GEORGE MASON AMERICAN INNS OF COURT

EVIDENCE JEOPARADY!

MASTER LIST OF QUESTIONS AND CORRECT RESPONSES WITH AUTHORITIES AND EXPLAINATIONS.

1. Test Question to Verify Equipment

2. Test Question to Verify Equipment

3. Q: In a personal injury case, Plaintiff calls Defendant as a witness in his case in chief and questions him about how an accident occurred. Plaintiff does not like Defendant's testimony and seeks to impeach him with evidence that Defendant was convicted of a felony. Is such impeachment testimony proper?

A: No, an adverse party called as a witness may not be impeached by evidence of bad character. Levine's Loan Office v. Starke, 140 Va. 712 (1924); Smith v. Lohr, 204 Va. 331 (1963). Va Code § 8.01-401.

4. Q: In an assault trial, the complaining witness testifies that he was punched by the Defendant. The Commonwealth seeks to introduce the recording of the 911 call the complaining witness made reporting the incident to corroborate the testimony. Is the recording admissible for that purpose?

A: No, bolstering on direct is not permissible. Proctor v. Commonwealth, 40 Va. App. 233 (2003); Faison v. Hudson, 243 Va. 397 (1992).

5. Q: In a criminal jury trial, the defense attempts to impeach a witness in the Commonwealth's case with a prior inconsistent statement that the witness made during the preliminary hearing. The Commonwealth then seeks to introduce a prior consistent statement the witness made to the police to rehabilitate the witness. Is the statement admissible?

A: Yes, McLean v. Commonwealth, 32 Va. App. 200 (2000)

6. Q: In a malicious wounding trial, the defense counsel moves for a rule on the witnesses. The Commonwealth objects to the extent that the "victim" wishes to remain in the courtroom for all of the proceedings, which would include the testimony of two other witnesses before he testifies. The Defendant objects to the "victim" not being excluded solely on the ground that his testimony could change if he heard other witnesses testify. Should the "victim" be excluded?

A: No. Va Code § 19.2265.01. A victim "shall not be excluded unless the court determines, in its discretion, the presence of the victim would impair the conduct of a fair trial. Hearing testimony of other witnesses does not itself impair the conduct of a fair trial. Hernandez Guerrero v. Commonwealth, 46 Va. App. 366 (2005).

7. Q: Plaintiff was seriously injured in an automobile accident. A picture of the accident scene was published in the local paper, but the Plaintiff is uncertain about who took the photograph. Plaintiff's counsel seeks to introduce the photograph as evidence through the state trooper who was at the scene of the accident. The trooper testifies that the photograph "actually portrayed the conditions as he recalled them." Has the photograph been sufficiently authenticated to make it admissible?

A: Yes, State Farm Mut. Auto. Ins. Co. v. Futrell, 209 Va. 266 (1968) (the trooper was a qualified witness who testified that the photograph was a correct representation and reproduction of the object which it portrayed).

8. Q: In a criminal case, the Defendant made several incriminating statements that were video recorded (Defendant was not in custody at the time and there is no *Miranda* issue). At trial the Commonwealth plays the video and provides the jury with a transcript of the recording. The transcript is accurate. The Defendant objects. May the court allow the jury to refer to the transcript while the video is being played?

A: "A court may, in its discretion, permit the jury to refer to a transcript, the accuracy of which is established, as an aid to understanding a recording." Fisher v. Commonwealth, 236 Va. 403, 413, 374 S.E.2d 46, 52 (1988), cert. denied, 490 U.S. 1028 (1989).

9. Q: John Doe is subpoenaed by the Commonwealth to testify against his wife on a charge of domestic assault. John Doe testifies at trial that his wife did not assault him. This is inconsistent with what he told the investigating police officer on the night of the incident. Can the

Commonwealth impeach its own witness with the prior inconsistent statement?

A: Yes, Va. Code § 8.01-403; Trout v. Commonwealth, 167 Va. 511 (1936), "A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall in the opinion of the court prove adverse, by leave of the court, prove that he has made at other times a statement inconsistent with his present testimony, but before said last-mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement." **However, the statement can only be used for the purpose of contradicting the witness and not for proof of the assault.**

10: Q: Plaintiff's car was damaged when Defendant ran a red light. Plaintiff's repairs cost $2,000.00. At trial the Plaintiff seeks to recover the $2,000.00 in damages and presents a signed itemized statement from his mechanic. The signed statement itemizes the damage and includes a statement from the mechanic that the mechanic "is the Owner of Joe's Garage located at 123 Elm St, Fairfax, VA, that he has been a mechanic for over thirty (30) years, and that he is qualified to make estimates for damages." Is the itemized statement admissible?

