

Question # 1

In a suit based on a will, the distribution of \$1 million depends upon whether the wife survived her husband when both died in the crash of a small airplane. An applicable statute provides that, for purposes of distributing an estate after a common disaster, there is a rebuttable presumption that neither spouse survived the other. A witness has been called to testify that as she approached the plane she heard what she thought was a woman's voice saying, "I'm dying," although by the time the husband and wife were removed from the wreckage they were both dead.

Is the witness's testimony admissible?

- (A) No, because the matter is governed by the presumption that neither spouse survived the other.
- (B) No, because the witness's testimony is too speculative to support a finding.
- (C) Yes, because the hearsay rule does not apply to statements by decedents in actions to determine rights under a will.
- (D) Yes, because it is relevant and not otherwise prohibited.

Question # 2

A defendant was lawfully arrested for bank robbery, without an arrest warrant. He was not given Miranda warnings but was immediately taken to a police station, where he and five other men were placed in a lineup to be viewed by the bank teller who had been on duty at the time of the robbery. Each man was required to say the words spoken by the bank robber: "Give me all your money. I've got a gun." After all the men in the lineup spoke those words, the teller identified the defendant as the robber.

The defendant subsequently moved to suppress the teller's testimony, claiming that the lineup violated his privilege against self-incrimination. At the suppression hearing, the teller testified that she had not gotten a good look at the robber's face, because the robber had been wearing a hat pulled down over most of his face, but that she was certain the defendant was the robber because she had recognized his voice at the lineup.

Should the defendant's motion be granted?

- (A) No, because being required to speak at the lineup, while compelled, was not testimonial or communicative.
- (B) No, because testimony of a witness based on firsthand observation is not subject to exclusion as the fruit of the poisonous tree.
- (C) Yes, because the defendant was compelled to speak at the lineup, and this compelled speech led to the witness's identification testimony.
- (D) Yes, because the defendant was never informed that he could refuse to make a statement and that any statement could be used as evidence against him.

Mbe Practice Questions

Clemens Wendtner

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