

Monterey College of Law

EVIDENCE

Midterm Examination

FALL 2025

Prof. J. O'Keefe

General Instructions:

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

Evidence – SLO & HYB

Fall 2025

Professor J. O’Keefe

Question 1

Sandy was walking down the beach access staircase at Oasis City. She grabbed the handrail which collapsed because it was loose. As a result, Sandy fell several feet and dislocated her left knee. She was able to call 911 with her cell phone.

Within minutes, Stretcher, a paramedic, arrived. He stated to Sandy, “This is the third dispatch call we received this month involving falls at this specific beach staircase.”

After Sandy’s fall, she learned that Oasis City temporarily closed the beach access staircase for six months and then reopened it. Also, there was a change in the product design of the staircase with sign posting, “Warning! Step Carefully.”

Sandy sued Oasis City in a California state court for negligence and a product design defect. Oasis City denied liability arguing that Step- Up Company, an independent contractor, was responsible for stairway maintenance.

Assume the following occurred in a California state jury trial. Discuss all the evidentiary issues and arguments that would likely arise in each section below. How would the trial court rule on each of the issues below? Assume proper objections were made.

Answer according to California Evidence Code.

- 1 During Plaintiff’s case, Sandy testified to her injury and introduced evidence that Oasis City had closed beach access staircase and reopened the staircase with improvements and a new warning sign posted.
- 2 Next, Sandy introduced Stretcher to testify that he responded to three prior calls to the same area and they all involved falls.
- 3 Next, Sandy introduced a liability insurance policy issued to Oasis City that included the beach access staircase.
- 4 Finally, Sandy introduced a properly authenticated letter from Oasis City offering \$45,000 to Sandy to settle the case. Sandy declined the offer.

Question 2

A 911 dispatch call went out regarding a robbery at Bling On, a high-end jewelry store. The dispatch included a description of armed robbers waving around firearms, wearing black ski masks and wrap-around sunglasses. The robbers stole four diamond Rolex watches and fled in a yellow Mustang.

Minutes later, Officer Ryder located a yellow Mustang a few blocks from the store. He conducted a proper stop, arrest, and seizure of items. All three occupants were charged with conspiracy to commit armed robbery and armed robbery. On the backseat of the Mustang, Officer Ryder seized firearms, three black hoodies, three wrap-around sunglasses, some Justice Tarot cards and four diamond Rolex watches.

During follow-up, Detective Gotcha located one Justice Tarot card that was left on the counter by the robbers. He interviewed Sparkles, the store owner, who identified the robbers by their attire and distinctive tattoos of sharks on their hands. Sparkles said, one robber yelled, “Go! Go! We’ve got three minutes!” The other robbers nodded.

Detective Gotcha had investigated four robberies of jewelry stores where the robbers had firearms, where they were dressed in black hoodies with wrapped around sunglasses and left a Justice Tarot card at each crime scene. Detective Gotcha suspected that this robbery was committed by the same crew.

Assume each of the numbered events occurred in a jury trial in a California state court. Discuss all the evidentiary issues, arguments that would likely arise, including objections, if any, and the likely ruling by the trial court.

Answer according to the California Evidence Code.

1. During the prosecution’s case, Sparkles testified to the watches, the description of the robbers, the yellow Mustang, the shark tattoo, and the statement made by one robber to the other robbers.
2. Next, the prosecution called Officer Ryder to testify as to the stop, arrest and search of the robbers. However, Ryder could not recall the exact number of watches he seized as evidence. The prosecution approached the witness with Ryder’s police report. Upon review, Ryder testified that he seized four watches.
3. Next, the prosecution called Detective Gotcha to testify as to the four prior robberies and the similarities of all the robberies including this robbery. The defense has been given notice and provided with all the police reports. Also, Detective Gotcha testified to seizing the Justice Tarot card and getting information from Sparkles on the present robbery.
4. Finally, the prosecution called the 911 dispatcher who testified that she had received a call regarding the Bling On robbery. She presented the dispatch log and the audio call.

Question 3

The defendant, Dan, is on trial for the assault with a deadly weapon for allegedly stabbing Victor in a bar fight. The Prosecution’s theory is that Dan stabbed Victor after an accident. The defense theory is that Dan did not stab Victor, rather, Victor fell onto a broken bottle during the mutual struggle.

Discuss all the evidentiary issues and arguments that would likely arise, including objections, if any, and the likely trial court ruling on the admissibility of the evidence. Apply the **Federal Rules of Evidence**.

