but she was not asked about anything said during the incident. The prosecutor then called a witness to testify that when the beating stopped, the victim screamed: "I'm dying-don't let [the defendant] get away with it!" Is the testimony of the witness concerning the victim's statement admissible?

A. No, because it is hearsay not within any exception.

B. No, because the victim was not asked about the statement.

C. Yes, as a statement under belief of impending death, even though the victim did not die.

D. Yes, as an excited utterance.

184. X-- A homeowner sued a plumber for damages resulting from the plumber's allegedly faulty installation of water pipes in her basement, causing flooding. At trial, the homeowner was prepared to testify that when she first detected the flooding, she turned off the water and called the plumber at his emergency number for help. The plumber responded, "I'll come by tomorrow and redo the installation for free." Is the plumber's response admissible?

A. No, because it is an offer in compromise.

B. No, because it is hearsay not within any exception.

C. Yes, as a subsequent remedial measure.

D. Yes, as evidence of the plumber's fault.

185. A defendant was charged in federal court with selling a controlled substance (heroin) in interstate commerce. At trial, the prosecutor introduced evidence that the defendant obtained the substance from a supplier in Kansas City and delivered it in Chicago. The defendant denied that the substance in question was heroin, but he introduced no contrary evidence on the issue of transportation. Which of the following instructions regarding judicial notice may the judge legitimately give the jury?

A. "If you find that the defendant obtained the drugs in Kansas City and delivered them to Chicago, I instruct you to find that the substance was sold in an interstate transaction."

B. "If you find that the defendant obtained the drugs in Kansas City and delivered them to Chicago, then the burden of persuasion is on the defendant to establish that the transaction was not interstate."

C. "If you find that the defendant obtained the drugs in Kansas City and delivered them to Chicago, then you may, but you are not required to, find that the transaction was interstate in nature."

D. "I instruct you that there is a presumption that the substance was sold in an interstate transaction, but the burden of persuasion on that issue is still on the government."

186. In a personal injury case, the plaintiff sued a retail store for injuries she sustained from a fall in the store. The plaintiff alleged that the store negligently allowed its entryway to become slippery due to snow tracked in from the sidewalk. When the plaintiff threatened to sue, the store's manager said, "I know that there was slush on that marble entry, but I think your four-inch-high heels were the real cause of your fall. So let's agree that we'll pay your medical bills, and you release us from any claims you might have." The plaintiff refused the offer. At trial, the plaintiff seeks to testify to the manager's statement that "there was slush on that marble entry."

Is the statement about the slush on the floor admissible?

A. No, because it is a statement made in the course of compromise negotiations.

B. No, because the manager denied that the slippery condition was the cause of the plaintiff's fall.

C. Yes, as an admission by an agent about a matter within the scope of his authority.

D. Yes, because the rule excluding offers of compromise does not protect statements of fact made during compromise negotiations.

187. In a civil action for misrepresentation in the sale of real estate, the parties contested whether the defendant was licensed by the State Board of Realtors, a public agency established by statute to license real estate brokers. The defendant testified she was licensed. On rebuttal, the plaintiff offers a certification, bearing the seal of the secretary of the State Board of Realtors. The certification states that the secretary conducted a thorough search of the agency's records and all relevant databases, and that this search uncovered no record of a license ever having been issued to the defendant. The certification is signed by the secretary.

Is the certification that there was no record of a license issuance admissible?

A. No, because it is hearsay not within any exception.

B. No, because the writing was not properly authenticated.

C. Yes, for the limited purpose of impeaching the defendant.

D. Yes, to prove the nonexistence of a public record.

188. X-- A defendant is on trial for attempted fraud. The state charges that the defendant switched a price tag from a cloth coat to a more expensive fur-trimmed coat and then presented the latter for purchase at the cash register. The defendant testified in her own behalf that the tag must have been switched by someone else. On cross-examination, the prosecutor asks whether the defendant was convicted on two prior occasions of misdemeanor fraud in the defrauding of a retailer by the same means of switching the price tag on a fur-trimmed coat. Is the question about the convictions for the earlier crimes proper?

A. It is not proper either to impeach the defendant or to prove that the defendant committed the crime.

B. It is proper both to prove that the defendant committed the crime and to impeach the defendant.

C. It is proper to impeach the defendant, but not to prove that the defendant committed the crime.

D. It is proper to prove the defendant committed the crime, but not to impeach the defendant.

189. The defendant, a young doctor, is charged with falsely claiming deductions on her federal income tax return. At trial, a witness testified for the defendant that she has a reputation in the community for complete honesty. After a sidebar conference at which the prosecutor gave the judge a record showing that the defendant's medical school had disciplined her for altering her transcript, the prosecutor proposes to ask the witness on cross-examination: "Have you ever heard that the defendant falsified her medical school transcript?" Is the prosecutor's question proper?

A. No, because it calls for hearsay not within any exception.

B. No, because its minimal relevance on the issue of income tax fraud is substantially outweighed by the danger of unfair prejudice.

C. Yes, because an affirmative answer will be probative of the defendant's bad character for honesty and, therefore, her guilt.

