Question 1
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.

Question 2
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.

Question 3
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.

Question 4
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.

Question 5
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.

Question 6
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 a 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.

Question 7
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.

Question 8
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.

Question 9
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.

Question 10
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.

Question 11
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.

Question 12
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.

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.

Question 14
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.

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 officer's testimony that the teller picked the defendant out of the lineup as the robber.
(C) The computerized records from the savings and loan.
(D) The videotape of the eyewitness's statement.

**Question 16**

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.

**Question 17**

A plaintiff sued his employer for illegal discrimination, claiming that the employer fired him because of his race. At trial, the plaintiff called a witness, expecting him to testify that the employer had admitted the racial motivation. Instead, the witness testified that the employer 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 employer's admissions of racial motivation.

The tape recording is

(A) admissible as evidence of the employer'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.

**Question 18**

At a defendant's trial for burglary, a witness supported the defendant's alibi that they were fishing together at the time of the crime. On cross-examination, the witness 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 witness denied that the statement was false. The prosecutor then calls the manager of the company for which the witness works, to testify that although the witness 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 manager is

(A) admissible, in the judge's discretion, because the witness's credibility is a fact of major consequence to the case.
(B) admissible, as a matter of right, because the witness "opened the door" by his denial on cross-examination.
(C) inadmissible, because whether the witness lied in his application is a matter that cannot be proved by extrinsic evidence.
(D) inadmissible, because the misstatement by the witness could have been caused by misunderstanding of the application form.

**Question 19**

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 home 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.

**Question 20**

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 local 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.

**Question 21**

A plaintiff sued a defendant auto manufacturer 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 auto manufacturer 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.

**Question 22**

A defendant and a co-defendant 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 started to give them the Miranda warnings prior to the questioning, the defendant said, “Look, [the co-defendant] 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 co-defendant said nothing.

The co-defendant was escorted into another room and a full written confession was then obtained from the defendant. If the co-defendant is brought to trial on an indictment charging him with robbery, the fact that the co-defendant failed to object to the defendant’s statement and remained silent after the defendant had implicated him in the crime should be ruled
(A) admissible, because his silence was an implied admission by the co-defendant 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 co-defendant's part to respond.
(D) inadmissible, because whatever the defendant may have said has no probative value in a trial against the co-defendant.

**Question 23**

A plaintiff's estate sued a defendant 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.

**Question 24**

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

The witness's testimony is
(A) inadmissible, because there is no evidence that the dealer was authorized to speak for the defendant.
(B) inadmissible, because the statement of the dealer 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 dealer's statement.

**Question 25**

In a federal civil trial, a plaintiff wishes to establish that, in a state court, the defendant had been convicted of fraud, a fact that the defendant denies.
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Question 28
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 police officer as a witness 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 officer lacks firsthand 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.

Question 29
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 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.

Question 30
A plaintiff sued a defendant for personal injuries arising out of an automobile accident.

Which of the following would be 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 called the defendant as an adverse witness.
(B) The judge refuses to allow the defendant’s attorney to cross-examine the defendant by leading questions.
Question 31
In a contract suit between a plaintiff and a defendant, the defendant testifies that he recalls having his first conversation with the plaintiff on January 3. When asked how he remembers the date, he answers, “In the conversation, the plaintiff referred to a story in that day’s newspaper announcing my daughter’s engagement.” The plaintiff’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.

Question 32
A defendant is on trial for extorting $10,000 from a victim. An 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.

Question 33
A plaintiff construction company sued a defendant 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 its general manager as a witness to testify that it is the plaintiff’s routine practice to send cost overrun notices as required by the contract. The general manager 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.

Question 34
A defendant has pleaded 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.

Question 35
In a murder trial in which the defendant relied on a theory of self-defense, the defendant called a witness to testify that the victim 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 victim was the aggressor.
(B) admissible, if the witness testifies further as to specific acts of misconduct on the victim’s part of which the witness has personal knowledge.
(C) 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.

Question 39
A defendant is charged with murder in connection with a carjacking incident during which the defendant allegedly shot a 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.

Is the son's testimony proper?
(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.

Question 40
Cars driven by a victim and a 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 victim, alleging that the defendant’s intoxication had caused the collision, sued the defendant for damages. At trial, the victim 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.

Question 41
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 the tree was in a rotted condition.

Question 42
At a 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 the witness's wife telephoned the 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; 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 firsthand knowledge of the license number.

Question 43
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.

Question 44
While crossing a street, a plaintiff was hit by a car that she did not see. The plaintiff sued the defendant for her injuries.

