

**Monterey College of Law - Hybrid**

**EVIDENCE- SEC. 1**

Mid Term Examination

FALL 2024

Prof. S. Chronister

**General Instructions:**

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

Question 1

Assume the following fact pattern occurred in a jury trial in California Court.

Paul works as an aircraft mechanic, and was working a contract job at the Downtown Airport. While on site to work on a plane, Paul was injured when Harry, an employee of the airport, allowed Paul onto the jet bridge while the bridge was closed for maintenance. Paul tripped on an exposed wire while walking down the bridge and broke his leg. When he fell Paul called out for help. Harry was in charge of access to the jet bridge, and knew the state of the maintenance, but thought that Paul would have known to step around the wiring because he was familiar with plane maintenance. Harry went down the jet bridge and helped Paul call for an ambulance. While they waited for paramedics, Harry told Paul “I am so sorry you are hurt! They really shouldn’t have left those wires exposed. I told the airport manager this bridge was unsafe.

Paul sues Downtown Airport for negligence. The airport denies liability, saying the jet bridge maintenance was being performed by a third party company, ABC Contractors. ABC denies liability saying the accident was caused by Harry failing to keep people from entering the closed jet bridge.

Discuss all evidentiary issues and arguments that would likely arise in each section below, including objections if any, and likely court rulings on the admissibility of the evidence. Assume proper objections were made.

1. Paul’s counsel called Margaret, the airport manager, as the first witness. Margaret testified that she was walking by the gate where Paul was working when she heard Paul calling for help. She then testified that the jet bridge was old and had exposed wiring prior to the maintenance work, but that the airport was not responsible because ABC Contractors managed maintenance of the bridge.
2. Then, Paul’s attorney called the Insurance Agent for the airport. The agent testified that the airport was insured for all negligence claims that occurred within the terminals, including the jet bridge. Also, the Insurance Agent testified that he offered Paul \$100,000 to settle the lawsuit, and that Paul rejected the offer.
3. Next, Carl, the custodian of records for the airport, testified. He testified that the airport had submitted claims to the insurance company from two (2) other passengers who had tripped walking down the jet bridge due to exposed wiring. Also, he testified that after this lawsuit began, the airport covered the exposed wiring while continuing to perform maintenance on the bridge.

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## Question 2

Danny is prosecuted for murder in the case of People of the State of X v. Danny. It is alleged that Danny broke into Vanessa's apartment at 2:00am before threatening to kill her if she did not sleep with him. Danny and Vanessa had been in a relationship 5 years prior, and since Vanessa had ended things she would receive vague threatening messages from unknown numbers, but could never trace them back to Danny. After Danny allegedly threatened to kill her, Vanessa screamed "Someone please help me!" knowing that the walls of her apartment were very thin. Danny and Vanessa then got into a physical altercation, ending with Vanessa falling backwards into her coffee table where she was immediately knocked unconscious. Danny maintains that Vanessa had invited him over, that the fight was a misunderstanding, and that he pushed Vanessa off him, which made her trip backwards into the coffee table.

Wes, Vanessa's neighbor, heard her scream and came outside to see a man leaving Vanessa's apartment with blood on his arm. The apartment hallway was dark, but Wes thought he could see the man's face. Wes then immediately call 911 and spoke with Penny, a police officer, about the incident. Paramedics arrived at 2:30am, but Vanessa was pronounced dead at the scene.

At 5am that morning Penny showed Wes a photo lineup of suspects, and Wes picked Danny out of the lineup.

Assume the following occurred in the jury trial of Danny. Discuss all evidentiary issues and arguments that would likely arise in each section below, including objections, if any, and the likely trial court ruling on the admissibility of the evidence. The State of X has adopted the Federal Rules of Evidence.

1. The Prosecution calls Wes as a witness. Wes testifies that he has always had memory issues, and is having trouble remembering the night of the attack. Wes testifies that he saw a man after the attack, that he remembers making the identification at the police station, but that he cannot remember what the assailant looks like now. The Prosecution then calls Penny, the police officer, as a witness. Penny testifies that Wes identified Danny in the lineup.

2. Next Wes testifies that he heard Vanessa scream "Someone please help me!" the night of the attack.

3. Danny testifies in his own defense that he and Vanessa had dated for a year and Vanessa had always had a violent temper. Danny testifies that on the night in question, Vanessa let him into the apartment and then verbally and physically attacked him. Danny admits to pushing Vanessa, but claims it was in self-defense, and that he did not mean for her to fall into the coffee table.

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### Question 3

Assume the following fact pattern occurred in California state court.

Patrick and Dani were hired at X company at the same time, 5 years ago. They worked in different departments, but interacted throughout the year at company retreats, happy hours, and holiday parties. Patrick always felt that Dani disliked him, but he did not know why. Patrick and Dani were at a company happy hour and ended up staying at the bar talking until midnight. The next morning Patrick heard Dani talking to a coworker in the break room saying 'Patrick was hitting on me all night, I was trying to be polite so he wouldn't get upset, but he was had so much to drink and he is known to be a violent drunk.' Patrick claims he was drinking non-alcoholic drinks on the night in question.

Patrick filed a defamation lawsuit against Dani. Discuss all the evidentiary issues and arguments that would likely arise in each section below, including objections, if any, and the likely trial court ruling on the admissibility of the evidence.

1. During Patrick's case in chief, Patrick calls Emily, an employee at X company, who testifies that she heard Brad, the boss, say, "I didn't know that Patrick would be so violent or inappropriate when drunk. He was up for his 5 year bonus and now I don't know if I should recommend him for that." Brad did not end up recommending Patrick for the bonus, and told Patrick it was because the company did not hit its year-end revenue goals. After learning about the defamation lawsuit, Brad quit and started a new job in another state. No one at the company knows his new address or phone number.

2. Next, Patrick testified to Dani's statements in the break room.

3. Next, the Patrick called Tom, a good friend of Patrick's, to testify. Tom testified that he and Patrick worked together for 3 years at a different company, and Patrick never drank at work events. Tom additionally testified that in his opinion Patrick is a peaceful person, and he has never seen him be violent.