1. The Prosecution calls as their first witness, Wendy, a bar patron. Wendy testifies she was near the fight. When asked what she observed, Wendy begins to describe a man standing nearby who was staring at the fight. The man suddenly pointed at Dan and screamed, “He’s got a knife and he’s sticking him with it! Get help!” moments before running out the door.
2. The Prosecution offers a properly authenticated screenshot of an Instagram direct message (DM) sent from the victim, Vic, to his friend two hours *before* the fight occurred. The message reads: "Just saw Dan at 'The Rusty Nail'. That guy is trouble. He told me last week he carries a knife everywhere now and would use it on me if he saw me again."
3. The Prosecution calls Dr. Drew, the emergency room physician who treated Victor. Dr. Drew testified that Victor had three deep stab wounds consistent with a knife. Dr. Drew testifies, "I asked Victor how this happened. Victor was in significant pain and struggling to speak, but he managed to say, '**It was Dan. He came at me with a big switchblade.**'" Dr. Drew noted this in his chart as a 'reliable history of assault' to guide his surgical approach."
4. The defense introduces the bar's properly authenticated "Incident Log," a record kept in the regular course of business for insurance purposes. The entry for the night in question, written by a security guard who has since moved to an unknown location, states: "01:15 AM - Fight broke out. Bar patron (Victor) appeared heavily intoxicated. Management noted significant broken glass found *underneath* Victor when he was moved." "A patron told me he saw the whole incident and there was no knife involved."

Evidence

Fall 2025

Question 1

Answer Summary of Issue Outline (Sandy)– Evidence Fall 2025

PLEASE NOTE: Students may argue about different outcomes, so long as they hit the issue. This essay is more about the Special Relevancy Issues and Policy Exclusions as per CEC. The students should know CEC 352 and 250 but specifically listing the code section number is not required.

QUESTION 1: ANSWER OUTLINE

1. Sandy's Testimony

As per CEC 350, only relevant evidence is admissible.

Logical Relevance/CEC 210 Tendency Test- evidence is logically relevant if there is a tendency to prove or disprove any disputed fact that is of consequence.

The court will likely rule Sandy's Testimony as logically relevant because it tends to establish, she is a percipient witness, had a dislocated knee due her fall on a defective product, the handrail.

However, see below under Special Relevancy regarding the repairs.

Legal Relevancy/Balancing Test CEC 352

The trial court has discretion under CEC 352 to exclude evidence if the probative value is substantially outweighed by the danger of unfair prejudice. It does not seem that the firsthand account by Sandy would confuse, mislead or be a waste of judicial time. However, see below under Special Relevancy regarding the repairs.

Special Relevance- Relevant Policy Exclusion

Logical Relevancy- defined above.

See Special Relevancy below.

Legal Relevancy- CEC 352 defined above

The trial court has discretion to weigh the probative value v. unfair prejudice.

See Special Relevancy below.

COMPETENCY AS A WITNESS

Competency – for a witness to be competent to testify, under CEC it 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. In short, witnesses must have capacity to observe, recollect, communicate and affirm to be truthful.

Sandy's testimony is based on personal knowledge; dislocated knee injury is admissible.

Special Relevancy- Subsequent Remedial Measures

In general, evidence of safety measures or repairs after an accident is inadmissible to prove negligence. This is due to public policy concerns as landlords, owners or managers should fix a problem. Taking action to fix future harm is good public policy. Remedial measures taken before an accident do not imply policy concerns.

Subsequent Remedial Measures- Closure then reopening of staircase. General rule- cannot be used to establish negligence. Subsequent repair or change in product design cannot be used for liability. Warning sign –may be argued as notice.

Argue/conclude

2. Stretcher's Testimony

Logical Relevance/ CEC 210 Tendency Test- *evidence is logically relevant if there is a tendency to prove or disprove any disputed fact that is of consequence in the determination of the action.*

Legal Relevancy-

Similar Happenings- Notice to Oasis City

Three 911 calls about ocean staircase and falls should be argued as notice. Argument that Oasis City should know or reasonably know about the dangerous staircase and defective handrail. Breach of duty and causation issues.

Argue /conclude.

3. Oasis Liability Insurance Policy- includes the beach staircase

Logical Relevancy

Legal Relevancy

Special Relevance-Relevant Policy Exclusions (liability insurance)

The general rule is that an insurance policy cannot be admissible to establish negligence. However, there is an exception where a party is denying "ownership or control" over the premises.

Here, Oasis City, a party, is denying liability and had an independent contractor deal with the maintenance of the staircase. To prove otherwise, the policy will be admitted in since the maintenance care responsibility is disputed. Oasis City is "blame shifting" to the Step-up company. The liability insurance policy is highly relevant because it tends to establish that City does have insurance coverage regarding the staircase. Since Oasis City is denying liability, the policy may help establish "ownership or control" of the staircase area.

Here, the City insurance policy tends to establish that the city does in fact own or control the staircase. Since the coverage includes the staircase, it is likely the "Step Up" Company is included. Part of a negligence claim includes duty, breach of duty, causation and damages. Therefore, the policy may prove liability. Since the insurance policy tends to establish duty, it may be significant in the disputed claim or a blame shift to the Step up company.

The liability coverage policy is admissible to show that in fact, Oasis City did exhibit ownership and control of the staircase. Most likely, the stairway handrail collapse will fall under Oasis City insurance coverage.

LIMITING INSTRUCTION/ LIMITED ADMISSIBILITY- a limiting instruction is one where the court may restrict the proper scope of the evidence. In the admission of the liability policy, the jury may be instructed to consider the policy for the purpose of the insurance for Oasis City, but the policy does not establish negligence.

Thus, the policy is admissible to prove that Oasis City had “ownership or control” over the event staircase but not that the city was negligent.

See below under Special Relevancy, where some relevant evidence has limitations.