At trial, the plaintiff 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 involving a blue convertible, which I followed to the drive-in restaurant at the nearest intersection,” and that a few seconds later the officer saw the defendant sitting alone in a blue convertible in the drive-in restaurant's parking lot. The 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.

Question 45
A plaintiff sued a defendant for personal injury alleged to have been caused by the defendant's negligence. A major issue at trial was whether the plaintiff’s disability was caused solely by trauma or by a preexisting condition of osteoarthritis.

The plaintiff called his doctor, who testified that the disability was caused by trauma. On cross-examination, the plaintiff's doctor testified that a medical textbook entitled Diseases of the Joints was authoritative and that she agreed with the substance of passages from the textbook that she was directed to look at, but that the passages were inapplicable to the plaintiff’s condition because they dealt with rheumatoid arthritis rather than with the osteoarthritis that the plaintiff was alleged to have. The defendant then called his expert doctor who testified that, with reference to the issue being litigated, there is no difference between the two kinds of arthritis. The defendant's counsel then asks permission to read to the jury the textbook passages earlier shown to the plaintiff's doctor. The judge should rule the textbook passages

(A) admissible only for the purpose of impeaching the plaintiff's doctor.
(B) admissible as substantive evidence if the judge determines that the passages are relevant.
(C) inadmissible, because they are hearsay not within any exception.
(D) inadmissible, because the plaintiff's doctor contended that they are not relevant to the plaintiff's condition.

Question 46
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.

Question 47
A defendant was prosecuted for armed robbery. At trial, the defendant testified in 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.

Question 48
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.

Question 49
A defendant and co-defendant are being tried in federal court for criminal conspiracy to violate 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 co-defendant 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 is for the defendant's wife to make.
(B) The choice is for the defendant to make.
(C) The defendant's wife is permitted to testify only if both the defendant and his wife agree.
(D) The defendant's wife is compelled to testify even if both the defendant and his wife object.

Question 50
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 [the defendant] is driving!” The defendant offers evidence to impeach the witness's friend by asking the witness, “Isn't it true that your friend beat up the defendant just the day before the collision?”

The question is
(A) proper, because it tends to show the possible bias of the witness's friend against the defendant.
(B) proper, because it tends to show the character of the witness's friend.
(C) improper, because the witness's friend has no opportunity to explain or deny.
(D) improper, because impeachment cannot properly be by specific instances.

Question 51
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.

Question 52
A lender sued a debtor for nonpayment of a personal loan to the debtor, as evidenced by the debtor's promissory note to the lender. The lender called a witness to testify that he
knows the debtor's handwriting and that the signature on
the note is the debtor's. On direct examination, to identify
himself, the witness gave his name and address and testi-
fied that he had been employed by a roofing company for
seven years.

During presentation of the debtor's case, the debtor
called the roofing company's manager to testify as to her
occupation 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 the manager's 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's
credibility.

Question 53
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 physician on her
rounds, immediately wrote the diagnosis on the plaintiff's
hospital record. At trial, the hospital records custodian testi-
fies that the plaintiff's hospital record was made and kept in
the ordinary course of the hospital's business.

The entry reporting the physician's diagnosis is
(A) inadmissible, because no foundation has been laid for
the physician's competence as an expert.
(B) inadmissible, because the physician'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.

Question 54
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 an 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 identifi-
cation of the defendant is
(A) admissible as a prior inconsistent statement by the
witness.
(B) admissible as an identification of the defendant by the
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.

Question 55
A company sued its former vice president for return of
$230,000 that had been embezzled during the previous
two years. Called by the company as an adverse witness,
the former vice-president testified that his annual salary
had been $75,000, and he denied the embezzlement. The
company calls a banker to show that, during the two-year
period, the former vice-president had deposited $250,000
in his bank account.

The witness's testimony is
(A) admissible as circumstantial evidence of the former
vice-president's guilt.
(B) admissible to impeach the former vice-president.
(C) inadmissible, because its prejudicial effect substantially
outweighs its probative value.
(D) inadmissible, because the deposits could have come
from legitimate sources.

Question 56
A pedestrian died from injuries caused when a car struck
him. The pedestrian's executor sued the driver of the car 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 pedes-
trian's statement, the executor offers to the court the doc-
umentary evidence 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 evidence 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
cannot be used except in prosecutions for homicide.
(C) Yes, because, though hearsay, it is a statement of then-
exisiting mental condition.
(D) Yes, because the judge may consider hearsay in ruling
on preliminary questions.

Question 57
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, as a witness, to testify that
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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.

Question 58
At a defendant's murder trial, the defendant calls first a 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.