

**Monterey College of Law - Hybrid**

**EVIDENCE - Sec. 2**

Mid Term Examination

FALL 2024

Prof. S. Lizardo

**General Instructions:**

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

EVIDENCE  
FALL 2024  
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### QUESTION #1

On a clear sunny day, Dash was riding an electric scooter from the Quick Silver Company. He was traveling at a safe speed when the scooter's wheels or the throttle locked suddenly. Dash lost control due to a loose handlebar and fell off the electric scooter.

Walker saw the fall and ran to assist Dash. Walker said to Dash, "That scooter suddenly locked up!" Dash replied, "My ankle is throbbing. It's fractured!" Walker said, "I am calling an ambulance."

Dash filed a products liability lawsuit against the Quick Silver Company based on based on negligence. The company asserted Dash misused the electric scooter.

Dash discovered that the company uses geo-fencing, (a location awareness device) which may have caused the scooter to automatically slow down or stop. This was not disclosed in the scooter user agreement. During the past year, Quick Silver Company has come under scrutiny for using old or damaged components to repair scooters in operation.

Assume that in each instance, all appropriate objections were made. Discuss all evidentiary issues that would likely arise in each section below and the likely trial court ruling on admissibility. Answer according to the California Evidence Code.

1. During Dash's case, he testified about riding on the electronic scooter, his fall, the pain and his statements to Walker.
2. Next, Dash offered Walker's testimony about the scooter locking up.
3. Then Dash offered the testimony from Booker, the custodian of records, of the Quick Silver Company. Booker testified regarding the company's use of old or damaged components for repairs was common. Also, Booker testified that the company had records of 325 prior complaints regarding the scooter's sudden stops.
4. During the Quick Silver Company's defense, the court allowed in a store a surveillance video of Dash on the scooter. It showed Dash dodging a dog right before his fall. The video was authenticated by the proper store owner.

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### Question 2

Asher and Crosby are on trial for conspiracy to assault and assault with a deadly weapon on Buzz.

At the Stumbles Bar, Asher and Crosby were playing pool. Buzz was waiting his turn and finally says, "Stop hogging the pool table." Both Asher and Crosby wink at each other and replied, "You asked for this!" Then Asher hits Buzz over the head with a cue stick which breaks in two. Crosby grabs the 8 -ball and slams it into Buzz's jaw. Buzz falls on the floor bleeding.

Thumper, the bouncer grabbed Asher and Crosby and ousted them from the bar. He said to both, "I saw the winks and the beating! You're done here!" Asher and Crosby hang their heads down and do not reply.

Tipsy, the bartender, tried to help Buzz who whispered, "I think I am dying." However, Buzz cannot talk anymore. Instead, Buzz used his finger to write in his own blood, "Asher - Crosby." Tipsy called an ambulance and the police. Tipsy used his cell phone camera to take a digital image of the bloody names. He gave the digital image to Officer Otis who proceeded to the hospital.

Officer Otis tried to interview Buzz, but the head injury is too severe. Buzz cannot recall the incident. However, one month later, Officer Otis returns, and Buzz now recalls the attack by Asher and Crosby. Also, Buzz identifies the cell phone digital image Tipsy took. Buzz slips into a coma and does not testify at the jury trial.

Assuming all appropriate objections and motions were timely made. How should the trial court rule on the admissibility of the following evidence? Answer according to the California Evidence Code.

1. During the prosecution's case, Thumper testified that he ousted the Asher and Crosby from the bar. Further, he testified that Asher and Crosby did not reply to his statement, "I saw the winks and what you did." After this, there was no reply.
2. Next, the prosecution presented Tipsy. Tipsy testified about Buzz's whisper and the digital image he took on his cell phone.

3. Finally, Officer Otis testified that Buzz did not recall the incident initially, but recalled weeks later, identifying Archer and Crosby. Also, Buzz told the officer that he wrote Asher -Crosby in blood and then identified the digital image.

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## EVIDENCE

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### Question 3

Defendant Darlene is charged with the first-degree premeditated murder of her husband, Victor. Darlene is claiming self-defense.

Discuss all evidentiary issues that would likely arise in each section and the likely trial court ruling on admissibility. Answer according to the Federal Rules of Evidence.

- 1 In its case in chief, the prosecution seeks to introduce evidence of marital discord and physical assaults that occurred prior to the homicide. Among the evidence the prosecution wishes to introduce are the following: quarrels between Darlene and Victor; domestic violence restraining order obtained by Victor against Darlene; and physical injuries to Victor from having been beaten by Darlene before the date of the homicide.
- 2 Next, the prosecution calls Roger, a close friend of Victor's. Rodger testifies that Victor told him shortly before Victor's murder, "I am afraid of Darlene." Rodger then testifies that Victor told him, "Darlene threatened to kill me."
- 3 Roger testifies that Victor had a reputation in the community for being peaceful and that in his (Roger's) opinion, Victor would never hurt a fly.
- 4 In the defense case in chief, the defense calls Peter. Darlene met in an inmate pen pal program while she was in custody pending trial. Peter will testify that he has known Darlene through the pen pal program for five months and in his opinion she is a peaceful and gentle person. On cross examination, the Prosecutor asks Paul if he heard that Darlene attacked a former co-worker after a work dispute. Paul states that he did not. The Prosecutor seeks to call Amy, Darlene's former co-worker to testify about the attack.

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*ANSWER OUTLINE*

*EVIDENCE – SLO & MCL*

*FALL EXAMINATION*

*FALL 2024*

*Profs. Lizardo & O'Keefe*

*ANSWER OUTLINE Q1 -DASH - (Prof. Lizardo)*

*Caution:* Summary or listing of issues outline only. Not intended to be considered a full analysis or discussion. Highlights only. For Hearsay issues, students should incorporate in the statement, then analyze if there are exceptions, then conclude in each issue what the court ruling on the issue would be.

**1. Dash's Testimony**

*LOGICAL RELEVANCY/CEC 250* Tendency Test- evidence is logically relevant if there is a tendency to prove or disprove any disputed fact of consequence.

*The plaintiff will argue that his observations of riding on the electric scooter when the wheels or throttle suddenly locked directly caused his ankle fracture is logically relevant to prove his injuries and damages because it tends to establish the scooter was defective. His eyewitness testimony is relevant because it is based on personal knowledge of how his ankle was fractured.*

*Defense, the Quick Silver Company will argue that D was at fault.*

*The trial court will rule that Dash's testimony is logically relevant.*

*LEGAL RELEVANCY/CEC 352* Balancing Test- the trial court has discretion to exclude evidence if the probative value is substantially outweighed by the danger of unfair prejudice. It does not seem likely that Dash's testimony as an eyewitness to his fall would waste judicial time, confuse or otherwise mislead or prejudice the jury.