Yes / No?

A: No, the statement was not given under oath. Va Code 8.01-416.

11. Q: May a judge take judicial notice of a factual matter when the judge happens to have actual personal knowledge of the matter?

a. Yes. A judge may take judicial notice of a fact that he/she has personal actual knowledge of.
b. Yes. A judge may take judicial notice of a fact that he/she has personal actual knowledge of but only after source material is sought relevant to factual matter.
c. No. A judge may not take judicial notice of a matter that is not otherwise judicially noticeable merely because the judge happens to have actual personal knowledge of the matter
d. No. A judge may not take judicial notice of a factual matter without counsel first providing reliable sources for the court's use.

A: c

Explanation: Judicial Notice of Adjudicative Facts, Rule 2:201. (a) Notice. A court may take judicial notice of a factual matter not subject to reasonable dispute in that it is either (1) common knowledge or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Further explanation: Judges Knowledge. The actual knowledge of the judge as to the matter of which he is asked to take judicial notice is immaterial, where reliable sources are readily available. In fact, the judge may not take judicial notice of matters which are not otherwise judicially noticeable, merely because the judge happens to have actual personal knowledge of those matters. Unless the fact is "common knowledge" in the legal sense, or the judge's knowledge is obtained from "reliable sources"… his personal knowledge cannot be a basis of judicial notice, at least as to matters of fact. The Law of Evidence in Virginia, Sixth Edition. Friend/Sinclair. pp. 170-178.

12. Q: The defendant decides to meet Detective Smith to undergo a polygraph examination. After the detective reviews the deceptive nature of the polygraph examination, the defendant admits to committing a criminal offense. The entire polygraph exam was recorded by the detective without knowledge of the defendant.

Are the defendant's statements admissible?

a. No. Results of the polygraph examination are not admissible
b. Yes. Statements of the defendant after the polygraph examination are admissible but only if he voluntarily waived his Miranda rights
c. Yes. The defendant's statements after the polygraph examination are admissible.
d. No, the defendant's statements are not admissible because the officer recorded the polygraph exam without the defendant's consent.

A: c. Rule 2:402(b) Results of Polygraph Examination. The results of polygraph examination are not admissible.

13. Q: May the Commonwealth impeach a defense witness who has been convicted of 5 separate petit larceny adjudications when he was 17 years old?

a. Yes. The witness may be impeached with misdemeanor convictions involving crimes of moral turpitude

b. Yes. The witness may be impeached with misdemeanors involving moral turpitude, including the number of convictions, and the name and nature, but not the details of the convictions
c. No. The witness may not be impeached without first obtaining leave of court
d. No. The witness may not be impeached.

A: d. Rule 2:609, Impeachment by Evidence of Conviction of Crime (derived from Code Section 19.2-269), Rule 2:609 (c) Juvenile adjudication. Juvenile adjudications may not be used for impeachment of a witness on the subject of general credibility, but may be used to show bias of the witness if constitutionally required.

14. Q: In a breach of contract jury trial, the witness is asked by defense counsel to read Clause 205 of the contract that was previously admitted into evidence as defendant's exhibit # 71.

The witness testimony should be:

a. admitted, because the contract is the best evidence
b. denied because the contract speaks for itself
c. denied because allowing the witness to read Clause 205 of the contract would be cumulative
d. admitted because an exhibit may be published to the jury in a variety of ways

A: d. Rule 2:1002, Requirement of Production of Original. To prove the content of a writing, the original writing is required, except as otherwise provided in these rules, Rules of Supreme Court of Virginia, or in a Virginia statute.