4. During the Defense's case-in-chief the Defense called Walker, Patrick's college roommate, to testify. Walker testified that during college Patrick had been kicked out of his fraternity after being accused of sexual assault and that Patrick had been hospitalized multiple times for alcohol poisoning.

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# **Monterey College of Law - Hybrid**

## **EVIDENCE- SEC. 1**

*FALL 2024*

*Prof. S. Chronister*

### **ANSWER OUTLINE**

#### *Answer Outline – Question 1*

##### *1. Manager's testimony*

*Logical Relevance – Evidence having any tendency to make the existence of any disputed fact of consequence to the determination of the action more or less probably than it would be without the evidence.*

*Balancing / Legal relevance – Court must balance the probative value of the evidence against the danger of unfair prejudice, confusion of the issues, misleading the jury, or undue consumption of time. If prejudice is substantially greater than the probative value of the evidence the court will exclude the evidence.*

*Hearsay – Out of court statement offered for its truth. Inadmissible unless exception applies.*

*Spontaneous statement - A statement that narrates, describes, or explains an act, condition or event perceived by the declarant, made spontaneously while declarant was under stress / excitement caused by that perception.*

*Contemporaneous statement – A statement that explains the conduct of the declarant, made while the declarant was engaged in the conduct.*

*State of mind – Declarant's then existing physical or mental condition is admissible to show that condition (the fall). Declarant's cry for help when he fell and is an emotional response to falling.*

##### *2. Insurance Agent's testimony*

*Logical Relevance – Evidence having any tendency to make the existence of any disputed fact of consequence to the determination of the action more or less probably than it would be without the evidence.*

*Balancing / Legal relevance – Court must balance the probative value of the evidence against the danger of unfair prejudice, confusion of the issues, misleading the jury, or undue consumption of time. If prejudice is substantially greater than the probative value of the evidence the court will exclude the evidence.*

*Settlement offers – Offers to settle are inadmissible to prove liability of the amount of the disputed claim, or the validity of the claim. Statements made during settlement negotiations are excluded against public policy. The Insurance Agent's settlement offer is inadmissible to prove damages or medical expenses amounts or the airport's liability for negligence.*

*Premises liability – Evidence of liability insurance is not admissible to prove negligence. It IS admissible to prove "ownership or control" of the premises. Manager denied the airport is liable because the jet bridge is maintained by another entity. However, the insurance policy specifically provides that all the jet bridge is covered against negligence claims.*

*Limiting instruction – Trial court could instruct the jury that they may consider the insurance coverage for the “ownership and control” issue, but not for fault.*

### 3. The Custodian of Record's testimony

*Logical Relevance – Evidence having any tendency to make the existence of any disputed fact of consequence to the determination of the action more or less probably than it would be without the evidence.*

*Balancing / Legal relevance – Court must balance the probative value of the evidence against the danger of unfair prejudice, confusion of the issues, misleading the jury, or undue consumption of time. If prejudice is substantially greater than the probative value of the evidence the court will exclude the evidence.*

*Similar happenings – The fact that the airport had 2 previous claims for passengers falling does not establish fault. However the fact that there were 2 injuries in the same area and caused by the same exposed wiring where P fell may establish that the airport had knowledge of the causation and did nothing, and therefore breached the duty of care.*

*Limiting instruction – Court could instruct the jury that the 2 claims be used as putting the airport on notice that there was a problem with the jet bridge's safety. However, that can't be used as a basis for fault.*

*Subsequent remedial measures – Evidence of safety measures or repairs are inadmissible to prove negligence. The fact that the airport covered the exposed wiring after the lawsuit is inadmissible to prove fault. However, like with similar happenings it could be admissible to show something else, like knowledge and ownership.*

*Hearsay – the claims (if offered for TOMA) are hearsay. Like discussed above, if they are offered only to prove knowledge of the problem or ownership of the doors, the court may use a limiting instruction.*

*Business Record Exception - 1) recording of an act or event, 2) made by a person with personal knowledge, 3) made at or near the time of the event or act, 4) by a person under a duty to keep the records in the ordinary course of business. Here, C, as custodian of records, has access to the records of events in the “regular course of business” at the airport. He is under a duty to record events at or near the time of the event. With that foundation the records may be admissible. But consider the limiting instruction above for similar happenings.*

## *Answer Outline-Question 2*

### 1. W's Identification

*Logical Relevance – A tendency to prove or disprove a fact of consequence.*

*Balancing / Legal Relevancy – The probative value of the evidence must be weighed by undue prejudice, waste of time or jury confusion.*

*Witness competency / Personal Knowledge – Witnesses presumed to be competent until contrary demonstrated. A witness needs to have personal knowledge of the facts to which they are testifying.*

*Hearsay - Out of court statement offered for TOMA. Hearsay is typically inadmissible unless there is an exception.*

*Prior Identification – A statement is not hearsay if the declarant testifies and is subject to cross-examination about a prior statement, and the statement identifies a person as someone the declarant perceived earlier. Here, W identified D in a photo lineup a few hours after the incident. W is testifying and subject to cross examination. Even though W does not currently remember the man he identified, he does testify that he identified the assailant soon after the attack. Though the Defense might argue hours after the incident is too long, and not fresh in W's memory. The police officer then testifies to confirm that W did identify D. With these two testimonies together, the hearsay exception is met. \*Extra analysis: Is W truly subject to cross if he doesn't remember the specifics of the night?*

*Confrontation Clause – An out of court statement, if deemed testimonial, can be produced against a criminal D only if 1) he has the opportunity to cross-examine the declarant, and 2) the witness is unavailable to testify at trial. Analysis: W is not unavailable he is present testifying and subject to cross.*

## 2. W's Testimony re: the scream

*Relevance – A tendency to prove or disprove a fact of consequence.*

*Balancing / Legal Relevancy – The probative value of the evidence must be weighed by undue prejudice, waste of time or jury confusion.*