*The trial court will rule Dash's testimony is legally relevant.*

*COMPETENCY-* for a witness to be competent to testify, CEC states that all people are qualified unless there is a disqualification due to: perception, memory, or the witness does not understand the truth or cannot communicate. Witnesses must have the capacity to observe, recollect, communicate and be truthful.

*Nothing in the facts suggests that Dash is impaired or lacking competency. His testimony on his observations will be admitted.*

*HEARSAY* – Out of court statement offered to prove the truth of the matter asserted. It is inadmissible unless there are exceptions. Dash's statement to Walker, "My ankle is throbbing; I think it is fractured!" is likely hearsay if offered to prove the personal injury.

*Some exceptions may be:*

- *CEC Spontaneous Statements – define - especially stressful event, analyze, conclude*
- *Contemporaneous Statements -define, do not include stressful events. More narrative.*
- *State of Mind (Physical Pain) – define, throbbing pain, Dash thought it was a fracture. Ok to discuss lay opinion, but not main issue.*

*Must reach a conclusion on each hearsay exception.*

## ***2. Walkers' Testimony***

*Logical Relevancy*

*Legal Relevancy*

*Hearsay*

*Statement #1 "That scooter suddenly accelerated!" "Hearsay Exceptions- Spontaneous Statement, Contemporaneous statement.*

*Statement #2 "I am calling an ambulance!"- Hearsay Exceptions- Spontaneous Statement, contemporaneous statement."*

*Must reach conclusions on each doctrine and rule.*

## ***3. Booker's Testimony***

*Logical Relevancy*

*Tends to establish product defect by company using old or damaged parts to repair*

*Legal Relevancy*

*Hearsay*

*Exceptions*

*Business Records-* *custodian or records, (Booker is) Duty to record, etc.*

*-Old or Damaged parts used- Records*

*Similar Happenings-* *Notice (375 prior complaints)*

*It should be admissible to prove the company knew due to the 375 prior complaints.*

## ***4. Video Surveillance***

*Logical Relevancy-* *Tendency Test*

*Defense: Tends to show comparative negligence since Dash is dodging a dog and was at fault. An Operator mistake and not a products liability issue.*

*Plaintiff Argument- not logically relevant since the dog may have contributed but scooter still defective by old or used parts and loose handlebar.*

Legal Relevance- Balancing test

*Balance probative value v unfair prejudice*

Writing

*Authentication- by store owner- foundation laid the video is fair and accurate.*

Hearsay- defined above

Exception

## ANSWER OUTLINE Q2 -Asher- Crosby (Prof. Lizardo)

*Caution: Summary or listing of issues outline only. Not intended to be considered a full analysis or discussion. Highlights only. For Hearsay issues, students should incorporate in the statement, then analyze if there are exceptions, then conclude in each issue what the court ruling on the issue would be.*

### **5. Thumper's Testimony**

LOGICAL RELEVANCY/CEC 250 Tendency Test- evidence is logically relevant if there is a tendency to prove or disprove any disputed fact of consequence.

*Prosecution will argue that Thumper, the bouncer's observations, of Asher and Crosby 's conduct towards Buzz, including the winks tends to establish both defendants were involved in conspiracy to assault Buzz and the actual assault with a deadly weapon (poll cue and 8 – ball) The eyewitness testimony is relevant because it is based on personal knowledge of how Buzz was attacked and by whom.*

*Defense will argue that Buzz started the argument by telling Asher and Crosby to stop hogging the pool table. So, Buzz was the aggressor.*

*The trial court will rule Thumper's testimony is logically relevant.*

LEGAL RELEVANCY/CEC 352 Balancing Test- the trial court has discretion to exclude evidence if the probative value is substantially outweighed by the danger of unfair prejudice. It does not seem likely that Thumper's testimony as an ear witness to the whisper by Buzz would waste judicial time, confuse or otherwise mislead or prejudice the jury.

*The trial court will rule Thumpers' testimony is legally relevant.*

COMPETENCY- for a witness to be competent to testify, CEC states that all people are qualified unless there is a disqualification due to: perception, memory, or the witness does not understand the truth or cannot communicate. Witnesses must have the capacity to observe, recollect, communicate and be truthful. Nothing indicates that Thumper cannot testify.

HEARSAY – Out of court statement offered to prove the truth of the matter asserted. It is inadmissible unless there are exceptions. Here, if Thumper's statements are offered to prove that both Asher and Crosby agreed (by the winking) and the reply to Buzz, "You asked for this?" are parts of an agreement to conspire against Buzz = Hearsay

*Some exceptions may be:*

- *Adoptive Admissions- (by Thumper) "I saw the winks and the beating!"  
by both Asher and Crosby (hanging head down and not responding to Thumper's accusation)*
- *Co-conspiracy Exception- include "during the conspiracy and in furtherance of"  
The winking – as assertive conduct for an agreement*
- *CEC Spontaneous Statements – define - especially stressful event, analyze, conclude*
- *Contemporaneous Statements -define, do not include stressful events. More narrative.*

*Must reach a conclusion on each hearsay exception.*

### **6. Topsy's Testimony**

### Logical Relevancy- defined above

The logical relevancy of Topsy, the bar tender, assisting Buzz and hearing Buzz whisper, "I think I am dying," has the tendency to establish an assault with a deadly weapon and a possible death.

Further, Topsy sees Buzz write in blood, "Asher-Crosby" which tends to identify his attackers. Although Buzz cannot talk, his use of his finger to write out who attacked him is assertive conduct. Prosecution will argue the blood writing by declarant

The trial court will rule Topsy's testimony as logically relevant.

### Legal Relevancy – defined above

#### Hearsay – Buzz's Statement to Topsy

Defined above.

The issue with Topsy's testimony is that he is not the original declarant, Buzz is. However, there are certain hearsay exceptions that may apply.

#### Some Hearsay Exceptions

- Dying Declaration. "I think I am dying and the blood writing- Should be discussed, but under CEC, there is a requirement of death. Buzz is in a coma and does not die. Not admissible.
- Spontaneous Statement- stressful event in being hit with cue stick and 8- ball by Asher and Crosby
- Contemporaneous Statement
- State of Mind

Must state elements, analyze and reach conclusions on each doctrine or rule.