Further explanation: Law of Evidence in Virginia, Sixth Edition, Friend/Sinclair, pp. 1191-1192. [b] Misapplication of the Rule. The best evidence rule applies only to documents, and then only when the contents of the document are in issue. The best evidence rule is also misapplied when a witness seeks to read an already-admitted document (exhibit) from the stand. Frequently, when a party attempts to have such a document read from the stand by a witness, the opposing party will object on the grounds that "the document speaks for itself". Lawyers who make this objection typically will, when pressed, justify this contention by reference to the best evidence rule, arguing that the exhibit should

not be read because the document is the "best evidence" of its contents. This is totally incorrect. The best evidence rule is a rule of admissibility. A document cannot be received into evidence unless and until the best evidence rule has been satisfied. Once the document has been admitted as an exhibit, however, then by definition the best evidence rule has been satisfied and no longer has any applicability. Whether or not a witness is permitted to read an exhibit from the stand is a matter totally within the trial judge's discretion: an exhibit may be published to the jury in a variety of different ways, and reading parts is one such technique. Subject to common traditions against "cumulative" proof, there is no rule of evidence which absolutely permits or absolutely prohibits it.

15. Q: At any evidentiary hearing, the Commonwealth calls a witness to the stand to tell his version of the events which led to the litigation now proceeding. During cross examination, the defense attorney asks a question of the witness and the witness states that he can answer the question if he has the opportunity to review the notes he made after the incident. Counsel allows him to review the notes. Counsel asks to see the witness' notes. The Commonwealth objects. Should defense counsel be allowed to review the notes the witness used during his cross examination?

A: Yes. Rule 2:612. It doesn't matter if the witness uses it during direct or cross examination

16. Officer Jones is testifying in a criminal trial: "I received a radio call from dispatch that advised me to proceed to 10056 Main Street for a suspected homicide in suite 506." Defendant's counsel objects.

a. The objection is sustained as hearsay
b. The objection is overruled as NOT HEARSAY
c. The objection is overruled but the defendant may ask for a cautionary instruction
d. The objection is sustained and the defendant may ask for a cautionary instruction

A: b. NOT HEARSAY. *Foster v. Commonwealth,* 209 Va. 297 (1968); *Upchurch v. Commonwealth*, 220 Va. 408 (1979).

17. A witness testifies to receiving numerous text messages from Plaintiff. Court rules do not allow her to bring her phone into the courtroom. She testifies that she created a document which lists all of the text messages received from Plaintiff. She testifies to the manner in which she created the document and that each message is an exact replica of the message she received. She further testifies that her phone is outside and she can retrieve it if the court will allow. Is this testimony admissible over objection of counsel?

A: YES. Rules 2:803 and 2:901 it is a statement by a party opponent and therefore a hearsay exception exists. And, it has been properly authenticated. But, is there a best evidence argument? Should the court review the phone record to determine whether it is an exact match and then allow the prepared copy into evidence. Discussion Point.

18. Under rule 3:20 and Virginia Code 8.01-420 discovery depositions cannot be used to support a motion for summary judgment unless the parties agree. The rule and statute do not apply to the use of depositions to OPPOSE A MOTION FOR SUMMARY JUDGMENT.

a. True
b. False

A: True. *Lloyd v. Kime,* 275 Va 98 (2008).

19. Defendant is on trial for the criminal charge of assault. Defendant intends to rely on the defense of self-defense. During his case in chief the Defendant seeks to present testimony about three specific instances where the complaining witness was involved in other recent fights. Is such testimony about specific instances (and not just general reputation testimony) admissible?

A: Yes. In Virginia, the rule in criminal cases is that, when a defendant adduces evidence of self-defense, proof of specific acts is admissible to show the character of the victim for turbulence and violence, even when the defendant is unaware of such character. Barnes v. Commonwealth, 214 Va. 24, 25-26, 197 S.E.2d 189, 190 (1973); Stover v. Commonwealth, 211 Va. 789, 794, 180 S.E.2d 504, 508 (1971). When admissible, such evidence bears upon the questions of who was the aggressor or what was the reasonable apprehension of the defendant for his safety.

20. Defendant is on trial for credit card fraud. Kim testifies that defendant has a good reputation for honesty. The prosecution in rebuttal calls Jim to testify that he recently saw the defendant put false information down on a loan application

Jim's testimony should be:

a. admitted, because the act of falsely completing a loan application involves a specific instance of prior dishonest behavior;
b. admitted, because the defendant has opened the door by putting his good character in issue
c. excluded, because it is evidence of other crimes, wrongs or bad acts not probative to an element of the charged crime
d. excluded, because the defendant's act of falsely completing a loan application may only be inquired on cross-examination of the character witness.