*Witness competency / Personal Knowledge – Witnesses presumed to be competent until contrary demonstrated. A witness needs to have personal knowledge of the facts to which they are testifying. Here, W testifies that he heard V scream out. \*Possible issue of personal knowledge, as the facts don't tell us that W saw V while she screamed. May need additional facts to explain how he could recognize V's voice?*

*Hearsay - Out of court statement offered for TOMA. Hearsay is typically inadmissible unless there is an exception.*

*Dying Declaration – In a homicide case, or civil case, a statement that the declarant, while believing they were under the threat of imminent death, made about its cause or circumstances. The declarant must now be unavailable. Here V died from her injuries and is thus unavailable. If we can show that W has knowledge of V's voice, "someone please help me" might meet this exception if it can be shown that V believed her death was imminent. However, V statement does not specifically say she imminently fears for her life, so there would need to be additional facts to show that knowledge.*

*Excited Utterance – A statement made while the declarant is under the stress of an exciting or startling event.*

*Present Sense Impression - A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.*

*Confrontation Clause – An out of court statement, if deemed testimonial, can be produced against a criminal D only if 1) he has the opportunity to cross-examine the declarant, and 2) the witness is unavailable to testify at trial. Analysis: V is unavailable, but the statement is likely not testimonial.*

## 3. D's testimony

*Logical Relevance – A tendency to prove or disprove a fact of consequence.*

*Balancing / Legal Relevancy – The probative value of the evidence must be weighed by undue prejudice, waste of time or jury confusion.*

*Witness competency / Personal Knowledge – Witnesses presumed to be competent until contrary demonstrated. A witness needs to have personal knowledge of the facts to which they are testifying.*

*Character Evidence - Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait. However, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may: (i) offer evidence to rebut it; and (ii) offer evidence of the defendant's same trait. Here, D is the one "opening the door" to character evidence of the victim. Evidence that the victim was aggressive would be pertinent to D's self-defense claim. This is allowable, but the Prosecution will then be able to rebut with character evidence of D.*

### *Answer Outline-Question 3*

#### *1. Emily's testimony*

*Logical Relevance – A tendency to prove or disprove a disputed fact of consequence. The testimony is relevant because it constitutes the basis of the defamation lawsuit and is in dispute. It is clear that B had knowledge of D's statements because he made a reference to P being violent. B also did not recommend P for a bonus because he believed the statement was truthful, and it influenced his decision.*

*Balancing / Legal Relevancy – CEC 352, probative value of the evidence must be weighed by undue prejudice, waste of time or jury confusion. Here E's testimony is relevant because it supports the defamation allegation since character (violence) is directly in issue.*

*Witness competency / Personal Knowledge – Witnesses presumed to be competent until contrary demonstrated. A witness needs to have personal knowledge of the facts to which they are testifying. Here E is testifying to something she heard, which she has personal knowledge of. She is also an employee of X and the facts tell us she knows who B is and was in a place to overhear him.*

*Hearsay – Out of court statement offered for TOMA. Hearsay is typically inadmissible unless there is an exception. The declarant, B, can't be found and is arguably unavailable. P might argue that B's statements are not hearsay, because they are going to show his state of mind in deciding whether to recommend P for a bonus and not to the truth (proving that P is violent). Alternatively P will argue that if the statements are deemed hearsay, that they can still be admissible under an exception. D will argue that the statements are inadmissible hearsay.*

*State of Mind – the underlying reason that P was not recommended for a bonus. B specifically voiced his concern to others (E) about P's violent history and the fact that as a boss, he was unaware of. Here, a declarant's then existing state of mind is admissible to show the condition or mindset. It is likely a court will view the B statement as a state of mind exception.*

*Independent act of Legal Significance (non-hearsay) – P may argue that the B's statement is not hearsay because they have independent legal significance. B's statement about P being violent is allegedly a defamatory statement in a defamation lawsuit. This is likely a successful argument. Also it may be argued that P was not recommended for a bonus because B believed P was a violent person.*

## 2. P's testimony about D's statements

*Logical Relevance – A tendency to prove or disprove a disputed fact of consequence.*

*Balancing / Legal Relevancy – Probative value of the evidence must be weighed by undue prejudice, waste of time or jury confusion.*

*Witness competency / Personal Knowledge – Witnesses presumed to be competent until contrary demonstrated. A witness needs to have personal knowledge of the facts to which they are testifying.*

*Hearsay – Out of court statement offered for TOMA. Hearsay is typically inadmissible unless there is an exception.*

*Opposing party statement – Statement may be admissible if made by a party and offered by the opponent. It does not need to be against the declarant's interest. In this case, the statement was made by D and offered against her at trial.*

*Contemporaneous statement – Statement offered to explain, qualify, or make understandable conduct of the declarant, made while the declarant was engaged in such conduct. Here D is describing an event, but it is not made while D was engaged in the conduct (and the "event" is P's conduct, not D's).*

*Independent act of Legal Significance (non-hearsay) – P may also argue that the D's statement about P being a violent drunk is not hearsay because they have independent legal significance. D's statement is allegedly a defamatory statement in a defamation lawsuit. This is likely a successful argument.*

## 3. Tom's testimony

*Logical Relevance – A tendency to prove or disprove a disputed fact of consequence.*

*Balancing / Legal Relevancy – Probative value of the evidence must be weighed by undue prejudice, waste of time or jury confusion.*

*Witness competency / Personal Knowledge – Witnesses presumed to be competent until contrary demonstrated. A witness needs to have personal knowledge of the facts to which they are testifying.*

*Character evidence – Is usually inadmissible to prove conduct in conformity. However, in this civil case, it may be admissible since a character trait – violence – is directly in issue in the defamation case. Here, T's testimony is being offered to show the falsity of D's testimony about about P being a violent drunk.*

*Bias – May be explored on cross-examination by D because T worked with P's for 3 years, and clearly has a good opinion of him.*

## 4. Walker's testimony

*Logical Relevance – A tendency to prove or disprove a disputed fact of consequence.*

*Balancing / Legal Relevancy – Probative value of the evidence must be weighed by undue prejudice, waste of time or jury confusion.*

*Witness competency / Personal Knowledge – Witnesses presumed to be competent until contrary demonstrated. A witness needs to have personal knowledge of the facts to which they are testifying.*

*Character evidence, Specific Acts – Other crimes and bad acts may be used as specific instances. Here W is giving an account from college that P was violent – accused of sexual assault. W is also testifying that P was hospitalized for alcohol. The accused sexual assault is a prior act of violence. This testimony is being used to counter the testimony of T. Character of the victim (P) is offered by Defense to rebut, and may be deemed admissible since there was testimony that P is a peaceful person. The prior college incident may give rise to truth of violence and truth is a defense to a defamation lawsuit.*

1)

## Question 2

In order for evidence to be admitted into court, you have logical relevancy, legal relevancy, and authentication of the evidence. We are in California Court therefore the CEC rules will apply below.