### 7. Officer Otis's Testimony

#### Logical Relevancy – Tendency Test

Tends to establish later identification of Buzz's attackers as Asher and Crosby in the conspiracy and assault with deadly weapons.

#### Legal Relevancy -Balancing Test

Competency- initially Buzz could not ID due to injuries. Later ID is admissible

#### Hearsay – Exceptions

##### Prior ID – Blood Writing by Buzz

Witness (here Buzz) wrote in blood the names of his attackers as Asher-Crosby while fresh in his mind because it was right after the pool cue and 8-ball were used as deadly weapons. Then, the witness must confirm that this was a true reflection. May be argued that the prior ID was the blood writing later confirmed by Buzz when Officer Otis followed up at the hospital weeks later.

This was verified by Buzz that the digital image was his prior ID of the attackers.

Past Recollection Recorded- ok if argued that the blood writing was a writing.

*All must be defined, fully discussed and conclusions given.*

*Question 3 – (Prof. O’Keefe)*

*Defendant Darlene is charged with the first-degree premeditated murder of her husband, Victor. Darlene is claiming self-defense.*

*Discuss all evidentiary issues that would likely arise in each section and the likely trial court ruling on admissibility. Answer according to the Federal Rules of Evidence.*

- 1 In its case in chief, the prosecution seeks to introduce evidence of marital discord and physical assaults that occurred prior to the homicide. Among the evidence the prosecution wishes to introduce are the following: quarrels between Darlene and Victor; domestic violence restraining order obtained by Victor against Darlene; and physical injuries to Victor from having been beaten by Darlene before the date of the homicide.*

**Relevance:** Evidence is relevant if it has some tendency to prove or disprove a material fact. Here, the prosecution is seeking to introduce evidence of prior physical assaults between Darlene and Victor to show Darlene’s motive and intent to kill Victor.

**Character Evidence 404(a):** The general rule under FRE 404(a) is that character evidence is not admissible to prove that a person acted in accordance with that character on a particular occasion. In criminal cases, the defendant may introduce evidence of his or her good character to support an inference that they did not commit the crime. The prosecution cannot introduce evidence of the defendant’s bad character to prove guilt unless the defendant first opens the door by introducing evidence of character.

Here, the prosecution seeks to introduce evidence of marital discord and physical assaults in its case in chief. The testimony would not be permissible character evidence as the defendant has not opened the door to character evidence at this point. Also, character evidence must take the form of reputation or opinion rather than specific instances of conduct.

**FRE 404(b):** The prosecution may seek admission of this evidence under FRE 404(b) for a non-propensity purpose (such as motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake). Here, the evidence is relevant on the issue of intent—to show Darlene’s ill will toward Victor and her intent to injure and kill him. Intent requires the least amount of similarity between the uncharged and charged offenses. Darlene’s behavior toward Victor in both the charged and uncharged offenses was similar enough to show intent.

- 2 Next, the prosecution calls Roger, a close friend of Victor’s. Rodger testifies that Victor told him shortly before Victor’s murder, “I am afraid of Darlene.” Rodger then testifies that Victor told him, “Darlene threatened to kill me.”*

**Relevance:** Evidence is relevant if it has some tendency to prove or disprove a material fact. Rodger's testimony is relevant because it shows that Victor was afraid of Darlene and that she had threatened to kill him, thereby rebutting Darlene's claim of self defense.

**Hearsay:** Hearsay is an out of court statement offered for the truth of the matter asserted.

**"I'm afraid of Darlene"** – This statement is hearsay. The prosecution is offering Victor's out of court statement for its truth.

**State of Mind Hearsay Exception:** This exception covers statements about What a person is feeling at the time he or she speaks. It includes physical and emotional feelings. This exception does not cover statements about memory or belief.

*Analyzing the State of Mind Exception When State of Mind is at Issue:*

1. The declarant's state of mind is at issue in the case
2. A statement was made by the declarant that relates to the declarant's then existing state of mind;
3. The declarant made the statement at or near the pivotal time under the substantive law

Here, Victor's state of mind is at issue as a self defense claim as been raised. The statement directly refers to Victor's state of mind. He is afraid of Darlene. The statement was made shortly before his murder. Thus, the statement will be admissible under this exception.

**"Darlene threatened to kill me."** – This statement would not fall under the state of mind exception as it is not relating the declarant's then existing state of mind. Thus, if offered for its truth, it would not be admissible. However, if the prosecution wished to offer the statement as circumstantial evidence of Victor's state of mind – that he was fearful, the evidence would be admissible as non-hearsay as circumstantial evidence of the declarant's state of mind.

- 3 Roger testifies that Victor had a reputation in the community for being peaceful and that in his (Roger's) opinion, Victor would never hurt a fly.

**Relevance:** Evidence is relevant if it has some tendency to prove or disprove a material fact. The prosecution is seeking to introduce evidence of Victor's peaceful character to rebut Darlene's claim of self-defense.

**Character Evidence 404(a):** The general rule under FRE 404(a) is that character evidence is not admissible to prove that a person acted in accordance with that character on a particular occasion. In criminal cases, the defendant may introduce evidence of their good character to support an inference that they did not commit the crime. The prosecution cannot introduce evidence of the defendant's bad character to prove guilt unless the defendant first opens the door by introducing evidence of character.

*The prosecution is also generally prohibited from introducing evidence of the victim's good character unless it is raised by the defendant.*

*There is one exception to this rule under the FRE. The prosecution may introduce evidence of the victim's character for peacefulness in a homicide case whether or not the defendant raises the issue of the victim's character to rebut a claim of self-defense. Under this exception, simply saying that the victim was the aggressor is enough. The evidence must be introduced in the form of reputation or opinion. This does not open the door to evidence about the defendant's character.*

**Analysis:** *Here, Darlene is being prosecuted for murder. She is claiming self-defense. Rodger's proposed testimony is about Victor's character for peacefulness and is in the form of reputation and opinion testimony. The testimony will be admissible.*

4. *In the defense case in chief, the defense calls Peter. Darlene met in an inmate pen pal program while she was in custody pending trial. Peter will testify that he has known Darlene through the pen pal program for five months and in his opinion she is a peaceful and gentle person. On cross examination, the Prosecutor asks Paul if he heard that Darlene attacked a former co-worker after a work dispute. Paul states that he did not. The Prosecutor seeks to call Amy, Darlene's former co-worker to testify about the attack.*