D. Yes, because an affirmative answer will impeach the witness's credibility.

190. In a civil action for breach of an oral contract, the defendant admits that there had been discussions, but denies that he ever entered into an agreement with the plaintiff. Which of the following standards of admissibility should be applied by the court to evidence proffered as relevant to prove whether a contract was formed?

A. Whether a reasonable juror would find the evidence determinative of whether the contract was or was not formed.

B. Whether the evidence has any tendency to make the fact of contract formation more or less probable than without the evidence.

C. Whether the evidence is sufficient to prove, absent contrary evidence, that the contract was or was not formed.

D. Whether the evidence makes it more likely than not that a contract was or was not formed.

191. At a civil trial for slander, the plaintiff showed that the defendant had called the plaintiff a thief. In defense, the defendant called a witness to testify, "I have been the plaintiff's neighbor for many years, and people in our community generally have said that he is a thief." Is the testimony concerning the plaintiff's reputation in the community admissible?

A. No, because character is an essential element of the defense, and proof must be made by specific instances of conduct.

B. Yes, to prove that the plaintiff is a thief, and to reduce or refute the damages claimed.

C. Yes, to prove that the plaintiff is a thief, but not on the issue of damages.

D. Yes, to reduce or refute the damages claimed, but not to prove that the plaintiff is a thief.

192. X-- A plaintiff sued her employer, alleging that poor working conditions had caused her to develop a stomach ulcer. At trial, the plaintiff's medical expert testified to the cause of the plaintiff's ulcer and stated that his opinion was based in part on information in a letter the plaintiff's personal physician had written to the plaintiff's employer, explaining why the plaintiff had missed work.

When offered to prove the cause of the plaintiff's condition, is the letter from the plaintiff's doctor admissible?

A. No, because it is hearsay not within any exception.

B. No, because the plaintiff's physician is not shown to be unavailable.

C. Yes, because it was relied upon by the plaintiff's medical expert.

D. Yes, under the business records exception to the hearsay rule.

193. In a suit based on a will, inheritance of $1 million depended upon whether the wife had survived her husband when both died in the crash of a small airplane. An applicable statute provided that, for purposes of distributing an estate after a common disaster, there was a rebuttable presumption that neither spouse had survived the other. A witness was called to testify that as she approached the plane she heard what she thought was a woman's voice saying, "I'm dying," although by the time the two occupants were removed from the wreckage, they were both dead. Is the witness's testimony admissible?

A. No, because the matter is governed by the presumption that neither spouse survived the other.

B. No, because the witness's testimony is too speculative to support a finding.

C. Yes, because the hearsay rule does not apply to statements by decedents in actions to determine rights under a will.

D. Yes, because it is relevant and not otherwise prohibited.

194. X-- A defendant was on trial for burglary. The prosecutor called the arresting officer to testify that shortly after the arrest the defendant had orally admitted her guilt to him. Before the officer testified, the defendant objected that no Miranda warning had been given, and she requested a hearing outside the presence of the jury to hear evidence on that issue.

How should the court proceed?

A. The court should grant the request, because the hearing on the admissibility of the confession must be conducted outside the presence of the jury.

B. The court may grant or deny the request, because the court has discretion whether to conduct preliminary hearings in the presence of the jury.

C. The court should deny the request and rule the confession inadmissible, because only signed confessions are permitted in criminal cases.

D. The court should deny the request and rule the confession admissible, because it is the statement of a party-opponent.

195. A defendant was charged with murder. While walking down the hallway during a recess in the defendant's trial, the judge overheard the defendant say to his attorney, "So what if I did it? There's not enough proof to convict." Upon the judge's reporting the incident to counsel, the prosecutor called the judge as a witness in the trial.

Is the judge's testimony regarding the defendant's statement admissible?

A. Yes, as the statement of a party-opponent.

B. Yes, because the defendant's statement, although otherwise privileged, was made without reasonable efforts to preserve confidentiality.

C. No, because the statement was a privileged attorney-client communication.

D. No, because a judge may never testify in a trial over which he or she is presiding.

196. X-- A defendant's house was destroyed by fire and she was charged with arson. To prove that the defendant had a motive to burn down her house, the government offered evidence that the defendant had fully insured the house and its contents.

Should the court admit this evidence?

A. No, because the probative value of the evidence of insurance upon the issue of whether the defendant intentionally burned her house down is substantially outweighed by the dangers of unfair prejudice and confusion of the jury.

B. No, because evidence of insurance is not admissible upon the issue of whether the insured acted wrongfully.

C. Yes, because evidence of insurance on the house has a tendency to show that the defendant had a motive to burn down the house.

D. Yes, because any conduct of a party to the case is admissible when offered against the party.

197. A defendant was charged with battery for allegedly attacking a man as they left a local bar together. No one else witnessed the fight. At trial, each testified that he had acted only in self-defense. The defendant called his next-door neighbor as a witness to testify as to the defendant's reputation both for truthfulness and for peacefulness. The government objected to the testimony in its entirety.

How should the court proceed?

A. Admit the evidence in its entirety.

B. Admit the evidence regarding the defendant's reputation for peacefulness, but exclude the evidence regarding his truthfulness.

C. Exclude the evidence regarding the defendant's reputation for peacefulness, but admit the evidence regarding his truthfulness.

