

Kern County College of Law

Evidence I Examination

Fall 2024

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Instructions:

Answer Three (3) Essay Questions

Time Allotted: Three (3) Hours.

Question One

Bob is shopping at Crawdaddy's – a well-known home improvement store in town, similar to Home Depot or Lowe's. While walking through the store to get to the garden section, something terrible happens. In the tools section, a heavy box containing hardware and tools had been sloppily placed on the second floor of a shelving system without being properly secured. While Bob was walking by, the box fell about 15 feet, striking Bob in the head, and knocking him unconscious. When Bob woke up (about five minutes later), he opened his eyes, and saw a Crawdaddy's employee named Dale standing above him. "Oh my goodness, are you OK!?" Dale asked. Bob replied "no, I don't think so, my head is killing me and I think I should get looked at – I'm an old guy after all, and you have to be careful at my age." Dale then says that he saw what happened, and that he would call for an ambulance and that Bob need not worry, because Crawdaddy's has a great policy that covers all expenses for any accidents that occur on site, and this includes expenses incurred by customers. Dale called 911, but before an ambulance arrived, Susan (the floor manager) ran over to the scene. Susan was in a panic, and she told Bob that she would be willing to give him \$1,000 today if he agreed not to pursue any additional legal causes of action against Crawdaddy's. Bob declined, saying he was in no position to make those types of decisions right now.

Bob eventually sues the Crawdaddy's Corporation for negligence and emotional distress. During the discovery phase, Bob's lawyer learns that Crawdaddy's had another employee, Frank, who failed to properly secure similar (but not identical) hardware and tool inventory at another time, about six months before the incident with Bob. Between Bob's accident but before Bob filed suit, Crawdaddy's fired Frank.

Assume the lawsuit gets filed in federal court, and that the Federal Rules of Evidence apply.

1. Bob's attorney seeks to admit Bob's initial statement to Dale by asking Dale about it on cross-examination. What objections, if any, should Crawdaddy's attorney make? What rulings should the court make in response?
2. Bob's attorney also seeks to admit Dale's subsequent statement to Bob (that Bob "need not worry," etc.). How should the court rule on Crawdaddy's hearsay objection? What other objections, if any, should Crawdaddy's attorney make? What rulings should the court make in response?
3. Bob's attorney further seeks to admit Susan's statement that she made to Bob at the scene. What objections, if any, should Crawdaddy's attorney make? What rulings should the court make in response?
4. Finally, Bob's attorney seeks to call witnesses to establish that Frank failed to secure another piece of inventory approximately six months before the accident, and that Crawdaddy's ended up firing Frank. What objections, if any, should Crawdaddy's attorney make? What rulings should the court make in response?

Question Two

Mary is asleep at night in her bed when she hears a strange noise coming from her kitchen. This frightens her greatly; she lives alone and no one else should be in her apartment. She goes to the kitchen to look and her worst fears are realized; someone wearing a black ski mask is wandering around aimlessly. She screams, and then runs to her bedroom, locks the door, and calls 911. Police respond within five minutes, break into the house, and arrest the man, who was still in the kitchen when police arrived. Mary sits down on her living room couch, and the police begin taking a recorded statement from her about what happened. During the initial part of her statement, she relates to the police everything she can about what she heard, seeing the man in the kitchen, and other pertinent details. In the middle of her statement, she sees other officers removing the suspect (in handcuffs) from the house to their patrol vehicle outside. Without prompting, Mary points at the suspect and screams, "that's the guy - screw you, asshole!" and then tells the officers that she has no doubt that he would have tried to assault her and steal her jewelry if she had not called 911 in time.

The man (later identified as John Campbell) gets criminally charged with burglary, a felony. John's case eventually proceeds to trial, but tragically, prior to trial, Mary passes away after being involved in an unrelated car accident.

During the defense's case, John seeks to call a witness (Mark) to state that he goes to church with John, has known John all of his life, and that John is a good and honest person who would never try to hurt anyone else or steal. In response, the prosecutor asks to approach and makes an offer proof that she intends to ask Mark on cross-examination if Mark knows that John is a registered sex offender, and that he was convicted of child molestation 15 years ago (a felony).

At his trial, and after John testifies, the prosecutor then seeks to admit a copy of a court minute order that he personally obtained from federal court, indicating that 15 years ago, John pled "nolo contendere" to a charge of child molestation.

Assume the trial takes place in a California state court, and that the California Evidence Code applies.

