

**PART THREE**  
**EVIDENCE**  
**(60 minutes)**

**Question E-1. (4 minutes)**

Taxpayer is under IRS audit. Taxpayer, Taxpayer's spouse "Spouse", and friend Joe are having drinks prior to dinner at a local supper club. Joe is not a business associate of Taxpayer. Rather, they are on the same bowling team. Over cocktails, Taxpayer remarks to Spouse, but within the hearing of Joe: "I hope they don't find out. I did not report that \$90,000 we took in from Acme Electric last year." Later, in Taxpayer's Tax Court trial, Joe is called as a witness against Taxpayer. Over objection, can Joe testify to the remark in the supper club? Answer "yes" or "no," then explain briefly.

**Question E-2. (4 minutes)**

Refer to the trial described in Question E-1. The government calls witness Tillie Neighbor to the stand. She identifies herself as living in the same subdivision as Taxpayer and then testifies to the lavish lifestyles of Taxpayer and spouse. A magnificent home, three luxury cars, swimming pool and yacht, among other possessions. She is then asked on direct examination if she knows how Taxpayer and Spouse manage to live in such fashion. If allowed to testify, Tillie will answer that she does not know directly, but word around the neighborhood is that Taxpayer cheats on taxes. What will be the best objection or objections for Taxpayer to make to the government's question which seeks to have Tillie testify to "word around the neighborhood"? State the objection or objections to this sort of evidence,

**Question E-3. (2 minutes)**

Refer to Question E-2. Will the judge permit Tillie to testify that in her opinion the neighbors of Taxpayer and Spouse believe that Taxpayer cheats on taxes?

**Question E-4. (4 minutes)**

Refer to the trial described in Question E-1. Taxpayer testifies in Taxpayer's own defense. While on the stand during direct examination Taxpayer pulls from a shirt pocket a memo which Taxpayer uses to refresh Taxpayer's recollection about how Taxpayer computed some amounts which appeared on the tax return. After providing this information, Taxpayer put the memo back in the pocket. On cross examination, the attorney for the government asks Taxpayer to produce the memo again but this time to hand it to the attorney so the attorney can look it over. Taxpayer responds: "No, that's private." Upon the government attorney's request, will the judge order Taxpayer to hand over the memo to the government lawyer? Answer "yes" or "no," then explain briefly.

**Question E-5. (2 minutes)**

What is the rule in the Tax Court regarding whether a party can impeach the party's own witness?

**Question E-6. (2 minutes)**

In a Tax Court trial, a witness usually takes an oath just before starting to testify. What provision is made in the Federal Rules of Evidence for witnesses who refuse to swear to an oath, perhaps for religious reasons? What method is in such situations to commit the witness to telling the truth?

**Question E-7. (2 minutes)**

May the judge presiding at a trial also testify as a witness in the case?

**Question E-8. (2 minutes)**

A witness who speaks in a foreign language testifies in a Tax Court trial. How will this testimony be made understandable to the judge, attorneys and other court personnel who do not speak that language?

**Question E-9. (3 minutes)**

An attorney in a Tax Court trial wants the witnesses in the case excluded from the courtroom until the time that each individual testifies. Will the attorney be able to effect exclusion of witnesses? Answer "yes" or "no," then explain briefly.

**Question E-10. (4 minutes)**

A taxpayer discloses the mental stress and emotional concerns about pending tax problems to the taxpayer's psychologist, and in the process inadvertently reveals information about potential tax liability. At a later trial in Tax Court, the government calls the psychologist to the witness stand to testify against the taxpayer, as a government witness. The taxpayer objects. Should the judge allow the psychologist to testify about the tax disclosures made by the taxpayer? Answer "yes" or "no," then explain briefly.

**Question E-11. (4 minutes)**

In Taxpayer's trial in Tax Court, the IRS calls an accountant to the stand as an expert witness. The accountant is asked whether the accountant has studied Taxpayer's records, and answers "yes." The accountant is next asked whether Taxpayer's documents reveal criminal fraud and guilt under the applicable section of the federal Code. Taxpayer objects. Should the judge permit the witness to answer? State "yes" or "no," then explain briefly.

**Question E-12. (4 minutes)**

Refer to the trial described in Question E-11. The accountant is asked on cross-examination by Taxpayer's counsel if the accountant is acquainted with the text by Edwards on Accounting Practices and Policies. Assume it is a standard work in the accounting field, a well-known text. The accountant answers no, I cannot say it is a reliable text." Taxpayer's counsel wants to promptly cross-examine the accountant from the text, asking the accountant why the accountant's approach to analyzing the records contradicted the standard method described in the text. How will Taxpayer's counsel proceed? Describe what counsel should do next, in order to convince the judge to allow counsel to immediately cross-examine from the text.

**Question E- 13. (4 minutes)**

Refer to Question E- 12. If the judge allows cross-examination from the text, may Taxpayer's counsel go further and have the Edwards book marked as an exhibit and received in evidence? Answer "yes" or "no," then explain briefly.

**Question E-14. (4 minutes)**

Refer to the trial described in Question E-11. Taxpayer calls an expert witness to the stand, a polygraph operator. If allowed to testify, the polygraph expert will state that he tested Taxpayer regarding Taxpayer's assertions about whether Taxpayer truthfully reported matters reflected on Taxpayer's tax returns, and that Taxpayer passed the lie detector test. The government objects to this lie detector testimony. Applying current federal law, will the judge allow the testimony? Answer "yes" or "no," then explain briefly.

**Question E-15. (4 minutes)**

Refer to the trial described in Question E-11. Taxpayer testifies in Taxpayer's own defense.

On cross-examination the government lawyer asks: "Are you the same Leslie Taxpayer who was convicted of forgery in federal court in 1985 and sentenced to two years?" Taxpayer's counsel objects to the question. Under the Federal Rules of Evidence, is the question proper? Answer "yes" or "no," then explain briefly.

**Question E-16. (2 minutes)**

Refer to the trial described in Question E-11. After Taxpayer testified of never having had any plan to defraud the government or falsify on Taxpayer's tax returns, the IRS calls a tax attorney as a rebuttal witness. This witness had been consulted by Taxpayer prior to preparation of the tax returns in question in this trial. The tax attorney will state that Taxpayer came to the attorney's office, revealed a plan to conceal gross income, and requested the attorney to represent taxpayer in concealing the gross income. The attorney declined employment. When this attorney appears at Taxpayer's current trial, what is the most likely objection which Taxpayer will assert to the attorney's testimony? State the objection.

**Question E- 17. (5 minutes)**

Refer to Question E- 16. With respect to the tax attorney who declined employment by Taxpayer, will the attorney's testimony be admissible? Answer "yes" or "no," then explain briefly.

**Question E-18. (4 minutes)**

Originals of written documents are often required in court under the best evidence rule, sometimes called the original writings rule. However, occasionally an original is not available to a party, and the party must supply an excuse for nonproduction of the original in order to get a copy received in evidence. State excuses which will justify introduction of a copy, reasons that an original cannot be produced.