**Relevance:** *Evidence is relevant if it has some tendency to prove or disprove a material fact. Here, Darlene is calling Peter as a character witness to support her claim of self-defense. The prosecutor's question is relevant to show that Paul doesn't know Darlene well and thus, his opinion about her peacefulness should be discounted. The prosecutor's proposed testimony from Amy is an attempt to bolster the prosecution's position that Paul's opinion of Darlene is unsupported.*

**Character Evidence:** *The general rule is that information about a person's character may not be introduced to suggest that the person did something because he or she has a propensity to do such things.*

### ***The Defendant May Initiate Character Evidence***

*Despite the general rule that propensity evidence is not admissible, both the FRE and CEC allow a criminal defendant to introduce character evidence. Character evidence to prove a person's actions in conformity with that character is allowed in the case of a criminal defendant who introduces evidence about his or her own good character to support an inference that he or she did not commit a charged crime. If the defendant first introduces such evidence, the prosecutor is entitled to rebut that evidence to suggest that he or she is guilty. In a criminal case the defendant may also show that the victim was the aggressor by introducing evidence of the victim's character for violence. The prosecutor can also rebut this evidence*

### ***The Prosecution May Not Initiate Character Evidence***

*Character evidence is **inadmissible** in a criminal trial if first offered by the prosecution as circumstantial evidence to show that a defendant is likely to have committed the crime with which he or she is charged—the prosecution may not, in other words, initiate character evidence that shows **defendant's***

**propensity** to commit a crime. If the defendant initiates character evidence, the prosecutor can respond in the ways discussed below.

### **Character evidence offered by the defendant**

Character evidence is **admissible** in a criminal trial if offered by a defendant as circumstantial evidence—through **reputation or opinion evidence**—to show his or her own character, as long as the character evidence the defendant seeks to introduce is relevant to the crime with which the defendant is charged.

**Analysis:** Here, Darlene may call a character witness to discuss a relevant character trait – her peacefulness. Darlene’s witness may not be the most compelling witness because Paul has only known her for a few months, but that would go to the weight of the opinion rather than its admissibility.

### **Prosecutor’s Rebuttal**

The prosecutor may rebut the defendant’s character evidence through cross examination. Here, the prosecutor asks Paul if he knows of a prior act of violence committed by Darlene. This is permissible cross examination of the character witness as the cross examiner can ask about specific prior acts to challenge the witness’ knowledge of the defendant. In order to ask about a specific act, the prosecutor must have a good faith basis to believe the act occurred and it must be relevant to the pertinent character trait. Thus, the question is admissible.

Paul denied knowing of the prior assault. The prosecutor is prohibited from introducing extrinsic evidence if the character witness denies knowing of the alleged prior act. Thus, the prosecution cannot call Amy to testify about the assault.

The prosecutor could call Amy to testify as to her opinion of Darlene’s character for violence or Darlene’s reputation for violence. The prosecutor would be limited to this type of information under the Federal Rules. Thus, the details of the assault, which would be considered to be a specific act, would be excluded.

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1. Dash's Testimony

*Dash's Statement about riding on the electronic scooter*

**Logical Relevance (Tendency Test)**

In order for Dash's (D) statement about riding on the electronic scooter to be admitted into evidence it must be logically relevant. A piece of evidence will be considered logically relevant if it tends to prove or disprove a fact of consequence.

Here, Dash has filed a products liability lawsuit against the Quick Silver Company (Quick), and Quick has asserted that Dash misused the electric scooter. If there was evidence admitted that D was riding the scooter it would show that it was indeed D that was the user of the scooter. This is a fact of consequence to show damages that may have been suffered directly by Dash and would also be a fact of consequence for Quick's assertion that it was D that misused the scooter as he was the one riding it.

Because the fact that Dash was the individual riding the scooter tends to prove a fact of consequence, his statement is logically relevant.

**Legal Relevance (Balancing Test)**

In order for a piece of evidence to be admissible it must also be considered legally relevant. The court has the discretion to exclude evidence if the unfair nature of the evidence outweighs its probative value. The court weighs the probative value of the evidence against whether the evidence would unfairly prejudice the jury, cause confusion for the jury, or waste the court's time.

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Here the fact that Dash was riding the scooter has high probative value because it is evidence that he was the one that suffered potential damages and was operating the scooter at the time of the incident. Nothing about this statement would prejudice the jury or cause confusion, therefore the court would find it legally relevant.

### **Conclusion**

Because Dash's statement that he was riding the electronic scooter is both logically and legally relevant it is admissible.

*Dash's testimony about his fall*

### **Logical Relevance (Tendency Test)**

See supra

Dash is likely to testify that when he fell he was traveling at a safe speed and the scooter malfunctioned causing him to lose control and he fell off his scooter. What happened on the scooter and what Dash was actively doing and experiencing at the time are a fact of consequence for the proof of what actions were taken by Dash during the incident. Dash's actions would be a fact of consequence both for his claim of damages due to the negligence of Quick as well as Quick's assertion that Dash was misusing the scooter at the time of the accident.

Because the details of the fall tends to prove a fact in consequence his testimony will be considered logically relevant.

### **Legal Relevance (Balancing Test)**

See Supra

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Here, the details of what Dash experienced during his fall has high probative value as it goes to the issues at the crux of the negligence action and Quick's defense. It is possible that the fact that Dash lost control due to a loose handlebar could be seen as prejudice against Dash, however the prejudice would not be considered unfair as it is just a fact and does not go to anything that would cause the jury to see Dash in an unfairly negative light. The facts of the fall are also not likely to cause any juror confusion or waste the court's time.

Because the details of the fall as experienced and told by Dash have high probative value and would not unfairly prejudice the jury his testimony about his fall would be found legally relevant.

### **Conclusion**

Because Dash's testimony about his fall is both logically and legally relevant it is admissible evidence.

*Dash's statement about the pain*

### **Logical Relevance (Tendency)**

See supra

The pain that Dash experienced tends to prove that he was actually injured and likely suffered potential damages that Quick could be found responsible for. This is a fact of consequence as injury and damages are critical to a successful cause of action for negligence in a products liability suit. Because it tends to prove a fact of consequence his statement about his pain will be considered logically relevant.

### **Legal Relevance (Balancing)**

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See supra

The pain that Dash experienced has high probative value. Especially if he is seeking any kind of pain and suffering damages in his cause of action. There is nothing about an individual experiencing pain that would likely put Dash in a poor light and unfairly prejudice the jury. It is also not something that is likely to cause any confusion to the jury.

Because Dash's pain has high probative value and no unfair prejudice implications it will be found legally relevant.

