

POP QUIZ (self-graded)

In *The Caine Mutiny*, Steve Maryk is on trial for mutiny. The prosecution calls the helmsman as a witness. He testifies:

.... We were in a typhoon. The ship was rolling real bad, I couldn't hold her. The captain wanted me to come left and Mr. Maryk wanted me to come right.

Q. Which did you do?

A. I obeyed Mr. Maryk, sir.

Q. Why?

A. Well, Mr. Keith told me Mr. Maryk had taken command.

Q. Did the captain act scared?

A. No, sir.

Q. Did Mr. Maryk act scared?

A. No, sir.

Q. Did anyone act scared?

A. Just me, sir.

Question 1: If the defense objected to the testimony that "The captain wanted me to come left" as hearsay, how should the prosecutor respond?

Question 2: If the defense objected to the testimony that “The captain wanted me to come left” as hearsay, and the prosecutor responded that the testimony did not describe what anyone said, how should the defense respond?

Question 3: If the defense objected to the testimony that “Mr. Maryk wanted me to come right” as hearsay, how should the prosecutor respond

Question 4: If the defense objected to the testimony that “Mr. Keith told me Mr. Maryk had taken command” as hearsay, how should the prosecutor respond?

Question 5: If the prosecutor responds that the testimony that “Mr. Keith told me Mr. Maryk had taken command” was a present sense impression, what is the best reply for the defense?

Question 6: If the prosecutor responds that the testimony that “Mr. Keith told me Mr. Maryk had taken command” was an excited utterance, what is the best reply for the defense?

Question 7: If the prosecutor argues that the testimony that “Mr. Keith told me Mr. Maryk had taken command” was an excited utterance, and the⁴ defense replies that there is no foundation that Mr. Keith was under stress when he made the statement, what if the prosecutor’s best rejoinder?

Answers:

Question 1: If the defense objected to the testimony that “The captain wanted me to come left” as hearsay, how should the prosecutor respond?

Not an assertion of fact, but a command.

Question 2: If the defense objected to the testimony that “The captain wanted me to come left” as hearsay, and the prosecutor responded that the testimony did not describe what anyone said, how should the defense respond?

It contains an implied assertion that the Captain spoke those words; otherwise he could not have known what the captain wanted.

Question 3: If the defense objected to the testimony that “Mr. Maryk wanted me to come right” as hearsay, how should the prosecutor respond?

Statement of the opposing party; also not an assertion of fact, but a command.

Question 4: If the defense objected to the testimony that “Mr. Keith told me Mr. Maryk had taken command” as hearsay, how should the prosecutor respond?

Either a present sense impression or an excited utterance.

Question 5: If the prosecutor responds that the testimony that “Mr. Keith told me Mr. Maryk had taken command” was a present sense impression, what is the best reply for the defense?

No foundation laid as to how much time had elapsed between the event (taking command) and the statement describing it, so the prosecutor has not established that the statement was made immediately after it.

Question 6: If the prosecutor responds that the testimony that “Mr. Keith told me Mr. Maryk had taken command” was an excited utterance, what is the best reply for the defense?

No foundation that the statement was made while Mr. Keith was under the stress of either the typhoon or the relieving Queeg of command. Indeed, the witness testifies that no one seemed scared but him.

Question 6: If the prosecutor argues that the testimony that “Mr. Keith told me Mr. Maryk had taken command” was an excited utterance, and the defense replies that there is no foundation that Mr. Keith was under stress when he made the statement, what if the prosecutor’s best rejoinder?

A typhoon and mutiny are obviously stressful events; you don’t have to prove the obvious.