

Part II: Essay 1 (One Hour)

Madoff is prosecuted for securities fraud. He is accused of taking investors' money by telling them he is investing it in secure ventures and then stealing it. The prosecution presents the following evidence:

1. Testimony of Madoff's wife, Roxie, that for 25 years she and Madoff ran a fraudulent investment firm and that they planned the scheme together.
2. Testimony of Madoff's secretary that the firm's accountant has records showing all of the fraudulent transactions. She also identifies a series of documents that she says are journals kept by Madoff's son who was vice president of the firm. The journals show entries for moneys being sent to Swiss bank accounts in The Bank of Geneva for the past 10 years.
3. Testimony of Madoff's psychiatrist who says he once caught a glimpse of some papers Madoff had in a partially opened briefcase during a session between him and Madoff at the psychiatrist's office. The heading on one of the papers was titled: "Things I need to do to keep this swindle from being found out."

In defense:

1. Madoff testifies that his father-in-law told him just before he died, "I am having a heart attack because my daughter told me she is going to frame you."
2. Testimony of Orson, a private investigator, who says he was hired, two years before, by a woman to find out if her husband was cheating on her. Orson says he can't remember any more of the details, but he identifies a report he made on the case. The report states that he told his client, identified as "Mrs. Roxie M." that his investigation established that her husband was having an affair. Madoff's lawyer asks that the report be admitted into evidence.
On cross-examination, the prosecutor asks the investigator, "Weren't you convicted of shoplifting 9 years ago?"
3. Madoff's lawyer presents copies of records from a bankruptcy court in Switzerland which state that The Bank of Geneva, referred to in the prosecutions case above, was liquidated in bankruptcy and went out of business 30 years ago. The lawyer asks the court to take judicial notice of the records.
4. The president of the local Chamber of Commerce testifies that, "Madoff is a terrific guy. Everybody likes him. He devotes his life to personally nursing sick dogs and cats back to health."

Discuss all issues raised by these facts. State how these issues should be resolved and why.

END OF ESSAY QUESTION 1

Part III: Essay 2 (One Hour)

Alice sues Tiffany for breach of contract. She alleges that Tiffany agreed to buy Alice's house, paid a deposit of \$25,000 and then backed out when the housing market collapsed. Tiffany claims Alice misrepresented that the house had no defects. Tiffany says the house has serious structural problems that make it unsafe to live in. Tiffany is also counter suing for return of her deposit.

Alice presents this evidence:

1. Testimony by Alice that the contract she had with Tiffany called for final payment within 30 days of deposit and that Tiffany failed to pay.
2. Alice testifies that she lived in the house for 25 years and that it was "in perfect condition."

In defense, Tiffany presents:

1. Testimony by Sid, a structural engineer, that he invented a new device called a "House-a-Meter" which showed that the house's foundation was unsafe.
2. Testimony by Alice's next door neighbor, Flo, that Alice's lawyer told her "Alice has to unload that dump before it falls in on her."
3. Flo also testifies that she saw two workmen come out of Alice's house one day and one of them commented, "The floor of that place vibrates as you walk on it. I ain't working inside there."
4. Testimony of Jack who says he sued Alice for personal injuries received by falling through a rotted staircase inside the house. He says that Alice repaired the broken step after he sued and that her insurance company has said they would settle the case with him for \$50,000, but he wants \$100,000.

On cross examination, Jack is asked if it is true that he has filed over 500 personal injury suits against people which have all been ultimately dismissed by the courts as frivolous. When Jack denies this, records the dismissal of the lawsuits from the county clerk's office are put in evidence.

5. Testimony of Simon, a building contractor, that Alice's secretary called him last year and asked. "Can you do a quick, cheap repair job on a house that only needs to hold up until it is sold?"

In rebuttal, Alice puts in evidence a transcript of a deposition in the personal injury case brought against her by Jack in which Jack said that his injuries in Alice's house came from ceiling plaster falling on him.

Discuss all issues raised by these facts. State how these issues should be resolved and why.

END OF ESSAY QUESTION 2

END OF EXAM