

# Drafting Multiple Choice Questions

# Why?

- Test Specific Knowledge
- Course Coverage
- Test Critical Reading
- Objective Grading

# Part of a Continuum

	MBE	Essay	PT
Memorize law	X	X	
Critical reading	X	X	X
Identify relevant facts			X
Marshal facts		X	X
Communication skills		X	X
Follow directions	X	X	X
Problem solving			X
Task competency			X
Legal analysis	X	X	X

# Step 1

- It may seem obvious, but you have to ask what subject areas you want to test.

# Evidence

## Section 1

I. Presentation of evidence	33.3%	33.3%
A. Introduction of evidence		
1. Requirement of personal knowledge		
2. Refreshing recollection		
3. Objections and offers of proof		
4. Lay opinions		
5. Competency of witnesses		
6. Judicial notice		
7. Roles of judge and jury		
8. Limited admissibility		

B. Presumptions		X
C. Mode and order		X
1. Control by court		X
2. Scope of examination		X
3. Form of questions		X
4. Exclusion of witnesses		X
D. Impeachment, contradiction, and rehabilitation		X
1. Inconsistent statements and conduct		X
2. Bias and interest		X
3. Conviction of crime		X
4. Specific instances of conduct		X
5. Character for truthfulness		X
6. Ability to observe, remember, or relate accurately		X
7. Impeachment of hearsay declarants		X
8. Rehabilitation of impeached witnesses		X
9. Contradiction		X
E. Proceedings to which evidence rules apply		X

II. Relevancy and reasons for excluding relevant evidence	11.1%	11.1%
A. Probative value		X
1. Relevancy		X
2. Exclusion for unfair prejudice, confusion, or waste of time		X
B. Authentication and identification		X
C. Character and related concepts		X
1. Admissibility of character		X
2. Methods of proving character		X
3. Habit and routine practice		X
4. Other crimes, acts, transactions, and events		X
5. Prior sexual misconduct of a defendant		X
D. Expert testimony		X
1. Qualifications of witnesses		X
2. Bases of testimony		X
3. Ultimate issue rule		X
4. Reliability and relevancy		X
5. Proper subject matter for expert testimony		X
E. Real, demonstrative, and experimental evidence		X

III. Privileges and other policy exclusions	11.1%	11.1%
A. Spousal immunity and marital communications		
B. Attorney-client and work product		
C. Physician/psychotherapist-patient		
D. Self-incrimination		
E. Other privileges		
F. Insurance coverage		
G. Remedial measures		
H. Compromise, payment of medical expenses, and plea negotiations		
I. Past sexual conduct of a victim		

IV. Writings, recordings, and photographs	11.1%	11.1%
A. Requirement of original		
B. Summaries		
C. Completeness rule		

<b>V. Hearsay and circumstances of its admissibility</b>	<b>33.3%</b>	<b>33.3%</b>
A. Definition of hearsay		
1. What is hearsay		
2. Prior statements by witness		
3. Statements attributable to party-opponent		
4. Multiple hearsay		
B. Present sense impressions and excited utterances		
C. Statements of mental, emotional, or physical condition		
D. Statements for purposes of medical diagnosis and treatment		
E. Past recollection recorded		<b>X</b>

F. Business records		
G. Public records and reports		
H. Learned treatises		
I. Former testimony; depositions		
J. Statements against interest		
K. Other exceptions to the hearsay rule		
L. Right to confront witnesses		
<b>TOTAL WEIGHT</b>		<b>100.0%</b>

# Basic Guidelines

- Fact pattern (stimulus)
- Question (call or stem)
- Answers (options)
  - 1 right answer
  - 3 credible distractors
- Key
- Explanation

# General Tips

- Compact facts (e.g., 2 inches)
- All necessary facts
- Names associated with roles
- No facts in answers
- Parallel options
- Only 4 options
- Stagger keys

# General Tips, cont'd

- Distractors need to be plausible
- Avoid
  - stand out keys
  - double negatives
  - “always” or “never”
  - “none of the above”
  - “all of the above”
  - value judgments (e.g., prejudicial impact)

# Example 1: First Draft

1. Plaintiff sues the Seller of a parcel of land for violating Plaintiff's right of first refusal. At trial, Seller objects to Plaintiff's description of the contract of sale wherein Plaintiff sold the property to Seller and retained the right of first refusal. The contract of sale has not been produced by Plaintiff. The court should rule:

- A. The testimony is inadmissible hearsay.
- B. The testimony is admissible.
- C. The testimony is inadmissible under the Best Evidence Rule.
- D. Answers A and C are correct.