A:d. Rule 2:608 Impeachment by Evidence of Reputation For Truth Telling And Conduct of Witness. Rule 2:608 9 (c), Cross-examination of Character witness. Specific instances of conduct may, if probative of truthfulness or untruthfulness be inquired into on cross-examination of a character witness concerning the character trait of truthfulness or untruthfulness of another witness as to whose character trait the witness being cross-examined has testified.

21: In a personal injury case involving a two-car collision, the plaintiff wishes to introduce a sworn deposition taken from a witness who died two weeks before the case came to trial. In the deposition, the witness stated that she saw the defendant run a red light at the time of the collision with the plaintiff's car. Both the plaintiff's and the defendant's attorneys were present at the deposition. The defendant objects in the appropriate manner to the introduction of the witness's statement.

How should the court rule on the admissibility of the deposition?

(a) Admissible, because the defendant had an opportunity to cross-examine the witness at the time the deposition was taken.
(b) Admissible, as a dying declaration.
(c) Inadmissible, because the statement was not made while the witness was testifying in court.
(d) Inadmissible, because the defendant has no opportunity to cross-examine the witness at trial.

A: a.

22: The owner of a jewelry store brought a civil action against a former clerk for the value of various pieces of jewelry missing from the store. The defendant had been fired after another employee had reported that the defendant was stealing jewelry. At the trial, the plaintiff calls his employee as a witness. The witness testifies that he does not remember either having seen the defendant takes anything from the store or having told the plaintiff that she had done so. The plaintiff then takes the witness stand and proposes to testify to what the witness had told him about seeing the defendant stealing pieces of jewelry from the store.

Assuming appropriate objection by the defendant, such testimony by the plaintiff would be:

(a) Admissible as a statement against interest by the witness.
(b) Admissible as proper impeachment of the witness's testimony.
(c) Inadmissible as irrelevant.
(d) Inadmissible hearsay if offered to prove theft by the defendant.

A: d

23: A plaintiff brought a civil action against a defendant for embezzlement of funds missing from a trust account, for which the defendant is also being investigated by the district attorney. At trial, the plaintiff calls the defendant as an adverse witness and asks him one question. "Is it not true that you embezzled funds from the trust?" The defendant refuses to answer claiming a privilege against self-incrimination.

The trial court should:

(a) Order him to disclose to the court in camera what happened to the missing funds so that the court can determine whether he reasonably fears prosecution for a crime.
(b) Order him to answer because the privilege against self-incrimination does not apply in civil proceedings.
(c) Sustain his claim of privilege, because no witness can be compelled to answer questions that may tend to incriminate.
(d) Sustain his claim of privilege because he is a likely subject of criminal prosecution.

A: C

24: A plaintiff sued a defendant for serious personal injuries he incurred when the defendant allegedly drove through a red light and collided with the plaintiff's car. Calling the defendant as an adverse witness, the plaintiff asked her if she had been drinking before the accident. The defendant refused to answer, asserting her privilege against self-incrimination. The plaintiff then offers in evidence a certified copy of a court record indicating that, eight years previously, the defendant had been convicted of reckless driving while intoxicated that cause a serious personal injury, a felony.

The trial court should:

(a) Admit the record as relevant character evidence because the plaintiff suffered serious personal injuries.
(b) Admit the record as impeachment evidence.
(c) Exclude the record as irrelevant because as yet the defendant has given no testimony to impeach.
(d) Exclude the record because the conviction is too remote and does not necessarily reflect on the defendant's credibility as a witness in the present proceedings.

A: c

25: A horse breeder offered to sell a colt to his neighbor and they agreed on a purchase price. The horse breeder subsequently received a letter from the neighbor thanking him for the sale and summarizing their agreement. The letter contained the neighbor's alleged signature. When the horse breeder attempted to set up transfer of the colt, the neighbor denied that she agreed to purchase it. In a breach of contract action against the neighbor, the horse breeder offers into evidence the letter. The horse breeder testifies that he is familiar with the neighbor's handwriting and recognizes the signature on the letter as being hers.

Assuming appropriate objection by the neighbor, who claims she did not sign the letter, the trial court should:

(a) Exclude the letter for lack of foundation because lay opinion testimony regarding handwriting identification is not admissible.
(b) Exclude the letter unless its authenticity is established by a preponderance of the evidence.
(c) Admit the letter as authentic and instruct the jury accordingly.
(d) Admit the letter but instruct the jury that it is up to them to decide whether the letter is authentic.