D. Exclude the evidence in its entirety.

198. X-- At a trial of a contract dispute, the plaintiff offered to testify to what the defendant said in a private conversation between the two of them, which the plaintiff had secretly recorded on an audiotape that she did not offer in evidence.

Is the plaintiff's testimony admissible?

A. Yes, because the plaintiff has personal knowledge of the statement of a party-opponent.

B. Yes, because the original document rule does not apply to audiotapes.

C. No, because the statement must be proved by introduction of the audiotape itself.

D. No, because of the plaintiff's deception, even if the recording was not illegal.

199. A plaintiff sued a ladder manufacturer for injuries he suffered to his neck and back when a rung of the ladder on which he was standing gave way. When the plaintiff's back and neck continued to be very sore after more than two weeks, his treating physician sent him to an orthopedist for an evaluation. Though the orthopedist did not treat the plaintiff, he diagnosed an acute cervical strain. At trial, the plaintiff called the orthopedist to testify that in response to the orthopedist's inquiry about how the plaintiff had injured his back, the plaintiff told him, "I was standing near the top of a 15-foot ladder when I abruptly fell, landing hard on my back, after which the ladder toppled onto my neck."

Should the statement be admitted?

A. Yes, because the plaintiff is present and can be cross-examined about it.

B. Yes, because it was made for the purpose of medical diagnosis or treatment.

C. No, because it was not made to a treating physician.

D. No, because it relates to the inception or the cause of the injury rather than the plaintiff's physical condition.

200. A plaintiff sued a defendant for wrongful death arising out of a traffic collision between the plaintiff's decedent and the defendant. At trial, the investigating traffic officer authenticated a tape recording of her shift-end dictation of comments used in preparing the written report of her factual findings. She testified that the tape recording was accurate when made and that she currently had no clear memory of the details of the investigation.

Is the tape recording admissible as evidence?

A. Yes, under the past recollection recorded exception to the hearsay rule.

B. Yes, under the public records exception to the hearsay rule.

C. No, because it is hearsay and is a police report being offered against the defendant in a wrongful death case.

D. No, because the police report itself is the best evidence.

201. A plaintiff sued his insurance company for the full loss of his banquet hall by fire. The insurance company defended under a provision of the policy limiting liability to 50 percent if "flammable materials not essential to the operation of the business were stored on the premises and caused a fire." The insurance company called the keeper of the city fire inspection records to identify a report prepared and filed by the fire marshal as required by law, indicating that shortly before the fire, the fire marshal had cited the plaintiff for storing gasoline at the banquet hall.

Is the report admissible?

A. No, because it is hearsay not within any exception.

B. No, because the proceeding is civil, rather than criminal.

C. Yes, as a public record describing matters observed as to which there was a duty to report.

D. Yes, as a record of regularly conducted activity, provided the fire marshal is unavailable.

202. A plaintiff sued an individual defendant for injuries suffered in a collision between the plaintiff's car and the defendant's truck while the defendant's employee was driving the truck. The plaintiff sought discovery of any accident report the employee might have made to the defendant, but the defendant responded that no such report existed. Before trial, the defendant moved to preclude the plaintiff from asking the defendant in the presence of the jury whether he destroyed such a report, because the defendant would then invoke his privilege against self-incrimination.

Should the court allow the plaintiff to ask the defendant about the destruction of the report?

A. No, because a report that was prepared in anticipation of litigation is not subject to discovery.

B. No, because no inference may properly be drawn from invocation of a legitimate privilege.

C. Yes, because a party in a civil action may not invoke the privilege against self-incrimination.

D. Yes, because the defendant's destruction of the report would serve as the basis of an inference adverse to the defendant.

203. X--In a prosecution for aggravated battery, a police officer testified that when he arrested the defendant, he took a knife from the defendant and delivered it to the medical examiner. The medical examiner testified that the knife blade was consistent with the victim's wound but admitted on cross-examination that any number of other knives could also have caused the wound.

Should the judge grant a motion to strike the medical examiner's testimony?

A. No, because the probative worth of this evidence is for the jury to assess.

B. Yes, because in light of the medical examiner's admission, his testimony has insufficient probative value.

C. Yes, because the medical examiner could not state the probability that the wound was caused by the defendant's knife.

D. Yes, because the probative value is substantially outweighed by the danger of unfair prejudice.

204. A defendant was on trial for perjury for having falsely testified in an earlier civil case that he knew nothing about a business fraud. In the perjury trial, the defendant again testified that he knew nothing about the business fraud. In rebuttal, the prosecutor called a witness to testify that after the civil trial was over, the defendant admitted to the witness privately that he had known about the fraud.

Is the witness's testimony in the perjury trial admissible?

A. Yes, but only to impeach the defendant's testimony.

B. Yes, both to impeach the defendant's testimony and as substantive evidence of the perjury.

C. No, because it is hearsay not within any exception.

D. No, because it relates to the business fraud and not to the commission of perjury.

205. A plaintiff sued a defendant for injuries allegedly suffered when he slipped and fell on the defendant's business property. Without asking that the defendant's property manager be declared a hostile witness, the plaintiff called him solely to establish that the defendant was the owner of the property where the plaintiff fell. On cross-examination of the manager, the defendant's attorney sought to establish that the defendant had taken reasonable precautions to make the property safe for business invitees. Should the defendant's cross-examination of the manager be permitted over the plaintiff's objection?