# Example 1: Edited

1. Seller sues Buyer, the purchaser of a parcel of land, for violating Seller's right of first refusal. At trial, Buyer objects to Seller's description of the written contract of sale by which Seller had sold the property to Buyer and had retained the right of first refusal. The contract of sale has not been produced by Seller nor has Seller attempted to explain the absence of the contract document. How should the court rule on Buyer's objection?

- A. Sustain, because the testimony is inadmissible hearsay.
- B. Sustain, because the testimony is inadmissible under the Best Evidence Rule.
- C. Overrule, because the evidence is not rendered inadmissible under the Statute of Frauds.
- D. Overrule, because, by suing on the contract, Seller has waived any objection to the absence of the contract document.

Key = B

# Example 2: First Draft

Danny Defendant was charged by the state of Miller for the offense of receiving stolen property. At trial, before testifying himself, Danny called Willy, who testified that Danny's reputation in the community for being law abiding is excellent. On cross-examination the prosecutor asked Willy whether he had known that Danny had been convicted five years ago of offering a bribe to a public official. Danny's attorney objects. Select the proper ruling rationale:

- A. Sustained, because Danny has not yet put his character in issue.
- B. Sustained because Danny's character for honesty or dishonesty cannot be attacked until he takes the stand himself as a witness.
- C. Sustained because the inquiry does not concern a relevant trait for the purpose of this trial.
- D. Overruled as it is permissible to test Willy's knowledge of Danny's reputation.
- E. Overruled because Danny's character has been put directly in issue in view of the nature of Willy's testimony.

Key = D

# Example 2: Edited

Defendant is charged with receiving stolen property. At trial, the first witness for defendant testified that defendant's reputation in the community is that he is law abiding. On cross-examination the prosecutor asked the witness if he heard that defendant was convicted five years ago for bribery. Defense counsel objected.

How should the court rule on the objection?

- A. Sustain the objection, because Danny has not put his character in issue.
- B. Sustain the objection, because the inquiry does not concern a pertinent character.
- C. Overrule the objection, because it is permissible to test the witness' knowledge of defendant's reputation.
- D. Overrule the objection, because defendant's character has been put in issue.

Key = C

# Example 3: First Draft

In a suit between the former husband and the children of the insured wife and mother, the former husband claims that his former wife never designated her children to be the beneficiaries of her group life insurance. The children counter by offering a duplicate copy of a insurance company form in their mother's handwriting designating them as beneficiaries. Which statement is true:

- A. The form is admissible hearsay.
- B. The form is inadmissible hearsay.
- C. The duplicate form is not admissible because it violates the Best Evidence Rule.
- D. The form is admissible because the children authenticate the mother's handwriting.

# Example 3: Edited

In a suit between the former husband and the children of the deceased wife and mother to collect the proceeds of her group life insurance policy, the former husband claims that the decedent never designated her children to be the beneficiaries. The children counter by offering a duplicate copy of an insurance company form. The form, which they establish is in their mother's handwriting, designates them as beneficiaries. Which of the following statements is correct?

- A. The form is admissible hearsay because it is a statement of the decedent's then existing state of mind.
- B. The form is admissible because the children authenticated the mother's handwriting.
- C. The form is inadmissible hearsay because it is being introduced for the truth of the matter contained in it.
- D. The form is not admissible because it violates the Best Evidence Rule.

Key=A

# Hardest Part: Ideas!

- <http://lawprofessors.typepad.com/evidenceprof/>
- <http://web2.westlaw.com/signon/default.wl?bhcp=1&FN=%5Ftop&ifm=NotSet&newdoor=true&RS=WLW9%2E02&so=mup&sotype=mup&SV=Split&VR=2%2E0>