### **Conclusion**

Because Dash's statement about his pain is both logically and legally relevant, it is admissible.

*Dash's Statements to Walker - "My ankle is throbbing. It's fractured!"*

### **Logical Relevance (Tendency)**

See supra

Like the statements that Dash was riding the scooter, fell and experienced pain, his actual statements have the tendency to prove each element of his testimony which each tend to prove a fact of consequence in the cause of action against Quick and Quick's assertion that Dash was misusing the scooter. Because his statement "My ankle is throbbing" shows the pain he was experiencing and his statement "It's fractured" shows what he thought was happening in his body, they each prove a fact of consequence. Because both statements prove a fact of consequence they will both be considered logically relevant.

### **Legal Relevance (Balancing Test)**

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See supra

Like the statements describing what happened at the time of the fall, the statements that Dash actually made at the time of the fall have high probative value. They go to further show what Dash was experiencing in the moment, not just what he remembered happening factually. There is nothing in either statement that would unfairly prejudice the jury against Dash or Quick and would not cause any confusion or waste the court's time. Therefore, the probative value outweighs any potential unfair prejudice and both the statements made by Dash of "My ankle is throbbing" and "It's fractured" would be found as legally relevant.

### Hearsay

Hearsay is a statement made out of court offered for the truth of the matter asserted. Hearsay is inadmissible unless an exception applies.

Here, Dash's statement of "My ankle is throbbing. It's fractured!" would be objected to by Quick as hearsay because it was a statement made by Dash out of court, offered to prove that Dash's ankle was broken. Dash would argue that the statement of "my ankle is throbbing" is not being admitted for the truth of his ankle actually throbbing, but instead was being admitted to show what was being felt at the time. It is likely that the court would find that Dash's statement of "my ankle is throbbing" was being admitted for something other than the truth of the matter asserted and would allow it to be admitted.

However, Dash's statement of "It's fractured!" is being offered to prove that his ankle was indeed fractured. Therefore that portion of the statement would not be admissible unless an exception applies.

Spontaneous ~~Expression~~ *Statement*

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Dash would argue that his statement of "It's fractured!" should be admissible under the hearsay exception of a spontaneous expression. In order for a statement to be considered admissible as a spontaneous expression, the statement would need to be made under stress, about the event in question. When Dash made the statement, it was immediately after the accident and he was in obvious pain if his ankle was throbbing. Being in pain would be a form of stress. Generally hearsay is not admissible because it is not reliable, however when a statement is made under stress it is likely that the party does not have the mental space to fabricate a statement. Therefore it is considered more reliable.

Here because Dash made the statement under stress about what he thought happened to his body, the court should allow the statement to be admitted under the spontaneous expression exception to the hearsay rule.

### **State of Mind Declaration**

Dash would also argue that his statement of both "my ankle is throbbing" and "it's fractured" should be admitted under the state of mind declaration. In order to be a state of mind declaration Dash would have to be indicating what he was thinking or feeling in the moment he made the statements. Dash was feeling pain in the form of throbbing in his ankle and he thought it was fractured. Therefore the court should admit both statements under the state of mind declaration of hearsay.

### **2. Walker's Testimony about the scooter locking up**

#### **Logical Relevance (Tendency Test)**

See Supra

Walker's testimony about the scooter locking up is likely to include what he saw as well as the statement he made "That scooter suddenly locked up!" and the fact that he called the

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ambulance. The fact that Walker thought that the scooter had locked up and made the statement "that scooter suddenly locked up" is a fact of consequence. It tends to prove that the scooter was at fault in the accident, not Dash's use of the scooter as asserted by Quick. Because it tends to prove a fact of consequence it is logically relevant.

### **Legal Relevance (Balancing Test)**

See Supra

Walker's testimony has high probative value as he was an eye witness to the accident and has an idea of what he thought was the cause of the accident. An eye witness is crucial in determining what happened and will be considered highly probative. There is little in his statement "that scooter suddenly locked up" that would confuse the jury or waste the court's time. Quick will argue that it unfairly prejudices the jury against their product and makes them look negligent. While it is true that it might prejudice the jury, it is not likely to be considered unfair as it is an eye witness giving his account of what happen at the scene.

Because the probative value outweighs the unfair prejudice, Walker's testimony, including his statement "that scooter suddenly locked up" would be legally relevant.

### **Hearsay**

See supra

Here Walker made the statement "that scooter suddenly locked up" at the site of the accident, which was out of court. Further Dash would be offering the statement to show that the scooter did in fact suddenly lock up. Quick would object to admitting Walker's statement as hearsay. Unless an exception applies the court would grant the hearsay objection.

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## Spontaneous Statement

See supra

Here Walker just saw Dash get in an accident. It was a bad enough accident that he ran to Dash to see what happened and in fact called an ambulance. Seeing someone fall bad enough to be injured and running to them is likely to cause some stress on Walker. Quick would argue that it wasn't enough stress that his statement could be considered reliable. After all, it was not Walker that was hurt, it was Dash. Dash would argue that if Walker wasn't under stress he would not have ran to assist Dash, nor would he have felt the need to call an ambulance. The court should rule the statement as admissible as a spontaneous statement.

## Contemporaneous Statement

A contemporaneous statement is one that is made out of court in which the individual is narrating what they are seeing happening. It is an exception to hearsay as it is more reliable because it is being narrated as everything is playing out. Dash could argue that Walker's statement of "That scooter suddenly locked up!" and "I am calling an ambulance." should be admitted under the contemporaneous statement exception. Quick would argue that the statement of "that scooter suddenly locked up" was not made at the time he was witnessing the accident and does not qualify for the contemporaneous exception. The court will agree with Quick and will not admit the statement "that scooter suddenly locked up" under the contemporaneous statement. However, his statement of "I am calling an ambulance" was made likely as he was calling the ambulance or seconds before, therefore his statement of "I am calling an ambulance" would be admitted.

**Conclusion**

*very good*

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Walker's testimony about the scooter locking up, along with his statements made will be admissible as a spontaneous statement exception to the hearsay objection.

### 3. Booker's Testimony

#### Logical Relevance (Tendency)

See supra

Here, Booker is testifying that Quick used older or damaged components in their repair of their scooters as well as the fact that the company should records of 325 prior complaints. The fact that Quick used damaged parts and was likely aware of the issues with the scooters, or potential issues with the scooters shows they did not maintain their duty of care and would likely be found negligent. Because Booker's testimony tends to prove a fact of consequence it is logically relevant.