Legal Relevance/Balancing Test CEC 352- the trial court has discretion under CEC 352 to exclude evidence if the probative value is substantially outweighed by the danger of unfair prejudice. It does not seem likely that the premises liability insurance policy would confuse, mislead or be a substantial danger of undue prejudice or a waste of time for a jury.

COMPETENCY AS A WITNESS

Competency – for a witness to be competent to testify, under CEC it 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. In short, witnesses must have capacity to observe, recollect, communicate and affirm to be truthful.

Sandy’s testimony is based on personal knowledge; dislocated knee injury is admissible.

3 Oasis Letter: Offer - \$45,000

Logical Relevancy- defined above

To promote the policy of encouraging settlements in civil cases, CEC 1152 prevents the use of settlement offers or negotiations to prove liability in a negligence claim.

The offer by City of Oasis of \$45,000 to Sandy may be considered a settlement offer and has a tendency to establish that the city was negligent in not maintaining the staircase. The letter is highly relevant to establish liability or negligence of the city.

See below under Special Relevancy.

Legal Relevancy- defined above

The trial court has the discretion to weigh the probative value of the letter offer against the unfair prejudice to Oasis City.

See below under Special Relevancy.

Special Relevancy- defined above

The offer by Oasis City of \$45,000 is likely an offer to compromise or settle the negligence lawsuit. The general rule is that settlement offers, offers to compromise or negotiations are inadmissible for the purpose of proving the validity of a claim or an amount of a disputed claim is inadmissible. Also, any statements made during the settlement negotiations are excluded as against public policy. The public policy is to have litigants settle cases and not be afraid of discussions or letters to be disclosed to the jury.

Here, the letter offer by City was for \$45,000 in settlement of Sandy’s negligence and product defect claim. The fact of the offer and the rejection of the offer should be inadmissible as it is against public policy.

QUESTION #2: ANSWER OUTLINE- Bling

**** Note:** Once a term has been defined, if it is used again in the same essay, students may write either defined above or see supra.

Summary issues only.

1. SPARKLES' TESTIMONY

- **LOGICAL RELEVANCY** – Tendency Test- evidence is logically relevant if it tends to make the existence of any material fact more or less probable than it would be without the evidence.

*Here, Sparkles' testimony is relevant because she is a **percipient witness** of **the** armed robbery and can identify how the robbers were attired, the statement said by one robber, "Go! Go! Three Minutes!" and the yellow Mustang getaway car.*

Argue both sides, use the facts and give the court ruling.

- **LEGAL RELEVANCY**- Balancing test- the court may exclude relevant evidence if its probative value is outweighed by the danger of unfair prejudice, confusing the issues, misleading or confusing the jury.

Argue both sides, use the facts and give the court ruling.

WITNESS COMPETENCY – for a witness to be competent to testify, under CEC it 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. In short, percipient witnesses must have first-hand knowledge, a capacity to observe, recollect, communicate and affirm to be truthful.

The court will rule- Sparkles testimony is based on personal knowledge and is admissible.

-**HEARSAY**-is an out of court statement by the declarant offered to prove the truth of the matter asserted. A statement is assertive verbal, written or non-verbal conduct intended as a statement.

Here, Sparkles overheard one robber telling the other robbers, "Go! Go! Three minutes!" is likely hearsay if it is offered to prove the robbers were in the heist together.

HEARSAY EXCEPTION: Co-conspirators

In furtherance of and during a conspiracy. Statement of "Go! Go! Three minutes!" may be used as an overt act that will be a factor in a conspiracy. This statement may bind all three robbers into the agreement to rob.

HEARSAY EXCEPTION: SPONTANEOUS STATEMENT

The statement, "Go! Go! Three minutes!" may be argued as a statement made during a stressful event, the armed robbery

2. OFFICER RYDER'S TESTIMONY

-LOGICAL RELEVANCE

-LEGAL RELEVANCE

-PAST RECOLLECTION RECORDED- writing made or adopted by the witness who cannot remember the facts, while made fresh in his mind and is trustworthy. Here, the officer remembered the robbery and the stop, arrest and search, but not the number of diamond Rolex watches seized from the defendants. Ryder's memory was refreshed by looking at his own police report. Students should comment that the police report itself should not be admitted into evidence.

Some students may argue memory jog or memory jog.

3. DETECTIVE GOTHCA'S TESTIMONY

-LOGICAL RELEVANCE

-LEGAL RELEVANCE

-RELEVANT MISCONDUCT -COMMON SCHEME OR PLAN

Character Evidence is not admissible to prove conduct in conformity with.

However, in criminal cases, prosecution may use relevant misconduct by defendants if using it to establish a common scheme or plan. This is like a signature crime and not being used as character evidence. If other police reports may be used, the defense must have been on notice and given the prior reports through the discovery process.

Compare this armed robbery with the prior robberies- attire, Tarot card (Justice), yellow Mustang, etc.

Argue and conclude. Defense will be very opposed.

4. 911 POLICE DISPATCHER TESTIMONY

- LOGICAL RELEVANCE

-LEGAL RELEVANCY

-HEARSAY DEFINED-

- BUSINESS RECORDS EXCEPTION: is the 911 call log and transcript admissible by the dispatcher?