A. No, because cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness.

B. No, because the court has not declared the manager hostile.

C. Yes, because the cross-examiner is entitled to explore matters relevant to any issue in the case, including credibility.

D. Yes, because the manager is the agent of a party, as to whom the scope of cross-examination is unlimited.

206. When a man entered a bank and presented a check for payment, the bank teller recognized the signature on the check as a forgery because the check was drawn on the account of a customer whose handwriting she knew. The bank teller called the police. Before the police arrived, the man picked up the check from the counter and left.

The man was charged with attempting to cash a forged check. At trial, the prosecutor called the bank teller to testify that the signature on the check was forged.

Is the bank teller's testimony admissible?

A. Yes, because a bank teller is by occupation an expert on handwriting.

B. Yes, because it is rationally based on the bank teller's perception and is helpful to the jury.

C. No, because the bank teller was at fault in allowing loss of the original by failing to secure the check.

D. No, because it is not possible for either the jury or an expert to compare the signature on the missing check with a signature established as genuine.

207. A pedestrian sued a driver for injuries suffered in a hit-and-run accident. At trial, the pedestrian called a witness who testified that he saw the accident and that as the car sped off he accurately dictated the license number into his properly operating pocket dictating machine. The witness stated that he no longer remembered the number.

May the tape recording be played?

A. Yes, as a present sense impression only.

B. Yes, as a recorded recollection only.

C. Yes, as a present sense impression and as a past recollection recorded.

D. No, because it is hearsay not within any exception.

208. A defendant was on trial for tax evasion. The IRS, seeking to establish the defendant's income by showing his expenditures, called on the defendant's attorney to produce records showing only how much the defendant had paid his attorney in fees.

Should the demand for the attorney's fee records be upheld?

A. Yes, because it calls for relevant information not within the attorney-client privilege.

B. Yes, because the attorney-client privilege cannot be invoked to conceal evidence of a crime.

C. No, because the records are protected by the attorney-client privilege.

D. No, because the records are protected by the attorney work-product doctrine.

209. X-- A defendant is being tried for the murder of a woman who disappeared 10 years ago and has not been heard from since. Her body has never been found. The prosecutor has presented strong circumstantial evidence that she was murdered by the defendant. To help establish the fact of her death, the prosecutor has requested that the judge give the following instruction, based on a recognized presumption in the jurisdiction: "A person missing and not heard from in the last seven years shall be presumed to be deceased."

Is the instruction proper?

A. No, because the fact that someone has not been heard from in seven years does not necessarily lead to a conclusion that the person is dead.

B. No, because mandatory presumptions are not allowed against a criminal defendant on an element of the charged crime.

C. Yes, because it expresses a rational conclusion that the jury should be required to accept.

D. Yes, because the defendant has a chance to rebut the presumption by offering evidence that the woman is alive or has been heard from in the last seven years.

210. Several defendants, senior executives of a corporation, were charged with securities fraud. The government called as a witness another executive of the corporation, who had not been charged and who had been given immunity from prosecution, to authenticate handwritten notes that she had made after meetings of the corporation's management team at which the alleged fraud was discussed. The witness testified that she had prepared the notes on her own initiative to help her remember what had happened at the meetings. After this testimony, the government offered the notes into evidence to establish what had happened at the meetings. Should the witness's notes be admitted?

A. No, because the notes are hearsay not within any exception.

B. No, because the witness's immunity agreement with the government makes her notes untrustworthy and thus substantially more prejudicial than probative.

C. Yes, because they are business records.

D. Yes, because they are past recollections recorded.

211. A plaintiff sued a defendant, alleging that she was seriously injured when the defendant ran a red light and struck her while she was walking in a crosswalk. During the defendant's case, a witness testified that the plaintiff had told him that she was "barely touched" by the defendant's car. On cross-examination, should the court allow the plaintiff to elicit from the witness the fact that he is an adjuster for the defendant's insurance company?

A. No, because testimony about liability insurance is barred by the rules of evidence.

B. No, because the reference to insurance raises a collateral issue.

C. Yes, for both substantive and impeachment purposes.

D. Yes, for impeachment purposes only.

212. A defendant was charged with the crime of defrauding the federal agency where he worked as an accountant. At trial, the court allowed the defendant to call his supervisor at the large corporation where he had previously worked, who testified about the defendant's good reputation in the community for honesty. Over objection, the defendant then sought to elicit testimony from his former supervisor that on several occasions the corporation had, without incident, entrusted him with large sums of money. Should the testimony be admitted?

A. No, because the testimony is extrinsic evidence on a collateral matter.

B. No, because good character cannot be proved by specific instances of conduct unless character is an essential element of the charge or defense.