#### Legal Relevance (Balancing)

See supra

Both the testimony of the custodian of records that Quick used damaged parts and knew there were existing complaints is highly probative. Further, the company had records of 325 prior complaints. Having the complaints in an official business record is evidence not only of their existence, but also that Quick knew about the issue. Although the complaints show Quick in a bad light and would prejudice the jury, it would not prejudice them unfairly and would not be considered a waste of the court's time.

Because the probative value is high on Booker's testimony and there is little to no unfair prejudice, his testimony, and the records that support his testimony are legally relevant.

#### Authentication

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Any record that is admitted into evidence must be authenticated. Here Booker is the custodian of records and is present to testify about the records that are to be admitted. Therefore the business records of the prior complaints would be considered authenticated.

## Hearsay

See Supra

In order for a statement to be considered hearsay it can be either verbal or written. Here, Quick is likely to object to Booker's testimony and the written complaints as hearsay. The court would overrule Quick's objection if an exception applies.

## Business Record

One exception to the inadmissibility of hearsay is the business record exception. In order for a business record to be admissible it must be a record that is kept within the regular course of business, made near or at the time of the event, and must be authenticated by the custodian of records. Here, Booker was the custodian of records for the Quick Silver Company and is the appropriate individual to authenticate the records to be submitted. The records that are being submitted are the records of 325 prior complaints regarding the scooter's sudden stops. It is likely that the complaints were recorded at the time of the complaint and made within the regular course of business, as most companies have a customer service person or department that regularly receives complaints. Because the complaints were recorded within the regular course of business, they can be admissible under the business records exception to hearsay.

## Conclusion

Also  
include  
serena's appearance  
for company's to be  
put on notice +  
knowledge of defects, etc  
in the topic

Susana Hopperis - (Title)

The 325 complaints will be admitted to prove Quick was on notice of the issues with the scooter under the business record exception to hearsay admissibility.

*this would need a bit more discussion -*

4. Store surveillance video

### Logical Relevance (Tendency Test)

See supra

Here, the video shows Dash was dodging a dog before his fall, and may go to prove Quick's assertion that Dash misused the electric scooter which is a fact of consequence. Therefore the video is logically relevant.

### Legal Relevance

See supra

Here, the video would be visual evidence of what happened during the crash, including Dash's interaction with the dog. This would be highly probative. Also while it may prejudice the jury on the type of scooter driver Dash may be, it would not unfairly prejudice the jury or waste the court's time. Therefore the video is logically relevant.

### Authentication

See supra

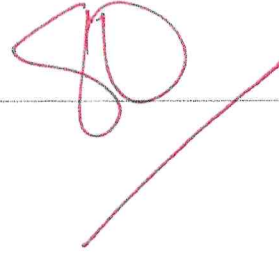
Here the video was authenticated by the proper store owner, therefore it meets the element of authentication.

Need: HS & exception  
Bec Rec here

### Conclusion

The store surveillance video will be admitted.

overall - well organized & argued.  
Discussion was complete and very good incorp. of facts.



2)

1. 1. Thumper's Testimony

**Logical Relevance (Tendency Test)**

In order for evidence to be admitted into evidence it must be logically relevant. A piece of evidence will be considered logically relevant if it tends to prove or disprove a fact of consequence.

Here Thumper's testimony would show that he ousted both Asher and Crosby from the bar. He also said to them both "I saw the winks and the beating!" before he told them they were "done here!" and kicked them out. Here, Asher and Crosby are on trial for assault and conspiracy to assault. Thumper was the bar's bouncer where the incident happened and was present during the altercation. His testimony tends to prove that he saw Asher and Crosby winking at each other as an indication of the conspiracy, a key element of the prosecutions case. It also tends to prove that Asher and Crosby's conduct was severe enough to have the bouncer interfere and kick them out of the bar.

Because Thumper's testimony tends to show the fact of consequence of both the attack and the potential of a conspiracy it is logically relevant.

**Legal Relevance (Balancing Test)**

In order for a piece of evidence to be admissible it must also be considered legally relevant. The court has the discretion to exclude evidence if the unfair nature of the evidence outweighs it's probative value. The court weighs the probative value of the evidence against whether the evidence would unfairly prejudice the jury, cause confusion for the jury, or waste the court's time.

---

Here, it is likely that Thumper, the bouncer present at the bar at the time of the incident, was either an eye witness or was at least in earshot of what was happening his statement has high probative value. In fact, he was close enough at the incident to see Both Asher and Crosby wink at each other before Asher hit Buzz over the head with a cue stick and Crosby slamming the 8-ball into Buzz's jaw causing injury. Although Thumper's testimony is likely to put both Asher and Crosby in a bad light and prejudice the jury against them, it would not be unfairly. It would also not cause any confusion for the jury or waste the court's time.

Because the probative value of Thumper's testimony outweighs the potential for unfair prejudice, it is legally relevant.

### Hearsay

Hearsay is a statement made out of court offered for the truth of the matter asserted. Hearsay is inadmissible unless an exception applies.

The defense will object to Thumper's testimony that he stated "I saw the winks and what you did" as well as the fact that Asher and Crosby did not reply as it is hearsay. The prosecution will argue that the statement "I saw the winks and what you did" was not being offered for the truth of the matter asserted. Instead it is being offered to show that Asher and Crosby in fact winked at each other, indicating their conspiratorship. The court should overrule the objection and allow Thumper's statement in as non-hearsay because it is not being offered for the truth of the matter asserted.

### Admissions

Admissions by the party are exceptions to hearsay admissibility. Admissions can be either adopted, authorized, or by a co-conspirator.

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Here, Thumper told Asher that he "saw the winks and the beating." While Asher and Crosby did not reply, they did not correct Thumper either. Their silence could indicate that they adopted the admission being thrust on them by Thumper. A reasonable person would respond to someone inferring a conspiracy to assault someone or an actual assault by a statement or act that would indicate the contrary. Here Asher and Crosby did not reply and hung their head. The prosecution will argue this is an adopted admission and should be admissible under the hearsay exception for admissions.

Conclusion

*missed / co - conspirator's exception  
also -  
- spirit stat - state ground - content  
- state ground - content*

Thumper's testimony including the fact that he ousted Asher and Crosby from the bar as well as his statement, "I saw the winks and what you did" will be admitted under the admissions exception to the hearsay rule.

## 2. Topsy's testimony

Logical Relevance (Tendency Test)

See supra

Topsy will testify that while she was helping Buzz after he fell to the ground that he stated "I think I am dying" she will also want to testify to the fact that she took a picture with her cell phone for the police of Buzz's blood written message of "Asher-Crosby".

