



Appendix E

RULES OF EVIDENCE - HYPOTHETICAL SITUATIONS

- a. Doug told me he killed his brother and Doug is on trial for the murder. Should I be able to testify to what he told me?
- b. During direct examination, the attorney wants to show that the witness, David, was at school on November 30. Can he ask, "You were at school on November 30, isn't that correct?"
- c. Same situation as in b. Can the attorney ask David, "Where were you on November 30?"
- d. Harry's being sued in a civil trial for breach of contract. Can the prosecution introduce evidence that Harry has been unfaithful to his wife?
- e. Can Harry's unfaithfulness be introduced in a contested divorce case?
- f. John made a sworn statement two days after the automobile accident that he had witnessed. When the case finally comes to trial and he is called as a witness, John cannot remember what happened. Can his attorney show John the statement that may help him remember? Must the attorney introduce the statement into evidence?
- g. Same situation as in f, only John does remember and testifies on direct examination. However, his testimony contradicts his earlier sworn statement. On cross-examination, can the other attorney bring up the inconsistencies?
- h. Mary is in a car accident and she sues the other driver. On her direct examination, damage to the car is never mentioned. Can the defense, on cross-examination, ask about the repair costs of the car?
- i. Herb is a doctor. The attorney has Herb testify to this when Herb is on the stand. Can Herb testify that in his expert opinion, the victim was suffering from a fracture of the right leg?
- j. Can Joe, a plumber who worked with the victim, testify that the victim was suffering from a fracture of the right leg?
- k. Kevin has never seen Amy with her baby. Can Kevin testify that Amy is a terrible mother?



Answers:

1. Yes. Although this is hearsay (an out-of-court statement being used to prove the contents of the statement), it is an admission by the defendant that goes against him--one of the exceptions to the hearsay rule.
2. No. Leading questions are not allowed on direct examination, so it will have to be rephrased (e.g., "Where were you on November 30?")
3. See #2 above.
4. No--It is irrelevant.
5. Yes
6. Yes. The attorney can show John the statement he made after the accident. Yes, he/she can use the statement to refresh John's recollection by showing it to him briefly. The statement need not be admitted into evidence.
7. Yes. This is called impeaching the witness by pointing out their prior inconsistent statement(s).
8. Technically, no. This is beyond the scope of direct examination. However, in practice this rule is broadly interpreted, so the judge might allow this question.
9. Yes. Since Herb was properly qualified as an expert in this area.
10. No. He is not an expert in this area.
11. No. Sally has no personal knowledge of this.