

JD EXAM INSTRUCTIONS, SAMPLE QUESTIONS and ANSWERS

Note: These materials are procedural, not substantive. The sample answers may be either right or wrong, and are intended only to give you a sense of my quasi-multiple choice system works.

Instructions:

1. This is a CLOSED BOOK exam. A copy of the Federal Rules of Evidence will be distributed with the exam, which you may refer to as needed.
2. You must write your answers on the exam itself, in the space provided. **Do not write your answers in a bluebook.**
3. No computers.
4. The exam consists of a transcript of an imaginary trial. It is interrupted at various times and you will be asked to make or respond to an objection. Each question is multiple choice, with the following twists:
 - a) Some answers will ask for an explanation. You must provide one. Space will be provided on the answer sheets, and you may not exceed that space. See sample question 1.
 - b) Unless I specifically ask for one, explanations are not necessary to get full credit. See sample question 2.
 - c) You may select more than one choice if you think there is more than one good answer, but this will not be common. You earn points for every good answer and lose points for every bad answer. See sample question 2.
 - d) Every question will include a “none of the above” option. This will rarely be a good choice, but may get you some points if I can see in your explanation that you understood a substantial part of the question. The explanation is the key. See sample question 3.
 - e) You may explain your answer even if the question does not call for it. See sample question 4. This is not usually a good idea, and you should not explain every answer out of some neurotic fear that you will not otherwise get full credit for circling the right answer. Unrequested explanations are a two-edged sword, and may reveal that you did not understand the question.
 - f) IMPORTANT: In your explanation, you may not assume facts not in the transcript, e.g., saying that you circled “business record” because you assumed the event was a regular activity even though there was no explicit evidence of it.
5. Following each objection, the judge will make a ruling. You should draw no inference from the rulings -- the judge has to make a decision in order for the trial to continue, and will often will rule incorrectly.
6. Throughout the exam, assume the case is being tried to a jury. Base your answers on the Federal Rules of Evidence and any other general legal principles of evidence you can remember. Ignore any tactical considerations.

The exam is based on the fictional case of *Linda Thompson vs. Lisa-Marie Presley and the First Memphis Bank and Trust Company*.

Linda Thompson was Elvis' live-in girlfriend in 1977 when he allegedly died. Lisa-Marie Presley is Elvis' only child, who inherited most of Elvis' estate under his will. Under the terms of the will, the bulk of the estate was put in trust supervised by the First Memphis Bank. Lisa-Marie is due to receive the residue of the estate soon, which includes sole title to Elvis' former home, Graceland. She is a member of the Church of Scientology, a west coast quasi-religious cult, and has said she plans to give Graceland to the Church to use as its new national headquarters. Linda Thompson has sued Lisa-Marie and the Bank to prevent this disbursement from the trust, alleging that Elvis is still alive. The defendants claim Elvis is dead. No statutes control the outcome. Disregard any Rule 11 problems with this lawsuit.

COURT: The plaintiff may call its first witness.

PLAINTIFF'S ATTORNEY: Thank you, your honor. We call Verena Deuble. She is a German citizen, your honor.

BAILIFF: Do you speak and understand English?

WITNESS: Ja, ich good at the English speaking am.

BAILIFF: Do you swear or affirm to tell the truth in this matter?

WITNESS: Was is das? Ich nicht so good at the English hearing am. How do you say -- deaf, ja? I am deaf.

BAILIFF (louder): Do you swear to tell the truth?

WITNESS: Oh, ja, yes.

Q: Do you know anything about Elvis Presley?

A: Oh, ja. I know much about der könig, but am difficult to speak it in English.

Q: Would it help to provide an interpreter?

A: Ja, sehr gut.

DEFENSE ATTORNEY: Your honor, we object to any further testimony by this witness. She is incompetent to be a witness. She is over 90 years old and believes that Elvis is sending her letters and neither speaks nor understands English very well.

1. How should plaintiff respond to this objection?

- a. Rule 601 says that everyone is competent to be a witness.
- b. The rules of evidence do not apply when laying a foundation, and we are laying a foundation for providing a interpreter pursuant to Rule 604.
- (c) The objection is untimely. Explain your answer.
- d. The objection is not specific. Explain your answer.
- e. None of the above. Explain your answer.

It should have been made before the witness gave any testimony. Grounds were apparent as soon as she she said she knew much about Elvis.

COURT: Overruled.