Because Topsy heard the statement made by Buzz immediately after altercation that indicated potentially who was responsible for his injuries, it tends to prove the fact of consequence of the responsible parties of Buzz's injuries. Therefore it is logically relevant.

Legal Relevance (Balancing Test)

See Supra

Because Buzz is unavailable to testify at the assault hearing, Topsy's testimony is the only available evidence to show who Buzz found responsible for his injuries. This gives it high probative value. While it is likely to prejudice the jury against Asher and Crosby, it does not prejudice them unfairly. Further, it does not cause any confusion for the jury and would not waste the court's time. Therefore, Topsy's testimony is legally relevant.

Hearsay

See supra

Topsy's statement that Buzz told her "I think I'm dying" is an out of court statement made by Buzz and is being offered to prove that Buzz actually thought he was dying. Further, Topsy took a picture of Buzz's blood writing that said "Asher-Crosby." A statement can be verbal or written, therefore the writing of the blood would also be considered a statement made out of court. It is being used to show that Buzz knew it as Asher and Crosby that assaulted him, therefore it would also be considered hearsay. The defense will object to Topsy's testimony as hearsay. The court will sustain the objection as long as an exception does not apply.

Double Hearsay

Buzz's blood writing of Asher-Crosby being testified to and shown by Topsy and her cell phone picture is double hearsay, or hearsay within hearsay. When a piece of evidence is double hearsay, both statements must be allowable under an exception for the evidence to be admitted. Here, the picture would be one piece of hearsay and the blood writing would be the second.

*Blood Writing by Buzz - Hearsay Level 1*

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## Unavailability

There are certain hearsay exceptions that are allowable if the declarant is unavailable. This includes if they are unavailable due to absence because of death or illness <sup>or out of the jurisdiction.</sup> Here Buzz was unable to attend the hearing because he had slipped into a coma and was still there during the trial. Therefore, statement's made by Buzz could be considered admissible under exceptions allowed if the declarant is unavailable.

## Dying Declaration

A dying declaration is allowed to be admitted as a hearsay exception if the declarant is unavailable, made the statement under the belief of imminent death, at or near the time of the event, about the cause of his potential death. Under CEC the declarant does not have to have died, but would have had to make the statement under the belief of imminent death. <sup>Death is required - incorrect stat</sup>

Here Buzz was unavailable because he was in a coma. He stated to Topsy "I think I'm dying" which indicates that he thought his injuries were fatal and that his death was imminent. Dying declarations are considered more reliable because when someone is dying they do not have a reason to fabricate a statement. Buzz wrote "Asher-Crosby" in his own blood, likely indicating who was responsible for his injuries. Although it was in writing it would still be considered a statement, especially because Buzz was no longer able to talk.

Because Buzz thought his death was imminent and made a statement about the cause of his potential death, his written statement would be admissible under the dying declaration exception. <sup>No, not admissible under CEC.</sup>

Non-Truth of the matter asserted

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The second potential layer of hearsay would be the fact that Topsy took the picture of the blood writing made by Buzz. The defense will object that it is hearsay. However the prosecution will argue that it is not being offered to prove that Topsy took the picture, but instead is proving that Buzz did in fact make a writing in his blood. Because it isn't being offered for the truth of the matter asserted, but instead for a non-truth of the matter asserted purpose, namely authentication of the picture, it is not hearsay. —

### Conclusion

Topsy's testimony is admissible both to Buzz's whisper of "I think I'm dying" under a <sup>No</sup> dying declaration exception and the fact that Topsy took the image of the bloody writing with her cell phone under a non-truth of the matter asserted reasoning.

### 3. Officer Otis Testimony

#### Logical Relevance (Tendency Test)

See Supra

Here Officer Otis is testifying to Buzz's identification of Archer and Crosby as well as the fact that Buzz wrong Asher-Crosby in blood and identified the digital image. All three of these items prove the fact of consequence that Buzz knew that Archer and Crosby were the ones responsible for his injuries. Because this is a fact of consequence Officer Otis' testimony is logically relevant.

#### Legal Relevance (Balancing Test)

See supra

Officer Otis was the one that tried to interview Buzz at the time of his injury with him before Buzz slipped into a coma. Buzz identified Archer and Crosby as his attackers and

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identified the cell phone image taken by Tipsy. Buzz's testimony on what happened is of utmost importance to the case and to proving the assault, therefore Officer Otis' recount of Buzz's testimony to him has high probative value. There is nothing in Officer Otis' testimony that would confuse the jury cause unfair prejudice or waste the court's time. Therefore it is legally relevant.

### Hearsay

See Supra

Here Officer Otis is testifying to what Buzz said out of court. Therefore the defense will object to his testimony as hearsay. The court must not admit the testimony unless an exception applies.

### Unavailability

need prior ID

See supra

Here Buzz is unavailable due to being in a coma

### ~~Former Testimony~~ Present Recollection Recorded

If a party is unavailable, his testimonial statements can be admitted under a hearsay exception. Here Buzz made the statements to law enforcement about the identity of his attackers. At the time he could not remember, but when he did remember he made the statement to the Officer. It is likely recorded in the police record and although a police report is inadmissible, Officer Otis' statement about Buzz's identifying the suspects would be admissible as testimony made by Buzz.

Buzz did not ever testify.  
He did make statements  
to off - NO  
Former Testimony

### Conclusion

Officer Otis' testimony is admissible as it is relevant, and meets the elements of the Former Testimony exception to the hearsay rule.

**END OF EXAM**

3)

### 1-Evidence of Marital Discord and Physical Assaults

#### Quarrels and Domestic Violence Restraining Order

##### Relevancy

Under FRE, only relevant evidence is admissible.

##### Logical Relevance - Tendency Test

Evidence is logically relevant if it tends to prove or disprove a fact that matters in litigation.

In this case, showing that Darlene and Victor quarreled and that Victor obtained a restraining order against Darlene in the past could show motive for murder. It would also disprove Darlene's claim of self-defense because she would be seen as the aggressor if Victor obtained the restraining order.

Therefore the court would rule that evidence of quarrels between Darlene and Victor and the restraining order are logically relevant.

##### Legal Relevancy - Balancing Test

Evidence can be excluded if the probative value is substantially outweighed by the danger of undue prejudice, wasted court time or jury confusion.

In this case, evidence of quarrels between Darlene and Victor and the restraining order would have high probative value to show that Darlene had motive and

intent to kill Victor. There may be some undue prejudice that may require limited admissibility.