### 1. Margaret Witness / Liability

#### Logical Relevancy

✓  
Evidence is logically relevant if there is a tendency to make the existence of a DISPUTED fact more or less probable than it would be without the evidence.

✓  
Here, evidence of Margaret (airport manager) witness testimony is a fact that has a tendency to make a disputed fact more or less probable. The disputed fact here can be that the wires did not cause Paul's fall. This fact is important to make any disputed facts regarding Paul's (P) injury more or less probable. Therefore this evidence is logically relevant.

#### Legal Relevancy

✓  
The trial court can exclude evidence if the probative value is substantially outweighed by the danger of unfair prejudice.

✓  
Here, the evidence's probative value is high and is outweighed by the danger of unfair prejudice because it is fair to be admitted. Therefore a judge will likely deem this evidence legally relevant. *why? expand on analysis*

#### Witness competency / Personal Knowledge

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✓  
Witness are presumed to be competent until contrary demonstrated. A witness must have personal knowledge of the facts to which they are testifying.

✓  
Here, Margaret personally heard Paul calling for help with her ears. She had direct knowledge of her testimony. There are no facts to suggest she is incompetent. Therefore a judge will rule she had direct personal knowledge and competent.

### Hearsay

✓  
Hearsay is an out of court statement offered for the truth of the matter asserted. Statements can be said or written. Although hearsay is inadmissible, there may be exceptions that apply.

✓  
Here, Paul's call for help is a statement made out of court. P's statement is made for the truth of the matter asserted because he actually needed help. Therefore this is likely hearsay.

### Spontaneous Statement

✓  
This exception applies when a statement was made spontaneously while the declarant is under stress/excitement that narrates, describes, or explains a condition or event they witnessed.. Here, Paul called for help during a stressful moment after his fall. He was narrating how he felt in the moment. Therefore this exception will likely apply.

### Contemporaneous statement

✓  
This exception explains the conduct of the declarant and was made while they were engaged with the conduct. Here, the statement was made while Paul was in pain therefore this exception may apply.

Statement doesn't explain Paul's own conduct like "I am falling"

### State of Mind

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✓  
State of mind explains a declarant's now-existing state of mind, and was made while they were engaged in the conduct. Here, Paul's call for help indicates his state of mind. It shows that he was feeling pain after the trip. Therefore this exception will likely apply.

### Liability Insurance

✓ *move to #2 Insurance agent's testimony*  
This cannot be offered to prove negligence. Although evidence of liability insurance can be admitted to show ownership. In California courts, they allow uninsured evidence to come in in order to promote people having insurance. This is a public policy exclusion and is not hearsay.

## 2. Insurance/Settlement

### Logical Relevancy

✓ ✓  
Rule see supra. The evidence presented here is logically relevant because it helps make a disputed fact more or less probable. The disputed fact is who is liable for the accident or who is responsible for Paul's injuries. Therefore this is likely logically relevant.

### Legal Relevancy

✓  
Rule see supra. Here the probative value is high and outweighs the chance of unfairness because it helps show who is actually liable. Therefore this is likely legally relevant.

### Witness competency / Personal Knowledge

✓ ✓  
Rule see Supra. Here, the insurance agent knows and deals with the airport insurance. He is their insurance agent. Therefore he has direct personal knowledge.

### Hearsay

X Hearsay is an out of court statement offered for the truth of the matter asserted. Statements can be said or written. Although hearsay is inadmissible, there may be exceptions that apply.

*no hearsay here*  
This statement is hearsay because it is an out of court written statement made and offered for the truth of the matter asserted. Therefore this is hearsay.

X Business Records Exception

This exception may apply if a record was made near the time by someone with knowledge made in the course of business, a regular practice, shown by the testimony of a qualified witness and if the opponent can't show lack of trustworthiness.

Here, the record of making was made in the course of business. t

X Public Records Exception

This exception may apply if to a writing made within the scope of duty by a public employee at/near the time of the event and one can indicate trustworthiness.

Here, this exception may apply to bring in the negligence claims. So long as the public employee insurance agent is able to testify and the document indicated trustworthiness, it can come in. Here there is no indication of lack of trustworthiness and the insurance agent testified for the document. Therefore this exception will likely apply.

Settlement Offer

✓  
Settlement offers and agreements are inadmissible when offered as evidence of liability or non-liability.

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✓  
Here, the settlement offer by the insurance agent is inadmissible to show liability. Courts want to encourage settlement offeres without the chance they would be used later in court against them. Therefore this is inadmissible.

### 3. Carl Testimony

#### Logical Relevancy

✓      ✓  
Rule see supra. Carl's testimony is logically relevant because it will help make the disputed fact of liability more or less probable. Carl testimony discusses actions the airport has taken to cover the wiring and about similar happenings. These make the disputed fact of who is liable more or less probable. Therefore, this evidence is logically relevant.

#### Legal Relevancy

✓      ✓  
Rule see supra. Here, Carl's testimony may be legally relevant because the probative value is high. He is the custodian of records and his testimony is important to know and its probative value is higher than the dangers of unfairness. Opposing party may argue that evidence of 2 other people tripping is unfair and will cause bias. They may say that 2 other accidents is not enough to establish a pattern. Therefore, a judge will likely rule it legally relevant.