C. Yes, because it is evidence of a pertinent character trait offered by an accused.

D. Yes, because it is relevant to whether the defendant was likely to have taken money as charged in this case.

213. A plaintiff sued his insurance company for the proceeds of a casualty insurance policy covering his 60-foot yacht, claiming that the yacht was destroyed by an accidental fire. The company denied liability, claiming that the plaintiff hired his friend to set the fire. In the hospital the day after the fire, the friend, who had been badly burned in the fire, said to his wife, in the presence of an attending nurse, "I was paid to set the fire." Two weeks later, the friend died of an infection resulting from the burns. At trial, the insurance company called the wife to testify to the friend's statement.

Is the wife's testimony admissible over the plaintiff's objection?

A. No, because the marital privilege survives the communicating spouse's death.

B. No, because the statement was made after the conspiracy ended.

C. Yes, because it is a statement against interest.

D. Yes, because it is a statement by a co-conspirator.

214. A defendant was charged with possession of marijuana with intent to distribute. On direct examination, the defendant testified that he worked with disadvantaged children as a drug counselor, that he hated drugs, that he would "never possess or distribute drugs," and that he had never used drugs and would not touch them. The government offered as a rebuttal witness a police officer who would testify that, three years earlier, he saw the defendant buy cocaine from a street dealer. The defendant objected. Is the testimony of the police officer about the prior drug transaction admissible to impeach the defendant?

A. No, because the bad act of buying drugs is not sufficiently probative of a witness's character for truthfulness.

B. No, because it is contradiction on a collateral matter.

C. Yes, because it is proper contradiction.

D. Yes, because the bad act shows a disregard for the law and makes it less likely that the defendant would respect the oath of truthfulness.

215. X-- A woman sued her friend for injuries she received as a passenger in the friend's car. On direct examination, the woman testified that the friend had been speeding and ran a red light. On cross-examination, the woman was asked whether she was under the influence of drugs at the time of the accident. The woman invoked the privilege against self-incrimination. How should the court treat the woman's claim of privilege?

A. Deny it, because the woman waived the privilege by voluntarily testifying.

B. Deny it, because evidence of the woman's drug intoxication is essential to assessing the accuracy of her observations.

C. Uphold it, because the privilege applies in both civil and criminal cases.

D. Uphold it, because the woman's credibility cannot be impeached by a crime for which she has not been convicted.

216. X-- A consumer has sued the manufacturer of a microwave oven for burn injuries allegedly caused by the manufacturer's negligent failure to warn purchasers of the dangers of heating foods in certain types of containers. The consumer has offered into evidence three letters, all received by the manufacturer before the oven was shipped to the consumer, in which customers had complained of serious burns under circumstances similar to those in the consumer's case. The manufacturer has objected to the letters on the grounds of hearsay and, in the alternative, has asked for a limiting instruction directing that the letters be considered not for the truth of the assertions contained in them but only regarding the issue of notice.

How should the court respond?

A. The court should sustain the objection and treat the request for a limiting instruction as moot.

B. The court should overrule the objection and deny the request for a limiting instruction.

C. The court should overrule the objection and give the limiting instruction.

D. The court should overrule the objection but allow only that the letters be read to the jury, not received as exhibits.

217. A plaintiff sued for injuries arising from a car accident, claiming a back injury. At trial, she wishes to testify that prior to the accident she had never had any problems with her back. Is the plaintiff's proposed testimony admissible?

A. No, because the plaintiff has not been qualified as an expert.

B. No, because the plaintiff's pain could have been caused by factors arising after the accident, such as an injury at work.

C. Yes, because it is probative evidence of the plaintiff's injury.

D. Yes, because the testimony of parties is not subject to the lay opinion rule.

218. A plaintiff, who had been injured in an automobile collision with the defendant, sued the defendant for damages. The defendant denied negligence and denied that the plaintiff's injuries were severe. At trial, the plaintiff has offered in evidence a color photograph of himself made from a videotape taken by a television news crew at the scene of the collision. The plaintiff has demonstrated that the videotape has since been routinely reused by the television station and that the footage of the plaintiff was erased. The photograph shows the plaintiff moments after the collision, with his bloodied head protruding at a grotesque angle through the broken windshield of his car. Should the photograph be admitted over the defendant's objection?

A. No, because the plaintiff has failed to establish that a duplicate could not be found.

B. No, because the plaintiff has failed to produce the original videotape or a duplicate.

C. Yes, because it tends to prove a controverted fact.

D. Yes, because a photograph that establishes a disputed fact cannot be excluded as prejudicial.

219. X-- A cyclist sued a defendant corporation for injuries sustained when she was hit by a truck owned by the defendant and driven by its employee, who was making deliveries for the defendant. The day after the accident, the employee visited the cyclist in the hospital and said, "I'm sorry for what I did." At trial, the employee testified that he had exercised due care. Why is the cyclist's testimony relating what the defendant's employee said at the hospital admissible to prove negligence?

A. It is a prior inconsistent statement.

B. It is a statement against interest.

C. It is a statement by a party-opponent's agent.

D. It is a statement of then-existing state of mind.

220. X-- A defendant is on trial for bank robbery. Evidence at the trial has included testimony by a bank teller who was present during the robbery. The teller testified for the prosecution after having refreshed her memory by looking at an FBI agent's investigative report that was created shortly after the robbery. The defendant has asked to examine the report. How should the court respond?