1. The prosecution seeks to introduce Mary's initial statement to police about what she saw and heard, up until the point that she was interrupted by other officers bringing the suspect through the living room to their patrol vehicle. What objections, if any, should John's attorney make? How should the court rule?
2. The prosecution also seeks to admit Mary's statement (through the testimony of a police officer who heard the statement) that she made immediately upon seeing officers leading John in handcuffs out of her residence, including her statement that she had no doubt that he would have tried to assault her and steal from her if

she didn't call 911 in time. What objections, if any, should John's attorney make to this evidence? How should the court rule?

3. When the defense calls Mark to the stand, the prosecution objects for improper character evidence. How should the court rule? Assuming that the court ended up allowing Mark to testify, the defense objects to the prosecutor's proposed line of cross-examination. Should the court allow the prosecution to move forward with its proposed cross-examination? Why or why not?
4. What objections, if any, should John's attorney make to the admission of the federal court minute order? How should the court rule?

Question Three

Michelle and Travis are in a really awful, toxic relationship. They have lived together for the past year and have a young child together, but they argue almost every night, and sometimes the arguments turn physical. One night, things go particularly badly. A neighbor overhears the couple in a vicious, early-morning argument, and then hears the sounds of thuds, slaps, and other noises that seem to indicate that the argument has turned physical. The neighbor calls police, who respond and arrest Travis. As Travis is getting arrested by Officer Gomez, Michelle yells out, “oh by the way, we were planning to watch a movie last night but then he just tried to rape me after I told him I was tired!” She also screamed out that Travis was a loser with no job who was not worthy of her. Travis ends up getting charged with both domestic violence and attempted rape.

At trial, after Michelle testified for the prosecution, Travis’s attorney indicates that he will seek to call Michelle’s ex-boyfriend, Chad, who will establish that five years ago, Michelle falsely accused him of rape, and that charges were brought against him, but ultimately dismissed.

In a surprise move, Travis’s attorney indicates that she will seek to introduce (through the testimony of Officer Gomez) Michelle’s statement on scene regarding Travis being a loser with no job, to show that she generally hates Travis and is prone to making false accusations about him. Once testifying, however, Officer Gomez indicates that he does not remember the specific statement about Travis being a loser, because another officer (Officer Jackson) wrote it down.

In response, the prosecution seeks to call a witness (Sara) who will testify that she dated Travis before a while back, and that Travis was rough with her and hit her on occasion, although no charges ever got filed. When they were breaking up, Travis told her, “I’m done with you, I’m going to find a new girl who will know when to do what I say.”

Assume the trial occurs in federal court, and that the Federal Rules of Evidence apply.

1. The prosecution seeks to call Officer Gomez and have him testify as to what he heard Michelle yell out (regarding planning to watch a movie, and Travis trying to rape her after she said she was tired)? What objections, if any, should Travis’s attorney make? How should the court rule?
2. The defense intends to call Chad to the stand. What objections, if any, should the prosecution make? What processes, hearings, etc., if any, should the court undertake to determine if Chad can testify? How should the court ultimately rule?
3. Regarding Michelle’s statement about Travis “being a loser with no job,” how should the court rule on the prosecution’s hearsay objection? If the objection is overruled, how can Travis’s attorney attempt to get Michelle’s statement in front

of the jury, while Officer Gomez is still testifying? Would your analysis change if Officer Gomez did not hear the statement himself – only Officer Jackson did?

4. The prosecution seeks to call Sara to the stand. What objections, if any, should the defense make to Sara's proposed testimony? What should the prosecution say in response? How should the court ultimately rule?

Suggested Answers

QUESTION ONE

1. Crawdaddy's attorney should make a hearsay objection. The entire statement will likely come in as an excited utterance, since Bob was still under the stress/excitement of the startling event. The first part of the statement could also come in as a statement for medical diagnosis or treatment, since those statements don't necessarily need to be made to medical personnel. The first part of the statement could also be a presence sense impression, as he is relating how he feels, but that would likely not apply to the second half of the statement (about being old, can't be too careful, etc.)
2. Crawdaddy's hearsay objection will probably be overruled as a vicarious statement of a party-opponent, given that Dale was an employee of Crawdaddy's, acting within the scope of his employment. Crawdaddy should also object on FRE 409 grounds (offer to furnish or pay medical expenses), and this objection will likely be sustained.
3. Crawdaddy's should make a hearsay objection, but the statement may be deemed an excited utterance, as well as a statement of a party-opponent. Crawdaddy should also object on FRE 408 grounds (compromise offers and negotiations). There is a good chance this objection will be overruled, however, because it is not clear that a claim was actually pending or being contemplated at the time the statement was made.
4. As to the first issue, Crawdaddy's attorneys should make objections on relevancy and FRE 403 grounds. Prior similar acts are generally disfavored when offered to show liability unless there is a high degree of similarity, and the facts do not suggest a high degree similarity here. As to the second part, Crawdaddy's should object on relevance and FRE 407 grounds (subsequent remedial measures). Firing an employee can be a subsequent remedial measure, and here, the firing occurred after the incident that spawned the lawsuit.

