

1) A barber was charged with the murder of his neighbor. The prosecutor alleged that the barber believed the barber's girlfriend owed the neighbor a significant debt. At trial, the prosecutor called a witness to testify that the barber said on the day of the alleged murder, "How is my girlfriend ever going to pay off that loan? It's not fair!"

If the defendant objects on the basis of hearsay, the trial court should rule:

- A) The statement is inadmissible as hearsay not within any exception.
- B) The statement is admissible as a statement against interest.
- C) The statement is admissible because it is not being used for the truth of the matter asserted.
- D) The statement is admissible as a prior inconsistent statement.

2) A defendant was arrested and charged with shooting a rival gang leader. At trial, the prosecutor seeks to call an informant to testify that, just before the rival gang leader passed out from massive blood loss, the leader said "Don't let Skinny Sam get away with shooting me in the back." The rival gang leader was bleeding from a bullet wound to the back that punctured both lungs.

Which of the following, if true, is most likely to lead to the informant's statement being admitted in the defendant's trial?

- A) The informant was a member in the rival gang leader's gang.
- B) The informant is unavailable, but the informant's statement is contained in a police report.
- C) The defendant is charged with murder.
- D) The rival gang leader believed that he was about to die, but he ultimately recovered.

3) Which of the following statements is most likely to be admitted as an excited utterance?

- A) A biker's exclamation of "This weather is really hot!" after he hit a sidewalk crack and fell off his bike.
- B) A friend's statement to a coworker, "My neighbor fell off his bike three hours ago and it was really bloody!"
- C) A baker's statement after witnessing a crime, "I can't believe Jimmy would do that!"
- D) The statement of a man, looking out his window, "It really is raining a lot tonight."

4) A man was accused of breaking into his neighbor's home at 6pm. At trial, he sought to call a restaurant waiter to testify that on the night in question the man said to him, around 5:30pm, "I'll have the fish. I need to eat light tonight because I have a date across town."

If the prosecutor objects, the judge should rule the statement is

- A) Admissible, as an excited utterance.
- B) Admissible, as a statement of then-existing plan.
- C) Admissible, as a prior consistent statement.
- D) Inadmissible, as hearsay not within any exception.

5) After being shot at a convenience store, a man was badly bleeding and sitting on the sidewalk. A shopper heard the man say "I can't believe Johnny shot me after all these years in business together!" The man died from his wounds, and the prosecutor concluded that the death was an accident. At Johnny's trial for unlawful possession of a firearm, the prosecutor wants to call the shopper to testify to what the man said.

The testimony is

- A) Admissible as an excited utterance only.
- B) Admissible as a dying declaration only.
- C) Admissible as a statement of prior identification or an excited utterance.
- D) Admissible as a dying declaration or excited utterance.

6) A business man walked into a cafeteria and sat down to drink a cup of coffee. While sitting, a patron turned to the business man and calmly said, "After all these years, I find my long-lost brother over a cup of java." At a subsequent trial against someone other than the patron, the business man wishes to show that the patron was, in fact, his biological brother.

Which of the following will be relevant in the court's ruling as to whether the patron's statement is admissible?

- A) Whether the trial is criminal or civil, because hearsay applies only in civil cases.
- B) Whether the trial is criminal or civil, because hearsay applies only in criminal cases.
- C) Whether the patron is unavailable.
- D) None of the above will be relevant, because hearsay applies in both criminal and civil cases.

7) A defendant in a civil lawsuit had previously told his spouse, "Today is a great day! I just bought the car I've always wanted since high school!" If that statement is subsequently introduced by the plaintiff to show that defendant did, in fact, own the car in question, the trial court should

- A) exclude the statement because it is not an excited utterance.
- B) exclude the statement because it is not a present sense impression.
- C) admit the statement because it is a statement against interest.
- D) admit the statement because the defendant said it, and the plaintiff is introducing it at trial against the defendant.

8) A couple was engaged in a long argument over finances. During it, the man turned to his partner and said, "that mockingbird across the street is making more sense than you."

At trial, that statement would be

- A) inadmissible as hearsay not within an exception.
- B) admissible as an excited utterance.
- C) admissible but only if the man is unavailable.
- D) admissible as a present sense impression.