A: d

26: In a criminal trial, the prosecutor called a witness to the stand to authenticate the voice in a tape recording as the defendant's. The only other time the witness has heard the defendant's voice was after his arrest.

Assuming a proper foundation has been laid, may the witness properly authenticate the defendant's voice?

(a) Yes, because the witness is now familiar with the defendant's voice.
(b) Yes, because the prosecutor can qualify the witness as an expert on the defendant's voice.
(c) No, because the witness's testimony would be inadmissible hearsay.
(d) No, because the witness did not hear the defendant's voice until after he was arrested.

A: a

27: A sportscaster on a local television show interviewed the parent of a child on the high school football team. The interviewee told the sportscaster that the head coach "openly condones the use of steroids by team members." The coach, who had always conducted a strong anti-drug program for his football players, watched and recorded the show daily. He was outraged when he saw the live broadcast, and filed suit for defamation against the interviewee, the sportscaster, and the television station. At the trial of the suit, the coach wishes to testify as to what the interviewee said on the television show. The defense objects.

Should such testimony be admitted?

(a) Yes, because the coach saw the live television broadcast.
(b) Yes, because the matter goes to the ultimate issue of the case and is thus highly relevant.
(c) No, because a videotape of the broadcast is available.
(d) No, because such testimony would be hearsay, not within any recognized exceptions to the hearsay rule.

A: a

28: An antiques purchaser who did not speak English sued a dealer for breach of contract, alleging that he had agreed to sell her an antique chair for $15,000 but had refused to accept her certified check when she came to pick up the chair. At the trial, the purchaser, through an interpreter, testified that she asked her brother to communicate to the dealer her offer to purchase the chair. She wishes to testify that her brother told her, "The dealer has agreed to sell you the chair for $15,000." The agreement was not reduced to writing and the brother died a few days after the conversation.

If the jurisdiction has a typical "Dead Man Act," what affect will the Act have upon the admissibility of the purchaser's conversation with her brother?

(a) It will render the conversation inadmissible because a civil action is involved.
(b) It will render the conversation inadmissible because the purchaser is an interested party.
(c) None, because the dealer is not a protected party.
(d) None, because a civil action is involved.

A: c

Q: The plaintiff is suing the defendant for misrepresentation, alleging that the defendant claimed his business was valued at $250,000 when he sold it to the plaintiff, but that an appraiser hired by the plaintiff concluded that it was only worth $150,000. At trial, the defendant's attorney offers a report prepared by an accountant shortly after the transfer agreement was signed. While reports of this kind are normally not prepared by the accountant, he prepared this one as a favor to the defendant. The report contained an extensive analysis of the financial condition of the business and concludes that the value of the business could be placed at $250,000 instead of $150,000. The plaintiff's attorney objects to the introduction of the report as evidence of the value of the business.

The court should rule that the report is:

(a) Admissible nonhearsay, because the report constituted the opinion of the accountant.
(b) Hearsay, but admissible as a past recollection recorded.
(c) Hearsay, but admissible as a business record.
(d) Inadmissible hearsay.

A: d

30: A motorist who failed to stop at a stop sign was struck by a car being taken for a test drive by a mechanic who had repaired the car's brakes. The motorist sued the repair shop that employed the mechanic to recover for his injuries. At trial, he called a bystander to testify that when the mechanic saw that the motorist was injured, the mechanic ran over and told him, "I'm really sorry. I guess I didn't fix the brakes as well as I thought."

The repair shop's objection to the bystander's testimony should be:

(a) Sustained, because the mechanic's statement is inadmissible against the repair shop.
(b) Sustained, because the motorist did not stop at the stop sign.
(c) Overruled, because it is a declaration against interest.
(d) Overruled, because it is an admission of a party-opponent.

A: d

31: Judy, a 14 year old, disclosed to her mother that she was the victim of a sexual assault two days prior. The police were called shortly thereafter. At trial, the Commonwealth seeks to have Judy's mother testify about the date and time that her daughter disclosed the incident to her. Is the mother's testimony admissible?

a. Yes, because it corroborates the testimony of the daughter, the complaining witness.

b. No, because it's not relevant.

c. Yes, because it's an excited utterance.

d. No, because it's hearsay.

A: a. YES, because it corroborates the testimony of the daughter, the complaining witness. Rule 2:308 (23) Recent complaint of sexual assault.

32. Which of the following is **not** an exception to the hearsay rule?

a. Present sense impression.

b. Records of vital statistics.

c. Price of goods.

d. Statement about a memory or belief to prove the fact remembered.