QUESTION TWO

1. John's attorney should lodge hearsay and Confrontation objections. Regarding hearsay, the only exception that may apply would be the spontaneous statement exception (C.E.C. 1240), but there is a legitimate issue as to whether the statements were made "spontaneously" given that this is a semi-formal interview. Regarding Confrontation, even though the statements do not involve actual testimony, they seem to be testimonial within the meaning of *Crawford* because they are being given to be used in a future prosecution. There is a legitimate issue as to whether the statements could be seen as addressing an ongoing emergency (either the capture of the suspect or of inquiring about needing medical attention), but because the suspect was already captured and no injuries occurred, the ongoing emergency exception outlined in *Davis* will probably not apply.
2. John's attorney should lodge hearsay objections. The first part of the statement would likely be a spontaneous statement. It would NOT fall under the prior identification exception in California, since Mary did not testify and was not subject to cross-examination. As to the second part of the statement, in addition to the same hearsay issues, the defense should object on relevance, 352, and speculation grounds. There is no indication that Mary knew exactly what John was planning to do while in the house, or why she thinks that he was going to go for her jewelry.
3. California law allows criminal defendants to call character witnesses on their behalf in any type of case, not just homicide cases. Thus, the court should allow Mark to testify. The prosecutor also has a right to confront Mark on cross-examination about specific acts of conduct that contradict Mark's testimony, so the cross should probably be allowed. John's attorney will argue that his prior conviction should be excluded as substantially more prejudicial than probative and highly inflammatory, but given that John opened the door to his character, the prosecutor will likely be allowed to proceed.
4. John's attorney should object on authentication grounds; there is no indication that the document has been authenticated. John's attorney should also object on hearsay grounds, but the prior judgment exception and public records exception will likely apply, assuming the proper foundation can be made. John's attorney could object on 352 grounds and argue that the evidence being highly inflammatory, but there is a good chance this will be overruled. Given that John opened the door regarding his character for non-violence and character generally, California law allows prosecutors to rebut that evidence, even with extrinsic evidence of specific acts. Furthermore, given that John testified, the evidence may be allowable to impeach his credibility.

QUESTION THREE

1. Travis should object for hearsay. This will not be a present-sense impression since the statement about planning to watch a movie was backward looking rather than forward looking, and it probably won't be an excited utterance, since Michelle is under the stress of a new event, rather than the one she is yelling about.
2. Chad's testimony will implicate the rape shield laws. The prosecution will need to give notice of its intent to call Chad. Then, the court should hold a hearing outside the presence of the jury to determine if a past instance of sexual assault occurred. If it determines that such an act did occur, the court must decide if the probative value of the testimony substantially outweighs the presumed prejudicial effect of the testimony, including embarrassment to Michelle. Here, there is a good chance this standard will be met, since the main purpose of the evidence is to attack Michelle's credibility, and there is a reasonable chance that a court may determine that Michelle was actually not previously raped at all, as she claimed.
3. The hearsay objection should be overruled – it is not being offered for the truth of the matter asserted. Travis's attorney can attempt to refresh Officer Gomez's recollection with Officer Jackson's report, and if that fails, Travis can attempt to either call Officer Jackson as a witness or have his report introduced as a past recollection recorded, if the proper foundation is laid. If Officer Gomez did NOT hear the statement, then his recollection could NOT be refreshed, since he does not have personal knowledge of the statement and therefore couldn't testify about it.
4. The defense should object as improper character evidence, since there is no domestic violence exception in federal court analogous to C.E.C. 1108. The prosecution can argue that this evidence is being offered for another purpose, such as modus operandi, intent, motive, etc. Of those options, the "intent" option is the most convincing, and there is a good chance the court will allow it in on that ground.

1)

1) Bob's initial statement to Dale

Hearsay Objection

Hearsay is an out of court statement made for the truth of the matter asserted

Here, the statement is being offered for the truth of the matter asserted. For the statement to be admissible an exception to the hearsay rule must apply.