#### Witness competency / Personal Knowledge

✓      ✓  
Rule see Supra. Here, Carl has personal knowledge of records because he is the custodian of records.

#### Hearsay

✓ Hearsay is an out of court statement offered for the truth of the matter asserted. Statements can be said or written. Although hearsay is inadmissible, there may be exceptions that apply.

✓ Here, Carl's testimony includes hearsay because they include out of court statements. They are offered to prove the truth of the matter asserted because its testimony about what actually occurred in the records.

✓ Therefore, this is likely hearsay.

### Similar Happenings

\*missing exceptions: Business Records

✓ Courts may allow evidence of similar happenings come into court to show pattern for a non-hearsay purpose. Here, P will try to get similar happenings of other passengers who had tripped and fell into court to show knowledge or pattern. This may be admitted by a judge with limiting instruction to the jury, although opposing party may argue that 2 other passengers tripping is not enough to establish a pattern. A reasonable jury will likely agree that this should not be admitted into court because it may cause bias to the jury.

Therefore, this will likely not be admitted.

### Subsequent Remedial Measures

✓ Subsequent remedial measures are inadmissible to prove negligence or culpable conduct. Although, it can be offered to the court to show another reason such as knowledge, ownership, or whether safety measures were possible.

✓ Here, Carl's testimony about the airport covering exposed wiring can not be admitted to show fault or liability. Although, it may come in to show that safety measures were possible. Simply covering them should have been done before. Therefore a judge may

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allow this to come, although the judge will allow this to come in for limiting purpose only and instruct the jury.

## Question 2

### The Insurance Agent's testimony about the airport being insured

#### Relevance

Rule supra.

#### Logical Relevance

Rule supra. Here, the evidence has a tendency to prove if the airport was insured.

Technically, this isn't a part of a negligence claim and initially irrelevant. However, it could be offered to show ownership, which is important in a negligence claim. Therefore, it is likely admissible.

#### Legal Relevance

Rule supra. Here the probative value is if the airport is liable for the negligence claim, which is important to the case. The primary risk is confusing the issues or unfair prejudice because if a person has insurance cannot be considered when entering a verdict. The risk of prejudice and confusing the issues are somewhat high but the probative value is slightly higher. Therefore it is admissible.

#### Personal Knowledge

Rule supra. Here, the insurance agent would have detailed knowledge of the airports' insurance coverage and is admissible.

#### Character Evidence

Rule supra. Here, the evidence is showing if the airport has insurance/ownership, which would show the "essential nature" of the business. Therefore it is inadmissible unless an exception applies.

## Character Evidence Exceptions

### Insurance

Evidence that a person/business is insured is inadmissible to show guilt. It is admissible to show ownership or control. Here, the evidence looks like it is introduced to show guilt and will likely be inadmissible. That is, unless Paul's attorney can show that it is being used simply to show that the airport owned the jet bridge. However, this is unlikely and it is probably inadmissible.

### Insurance Agent's Testimony about the \$100K settlement offer

Relevance -- rule supra.

Logical Relevance

rule supra. Here, the settlement offer is not an element of negligence and therefore irrelevant and inadmissible.

Legal Relevance

rule supra. Here, the settlement offer is not very probative and would likely confuse the jury. Therefore it is likely inadmissible.

Personal Knowledge

rule and analysis and conclusion supra.

Character Evidence

rule supra. Here the evidence of a settlement offer is conduct in conformity with a trait and is therefore inadmissible unless an exception applies.

Character Evidence Exceptions

Settlement Offers/Offer to compromise

Offers to settle are inadmissible as a matter of policy to encourage parties to

*You can combine this analysis with the relevance of it in previous page. only need to identify it once per section*  
*Ex: #2 Insurance agent's testimony*  
*1. Relevance*  
*2. Personal Knowledge*



settle/negotiate and not flood the courts with litigation. Therefore, this evidence is inadmissible.

\*missing analysis

\*Premises Liability Insurance (Public policy)

\*limiting instruction

### Question 3

#### Carl's testimony about 2 other passengers

Relevance

rule supra.

Legal Relevance

rule supra. Here, the importance of this evidence is if the airport is liable for negligence by not covering the wires, an essential element. It is therefore admissible.  
disputed?

Logical Relevance

rule supra. probative value = if the airport is liable for negligence, risks are confusing the issues and cumulative evidence. These are fairly balanced. Because the risks do not substantially outweigh the PV, it is admissible.

Personal Knowledge

rule supra. It passes because Carl has personal knowledge.

X Character Evidence

rule supra. Here, Carl's statements show that the airport has submitted other claims due to their negligence and is offering them as proof that the airport is acting in conformity. It is therefore inadmissible unless an exception applies.

Character Evidence Exceptions

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### Hearsay

rule <sup>✓</sup>supra. Technically, Carl is discussing other documents. Documents and other writings count as hearsay if made outside of court and are offered for their truth. This is the case here and are therefore inadmissible.

### Hearsay Exceptions

#### Double Hearsay

Hearsay within hearsay; all layers of hearsay must meet an exception to be admissible.

#### Business Records

(1) <sup>✓</sup>writings made by someone with knowledge, (2) <sup>recording an act or event</sup> made in the ordinary course of business, (3) <sup>✓</sup>kept in the ordinary course of business, (4) made at or <sup>✓</sup>near the time of the event, and (5) <sup>✓</sup>with an indicia of trustworthiness are admissible. Here, Carl is the custodian of records for the airport and is testifying. It is likely that he made and kept records of the claims submitted, however the claims are not being submitted, it is his testimony. Because this is Carl's testimony, not his records, this exception does not apply.

Non-truth purpose of state of mind, effect on the hearer, or legally operative words.

Evidence can be offered for the limited, non-truth purpose such as effect on the hearer. no facts suggest this as an option.

### Carl's Testimony about the remedial measures

Relevance -- rule supra

#### Legal Relevance

rule supra. Here the value is if the airport took adequate precautions and is admissible to show an essential element.

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### Logical Relevance

rule supra. The probative value here is quite high and the risks are marginal: confusing the issues. It is likely admissible.