A: d Rule 2:803(3)

33: During a trial for a robbery, defense counsel seeks to admit the following four convictions of the complaining witness as impeachment by evidence of a criminal conviction. Which conviction is admissible?

a. Misdemeanor conviction for drunk in public.

b. Misdemeanor conviction for indecent exposure.

c. Misdemeanor conviction for a false report to law enforcement.

d.Misdemeanor conviction for a DWI.

A: c Rule 2:609 – Conviction for misdemeanor involving moral turpitude

34. Shelly, the petitioner and mother in a custody trial against the father, Bob, testified that Bob always dropped their daughter off to school late and fed her fast food from Kentucky Fried Chicken at least four times a week. Is Shelly's testimony admissible?

a.No, because evidence of a person's habit is not relevant.

b.No, because Shelly did not personally witness each and every time these events occurred.

c.Yes, because evidence of a person's habit is relevant to prove the conduct of said person in civil cases.

d.No, because habit and routine evidence is not admissible in civil cases.

A: c Rule 2:406 (a)

35. One afternoon Bob, while outside mowing his lawn, sees a person in a mask walk up his neighbor's driveway and break a front window. Bob immediately calls the police and provides a description of what he saw. While on the phone with the police Bob is able to tell them that the person in the mask has climbed through the window into the house.

What is the appropriate hearsay exception for Bob's statements to the police?

a. Present sense impression.

b. Then existing mental, emotional or physical condition.

c. Recorded recollection.

d. Excited utterance.

A: a. Rule 2:803(3)

36. In a civil protective order case for family abuse in the Juvenile and Domestic Relations District Court, the mother's attorney wants to admit into evidence the report from the doctor who treated the son's injuries. There is a sworn statement attached to the medical report from the doctor attesting that the information in the report is true and accurate and fully describes the nature/extent of the injuries and that the patient named in the report is the person the doctor examined. Is this medical report and sworn statement from the doctor admissible?

a. Yes, provided the doctor and the custodian of records from the doctor's office is there to testify as to the report and sworn statement.

b. Yes, provided the mother's attorney gave written notice to the opposing party of their intention to use said report at least 10 days prior to the hearing and a copy of the report with the attached sworn statement (as described above).

c. No, the report and sworn statement are hearsay.

d. Yes, provided the sworn statement is signed by the doctor and his/her immediate supervisor.

A: b Va. Code 16.1-245.1 Medical Evidence Admissible in J&DR

37. At a preliminary hearing for a murder, the Commonwealth moves to introduce the autopsy report of the Chief Medical Examiner, which states that the cause of death was a gunshot wound to the chest. No one from the Office of the Medical Examiner is there. Is the autopsy report, including the statement of fact or opinion as to the physical or medical cause of death, admissible?

a. No, because the report is hearsay.

b. No, because admitting the report violates *Melendez-Diaz* and the defendant's rights under the 6th amendment.

c. Yes, as business record exception to the hearsay rule.

d. Yes, if the report is duly attested to by the Chief Medical Examiner or one of the Assistant Chief Medical Examiners.

A: d **Va. Code 19.2-188 (a) and (b)**

38. Husband and wife have an argument, and the husband ends up taking a baseball bat to wife's car, causing over $1,000 in damages. The car was purchased before the marriage and is only in wife's name. Husband is charged with destruction of property, a felony offense. On the day of trial, wife tells the Commonwealth that she refuses to testify against her husband and claims a spousal privilege. Can wife be compelled to testify against husband?

a. No, because in a criminal case a wife can only be compelled to testify against her husband if she was the victim of domestic violence or sexual assault.

b. Yes, because this is a case where the husband committed an offense against the property of his wife.

c. Yes, because spousal privilege only exists in civil cases.

d. No, because in any criminal proceeding a wife has a privilege to refuse to disclose any confidential communication between her and her husband.

A: b – Yes because this is a case where the husand committed offense against the property of his wife. Rule 2:504(b)(1)(i) Spousal and Marital Communications

39. In a custody trial in the Fairfax Juvenile and Domestic Relations District Court in front of Judge X, counsel for the petitioning mother moves to introduce a copy of a permanent protective order into evidence. The permanent protective order is from the same court; however Judge Y was the one who entered the order. Is the copy admissible?

a.Yes, because the permanent protective order is from the same J&DR Court.

b.No, because it's hearsay.

c.Yes, because Judge X can take judicial notice of law.

d.Yes, but only if the copy of the permanent protective order is certified from the J&DR clerk's office.