Present bodily condition

Under a present bodily condition, the declarant must be making a statement about their condition of pain, emotion, physical condition. Here, Bob was telling Dale that his head was killing him and that he should get it checked out as he is older. Under the hearsay exception the statement should be admissible.

Statement for medical treatment or diagnosis

Under a statement for medical diagnosis or treatment, the declarant must make the statement in response to further help them get the medical treatment they need. The statement does not have to be given to a medical professional. Here, Bob told Dale that his head was killing him and that he needs to get it checked out because he has to be careful at his age. Dale then called the ambulance. Here the statement would be admissible because the statement was given in furtherance of seeking medical treatment.

Presence Sense Impression

Under a presence sense impression exception to the hearsay rule, a statement was made contemporaneously or immediately after the event occurred. Here, Bob told Dale that he was not okay and that his head was killing him. This statement was made contemporaneously while Bob was experiencing the event. The statement should be admissible.

Excited Utterance

An spontaneous statement made by the declarant under the stress caused by the event will fall under a hearsay exception. Here, just woke up from being unconscious with Dale standing over him. Immediately in response to Dale's question Bob answered that he was not okay and that his head

was killing him. Here, because Bob's answer was given under the stress of the events that was occurring ie he was still laying on the floor from being unconscious, the likelihood that the statement was fabricate is slim. Thus the court should rule the statement as admissible.

2) Dale statement to Bob that "Bob need not worry because Crawdaddy has a great policy that covers all expenses for any accidents that occur on site and this includes expenses incurred by customers"

Hearsay

Hearsay is an out of court statement made for the truth of the matter asserted

Here, the statement is being offered for the truth of the matter asserted that "Bob need not worry because Crawdaddy has a great policy that covers all expenses for any accidents that occur on site and this includes expenses incurred by customers" Since it is being offered for the truth of the matter asserted, to become admissible it must fall under one of the hearsay exceptions.

Statement by an opposing party

A statement by an opposing party falls under a hearsay exemption and is classified as not hearsay. A opposing party made a statement and it is being used by an opposing party. Here, Bob's attorney is seeking to admit Dale's subsequent statement to Bob that he made under is duty of his job. Under a various admission, an employee who makes a statement while under the scope of their employment will be attributed to the company. Here, Dale's statement will be attributed to Crawdaddy as Dale was an employee of the company at the time the statement was made.

Excited Utterance

An spontaneous statement made by the declarant under the stress caused by the event will fall under a hearsay exception. Here, Dale witnessed Bob unconscious and was standing over him when he woke up. He asked him if he was going to be okay and that he saw what happened and that he would call for an ambulance.... All this statements were made under the excitement of the event and the statement would be less likely to be fabricated. Thus, the statement would be admissible under the hearsay exception.

Presence Sense Impression

Under a presence sense impression exception to the hearsay rule, a statement was made contemporaneously or immediately after the event occurred. Here, Dale witnessed Bob unconscious and immediately after it happened stated that he witnessed the events. As there is not time for contemplation the trustworthiness of the statement would be allowed in by the court as an exception to the hearsay rule. Admissible

Logical Relevance

Evidence is relevant if it has a tendency to make any fact more or less probable than it would have without the evidence

Here, the evidence that Dale stated to Bob that Crawdaddy have excellent coverage that includes expenses for any accident that occur on site and that it includes expenses incurred by customers is relevant because the evidence could be used to show that the store may have anticipated being sued by its customers.

Legal Relevance

relevant evidence will be excluded if its probative value is substantially outweighed by the dangers of undue prejudice, waste of time, undue delay, confusing the issues, misleading the jury, or needlessly presenting cumulative evidence

Here, the danger of undue prejudice substantially outweighs the evidence's probative value because the jury will use this to find fault on the defendant.

Liability Insurance (Public Policy Exclusion).

Under public policy, evidence of liability insurance can not be used to prove that the defendant was negligent or liability for the injuries. Here, to allow the evidence of the liability insurance would cause the jury to use it for the wrong reason that could be based on the fact that the company could pay out the money not really whether or not the company was truly at fault for the injury. Here, there would be undue prejudice and the public policy mandates that will exclude this evidence.