Proper foundation needs to be laid. Records of events made in the regular course of business, consisting of matters within personal knowledge with duty. However, a **custodian of the records**, or a functional equivalent person is needed to establish a business record. The dispatcher may qualify but it needs to be addressed.

Argue both sides, conclude.

-PUBLIC RECORDS HEARSAY EXCEPTION -the 911 call a public record with the dispatch log and transcript being a public record? Does the dispatcher have a public duty to record this 911 information?

Argue and conclude.

-CRAWFORD CASE/SIXTH AMENDMENT RIGHT TO CONFRONT

Was the call testimonial in nature? An ongoing emergency? Since 911 dispatcher is available – no Crawford issue.

Question 3

Fall 2025 Evidence Mid-Term Exam

Prof. O'Keefe

The defendant, Dan, is on trial for the assault with a deadly weapon for allegedly stabbing Victor in a bar fight. The Prosecution's theory is that Dan stabbed Victor after an accident. The defense theory is that Dan did not stab Victor, rather, Victor fell onto a broken bottle during the mutual struggle.

*Discuss all the evidentiary issues and arguments that would likely arise, including objections, if any, and the likely trial court ruling on the admissibility of the evidence. Apply the **Federal Rules of Evidence**.*

1. *The Prosecution calls as their first witness, Wendy, a bar patron. Wendy testifies she was near the fight. When asked what she observed, Wendy begins to describe a man standing nearby who was staring at the fight. The man suddenly pointed at Dan and screamed, "He's got a knife and he's sticking him with it! Get help!" moments before running out the door.*

Relevance: Evidence is relevant if it has some tendency to prove or disprove a material issue in the case.

The evidence is relevant because it establishes Dan had a knife and was stabbing Victor.

Competence. For a witness to be competent to testify, under CEC it 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. In short, witnesses must have capacity to observe, recollect, communicate and affirm to be truthful. Wendy is testifying from her personal knowledge.

Hearsay: Out of court statement being offered for the truth of the matter asserted. The statement offered by the prosecution is hearsay.

Excited Utterance exception.

1. An event occurred.
2. The event was startling, or at least stressful
3. The declarant has personal knowledge of the event.
4. The declarant made a statement about the event.

Analysis: The event, the bar fight and stabbing is a startling event. The declarant appears to have personal knowledge of the event based on his proximity to the fight and the nature of his statements. The declarant's statements relate to the event. The statements are admissible.

2. *The Prosecution offers a properly authenticated screenshot of an Instagram direct message (DM) sent from the victim, Vic, to his friend two hours before the fight occurred. The message reads: "Just saw Dan at 'The Rusty Nail'. That guy is trouble. He told me last week he carries a knife everywhere now and would use it on me if he saw me again."*

Relevance: *This tends to show that Victor is aware that Dan is a dangerous person and Dan's propensity for violence.*

Hearsay Analysis: *The message contains two statements by Vic: (A) "That guy is trouble," an opinion, and (B) "He [Dan] told me last week he carries a knife everywhere now and would use it on me if he saw me again," which is a statement about Dan's past statement (hearsay within hearsay). Both are offered to prove Dan was a violent, armed aggressor (truth of the matter asserted).*

Admissibility: *This is likely Inadmissible Hearsay.*

Reasoning:

- a. *This is not a "Dying Declaration" (FRE 804(b)(2)) as he made it hours before the fight.*
- b. *This is not a "Statement Against Interest" (FRE 804(b)(3)) for Vic.*
- c. *The statement is a general narrative of past threats. While it might relate to Vic's then-existing state of mind (fear) under FRE 803(3), that exception does not allow the admission of past facts used to prove the defendant did the act. The statement mainly speaks to Davis's character and propensity for violence, which is generally impermissible character evidence (FRE 404(a)). The State cannot use this evidence to prove Davis acted in conformity with his alleged prior threats.*

Conclusion: *Inadmissible.*

3. *The Prosecution calls Dr. Drew, the emergency room physician who treated Victor. Dr. Drew testified that Victor had three deep stab wounds consistent with a knife. Dr. Drew testifies, "I asked Victor how this happened. Victor was in significant pain and struggling to speak, but he managed to say, 'It was Dan. He came at me with a big switchblade.' Dr. Drew noted this in his chart as a 'reliable history of assault' to guide his surgical approach."*

Relevance: *Dr. Drew's testimony is relevant to substantiate that Victor was stabbed by a knife rather than cut by a bottle.*

Competence. *For a witness to be competent to testify, under CEC it 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. In short, witnesses must have capacity to observe, recollect, communicate and affirm to be truthful. Dr. Drew is testifying from her personal knowledge.*

Hearsay: *Dr. Drew's testimony about Victor's statement ("It was Dan. He came at me with a big switchblade.") is an out-of-court statement offered for its truth (that Dan committed the act with a switchblade).*

Statements for Medical Diagnosis or Treatment

1. The declarant made a statement for a medical motive
2. The subject matter of the statement was proper
 - a. Note: The inception or general character of the external source of a physical condition is admissible under the FRE. Statements as to fault would not ordinarily qualify under this language.