A. The court may allow the examination if the report was used by the teller to refresh her memory before testifying, and must allow it if she used it during her testimony.

B. The court must allow the examination, but only to the extent that the report contains the teller's own statement to the FBI agent.

C. The court should not allow the examination, unless the report was used by the teller to refresh her memory while on the witness stand.

D. The court should not allow the examination, because the report was not shown to have been read and approved by the teller while the matter was fresh in her mind.

221. A patient sued a hospital for medical negligence, claiming that a nurse employed by the hospital failed to administer critical medication prescribed by the patient's treating physician during the plaintiff's hospitalization. To prove the nurse's failure to administer the prescribed medication, the patient called the medical records librarian, who authenticated the hospital's record of the patient's treatment, which contained no entry showing that the medication in question had been administered. Is the hospital record admissible?

A. No, because it is hearsay not within any exception.

B. No, because the nurse's testimony would be the best evidence of her actions in treating the plaintiff.

C. Yes, although hearsay, because it is a statement against interest by agents of the hospital.

D. Yes, because it is within the hearsay exception covering the absence of entries in business records.

222. A college student sued an amusement company for injuries he sustained when the amusement company's roller coaster allegedly malfunctioned so that the student fell out. At trial, after the student presented his case, the amusement company called a witness who testified that just before the accident he heard a bystander say to the bystander's companion, "That crazy fool is standing up in the car."

The student then offered the testimony of another witness who would testify that the day after the accident she was with the same bystander, and that in describing the accident, the bystander told her that the car jerked suddenly and "just threw the guy out of his seat." How should the court rule with respect to this offered testimony?

A. Rule it admissible only to impeach the bystander's credibility.

B. Rule it admissible to impeach the bystander's credibility and to prove the amusement company's negligence.

C. Rule it inadmissible, because the bystander was given no opportunity to deny or explain her apparently inconsistent statement.

D. Rule it inadmissible, because the bystander herself was not called as a witness.

223. A defendant was charged with robbery of a savings and loan branch after being arrested near the scene and found with marked bills. An hour after the robbery, the officer investigating the crime videotaped an interview with an eyewitness, in which the eyewitness described the crime and the robber. The officer then arranged for a lineup, at which the teller who was robbed identified the defendant as the robber. The officer later obtained computerized records of that day's deposits and withdrawals at the savings and loan, which allowed the calculation of how much cash was taken in the robbery. A month later, the teller testified before a grand jury, which indicted the defendant. The teller and the eyewitness both died of unrelated causes shortly afterward.

At trial, which of the following evidence, if properly authenticated, may properly be admitted against the defendant over his attorney's objection that its receipt would violate the confrontation clause?

A. A transcript of the teller's sworn grand jury testimony.

B. The computerized records from the savings and loan.

C. The officer's testimony that the teller picked the defendant out of the lineup as the robber.

D. The videotape of the eyewitness's statement.

224. A defendant is being prosecuted for conspiracy to possess with intent to distribute cocaine. At trial, the government seeks to have its agent testify to a conversation that he overheard between the defendant and a co-conspirator regarding the incoming shipment of a large quantity of cocaine. That conversation was also audiotaped, though critical portions of it are inaudible. The defendant objects to the testimony of the agent on the ground that it is not the best evidence of the conversation. Is the testimony admissible?

A. No, because the testimony of the agent is not the best evidence of the conversation.

B. No, because the testimony of the agent reports hearsay not within any exception.

C. Yes, because the best evidence rule does not require proof of the conversation through the audiotape.

D. Yes, because the audiotape is partly inaudible.

225. The plaintiff sues a bar for injuries suffered in an automobile accident caused by a patron of the bar. The plaintiff claims that the patron was permitted to drink too much liquor at the bar before the accident. The plaintiff offers evidence that, after the accident, the manager of the bar established house rules limiting all customers to two drinks per hour, with a maximum limit of four drinks per night. This evidence is

A. admissible to show that the prior conduct of the bar was negligent.

B. admissible to show that the bar was aware of the need for taking precautionary measures.

C. inadmissible, because subsequent measures by an employee are not binding on the bar.

D. inadmissible, because its admission would discourage the taking of such remedial measures.

226. A defendant was tried for the July 21 murder of a victim. In his case in chief, the defendant called his first witness to testify to the defendant's reputation in his community as a "peaceable man." The testimony is

A. admissible as tending to prove the defendant is believable.

B. admissible as trying to prove the defendant is innocent.

C. inadmissible, because the defendant has not testified.

D. inadmissible, because reputation is not a proper way to prove character.

227. A clerk was held up at gun point with an unusual revolver with a red painted barrel while she was working in a neighborhood grocery store. A defendant is charged with armed robbery of the clerk. The prosecutor calls a witness to testify that, a week after the robbery of the clerk, he was robbed by the defendant with a pistol that had red paint on the barrel. The witness' testimony is

A. admissible to establish an identifying circumstance.

B. admissible to show that the defendant was willing to commit robbery.

C. inadmissible, because it is improper character evidence.

D. inadmissible, because its probative value is substantially outweighed by the danger of unfair prejudice.

228. X--A bus passenger sued the transit company for injuries to his back from an accident caused by the company's negligence. The company denies that the passenger received any injury in accident. The company calls an observer to testify that right after the accident, the passenger told him that he had recently suffered a recurrence of an old back injury. The judge should rule the observer's testimony