### Personal Knowledge

rule supra. Here, Paul likely has personal knowledge as the custodian of records.

### X Character Evidence

rule supra. Here the evidence goes to show that the airport is acting in conformity with their essential nature and inadmissible unless an exception applies.

### X Character Evidence Exceptions

#### Subsequent Remedial Measures

Rule supra. Here, the evidence, if offered to show that the airport is guilty because they covered the wires afterward would be inadmissible. If offered to show that previous remedial measures were ineffective, which lends credit to a negligence claim, then it would be admissible.

\* Subsequent remedial measures

no character  
evidence on this  
essay

2)

### Wes's forgetfulness & Officer Penny's testimony

#### Relevance

Evidence must be logically and legally relevant to be admissible. Irrelevant evidence is inadmissible.

#### Logical Relevance

Evidence that has a tendency to prove or disprove a material fact. Here, Officer Penny is testifying to help Wes remember correctly, this has a tendency to prove or disprove if Danny is the proper defendant, which is very important in a homicide case. Therefore, it is admissible.

#### Legal Relevance

The probative value of the evidence must not be substantially outweighed by the risk of unfair prejudice, confusing the issues, misleading the jury, cumulative evidence, etc.

Known as the "balancing test." Here, the probative value of determining if Danny is the correct defendant is incredibly high. There is a risk that this may be cumulative evidence or confuse the jury, but these risks are minimal. Therefore, it is admissible.

#### Personal Knowledge

A witness must have personal knowledge to testify. Here, Wes has personal knowledge of his actions, although a bit forgetful and Officer Penny has knowledge of her actions.

These are admissible. *expand on this*

#### X Character Evidence.

Evidence of a person's essential nature, quality, or trait is inadmissible to show conduct in conformity unless an exception applies. Here, the testimony of Wes and Penny is for identification purposes, which is an exception. → to hearsay

*no character issue here*

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## Prior Identification (Hearsay exception)

Evidence offered for the limited purpose of identification is admissible. Here the evidence is being offered to prove that Danny was identified as the correct defendant and is therefore admissible.

## Hearsay

An out-of-court statement offered for the truth of the matter asserted is inadmissible unless an exception applies. Here Penny's statement that Wes identified Danny in a photo lineup occurred outside of court and is offered to prove that Danny is the correct defendant. Therefore, it is hearsay and inadmissible unless an exception applies.

## Hearsay Exceptions:

### X Recorded Recollection

Where a witness (1) made a writing, (2) has insufficient recollection, and (3) accurately revitalizes memory, it is admissible and can be read into evidence. Here, the prior identification was made by Officer Penny, not by Wes. It might help Wes's recollection, but because Wes didn't make a record of it, this exception does not apply.

*W + P's testimony together meets hearsay exception of Prior Identification*  
*no writing*

### Public Records

A record (1) made by an officer on duty that describes what they observed, (2) made at or near the event, (3) and has an indicia of trustworthiness, is admissible. Here, Officer Penny is testifying to the photo lineup where Danny was identified. Penny is testifying, if the prosecution had introduced a police record for this, it would qualify, but because it is Penny's testimony, it is inadmissible.

### Excited Utterance

Statements made during or immediately after a stressful event while under the stress of excitement are admissible. Here, Wes identified Danny in the photo lineup at 5am and the

events took place around 2am. While it was certainly a stressful event, the time between the identification and the events is too long and likely will not qualify for this exception.

### Present Sense Impression.

Statements that describe or narrate the declarants present sensations/actions, as they occurs, are admissible. Statements of memory are inadmissible. Here, Officer Penny is offering her memory of the photo identification. Statements of memory are inadmissible.

X Non-truth purpose of state of mind, effect on the hearer, or legally operative words.

Evidence can be offered for the limited, non-truth purpose such as effect on the hearer.

\* missing confrontation clause

Wes's testimony about what Vanessa screamed

### Relevance

rule supra.

### Logical Relevance

Rule supra. Here, the statement is offered to prove that Vanessa was injured/needed help and would go to prove or disprove the murder charge. Therefore, it is admissible.

### Legal Relevance

rule supra. Here, the statement has probative value to show if Vanessa was injured. There is a risk of unfair prejudice against the defendant, but this risk is not substantially more than the probative value of proving that Vanessa was injured at the time. Therefore, it is admissible.

why? very prejudicial to D

### Personal Knowledge

rule supra. Here, Wes has personal knowledge of what he heard and it is therefore admissible.

Did he? Heard ✓ through wall?

Didn't see her, possible personal knowledge issue

### Confrontation Clause

✓ In all criminal cases, the defendant has a constitutional right to confront witnesses against him/her and cross examine; if the witnesses are unavailable <sup>if testimonial</sup> the evidence is inadmissible ~~unless an exception applies~~. Here, the declarant (Vanessa) is dead and therefore unavailable. However, ~~there is likely a hearsay exception~~ <sup>it is likely not testimonial, so no CC violation</sup> that can overcome the confrontation clause issue and make it admissible--dying declaration, opposing party statement, excited utterance, present sense impression etc. Discussion below.

### Hearsay

✓ An out-of-court statement offered for the truth of the matter asserted is inadmissible unless an exception applies. Here, Vanessa's statement was made out of court and is being offered to show that Danny killed Vanessa, therefore it is hearsay and will be inadmissible unless an exception applies.

### Hearsay Exceptions

#### Opposing Party Statements

Statements made by a party opponent or their representative, that were believed to be true when spoken, are admissible. Here the opposing party is the State, but the state is representing the interests of the people and Vanessa. Vanessa made the statement and because she screamed that she needed help, she likely believed her need as true.

Therefore, it is admissible. ~~X~~ <sup>statement needs to be offered by the opposing side</sup>

#### Excited Utterance

good ✓ Statements made during or immediately a stressful event, while under the stress of excitement, are admissible. Here, Vanessa made the statement immediately while the altercation was unfolding and because Danny allegedly threatened to kill her, it would certainly be a stressful event where Vanessa was under the stress of excitement.

