

EVIDENCE (60 Minutes)

Question E-1 (6 minute/s) John was Chief Executive Officer and majority shareholder of Small Bank, Inc. ("SBI"). A deficiency notice was issued to SBI alleging that part of John's salary was unreasonable and was a dividend, which was not deductible by SBI.

Karin, who was then a vice-president of SBI, was called as a witness by the Respondent and testified that she was present with two other bank officers during a conversation with John when John said, "Let's not pay out our income as dividends. Let's raise all of our salaries." The Petitioner objected that Karin's testimony concerning John's statement was hearsay. How should the court rule? Briefly explain.

Question E-2 (3 minute/s) Same facts as E-1. During cross-examination by Petitioner, Karin was asked whether she was presently unemployed because SBI had fired her six months earlier. Should the court permit the witness to answer if there is a timely objection? Briefly explain.

Question E-3 (3 minute/s) Same facts as E-1. The petitioner obtained copies of SBI's records that include John's salary for the years in question. In order to have these records admitted during the Tax Court's proceeding as SBI's business records, what foundation testimony must be introduced.

Question E-4 (3 minute/s) Same facts as E-1. During its case, Respondent called Cathy as a witness. Prior to the trial and during an interview with an IRS agent, she said that she was the CEO of a bank that was in the same city as SBI and that, in her opinion, John's salary was clearly excessive and unreasonable. She testified on direct examination that she was familiar with SBI and John's duties and responsibilities. She further testified that she believed that the salary John received was a reasonable amount for his responsibilities and the complexities of the SBI business. Respondent's counsel then attempted to question Cathy about the statement she made prior to trial concerning the salary being excess. If Petitioner's counsel objected on the basis that the IRS is attempting to impeach its own witness, how should the Tax Court rule? Briefly explain.

Question E-5 (3 minute/s) Assume that in Question E-4 the court overruled the objection. Petitioner then objected on the ground that the question is an improper method of impeachment. How should the Court rule? Briefly explain.

Question E-6 (3 minute/s) The Tax Court proceeding concerns whether Paula, the petitioner, is allowed for federal income tax purposes to deduct certain travel and entertainment expenses. Paula's counsel, before calling any witnesses, address the court and stated, "Your honor, before we call our first witness we would like to introduce as Exhibits, all of the receipts for the expenditures in controversy." How should the court rule on Respondent's objection to the exhibits as being not authenticated? Briefly explain.

Question E-7 (5 minute/s) Same facts as in E-6. Rather than introducing the receipts.

Paula called Carl, a CPA, who will testify that he had reviewed all of Paula's records and had prepared a chart with all of the travel and entertainment expenses listed by month on the chart. Respondent's counsel objected on the basis that the chart was not admissible as an exhibit unless the underlying documents were also admitted as exhibits. Should the chart be admitted? Explain briefly.

Question E-8 (6 minute/s) Same facts as in E-6. One month before the trial, Paula was at a cocktail party where she met a stranger, Sheila. After a brief conversation, Paula discovered that Sheila was a lawyer. Paula immediately said to her: "I just got a deficiency notice from the IRS. They caught me claiming bogus entertainment expenses." Will the conversation be protected by Paula's attorney-client privilege? Explain briefly.

Question E-9 (3 minute/s) Same facts as in E-8 and that Sheila is permitted to testify. During her cross-examination, Sheila was asked whether two years earlier she had been convicted of driving under the influence of alcoholic beverages, which was a misdemeanor with a maximum sentence of six months in jail. Is this proper cross-examination. Explain briefly.

Question E-10 (3 minute/s) The trial before the Tax Court concerns whether certain payments received by Juan should have been included for federal income tax purposes as gross income for 2001. At the outset of the trial, Petitioner's counsel moved the court to "prohibit all persons who will later testify as witnesses from being present in the courtroom." Should the judge grant the motion and exclude from the courtroom the IRS agent who investigated the case prior to the agents' testimony? Explain briefly.

Question E-11 (3 minute/s) Same facts as E-10. During the respondents' case, IRS Agent Alan testified as a witness. He testified that he had met with the Juan concerning the payment items. When Counsel for Respondent asked Alan whether Juan had made any statement during the meeting, Alan replied that he could not remember what Juan had said. Petitioner's counsel objected to Alan reviewing the report of the meeting he had written to refresh his memory because the report had not been admitted into evidence. How should the court rule? Explain briefly.

Question E-12 (4 minute/s) Assume that in Question E-11 Alan is permitted to review his report and will testify that, during the meeting, Juan said to him: "I know that I should have included it. Can't we settle this for half of what I owe? Is Alan's testimony regarding this statement admissible against Juan? Explain briefly.

Question E-13 (3 minute/s) The primary dispute in the Tax Court trial is the estate tax value of a painting included in the decedent's gross estate. Petitioner called the widow of decedent and asked her if she had an opinion concerning the painting's value. Respondent objected to her testimony on the basis that she was not an expert, and that she did not have any basis to express an opinion as a lay witness. Should the court permit the opinion to be given? Explain briefly.

Question E-14 (3 minute/s) Same facts as E-13. During widow's cross-examination, she was asked whether her husband had ever told her where he had obtained the painting. Petitioner objects to the question on the basis that the question is beyond the

scope of proper cross examination. What is the test the court should apply in determining whether to sustain the objection?

Question E-15 (6 minute/s) Same facts as E-13. Petitioner offered into evidence a written appraisal of the painting by Art Appraisers Inc (AAI) that valued the painting at \$50,000. Respondent objects as hearsay to a sentence in the document which states: "I consulted with three reputable art gallery owners all of whom reported that they believed the painting was not authentic." For purposes of the question, assume that Tax Court Rule 143(f) regarding expert witness reports has been satisfied. How should the court rule on Respondent's hearsay objection? Explain briefly.

Question E-16 (3 minute/s) In a Tax Court proceeding, when may leading questions be asked on direct examination?