A. admissible as an admission of a party opponent.

B. admissible as a spontaneous declaration.

C. inadmissible, because it is irrelevant.

D. inadmissible, because it is hearsay, not within any exception.

229. In a suit attacking the validity of a deed executed fifteen years ago, the plaintiff alleges mental incompetency of the grantor, and offers into evidence a properly authenticated affidavit of the grantor's brother. The affidavit, which was executed shortly after the deed, stated that the brother had observed the grantor closely over a period of weeks, that the grantor had engaged in instances of unusual behavior (which were described), and that the grantor's appearance had changed from one of neatness and alertness to one of disorder and absentmindedness. The judge should rule the brother's affidavit

A. inadmissible as opinion.

B. inadmissible as hearsay, not within any exception.

C. admissible as an official document.

D. admissible as an ancient document.

230. In a trial between a farmer and an equestrian, an issue arose about the equestrian's ownership of a horse, which had caused damage to the farmer's crops. The farmer offered to testify that he looked up the equestrian's telephone number in the directory, called that number, and that a voice answered "This is [the equestrian] speaking." At this the farmer asked, "Was that your horse that tramped across my cornfield this afternoon?" The voice replied "Yes." The judge should rule the testimony

A. admissible, because the answering speaker's identification of himself, together with the usual accuracy of the telephone directory and transmission system, furnishes sufficient authentication.

B. admissible, because judicial notice may be taken of the accuracy of telephone directories.

C. inadmissible unless the farmer can further testify that he was familiar with the equestrian's voice and that it was in fact the equestrian to whom he spoke.

D. inadmissible unless the equestrian has first been asked whether or not the conversation took place and has been given the opportunity to admit, deny, or explain.

231.A plaintiff sued a defendant for injuries suffered by the plaintiff when their automobiles collided. At trial the plaintiff offers into evidence a properly authenticated letter from the defendant that says, "Your claim seems too high, but, because I might have been a little negligent, I'm prepared to offer you half of what you ask.

The letter is

A. admissible as an admission by a party-opponent.

B. admissible as a statement against pecuniary interest.

C. inadmissible, because the defendant's statement is lay opinion on a legal issue.

D. inadmissible, because the defendant's statement was made in an effort to settle the claim.

232. X--At the defendant's trial for stealing an automobile, the defendant called a character witness who testified that the defendant had an excellent reputation for honesty. In rebuttal, the prosecutor calls another witness to testify that he recently saw the defendant cheat on a college examination. The prosecution witness's testimony should be

A. admitted, because the defendant has "opened the door" to the prosecutor's proof of bad character evidence.

B. admitted, because the cheating involves "dishonesty or false statement."

C. excluded, because it has no probative value on any issue in the case.

D. excluded, because the defendant's cheating can be inquired into only on cross-examination of the defendant's witness.

233. In the prosecution of a defendant for murdering a victim, the defendant testified that the killing had occurred in self-defense when the victim tried to shoot him. In rebuttal, the prosecution seeks to call a witness, the victim's father, to testify that the day before the killing, the victim told her father that she loved the defendant so much she could never hurt him. The witness's testimony is

A. admissible within the hearsay exception for statements of the declarant's then existing state of mind.

B. admissible, because the victim is unavailable as a witness.

C. inadmissible as hearsay not within any exception.

D. inadmissible, because the victim's character is not at issue.

234. A defendant is on trial for arson. In its case in chief, the prosecution offers evidence that the defendant had secretly obtained duplicate insurance from two companies on the property that burned and that the defendant had threatened to kill his ex-wife if she testified for the prosecution. The court should admit evidence of

A. The defendant's obtaining duplicate insurance only.

B. The defendant's threatening to kill his ex-wife only.

C. Both the defendant's obtaining duplicate insurance and threatening to kill his ex-wife.

D. Neither the defendant's obtaining duplicate insurance nor threatening to kill his ex-wife.

235. Under the rule allowing exclusion of relevant evidence because its probative value is substantially outweighed by other considerations, which of the following is NOT to be considered?

A. The jury may be confused about the appropriate application of the evidence to the issues of the case.

B. The evidence is likely to arouse unfair prejudice on the part of the jury.

C. The opponent is surprised by the evidence and not fairly prepared to meet it.

D. The trial will be extended and made cumbersome by hearing evidence of relatively trivial consequence.

236. X-- A plaintiff sued a defendant for unlawfully using the plaintiff's idea for an animal robot as a character in the defendant's science fiction movie. The defendant admitted that he had received a model of an animal robot from the plaintiff, but he denied that it had any substantial similarity to the movie character. After the model had been returned to the plaintiff, the plaintiff destroyed it.