Analysis: The rule allows statements that are "reasonably pertinent to medical diagnosis or treatment. Describing the mechanism of injury ("big switchblade," "stab wounds consistent with a knife") is crucial for diagnosis and surgery. Identifying the perpetrator ("It was Dan"), however, is typically not pertinent to medical treatment. A doctor treats the wound, not the identity of the person who inflicted it. Courts will redact the name "Dan," but admit the description of the weapon and assault mechanism because Vic made the statement to a doctor for treatment purposes, giving it high reliability. Since the entire quote includes both, the "Davis" part should theoretically be excluded, but the rest admitted.

Conclusion: Admissible in part (description of weapon and assault); Inadmissible in part (identification of the perpetrator's name).

4. The defense introduces the bar's properly authenticated "Incident Log," a record kept in the regular course of business for insurance purposes. The entry for the night in question, written by a security guard who has since moved to an unknown location, states: "01:15 AM - Fight broke out. Bar patron (Victor) appeared heavily intoxicated. Management noted significant broken glass found underneath Victor when he was moved." "A patron told me he saw the whole incident and there was no knife involved."

Relevance: The defense offers this log entry to support the theory that Victor fell on glass, not that he was stabbed.

Hearsay: The log is an out-of-court statement offered for its truth - Victor was intoxicated, glass was underneath him, and Dan did not stab him..

Business Records Exception: Business Records Exception: To introduce a business record under this exception, the following must be shown:

1. The report was prepared by a person with a business relationship with the company.
2. The declarant (the ultimate source of the report) had a business duty to report the information
 - a. NOTE: A report is not prepared in the course of business unless all of the persons contributing to the report have a business duty to do so.
3. The declarant had personal knowledge of the facts or events reported
4. The written report was prepared contemporaneously with the facts or events
5. It was a routine practice of the business to prepare such reports
6. The report was reduced to written form
7. The report was made in the regular course of business.

- a. *This requires that the entry be related to the nature of the business.*
- b. *Reports specially prepared for litigation are not made in the regular course of business*

Analysis: The log satisfies all necessary foundational requirements: It was kept in the regular course of business (for insurance purposes). It was a regular practice of the bar to make such records. The log was made at or near the time of the event. The security guard had personal knowledge and a business duty to report accurately to management for the log. There are no indicators of lack of trustworthiness (e.g., made in anticipation of litigation).

The statement in the log, "01:15 AM - Fight broke out. Bar patron (Victor) appeared heavily intoxicated. Management noted significant broken glass found underneath Victor when he was moved." Will be admissible as a business record.

However, the second statement in the log, "A patron told me he saw the whole incident and there was no knife involved." Will not be admissible under the business records exception because the patron did not have a business duty to the bar. That statement will need to be redacted unless there is a hearsay exception which would allow it to be introduced.

Present Sense Impression

1. *An event occurred.*
2. *The declarant had personal knowledge of the event*
3. *The declarant made the statement during or very shortly after the event*
4. *The statement relates to the event.*

Analysis: The problem with this exception is that we don't know exactly when the statement was made to the security guard.

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1. Closed Beach Access

Logical Relevance

Good A piece of evidence is logically relevant if it has the tendency to make a disputed fact in a case more or less probable with its inclusion. Relevance evidence is material, probative, and competent.

Here, the fact that Oasis city had closed their beach stair access shows that they are aware an injury occurred here and can show they are aware of their lability of the incident.

Legal Relevance

Good A piece of evidence is legally relevant if it's probative value is substantially outweighed by the dangers of the following: unfair prejudice, mistaking the issues, undue delay, confusing the jury, wasting time, and needlessly presenting cumulative evidence.

The evidence of the acts of Oasis city's probative value is not substantially outweighed by any prejudicial aspect.

Competency

Good Unless otherwise provide by law, any person is competent to testify. A lay person is required to have personal knowledge of the event.

Sandy is party to the event because she grabbed the handrail and fell then dislocated her knee. She is the reason Oasis City had to close access. She is competent to testify.

Subsequent Remedial Acts

Good A subsequent remedial act is a public policy exclusion where a party corrects a mistake that would have lessened the injury or harm had it been done earlier. This type of act is not admissible to show liability, but it can be admitted to provide a disputed fact regarding ownership, control, or the feasibility of precautionary measures. The purpose is to not deter people from fixing prior mistakes.

The act of reopening beach access after improvements and posting a warning sign is not admissible to prove a product design defect. However, since Oasis City denied liability for the incident because Step-Up Company was responsible for stairway maintenance opens the door to a disputed fact of ownership and control. This is applicable. Therefore, this evidence is ~~not~~ competent.

Conclusion

Since Oasis City's ownership and control is disputed, this evidence is now admissible. Good

2. Stretcher's Testimony

Logical Relevance

A piece of evidence is logically relevant if it has the tendency to make a disputed fact in a case more or less probable with its inclusion. Relevance evidence is material, probative, and competent.

The evidence of the three prior calls can show that there are other people who have been harmed by Oasis City's handrail.

Legal Relevance

A piece of evidence is legally relevant if it's probative value is substantially outweighed by the dangers of the following: unfair prejudice, mistaking the issues, undue delay, confusing the jury, wasting time, and needlessly presenting cumulative evidence.

The three call's probative value not substantially outweighed by any prejudicial aspect.