BAILIFF: State your name and address for the record, please.

WITNESS: Verena Deuble. I live in Bad Nauheim, Germany.

Q: Ms. Deuble, how old are you?

A: 94 or 95; I'm not sure.

Q: Were you recently given an award by the Israeli government for saving the lives of a Jewish family in the Second World War?

2. What objection(s) could the defense attorney make?

a. Leading

b. I object that the testimony is irrelevant because this has nothing to do with the issue of whether Elvis is still alive.

(c) I object that the testimony is unduly prejudicial under Rule 403 because World War II and the holocaust are emotional topics.

(d) I object under Rule 404 that this is inadmissible character evidence.

e. None of the above. Explain your answer.

COURT: Overruled.

A: Yes, I was.

Q: Are you acquainted with Elvis Presley?

A: Yes I am. I met him when he was in the U.S. Army. He was stationed near my home in 1958. The food on the army base was so bad, that he and some of his buddies would come over to my house whenever they could get away, and I would fix them sandwiches. He was a nice young man with very good manners.

Q: Did you receive a letter addressed to you that was postmarked October 11, 2011, from Memphis, Tennessee?

A: Yes, I did.

Q: Handing you plaintiff's exhibit one, is this the letter you received?

A: Yes.

Q: Was it written by Elvis?

A: Yes it was.

PLAINTIFF'S ATTORNEY: We offer this letter into evidence.

Dearest Verena:

I hope you're sitting down when you read this, because what I'm going to tell you may come as a shock. I'm not dead like everybody thinks. I'm alive and doing just great. I'm sorry I didn't write you sooner. I know you must have been upset to hear the papers report that I was dead. But I had to start a new life. I was killing myself with drugs and booze, and getting fat, and just wasn't happy any more. I used to look in the mirror and say, "Elvis, the magic's gone." You always were like a second mama to me. I will always remember your great sandwiches. I wish I could get to Germany to see you. But I wanted you to know firsthand that I was really alive. Take care.

Love, Elvis

3. What objections can the defense attorney make?

- a. Hearsay and no exception applies.
- b. Rule 602. No foundation that she has any personal knowledge of who wrote the letter.
- c. Rule 701. Her opinion that the letter was written by Elvis is not rational since it was based merely on looking at the letter.
- d. Rule 702. The witness has not been qualified as an expert in handwriting identification, so the letter is inadmissible.
- (e). None of the above. Explain in the space below.

I did not object hearsay because I think the letter is not being offered for its truth, but to show that Elvis was capable of writing and therefore alive. None of the other options seemed plausible. I would have objected to inadequate authentication, but it was not an option.

COURT: Sustained

PLAINTIFF'S ATTORNEY: Alright, then, we'll call an expert. We call Peter Richter.

BAILIFF: Do you swear to tell the truth?

WITNESS: I do.

BAILIFF: State your name and address.

WITNESS: Peter Richter, 3412 Mulholland Drive, Los Angeles.

Q: What is your occupation.

A: I am a freelance journalist who specializes in Elvis Presley. I have read every book written about him. I have one of the largest collections of Elvis memorabilia in the United States. Since his alleged death in 1977, I have investigated and written about reports that he is still alive. For over ten years, this has been my full-time occupation, and I have had over 200 of my articles published. I have talked to everyone I can locate who thinks they have seen or heard from Elvis since his death. Let me tell you, I have talked to a number of real fruitcakes out there, who think Elvis spoke to them from cereal boxes, or they met him when they were taken aboard a UFO, and so forth. It is often hard to distinguish the crazy people from those who really have seen or

communicated with Elvis Presley. I guess you could say I am an Elvisologist.

Q: Have you ever appeared on the Nancy Grace show?

A: Yes, several times.

Q: Handing you plaintiff's exhibit one, the letter allegedly from Elvis, would you examine it?

A: Okay

Q: in your opinion as an expert on Elvis Presley, do you think it is genuine?

4. What objection(s) could the defense make?

- (a). No foundation of any personal knowledge.
- b. No foundation that the witness is qualified to be an expert.
- c. No foundation that the witness used reliable methods.
- d. Hearsay and no exception applies.
- e. None of the above. Explain in the space below.

Although Richter was offered as an expert (who could base an opinion on second-hand knowledge), I do not think there is an issue that requires expert testimony, so he can only testify as a lay witness, subject to the personal knowledge rule.

COURT: Overruled.