

• 01-2: A person may invoke the privilege against self-incrimination in any civil or criminal proceeding, whether formal or informal (e.g. grand jury proceedings, trials, administrative hearings) – the privilege is available only where the possible consequence of the incriminating statement is criminal prosecution – it may not be invoked to shield against personal disgrace, loss of employment, or civil confinement (e.g. under cross examination in a civil action for negligence, a witness may properly refuse to answer a question about his personal use of drugs if doing so could subject the witness to criminal liability). (2011-NCBE-OPE3 Exam-Q:040) [Seperac]

• 02-2: A dead person cannot invoke a privilege. (1991-NCBE-1991 Exam) [Seperac]

• 02-2: A witness can invoke 5th amendment and remain silent if judge believes there is some reasonable possibility that the witness will incriminate herself. (1991-NCBE-1991 Exam) [Seperac]

• 02-2: If a witness refuses to answer at cross examination on the ground of self-incrimination, the judge may order the witness to testify or have the direct testimony stricken because the invocation of the privilege prevents adequate cross examination. (1992-NCBE-1992 Exam) [Seperac]

• 02-2: In a Grand Jury Hearing, privileged information cannot be disclosed absent a waiver of the privilege. (1991-NCBE-1991 Exam) [Seperac]

• 02-2: In refusing to answer a question, a witness can invoke the privilege against self-incrimination only if the judge believes that there is some reasonable possibility that the witness will incriminate himself. (1992-NCBE-1992 Exam) [Seperac]

• 02-2: Statement made to priest at a social event is not privileged (not within the scope of the privilege). (1991-NCBE-1991 Exam) [Seperac]

E. Insurance Coverage

• 01-2: Under the FRE, evidence of liability insurance cannot be used substantively to prove negligence or other wrongful conduct, BUT where the evidence of liability insurance is offered for some other purpose, such as impeachment for bias as a relevant, non-negligence purpose, it is admissible (e.g. if an insurance investigator testifies in an automobile accident case on behalf of the defendant, the plaintiff may cross examine and impeach the investigator by showing that he is employed by the defendant-driver's insurer and is thus biased – though the bias is established by evidence of liability insurance, the evidence is admissible for the impeachment purpose). (2011-NCBE-OPE3 Exam-Q:013) [Seperac]

• 02-2: Evidence of an insurance policy is admissible to prove the defendant owned or had responsibility for the insured property. (1998-NCBE-1998 Exam-Q:136) [Seperac]

E. Proceedings To Which Evidence Rules Apply

• 02-2: If case will use federal substantive law, you use federal common law rules for privilege. (1991-NCBE-1991 Exam) [Seperac]

F. Remedial Measures

• 02-2: Evidence of remedial measures after an accident is inadmissible for public policy reasons. (1992-NCBE-1992 Exam) [Seperac]

• 02-2: Evidence of remedial measures is inadmissible, because its admission would discourage the taking of such remedial measures. (1992-NCBE-1992 Exam) [Seperac]

• 02-2: Subsequent remedial measures are admissible to establish that a defendant owned or controlled a property involved in an accident. (1992-NCBE-1992 Exam) [Seperac]

• 02-2: Subsequent remedial measures are admissible to rebut a defendant's claim that he did not own or control property involved in an accident where he subsequently repaired the property. (1992-NCBE-1992 Exam) [Seperac]

G. Compromise, Payment Of Medical Expenses, And Plea Negotiations

• 01-2: If a claim is disputed as to validity or amount, statements or admissions made in compromise negotiations are inadmissible to prove liability (but can be used to show bias, prejudice, negative undue delay or obstruction) in order to encourage settlements (which are less likely to occur if the parties are guarded in their negotiations). (2006-NCBE-OPE1 Exam-Q:058) [Seperac]

• 02-2: Admissions in conjunction with an offer to pay medical bills (rather than a settlement) are admissible. (1992-NCBE-1992 Exam) [Seperac]

• 02-2: Any evidence of furnishing, or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is inadmissible. (1998-NCBE-1998 Exam-Q:069) [Seperac]