Competency

Unless otherwise provide by law, any person is competent to testify. A lay person is required to have personal knowledge of the event.

Stretcher is a paramedic who assist in the safety of others. He is a competent witness. He also has personal knowledge of the three calls because he works at the business that received the calls.

Hearsay

Hearsay is an out of court statement offered for the truth of the matter asserted. The statement can be oral or in writing.

Here, Stretcher orally stated out of court to Sandy regarding the three prior calls. This statement affects the truth of the matter of whether Oasis City would have known of these repeat incidents.

Similar Past Occurrences

Similar Past Occurrences is an issue of conditional relevance. It can not be admitted to prove the propensity of the crime, but rather a motive, intent, mistake, identify, or common plan, scheme, or preparation.

That is the rule stmt for 1101(b) not similar occurring

Here, the three falls occurred on the specific staircase Sandy fell off of which shows a pattern of Oasis's mistake. The evidence is admissible.

Conclusion

Stretcher's testimony of the three calls is admissible.

3. Liability Insurance Policy

Logical Relevance

A piece of evidence is logically relevant if it has the tendency to make a disputed fact in a case more or less probable with its inclusion. Relevance evidence is material, probative, and competent.

Here, the liability insurance policy can be shown to prove that Oasis City is the owner of the staircase.

Legal Relevance

A piece of evidence is legally relevant if it's probative value is substantially outweighed by the dangers of the following: unfair prejudice, mistaking the issues, undue delay, confusing the jury, wasting time, and needlessly presenting cumulative evidence.

Here, the liability insurance's probative value is not substantially outweighed by any prejudicial aspect.

Liability Insurance

The admission of liability insurance is a public policy exclusion of relevant evidence. Liability insurance may not be admitted to prove negligence, wrongdoing, or whether a party can pay. However, it can be admitted to prove bad faith such as bias.

Oasis city denied ownership and control of the staircase. This shows Oasis City has bad faith. The proof of liability insurance should be admissible to show Oasis City has ownership and control of the staircase thus they should maintain the area. This is applicable. *(can)*

Hearsay

See Supra.

Here, the insurance policy is a written statement out of court and is offered to show the truth of whether Oasis City is the owner of the staircase.

Business Records

Business records is a hearsay exception which allows evidence to be admissible if an employee of a company recorded information fresh in their recollection and it was a result of business. California does not require it to be a routine practice, can be a one time document. The document needs to be authenticated. Authentication happens through chain of custody, a unique object, or making an object unique.

Here, the liability insurance policy is a common business practice of insurance companies. The evidence is admissible under this exception.

Conclusion

The liability insurance policy is admissible.

4. Letter

Logical Relevance

See Supra.

Here, the letter shows Oasis believes they are the true owners of the staircase since they are offering to settle.

Legal Relevance

See Supra.

Here, the letter's probative value is not substantially outweighed by any prejudicial aspect.

Offer to Pay for Medical Expenses and Similar Expenses

Offer to pay for medical expenses and similar expenses is a public policy exclusion to relevant evidence. This exclusion is so that there is no deterrence for society to not want to help people. It cannot be shown to prove liability. California excludes any offers and joined statements.

Here, Oasis City offered \$45,000 to Sandy to settle the case. However, Oasis did not state whether the settlement money is for her medical expenses. This exclusion does not apply.

Compromises, Negotiations, and Settlements

Compromises, negotiations, and settlement statements of amount or liability are a public policy exclusion of relevant evidence. California does not have the government agency exception.

Here, Oasis offered \$45,000 to Sandy to settle the case. This is a settlement offer and is inadmissible.

Hearsay

See Supra.

Here, the letter is an out of court written statement shown to prove that Oasis City is claiming ownership of the staircase and wants to settle the case.

Business Records

See Supra.

Oasis City properly authenticated the document. The letter is likely not a routine practice, however, California allows one time documents as well.

Conclusion

The letter is inadmissible because of the compromises public policy exclusion.

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Question 2:

1) Sparkles Testimony

Relevance

Here, the testimony of Sparkles is relevant to prove that the items found in the defendants were the stolen items taken from the jewelry store. Sparkles, as the owner of the jewelry store can identify the stolen watches, and the description of the robbers, the yellow Mustang, the shark tattoo, and the statement made by one robber to the other robbers.

Spontaneous Statement (CEC)

An exception to the hearsay rule exists when: (1) the statement must intend to describe, or explain, (2) an act, condition, or event was startling, (3) that was perceived by the declarant, (4) the statement was made spontaneously, and (5) occurred while under the stress or excitement caused by that perception. Here, the jewelry store was robbed and Sparkles statement was made to describe the items stolen from the jewelry store, the robbery was startling for Sparkles and he was in fear and stress during the robbery, Sparkles statement was made spontaneously and occurred under extreme stress while the robbery was taking place. Thus, this evidence will be admissible.

Statement of a Party Opponent

Statement of the party opponent is admissible as the declaring is available in court to refute if he wishes so. A statement may be: (1) actual, it is the party's own words or acts, (2) adoptive, a third party makes a statement, and (3) vicarious, attribute the statement to D because agency (legal relationship) between the third party and D.