A: d Rule 2:902 Self-Authentication

40. At trial for malicious wounding, during the defendant's case-in-chief, counsel moved to admit a taped interview of the defendant and a police officer, where the defendant made additional statements about the night in question, namely that he had been attacked first and was defending himself. The Commonwealth objected. Are the defendant's statements from the taped interview with the police officer admissible?

a. No, they are hearsay.

b. Yes, because they are an admission by a party-opponent.

c. Yes, because they are relevant.

d. No, because the taped interview is not the best evidence.

A: a RULE 2:803(0) and King v. Commonwealth, 2 Va. App. 708 (1986).

41.At trial a witness for the Commonwealth testified that the defendant was drunk on the night of the incident – the witness said the defendant smelled like alcohol and he was stumbling when he walked. Counsel for defense objects to the statement that the defendant was drunk. Is the witnesses' opinion admissible?

a. No, because it is opinion testimony.

b. No, because it is an opinion of law.

c. Yes, because the opinion is reasonably based on the personal observations of the witness.

d. Yes, because the defendant's behavior is an admission against interest.

A: c. RULE 2:701 – OPINION TESTIMONY BY LAW WITNESS

42. In a breach of contract jury trial, the witness is asked by defense counsel to read Clause 205 of the contract that was previously admitted into evidence as defendant's exhibit # 71. The Witness testimony should be

a. admitted, because the contract is the best evidence
b. denied because the contract speaks for itself
c. denied because allowing the witness to read Clause 205 of the contract would be cumulative
d. admitted because an exhibit may be published to the jury in a variety of ways

A: d - Rule 2:1002, Requirement of Production of Original. To prove the content of a writing, the original writing is required, except as otherwise provided in these rules, Rules of Supreme Court of Virginia, or in a Virginia statute.

Further explanation: Law of Evidence in Virginia, Sixth Edition, Friend/Sinclair, pp. 1191-1192. [b] Misapplication of the Rule. The best evidence rule applies only to documents, and then only when the contents of the document are in issue. The best evidence rule is also misapplied when a witness seeks to read an already-admitted document (exhibit) from the stand. Frequently, when a party attempts to have such a document read from the stand by a witness, the opposing party will object on the grounds that "the document speaks for itself". Lawyers who

make this objection typically will, when pressed, justify this contention by reference to the best evidence rule, arguing that the exhibit should not be read because the document is the "best evidence" of it's contents. This is totally incorrect. The best evidence rule is a rule of admissibility. A document cannot be received into evidence unless and until the best evidence rule has been satisfied. Once the document has been admitted as an exhibit, however, then by definition the best evidence rule has been satisfied and no longer has any applicability. Whether or not a witness is permitted to read an exhibit from the stand is a matter totally within the trial judge's discretion: an exhibit may be published to the jury in a variety of different ways, and reading parts is one such technique. Subject to common traditions against "cumulative" proof, there is no rule of evidence which absolutely permits or absolutely prohibits it.

43: A police officer arrived on an accident scene and conducts his investigation. At trial, the Defendant asks the officer to state his opinion based on his investigation as to the point of impact of the two vehicles involved in the accident.

The officer's testimony should be:

a. admitted because the officer may state an opinion based on his investigation
b. admitted because the officer opinion would be relevant in assisting the trier of fact to understand the evidence or to determine a fact in issue
c. excluded because the officer's testimony would be expressing a conclusion
d. excluded, unless the officer is qualified to express such an opinion based on his training, knowledge, skill, experience or education.

A:c Although accident reconstruction testimony has on occasion been admitted, Virginia courts have been very reluctant to admit accident reconstruction testimony. Such testimony is rarely admissible because it invades the province of the jury Brown v. Corbin, 244 Va 528 (1992). It has been held improper for a witness who has investigated a motor vehicle accident to express an opinion as to the point of impact or draw inferences from tire marks, skid marks, scratches, or debris on the road. Lopez v. Dodson, 240 Va 421 (1990). The Law of Evidence in Virginia, Sixth Edition, Friend/Sinclair, pp 752-75

Above should be distinguished with VA Code Section 8.01-401.3 Opinion testimony and conclusions as to facts critical to civil case resolution.