✓ Therefore, it is admissible.

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### Present Sense Impression

Statements that describe or narrate an event or sensation while it is happening, are admissible. Here, Vanessa called for help, she did not describe what was happening and is therefore inadmissible. *Expand on analysis, how would Pargue admissibility*

### Dying Declaration

Statements made by the declarant when the declarant reasonably believed that their death was imminent, are admissible. Here, Danny allegedly said that he would kill Vanessa, which prompted her to scream for help. However, Danny will assert that this doesn't qualify because they had a history of arguments and that Vanessa likely did not reasonably believe her death was imminent. The State will assert that because Danny broke into Vanessa's apartment and then threatened her that Vanessa certainly had a reasonable, good-faith belief that her life was in danger. It is likely that the court will side with the prosecution and allow this into evidence. *+ Declarant must be unavailable* *good*

## Danny's testimony

### Relevance

rule supra.

### Logical Relevance

rule supra. Here, it is important for the court to consider if Danny or Vanessa was the aggressor because Danny is claiming self-defense in a murder trial. Therefore, it has a tendency to prove or disprove a material fact and is admissible.

### Legal Relevance

rule supra. Here, the probative value of determining who the aggressor was is very important to the outcome of the case. There is a risk that Danny's testimony confuses the

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✓ jury but this risk does not significantly outweigh the probative value of determining who the aggressor was. Therefore, it is admissible.

### Personal Knowledge

rule supra. Here, Danny has knowledge of his actions and history, therefore it is admissible.

### Character Evidence

Evidence of a person's essential nature, quality, or trait is inadmissible to show conduct in conformity unless an exception applies. Here, Danny's testimony is being offered to prove that Vanessa had a violent character and that she acted in accordance with that character. It is therefore inadmissible unless an exception applies.

### Character Evidence Exceptions

#### Intent/Motive/Lack of Mistake/Lack of Accident

Evidence of a person's character for the limited purpose of proving intent, motive, lack of mistake/accident, etc. are admissible. Here, Danny could claim that he is offering this evidence to show that Vanessa had a motive to attack him. If this is the case, it would be admissible.

### Opening the Door

In homicide cases, where the defendant claims self-defense, the prosecution may enter evidence of the Victim's peacefulness or that D was the aggressor. In all cases, where the defendant offers evidence of the victim's bad character, the prosecution may offer evidence of D's same bad character or V's good character on cross-examination. Here, Danny is testifying last and is offering his testimony to show that Vanessa was the first aggressor and he acted in self-defense. Danny is claiming that Vanessa had a violent temper. The prosecution may object on the grounds of improper character evidence OR they could strategically allow Danny to enter these statements because they will have an *good*

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opportunity to cross examine and offer evidence of D's violent temper or that V was peaceful. If the prosecution does not object, the evidence will be admitted.

good!

3)

### 1. Patrick's case in chief: Emily's testimony

#### <sup>logical</sup> Legal Relevance

State of the matter asserted. Tendency to prove a fact of evidence or action. More or less probable than it would be without the evidence to prove or disprove a material fact.

Here, Patrick called Emily to testify about what she claims to have heard their boss Brad say about Patrick. Emily claims that Brad made a comment about how him being unaware of how violent or inappropriate Patrick could be when drunk. However, it is unclear as to how Emily ties to the case, but apparently the information she gave Patrick was correct because Patrick was not recommended for the five year bonus by Brad.

Therefore, Emily's testimony could prove a fact of evidence because she provided Patrick with information that wound up being proven when he was passed up for the five year bonus.

#### <sup>legal</sup> Logical Relevance (Balancing test)

Probative value of the evidence which is substantially outweigh and helps prevent unfair prejudice, waste of time

Since Emily's statements to Patrick proved to be <sup>?</sup> true, the jury could benefit from hearing her testify because she was able to overhear their boss Brad talk about potentially not recommending him for the five year bonus based on Patrick's alleged behavior when they were at the company happy hour.

Therefore, Emily's statements will be ~~admissible by the court~~.

relevant

## Personal Knowledge

✓  
Witnesses can only testify to things they have first hand knowledge about.

Here, Emily was called to testify by Patrick because she states to have heard Brad say that he did not know that Patrick could be so violent or inappropriate when drunk, and that he was now unsure if he wanted to recommend him for the five year bonus.

Therefore, since Emily heard the boss make those comments, she had first hand knowledge and therefore, her testimony would be admissible.

## Hearsay

✓  
An out of court statement used to prove the truth of the matter asserted  
*missing analysis + conclusion*

### Present Sense Impression

*CA = contemporaneous statement,  
different rule*

- x Any event not just the declarant's own conduct. Statement explaining an event or condition immediately after the declarant perceived it.

Here, Emily testified as to what she heard her boss Brad say about Patrick and not knowing if he wanted to recommend him for the bonus. *missing analysis*

*Brad*  
Therefore, ~~Emily~~'s statement should be admissible under hearsay rule.

*\*State of Mind \*Independent legal significance*

2. Patrick testifies to Dani's statement in the breakroom

## Legal Relevance

State of the matter asserted. Tendency to prove a fact of evidence or action. More or less probable than it would be without the evidence to prove or disprove a material fact.

*\*same comment  
as above  
re: rule statement*

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→ analysis needs to be facts to be relevant not just restate mem

Here, Patrick is testifying to what he heard Dani tell another coworker. Patrick states that Dani was telling a coworker that Patrick was hitting on her all night, and that she was trying to be polite so Patrick would not get upset, but that she had first hand knowledge of him being a violent drunk (libel). However, Patrick asserts that he was drinking non-alcoholic drinks on the night in question.

As a result of Patrick's claim, it would be legally relevant to allow his testimony in court because it can help disprove the allegation made about him by Dani.

? OR prove defamation?

### Logical Relevance (Balancing test)

✓  
Probative value of the evidence which is substantially outweighed and helps prevent unfair prejudice, waste of time.