Express Adoptive Admission

(1) the declarant made a statement, (2) the made a statement in the party's pressence, (3) the party heard and understood the statement, (4) the party against whom the statement is sought to be introduced made a statement, which express agreement with the declarant's statement. Here, one of the robbers yelled, "Go! Go! we have three minutes" and the statement was made in the presence of the other robber, who understood the message, they had the chance to denied the statement but they didn't, which means that they made an implied adoptive admission. The other robbers had the opportunity to deny the statement but they didn't. the other robbers admitted being part of the robbery by nodding in agreement.

2) Officer Ryder Testimony

Relevance

Here, the testimony of Officer Ryder is relevant to prove the stop, arrest and search of the robbers. This evidence is crucial to the prosecution to prove its case against the robbers.

Prior Recollection Refresh

Prior recollection refresh is not a hearsay exception. When a witness on the stand cannot remember something, counsel may show the witness something, usually a document in order to jog the witness memory. Here, Officer Ryder could not recall the number of watches and the prosecutor help him refresh his memory by showing him the police report of the incident. this was crucial for Officer Ryder to accurately testify about the four stolen watches.

Business Records

Business records are admissible as an exception to the hearsay rule when: (1) the declarant had personal knowledge of the facts, (2) with a business duty to report the information, (3) the written report was prepared close in time to the events, (4) it was routine practice of the business to prepare such reports, (5) the report was made in the regular course of business. Further, CA allows a business record to be prepared for the purposes of providing a record during litigation. Here, officer Ryder testified based on his record, in this case a police report he made of the robbery. He had personal knowledge of the facts, it is customary and his duty to make a report after a robbery, it is routine practice to file a police report after a robbery, and it was during the regular course of his activities and duty as a police officer. Thus, this evidence is admissible.

3) Detective Gotcha Testimony

Relevance

Here, the testimony of Detective Gotcha is relevant to prove that he found one justice tarot card, which is similar tarot card found in other four prior robberies.

Prior Bad Acts

Prior bad acts are usually inadmissible when utilized to prove propensity, but they are admissible for other purposes such as motive, intent, lack of mistake, opportunity, knowledge, and identity. Here, the justice tarot card is not admissible to prove propensity but it is admissible to prove identity of the robber and link them to the other prior robberies. thus evidence is admissible to show identity. If this evidence is admitted, the court will give limiting instructions to the jury.

4) 911 Dispatcher Testimony

Relevance

Here, the testimony of the 911 dispatcher is relevant to prove that she received the audio call regarding the robbery. It will help the prosecution to prove that the dispatch call helped Officer Ryder locate the robbers.

Business Records

Business records are admissible as an exception to the hearsay rule when: (1) the declarant had personal knowledge of the facts, (2) with a business duty to report the information, (3) the written report was prepared close in time to the events, (4) it was routine practice of the business to prepare such reports, (5) the report was made in the regular course of business. Further, CA allows a business record to be prepared for the purposes of providing a record during litigation. Here, the dispatcher has personal knowledge of the call and has a duty to record all 911 calls. The record was prepared right after the call and it was in the regular course of business at the 911 call center. Thus, this evidence will be admissible.

3)

Student ID: 270020

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1.WITNESS WENDY

Relevance

Evidence is considered relevant if it has any tendency to make a fact of consequence more or less probable than without it. The evidence must be material and competent.

403/352:

A court can exclude relevant evidence if it deems that the probativeness is substantially outweighed by its prejudicial effect, and there is significant danger of issues such as unfair prejudice, undue delay, misleading the jury, or needlessly cumulative evidence.

Here, Witness Wendy is testifying as to what she witnessed during the fight. As she directly witnessed the events and there is no substantial prejudicial issues that would elicit an emotional jury response, her testimony would be very relevant and not excluded due to prejudice.

Competency of Witnesses

All witnesses are deemed to be able to testify, unless there is a question as to their competency based on a certain factor (such as age, mental impairment, or memory loss).

There is no indication of Wendy being incompetent, and her testimony would thus be admissible. A lay witness would need to be under oath to tell the truth and personal knowledge, which she had as an individual present at the fight scene.

Hearsay

Hearsay is an out of court statement offered for the truth of the matter asserted (TOMA). Evidence that is considered hearsay is inadmissible, unless it falls under an exception/exemption. Exceptions/exemptions include excited utterances/spontaneous statements, present sense impressions, records issued in connection with regular activity, etc.

Wendy is testifying as to an out of court statement made by a third-party declarant, a man who also witnessed the fight.

Excited Utterance

Good
An excited utterance is a statement made by a declarant, in connection with a startling event, at the time of the stressful event occurring. Under the FRE, the excited utterance does not need to describe the events (contrasted to CEC which requires a description) but does need to be made at the time of the stressful situation. It is presumed that a person would not have the time to think of a lie when stressed and letting out a sudden exclamation, and thus would very likely to be telling the truth.

Here, Wendy recalls the statement "He's got a knife and he's sticking him with it! Get help!" being shouted at the time of the bar fight. Although this would be very prejudicial to Dan's case, the statement was heard at the time of the event and was unlikely to have been fabricated. Wendy is recalling the statement and would be available for cross examination as to this statement; despite not being the original declarant of the utterance, she does have first hand knowledge of it and can be cross examined by defense.