### Limited Admissibility

If evidence may be used for one event and not another, the court may limit the admissibility. The court would restrict the evidence and provide a limiting instruction to the jury.

In this case, the court may limit the evidence to show that Darlene has motive to kill Victor, not that she acts in propensity of the prior bad act.

Therefore, the court will likely rule that the evidence is limited to showing that Darlene has motive and provide this instruction to the jury.

### Prior Bad Acts

Character Evidence is generally inadmissible in a criminal case unless it is being used for a non-propensity purpose such as motive, intent, lack of mistake/accident, or common plan or purpose. In addition, prior bad acts related to domestic violence are admissible if they are the same form of domestic violence.

In this case, evidence of Darlene and Victor's prior quarrels and the restraining order could be used for the non-propensity purpose of motive or common plan/purpose. Murder is considered the most aggressive of domestic violence and would fall under this rule. — so use for relevant misconduct

Therefore the court would likely rule that evidence of these prior bad acts is admissible as non-propensity evidence. — as relevant misconduct —  
Intent, Motive

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## Hearsay

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted.

In this case, the prosecution would likely provide out-of-court documents to prove the quarrels between Darlene and Victor and the proof of the restraining order. These documents would be offered to prove the truth of the matter that Darlene committed first-degree premeditated murder.

The court would likely rule the documents as hearsay and they would be inadmissible if they did not meet an exclusion <sup>or exception</sup> under FRE.

## Hearsay Exclusions

### Business Record

*Exception (not exclusion)*

Records kept in the official capacity of a business that are made at the time or near the time of the act being describe, if made by someone acting under their duty to the business are an admissible hearsay ~~exclusion~~. *exception*.

In this case, the quarrels of Victor and Darlene as well as the restraining order would be considered to be kept as part of the police department everyday records. The custodian of the records would need to testify as to their validity.

Therefore the court would likely rule that the evidence is admissible under this ~~exclusion~~. *exception*.

## Victor's Physical Injuries

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*Restraining order =  
This is  
official  
Records,  
not  
Bus. Rec.  
exception*

### Relevancy

See Supra

### Logical Relevance - Tendency Test

See Supra

In this case, evidence of Victor's prior injuries would tend to show that Darlene could and has injured Victor and would disprove her claim of self-defense.

Therefore the court would rule that evidence of Victor injuries are logically relevant.

### Legal Relevancy - Balancing Test

See Supra.

In this case, evidence Victor's injuries would have high probative value to show that Darlene had motive and intent to kill Victor.

### Hearsay

See Supra

In this case, the prosecution would likely provide out-of-court documents to show Victor's injuries. These documents would be offered to prove the truth of the matter that Darlene committed first-degree premeditated murder.

The court would likely rule the documents as hearsay and they would be inadmissible if they did not meet an exclusion <sup>on exception</sup> under FRE.

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## Hearsay Exclusions

### Medical Diagnosis

Records taken in the course of medical diagnosis that are pertinent to the treatment and diagnosis of that issue are admissible under this exclusion.

In this case, records of Victor's doctor's visit, such as emergency room visits would be considered under this <sup>exception</sup> ~~exclusion~~ to the hearsay rule.

Therefore the court would likely rule that the records are admissible, but may offer a limiting statement if there were any statements that were taken that were not part of the treatment/diagnosis, but there is not evidence of that in this fact pattern.. <sup>instruction?</sup>

## 2-Roger's Testimony

### I am Afraid of Darlene and Darlene Threatened to Kill Me

#### Relevancy

See Supra

#### Logical Relevance - Tendency Test

See Supra

In this case, Roger's testimony that Victor was afraid of Darlene and that Darlene had threatened to kill him would tend to prove that Darlene had motive and intent to kill Victor and that he was afraid of her.

Therefore the court would likely rule the evidence is logically relevant.

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### Legal Relevancy - Balancing Test

See Supra.

In this case, evidence of Victor's statements that "I am afraid of Darlene." and "Darlene threatened to kill me" would have high probative value to show that Darlene had motive and intent to kill Victor. This may have some undue prejudice but it would not substantially outweigh the very high probative value.

Therefore the court would rule the testimony as legally relevant.

### Character Evidence

Character Evidence is inadmissible unless it is used for a non-propensity purpose in a criminal case to show Motive, Intent, lack of mistake, identity or common scheme. *MIMIC is relevant misconduct*

In this case, Victor's statements would be used to show motive and intent.

Therefore they would be admissible under this exclusion.

### Hearsay

See Supra

In this case, Rodger's testimony is regarding Victor's out-of-court statements that are being offered to prove the fact of the matter asserted that Darlene murdered him and it wasn't self-defense..

The court would likely rule the statements are hearsay and they would be inadmissible if they did not meet an <sup>*an exception*</sup> exclusion under FRE.

### Hearsay Exclusions

#### Present Sense Impression

No

State of mind Exception

Under FRE, present sense impression exclusion is if the declarant has first hand knowledge that happened near the time of the event described.

In this case, Roger hear that shortly before the murder, Victor was afraid of Darlene and that he though she was going to kill him.

Therefore the court would rule that this evidence is admissible under this exclusion.

### 3-Roger's Character Evidence Testimony

#### Victor's Reputation and Roger's Opinion of Victor

##### Relevancy

See Supra

##### Logical Relevance - Tendency Test

See Supra

In this case, Victor's Reputation and Roger's opinion of Victor would tend to disprove Darlene's claim of self defense.

Therefore the court would likely rule the evidence is logically relevant.

##### Legal Relevancy - Balancing Test

See Supra.

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In this case, Victor's reputation and Roger's opinion of Victor would have high probative value to show that Victor was not likely the aggressor and have high probative value against Darlene's self-defense claim. This may have some undue prejudice but it would not substantially outweigh the very high probative value.

Therefore the court would rule the testimony as legally relevant.

### Character Evidence

Character evidence regarding the victim is admissible.

In this case, Victor's character would show that he was not likely the aggressor.

Therefore they would be admissible under this exclusion.

### 4-Peter's Testimony

#### Darlene's Character Evidence and Knowledge of Work Dispute

The defense can have character evidence regarding the defendant, it is admissible.

#### Opening the Door

The prosecution can cross-examine <sup>↓ rebut</sup> and ask about prior bad acts once the door is opened by the defense.

#### Amy's Testimony

Since the defense brought up Darlene's character of non-violence the prosecution can now call a witness to character evidence regarding the defendant.

ENDING OF EXAM

*Timing?*  
*more analysis needed in call #4*

*overall - very good*