In order for the plaintiff to testify to the appearance of the model, the plaintiff

A. must show that he did not destroy the model in bad faith.

B. must give advance notice of his intent to introduce the oral testimony.

C. must introduce a photograph of the model if one exists.

D. need not do any of the above, because the "best evidence rule" applies only to writings, recordings, and photographs.

237. A plaintiff sued a defendant for psychiatric malpractice and called another doctor as an expert witness. During the witness's direct testimony, the witness identified a text as a reliable authority in the field. He seeks to read to the jury passages from this book on which he had relied in forming his opinion on the proper standard of care.

The passage is

A. admissible, as a basis for his opinion and as substantive evidence of the proper standard of care.

B. admissible, as a basis for his opinion but not as substantive evidence of the proper standard of care.

C. inadmissible, because a witness's credibility cannot be supported unless attacked.

D. inadmissible, because the passage should be received as an exhibit and not read to the jury by the witness.

238. In a jurisdiction without a Dead Man's Statute, a deceased man's estate sued the defendant claiming that the defendant had borrowed $10,000 from the deceased man, which had not been repaid as of the man's death. The man was run over by a truck. At the accident scene, while dying from massive injuries, the man told a police offficer to "make sure my estate collects the $10,000 I loaned to the defendant."

The police officer's testimony about the deceased man's statement is

A. inadmissible, because it is more unfairly prejudicial than probative.

B. inadmissible, because it is hearsay not within any exception.

C. admissible as an excited utterance.

D. admissible as a statement under belief of impending death.

239. In a civil trial for professional malpractice, the plaintiff sought to show that the defendant, an engineer, had designed the plaintiff's flour mill with inadequate power. The plaintiff called an expert witness who based his testimony solely on his own professional experience but also asserted, when asked, that the book Smith on Milling Systems was a reliable treatise in the field and was consistent with his views. On cross-examination, the defendant asked the witness whether he and the book's author were ever wrong. The witness answered, "Nobody's perfect." The defendant asked no further questions. The defendant called a second expert witness and asked, "Do you accept the book as reliable?" The second witness said, "It once was, but it is now badly out of date." The plaintiff requested that the jury be allowed to examine the book and judge for itself the book's reliability.

Should the court allow the jury to examine the book?

A. No, because the jury may consider only passages read to it by counsel or witness.

B. No, because the plaintiff's expert in testifying did not rely on the treatise but on his own experience.

C. Yes, because an expert has testified that the treatise is reliable.

D. Yes, because the jury is the judge of the weight and credibility to be accorded both written and oral evidence.

240. A plaintiff sued a defendant for wrongful death arising out of a traffic collision between the plaintiff's decedent and the defendant. At trial, the investigating traffic officer authenticated a tape recording of her shift-end dictation of comments used in preparing the written report of her factual findings. She testified that the tape recording was accurate when made and that she currently had no clear memory of the details of the investigation. Is the tape recording admissible as evidence?

A. Yes, under the past recollection recorded exception to the hearsay rule.

B. Yes, under the public records exception to the hearsay rule.

C. No, because it is hearsay and is a police report being offered against the defendant in a wrongful death case.

D. No, because the police report itself is the best evidence.

241. A plaintiff sued for injuries arising from a car accident, claiming a back injury. At trial, she wishes to testify that prior to the accident she had never had any problems with her back. Is the plaintiff's proposed testimony admissible?

A. No, because the plaintiff has not been qualified as an expert.

B. No, because the plaintiff's pain could have been caused by factors arising after the accident, such as an injury at work.

C. Yes, because it is probative evidence of the plaintiff's injury.

D. Yes, because the testimony of parties is not subject to the lay opinion rule.

242. A plaintiff, who had been injured in an automobile collision with the defendant, sued the defendant for damages. The defendant denied negligence and denied that the plaintiff's injuries were severe. At trial, the plaintiff has offered in evidence a color photograph of himself made from a videotape taken by a television news crew at the scene of the collision. The plaintiff has demonstrated that the videotape has since been routinely reused by the television station and that the footage of the plaintiff was erased. The photograph shows the plaintiff moments after the collision, with his bloodied head protruding at a grotesque angle through the broken windshield of his car. Should the photograph be admitted over the defendant's objection?

A. No, because the plaintiff has failed to establish that a duplicate could not be found.

B. No, because the plaintiff has failed to produce the original videotape or a duplicate.

C. Yes, because it tends to prove a controverted fact.

D. Yes, because a photograph that establishes a disputed fact cannot be excluded as prejudicial.

243. A defendant was charged with robbery of a savings and loan branch after being arrested near the scene and found with marked bills. An hour after the robbery, the officer investigating the crime videotaped an interview with an eyewitness, in which the eyewitness described the crime and the robber. The officer then arranged for a lineup, at which the teller who was robbed identified the defendant as the robber. The officer later obtained computerized records of that day's deposits and withdrawals at the savings and loan, which allowed the calculation of how much cash was taken in the robbery. A month later, the teller testified before a grand jury, which indicted the defendant. The teller and the eyewitness both died of unrelated causes shortly afterward.

At trial, which of the following evidence, if properly authenticated, may properly be admitted against the defendant over his attorney's objection that its receipt would violate the confrontation clause?

A. A transcript of the teller's sworn grand jury testimony.

B. The computerized records from the savings and loan.

C. The officer's testimony that the teller picked the defendant out of the lineup as the robber.

D. The videotape of the eyewitness's statement.