3) Susan's statement to Bob that she was willing to give him \$1,000 today if he agreed not pursue any additional legal causes of action against Crawdaddy

Logical Relevance

Supra

Legal Relevance

Supra

Settlement Offers (Public Policy Exclusion)

Under Settlement offers, statements made in anticipation of litigation to settle the case with a monetary amount or accompanying statement made during negotiation can not be admissible to prove that negligence, culpable conduct, the validity of an offer, or the amount of the offer. Here, the statement that Susan made to Bob was an offer of settlement and would be inadmissible against Crawdaddy to prove that Crawdaddy was negligent based on public policy.

4) Witnesses to establish Frank failed to secure another piece of inventory 6 months before

Similar Occurrences

A similar occurrence can be used to prove causation, absent of mistake, or notice.

Logical Relevance

supra

This pieces of evidence is relevant to show that Crawdaddy was on notice that there was a prior similar accident involving inventory and an employee who did not properly secure it as in this case

Legal Relevance

supra

Here, the relevant evidence would not pass the balancing test because the past event involved a different employee and a different piece of inventory. This past occurrence was only one other incident of this type of accident. This evidence would be used for the wrong reason and would be prejudicial against the defendant. Evidence should be inadmissible.

Subsequent Remedial Measures (Public Policy Exclusion)

Evidence of a subsequent remedial measures can NOT be used to prove negligence, culpable conduct, design defect, or an inadequate warning. Subsequent remedial measures are admissible for impeachment purposes, ownership or control when it is in dispute, or feasibility if it is in dispute. Here, there are no facts to indicate that the evidence of firing Frank is being used for any admissible exception. Thus, the evidence will be inadmissible based on a public policy exclusion and because the jury will likely use it for the wrong reason if it was to be admitted.

2)

Question 1.

Logical Relevance: Evidence that has a tendency to make a fact of consequence more or less probable.

Legal Relevance: Balancing Test. More probative than it is prejudicial.

Witness Competency: In CA anyone can testify as long there is not something hindering their ability to do so. A witness must be able to understand right and wrong and have personal knowledge to what they're testifying about.

Hearsay: Out-of-court statement offered for the truth of the matter asserted.

There is some exceptions to hearsay here:

Contemporaneous Statement: A event occurred; a statement was made relating to the event, during or very shortly after the event. Federal counterpart is "Present Sense Impression."

John's attorney could make an objection for hearsay, but the court should overrule that objection because Mary's statement falls under the exception to hearsay known as: contemporaneous statement. Mary gave detail and statements about what she observed shortly after the event.

Question 2:

Spontaneous Statement: An event occurred that was stressful or exciting; a statement was made relating to the event while under the stress and excitement of said event. The Federal counterpart is "Excited Utterance."

John's attorney again could object on the grounds of hearsay. The statement was out of court offered for the truth of the matter asserted which is the identity of the intruder. There is an exception that applies which is spontaneous statement. Mary was still stressed from the seeing a stranger in her home, and as soon as officers had him in Mary's view she made a statement under the continuing stress of the event. The court should overrule John's hearsay objection. John could also make an objection for relevance. They would need to use the balancing test. Do Mary's statements that she was convinced he would have tried to assault her and steal from her provide an unfair prejudice or give rise to an emotional stake with the future jury? I believe the probative value is outweighed by the danger of unfair prejudice. Also John could object for speculation. Mary doesn't know exactly

why John was inside of her home and to assume and speculate it is strictly to cause her harm could also be prejudicial. I think the hearsay objection would be overruled and the other two would be sustained.

Question 3:

Character Evidence: Evidence of a person's character is inadmissible to prove that someone acted in accordance with that character on a certain occasion or that someone probably acted in a certain way (propensity). In a criminal case, however, if the defense opens up the door with opinion and reputation about a person's good character traits, the prosecution may rebut in California with all three types of character evidence (opinion, reputation, specific acts).

For sexual assault and child molestation cases evidence of prior convictions are admissible. The defense would object that the felony conviction is over 10 years old, and I think the court should sustain that and all of the prosecutions cross-examination strategy.

Question 4:

John's attorneys should object on the grounds of hearsay.

Hearsay: See above.

Public Records Exceptions: A record was taken by a public official or officer with a duty to make such a record. They had personal knowledge of the record and it was made at or around the time of the event, and the record was factual in nature.

Business Records Exception: A record was prepared during the regular course of business, the person had personal knowledge of the event, the record was made at or around the time of the event, and is factual in nature.

Prior Guilty Pleas: In Federal, evidence of guilty plea or felony convictions are admissible. In CA it also includes plea of nolo contendere.