Conclusion

The statement being recounted by Witness Wendy falls under the excited utterance exception, and would be bale to come in.

2. INSTAGRAM DM

Relevance

See above.

403/352

See above.

Here, the DM in question pertains to the involved parties, and would therefore be very relevant. However, there is the possibility that the evidence would be considered prejudicial as it could be considered emotionally stirring to the jury. Despite this, the jury would likely be aware of dealing with a sensitive topic such as stabbings given the overall nature of the case, and there would be no alternative issues preventing the admission of this evidence as relevant (absent deeming of hearsay).

Hearsay

See above.

The prosecution is seeking to bring in an Instagram DM from Victim to his friend two hours prior to the event taking place at the bar. The statement is absolutely outside of the current proceeding, but can be introduced if it meets an exception.

Present State of Mind

A statement made which gives insight into the state of mind of the party can be admissible. The DM from Victim indicates that he saw Defendant at the bar and thought of him as trouble, and also contains information regarding the knife allegedly carried by defendant and how defendant "would use it on me if he saw me again."

This statement was made 2 hours before the bar fight happened. However, it gives insight into V's state of mind at the time of the incident, illustrating him as likely to be on edge/afraid of encountering D. The defense is arguing that D did not stab V, but rather that V fell onto a broken bottle during the "mutual struggle."

The DM would not only call into question how much of a mutual struggle was actually taking place, but would also give insight into how the V was feeling at the time of the fight.

Conclusion

The DM would likely be admissible as present state of mind to demonstrate V's actual state of mind at the time of the fight.

3. DR. DREW

Relevance

See above.

403/352

See above.

The testimony evidence given by Dr. Drew would be very relevant as it ties in to the direct aftermath of the fight and pertains to the bodily condition of V.

Competency of Witnesses

All witnesses are deemed to be able to testify, unless there is a question as to their competency based on a certain factor (such as age, mental impairment, or memory loss).

There is no indication of Dr. Drew being incompetent, and his testimony would thus be admissible. No direct indication of Dr. being taken on as an expert witness in this matter, but his credentials as a professional ER doctor would make his opinion very credible and support his opinions. Additionally, he had direct review of V's medical records and would be able to review them if he were an EW.

Hearsay

See above.

The treatment for V and the statement made by V would be hearsay as it is out of court and being offered for TOMA.

Statements in Furtherance of Medical Treatment

A hearsay exception is statements made in furtherance of medical treatment. A declarant may make statements to either medical personnel (doctors or EMTs) or to lay people (including family and third parties) as to their physical condition, treatment, or nature of injuries and fall under the exception.

Here, Dr. Drew saw Victor as an ER doctor following the bar fight, and witnessed the three stab wounds. Dr. Drew also testified to the significant pain and struggles to speak expressed by Victor, as well as the identification of Dan and how the injury happened. Dr. Drew possesses first hand knowledge as to V's injuries and provided medical treatment, making his testimony admissible.

However, the identification of Dan as the culprit may be problematic, as it does not classify as testimony of V's physical condition or medical treatment received. As such, this portion of his testimony would likely face exclusion, while the statement relaying Victor's pain and speaking struggles would be admissible.

Conclusion

Dr. Drew's statements regarding identity of Dan may be problematic and excluded, but his testimony regarding Victor's physical condition and the treatment rendered would be admissible.

4. INCIDENT LOG

Relevance

See above.

403/352

See above.

The bar's Incident Log would be very relevant as evidence given that it was properly authenticated and noted to pertain to the incident. While prejudicial to Victor's case, it does not cause undue burden or any other issues that would substantially outweigh probativeness.

Hearsay

See above.

The incident log would be considered hearsay if it does not meet any exceptions. However, there is a major one that would allow for it to come in.

Business Records Exception

A hearsay exception pertains to business records. In order for this to be satisfied, a declarant/agent must generate a record in their capacity and during the course of their employment as a regular business occurrence. The records must be part of the business' regular activities under FRE, and cannot be issued in anticipation of litigation (however, the latter is not required under CEC and special reports are admissible under CEC).

In this situation under FRE, the log is noted to have been kept in the regular course of business for insurance purposes, and there is no indication that it was prepared in anticipation of any litigation. The declarant, a security guard, is noted to now have an unknown location; however, it was written at the time that he was employed by the bar and acting in his capacity as an employee/agent. The log is detailed and contains identifiable information, further cementing its status as a regular business practice.

Victor is noted to have appeared heavily intoxicated and the full scene is detailed, including the glass found underneath Victor and another patron's statement as to the incident and lack of knife. Prosecution may question the final statement regarding the patron's alleged statement to the guard as there is additional quotation marks & thus question as to whether this last portion was included in the log as a verifiable fact. A limiting instruction for this final portion may be requested, or there could be request to omit this final sentence as hearsay not within an exception.

Conclusion

While the guard is unavailable at this time and cannot be subject to cross exam, it is unlikely that the security guard would have falsified information at the time that he wrote the log during the course of his employment. No facts indicate that the log contains purely untrustworthy portions, and it would thus likely be able to come in under the business exception as a record.

END OF EXAM