Here, Dani has no clear evidence to prove that Patrick was drinking alcoholic beverages during the company's happy hour. Patrick claims that he was only drinking non-alcoholic drinks. expand analysis - doesn't need to affirmatively prove it to be legally relevant

Therefore, his statement should be allowed into evidence because Patrick lost his opportunity to obtaining a give year bonus because of the allegations Dani made about him to another co-worker. Allegations that wound up making it to their bosses ears and unfairly prejudiced Patrick.

\*missing witness comp / personal knowledge, Hearsay  
Present Sense Impression Contemporaneous Statement (CA)

✗ Any event not just the declarant's own conduct. Statement explaining an event or condition immediately after the declarant perceived it. Wrong Rule

Here, Patrick can claim that he was utterly shocked when he heard the things Dani was saying about him especially since she had stayed behind talking with him until midnight

↓  
hearsay statement is from Dani, not Patrick

even though the company happy hour had ended earlier that night. Dani can also testify to his knowledge of Dani not entirely liking him, but not necessarily knowing the reason behind her feelings towards him.

Therefore, Patrick's testimony about what occurred that night should be admitted into evidence because it can show how he felt upon hearing the lies Danni was spreading about him.

\* Opposing party statement, Independent legal significance  
3. Tom, Patrick's good friend

### Legal Relevance

✓  
State of the matter asserted. Tendency to prove a fact of evidence or action. More or less probable than it would be without the evidence to prove or disprove a material fact.

✓  
Here, Tom's testimony about Patrick might be extremely helpful because he previously worked with Patrick for 3 years in a different company. Tom asserts that Patrick never drank at work events, and therefore his testimony could help disprove Dani's accusations towards Patrick.

Therefore, it would be highly beneficial for Patrick if Tom's testimony was allowed because it helps prove his good character. → missing conclusion: is it logically relevant?

### Logical Relevance (Balancing test)

✓  
Probative value of the evidence which is substantially outweigh and helps prevent unfair prejudice, waste of time.

Here, Tom's testimony about Patrick's character could prove to be highly beneficial and can ~~help~~ prevent unfair prejudice against his friend and old coworker since Tom can  
doesn't help it, needs to outweigh potential prejudice

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assert that Patrick has never drank at work events, and can help prove that Patrick is not a violent person as Dani had stated to her friend.

Therefore, Tom's testimony will be ~~admissible~~ <sup>relevant</sup> in court.

### **Personal Knowledge/Witness Competency**

✓  
Witnesses can only testify to things they have first hand knowledge about.

Here, Tom can testify on behalf of Patrick because he claims to have <sup>✓</sup>personal knowledge about Patrick not drinking at work gatherings or about Patrick being violent as stated by Dani. Because Patrick and Tom worked together for 3 years <sup>✓</sup>in a different company, Tom can surely assert that he has personal knowledge and is competent to testify in court.

*Bias? issue of competency?*

### *X* **Hearsay**

An out of court statement used to prove the truth of the matter asserted

### *no hearsay issue* *X* **Opposing Party Statement**

Admission does not need to be a statement of fault, the party can manifest or adopt to be true.

Here, Tom, Patrick's good friend can help Patrick prove that he does not have a bad temper and that he does not tend to drink alcoholic beverages during company gatherings.

### **Character Evidence**

→ *incomplete rule*  
Generally not admissible. However, it can be admissible when the defendant opens the door and testifies to his own character or someone else's.

↓  
*only criminal*

Character  
"at issue"  
in defamation  
lawsuit

May not fall under this category, but here Tom is testifying about Patrick's good character. Tom states that in his opinion Patrick is a peaceful person, and that he has never seen him be violent. However, due to his testimony about Patrick, the prosecution is now able to rebut that statement and try to bring evidence showing that Patrick has a tendency to be violent and that he indeed does drink or has drunk alcohol during company events.

Therefore, talking about Patrick's good character could be a double edged sword because the prosecution could try and bring something that will make the jury question Tom's truthfulness.

4.

### Legal Relevance

State of the matter asserted. Tendency to prove a fact of evidence or action. More or less probable than it would be without the evidence to prove or disprove a material fact.

Here, the defense called Walker, one of Patrick's old college roommate's to testify as to Patrick's previous habits and character.

Because Tom testified on behalf of Patrick, the defense is able to bring up one of their witnesses who can rebut Tom's testimony about Patrick's good character. Therefore, the court ~~will allow~~ Walker's testimony because it can prove that Patrick had a tendency to be violent (sexual assault) and that he might of had an alcohol problem based on the amount of times he got alcohol poisoning.

→ wrong rule  
P has not  
"opened door"

### Logical Relevance (Balancing test)

Probative value of the evidence which is substantially outweighed and helps prevent unfair prejudice, waste of time.

Walker's testimony could prove to be a waste of time because he is testifying about a time when they were both in college and were both members of a <sup>why?</sup>fraternity. The case involving Dani does not have many similarities to the one being brought by the defense counsel to prove their case against Patrick. *-> going to show character for violence, not similarities*

X Therefore, since there is no substantial similarities, it is likely that the judge will not find this testimony viable and instead might deem it a waste of time.

### **Personal Knowledge/Witness Competency**

✓ Witnesses can only testify to things they have first hand knowledge about.

Here, Walker claims that him and Patrick know each other from College because they were members of the same fraternity. He also asserts that Patrick had been accused of sexual assault and since fraternity brothers are typically close to one another, the judge might find his testimony to be credible because Walker would have first hand knowledge about those statements.

*And W has personal knowledge / is a competent witness*  
Therefore, the judge ~~might admit his testimony.~~

### **Hearsay**

X An out of court statement used to prove the truth of the matter asserted

### **Opposing Party Statement**

*no hearsay issue* X Admission does not need to be a statement of fault, the party can manifest or adopt to be true.



Here, Walker made the statement that Patrick had been previously accused of sexual assault while attending college and that Patrick had been hospitalized on multiple occasions for alcohol poisoning.

Therefore, so long as Walker truly believes that his memory is correct about the incidents with Patrick, his testimony about him may be admitted but will need to be proven with substantial evidence to avoid unfair prejudice against Patrick.

**END OF EXAM**

\*missing: Character evidence