John's objection would be overruled because a court minute order falls under the public records exception. The minute order was also a plea of nolo contendere for child molestation which is admissible under in CA. There are a couple layers that would allow that evidence to be admitted. First, pleas of nolo contendere are admissible so it could come in that way. Second, it was for child molestation. One could make the argument that because it was a sexual assault/child molestation it would be admissible. You would still need to use the

balancing test to make sure that the probative value substantially outweighs the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or undue delay. I think here the prejudicial effect outweighs the probative value. It has the opportunity to confuse the jury when this isn't a child molestation case. I think the issues could easily get mixed up when bringing in a felony plea of no contest from something 15 years ago to a case of burglary where character evidence is trying to be shown, or is at issue.

3)

1. Prosecution calls Officer Gomez about Michelle yelling about rape

- **The defenses first objection will be hearsay.** Hearsay is an out of court statement offered for the truth of the matter asserted.

The prosecution rebuttal will be that the statements were not offered for the truth of the matter asserted, they were offered to show Michelle's fear and state of mind during the incident.

The prosecution will also rebut that Michelle's statement was an excited utterance. An excited utterance is a statement made under the stress of a startling situation. As Michelle and Travis were just fighting and arguing, and since Michelle is alleging she was only raped yesterday, she is still under stress and this would fall under an excited utterance.

- **The defense's second objection will be for inadmissible character evidence.** The defense will say the prosecution is offering evidence of him trying to rape Michelle to show he was a bad person who would force her into sex when did not want to have intercourse.

The prosecution will rebut that the character evidence was not offered for propensity but to as a non-propensity reason to offer evidence. They will say it is offered to show Travis's motive and intent to harm Michelle, and since they were together, that he had the opportunity to attack her.

The evidence is more prejudicial and probative, and should not be allowed for character reasons.

However, the evidence will likely be considered an excited utterance or state of mind, and the court should allow it in under a hearsay exception.

2. Defense intends to call Chad. Prosecution objections. - COME BACK TO THIS

- **The prosecution's first objection will be inadmissible character evidence against a victim in a rape shield case.**

Chad's testimony falls under the rape shield law as testimony in a criminal federal case. The testimony implies that Chad and Michelle had a consensual sexual relationship, and that she then falsely accused Chad of rape. The defense would use this evidence to indicate that Michelle had a consensual relationship with Chad and also with Travis. Specific instances evidence against a victim used to show consent is admissible.

There should be an evidentiary hearing at least fifteen days before Chad testifies in court to determine whether his statements can be admitted.

The court should ultimately rule that Chad's testimony is admissible.

3. Michelle's statement about Travis being a loser with no job - prosecution objects for hearsay

The defense will argue that Michelle's statement about Travis being a loser with no job should be admitted as non-hearsay. It is being offered for Michelle's statement of mind and the effect on the listener (to show that she hates Travis), not for the truth of the matter (that Travis is a loser and does not have a job). The statement will be admitted as non-hearsay.

3b. If objection overruled, how can Travis's attorney attempt to get Michelle's statement in front of a jury while officer Gomez is testifying?

Travis's attorney can attempt to get Michelle's statement in front of a jury while officer Gomez is testifying using the prior recollection recorded exception. Prior recollection recorded is admissible if there was a record made at the time of the incident and the declarant can confirm that the record was accurate at the time it was taken, even if they don't remember the specifics of the incident. Third party records are admissible.

3c. What if Officer Gomez did not hear the statements - only officer Jackson did?

- If only officer Jackson heard the statement, then Officer Gomez's statement is hearsay. The defense could attempt to admit the statement under the statements against interest exception. Statements against interest are admissible when the declarant makes a statement against their own interest which a reasonable person would believe must be true because there is no possible benefit to the declarant for saying it. The declarant needs to be absent in order for this exception to apply, which Officer Gomez would be in this scenario.

4. Sara's statements about Travis being rough with her and hit her on Occassion:

The defense will object to Sara's statement as inadmissible character evidence. They will say that the prosecution is attempting to use Travis's alleged abuse against Sara as propensity evidence of him abusing Michelle because he is a bad, violent person.

The prosecution will rebut that they are not using the evidence for propensity, but rather under a prior bad acts exception. They will claim that Travis's alleged abuse against Sara offers to show a common scheme or plan, and also a habit (repeated responses to the same type of situation).

The second part of the prior bad acts analysis is whether the evidence is more probative than prejudicial. The court will likely find the evidence overly prejudicial and find it inadmissible. The evidence also does not meet the requirements of habit evidence, as it does not happen often enough and there is not enough information to establish how similar the circumstances truly were.

END OF EXAM