9) While participating in a political rally, an activist was badly injured when someone threw a bottle that struck the activist's head. The other rally participants took the activist to a first aid tent, and one of the volunteers at the tent handed her a questionnaire asking about any allergies she had, that nature of her injury and symptoms, and whether the activist consented to receive over-the-counter medication, ice packs, and related options.

The activist completed the questionnaire and gave it back to the volunteer. Later, the activist found and sued the person who threw the bottle and the vendor who operated the first aid tent. If the activist's handwritten answers in the questionnaire are introduced at trial, they are

- A) inadmissible as hearsay not within an exception.
- B) admissible under the business record exception, but not the statement for medical diagnosis or treatment exception.
- C) admissible under the statement for medical diagnosis or treatment exception, but not the business record exception.
- D) admissible under either the business record exception or the statement for medical diagnosis or treatment exception.

10) In anticipation of an upcoming lawsuit, a business began keeping notes about facts potentially relevant to the claim. At trial, those notes are

- A) admissible if kept on a frequent basis by the business and if made by someone with knowledge of those facts.
- B) admissible as an excited utterance.
- C) admissible as a learned treatise.
- D) inadmissible as hearsay not within an exception.

11) While walking his dog, a man witnessed a bank robbery. Shocked, he quickly finished taking his dog around the large dog park walking track, took a shortcut through a park to get home more quickly, and washed and dried the dog to clean off the debris that accumulated when they cut through the park. He rushed into his apartment and told his partner, "I just saw my college roommate rob a bank and get away driving a red pickup truck."

If the man is subsequently unavailable at the college roommate's trial for bank robbery, what is the best argument that the statement is admissible?

- A) It is admissible as a present-sense impression.
- B) It is admissible as a prior consistent statement.
- C) It is admissible as a recorded recollection.
- D) It is admissible as an excited utterance.

12) While scheduling her next Botox injection, a fashion icon told the receptionist that she had a minor reaction to the prior injection. One month later, the fashion icon sued the doctor who administered the Botox for negligence. If the receptionist is called to testify to the fashion icon's statement, the judge should

- A) exclude the fashion icon's statement because it is hearsay not within any exception.
- B) exclude the fashion icon's statement because it violates the doctor's Confrontation Clause rights.
- C) admit the fashion icon's statement because it is a statement for purposes of medical treatment or diagnosis.
- D) admit the fashion icon's statement because it is a statement of then existing condition.

13) A patient told his doctor that he was experiencing severe shoulder pain. That night, the doctor told his wife about the patient's injury. The doctor went to an extended training conference in another country, and while gone the wife was called to testify to the patient's statements.

Should the court admit the wife's testimony?

- A) No, because it is hearsay not within any exception.
- B) Yes, because it was a present sense impression.
- C) Yes, because it was an excited utterance.
- D) Yes, because it was a statement for purposes of medical treatment or diagnosis.

14) During an extended argument, a woman made various loud remarks to a baker. Several of the baker's customers were scared away by the woman's loud remarks and stopped purchasing from the baker. The baker sued the woman alleging that the remarks the woman made breached a non-disclosure agreement with the baker.

If the baker seeks to admit the woman's statement in his civil case, how should the court rule?

- A) Exclude the statement because it is hearsay not within any exception.
- B) Exclude the statement because it violates the woman's Confrontation Clause rights.
- C) Admit the statement because it was a present sense impression.
- D) Admit the statement because it is not hearsay.

15) A patient went to see her doctor for knee pain. During the meeting, the doctor asked the patient what her symptoms were, and the patient said, "My knee hurts, and it hurts the most when I bend it." The doctor told the patient to do specific stretches and exercises for one month and then return for a follow-up visit.

In the second visit, the patient's knee was much worse. Upon further examination, the doctor realized that the exercises he told the patient to do were the wrong type for the injury the patient had. The doctor then said, "I'll gladly pay for an operation that would help fix your knee."

The patient sued the doctor for medical malpractice. The patient sought to introduce the doctor's statement to show the doctor made her knee worse, and the doctor sought to introduce the patient's statement to prove the patient already had a knee injury.

How should the court rule?

- A) Admit both statements.
- B) Exclude the patient's statement because it is being introduced for the truth of the matter asserted, and admit the doctor's statement as nonhearsay.
- C) Exclude the doctor's statement, but admit the patient's statement.
- D) Exclude both statements.