

Monterey College of Law

EVIDENCE

Final Examination

Spring 2023

Judge J. O'Keefe

General Instructions:

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

QUESTION 1

Alley-Op, a professional basketball player with the Jump Shots team, brought a cause of action against Mighty Ball, the manufacturer, for negligence and product defect. The exercise stability ball was manufactured by Mighty Ball and was advertised as burst resistant and able to withstand a total of 600 pounds.

Alley-Op was balancing on an exercise stability ball while lifting weights at the same time. He had 50-pound weights in each hand when the exercise stability ball suddenly burst. As a result, he fell forcibly to the ground.

Minutes later, at the emergency room, Alley-Op told Dr. Bones, “The pain in my left hand is excruciating, it happened when the ball popped like a balloon, and I fell!” Dr. Bones is a qualified expert orthopedic surgeon. Based on the X-rays, and conference with a radiologist, Dr. Bones diagnosed Alley-Op with a fractured left hand and a concussion. The personal injury caused Alley Op to miss the entire basketball season.

During a trial preparation meeting, Alley -Op showed Saul, his attorney, his gym journal. After the fall, Alley-Op made handwritten notes in his gym journal. The notes read, “Left-hand hurts and feeling dizzy. Going to Dr.” Alley –Op is right-handed.

Saul learns that Mighty Ball has had 752 written complaints from professional athletes that involved the exercise stability ball bursting with the weight of 150 pounds or less. Also, Saul learns from the authorized Mighty Ball website that the manufacturer changed the product design of the ball after the filing of the present lawsuit.

Assume the following occurred in a jury trial in a California state court. Discuss all evidentiary issues and arguments that would likely arise in each section below. Assume proper objections were made. Answer according to California Law.

1. During Alley -Op’s case, he testified as to his injuries, his statement to Dr. Bones and his gym journal notes.
2. Next, Dr. Bones testified that Ally Op had a fractured left hand and a concussion. He showed the jury the X-rays.
3. Finally, Saul introduces the following documents:
 - (a) The 752 verified prior complaints made regarding the exercise stability ball bursting.
 - (b) The Mighty Ball changed the design of the exercise stability ball.

QUESTION 2

Darryl Driver is being charged with hit and run driving resulting in death in the case of People of the State of X vs. Darryl.

On January 2nd at 8:00 a.m. Daryl Driver calls police to report that his vehicle was stolen. He tells police he last saw his black car at 11:00 p.m. when he returned from a New Year's Eve party and went to bed.

On January 2nd at 3:00 p.m. police are dispatched to a 2-vehicle accident. Both vehicles are found in a ravine off the roadway a half mile from Darryl's house. Police locate Victor in the driver's seat of the red car. Victor is badly injured but conscious. The black car is unoccupied. The black car is registered to Darryl Driver.

Victor is taken to the hospital where he tells Nurse Nan, "I am in so much pain and I don't think I am going to make it. I was driving home from my night-shift job at 1:00 a.m. on January 2nd when a black car came flying down the road. The car hit me and we both went down the ravine. I saw a male driver get out of the black car". Victor loses consciousness and dies from the injuries he sustained in the crash shortly later at the hospital.

Due to heavy rain and flooding the morning of January 2nd, the police are unable to determine the cause of the crash based on physical evidence.

On January 15, Officer Owen receives a call from Hillary, Darryl Driver's wife. Hillary tells Owen that Darryl came home at 3:00 a.m. on January 2nd after attending a New Year's Eve party. When Darryl got home he was drunk. Darryl told Hillary that he hit another car and they rolled down a ravine. Darryl said he was able to walk home. The next morning Hillary heard Darryl on the phone falsely reporting his car stolen. Hillary just found out Darryl was cheating on her and wants Darryl to go to prison because he is a lying cheat.

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

1. In their case in chief, the People call Nurse Nan to testify to Victor's statement.
2. The People call Hillary to testify regarding her observations of Darryl, the statements he made to her and his false report to police.
3. The People call Eugene Einstein, the author of a book on the application of the law of physics to colliding billiard balls and other objects. Einstein would testify that the black car was the cause of the crash based on the application of billiard ball physics to the angles of the vehicles located in the crash. Einstein has a PhD in physics. There are no peer reviewed studies that have applied his theories to vehicle crashes.

QUESTION 3

Officer West responded to a call for service dispatched by dispatcher Carly. According to Carly, the 9-11 caller identified herself as Jewel, the 14-year-old daughter of David and Vicky. Dispatcher Carly informs Officer West through dispatch channels that Jewel was crying hysterically and frantically begging for police to come because “my dad is upstairs killing my mom, I saw him beating and choking her!” Dispatcher Carly noted on the call that she heard what sounded like a male adult screaming in the background and a woman crying. When Officer West arrived at the house where the call originated, he saw David standing on the porch with his shirt off smoking a cigarette. Officer West asked David to sit on the curb while he made contact with Vicky. Vicky had a bloody gash on her forehead, deep red marks around her neck, and was bleeding from her lips and mouth. When Vicky came outside, she was crying and hyperventilating and said, “he tried to kill me! He tried to kill me!” Emergency Medical Technicians (EMTs) were called to the scene to treat Vicky’s injuries. When the EMTs were done treating Vicky, and she had calmed down considerably, Officer West interviewed her. Vicky told Officer West that David had come home and the two were having a nice time watching TV until Vicky got on her phone. David demanded to see who Vicky was texting but she refused to show David. Vicky said David then grabbed the phone and hit her in the head with it, causing the gash. David then punched her in the face and began strangling her. Vicky was rendered unconscious while being choked. Vicky said when she woke up, her daughter Jewel, was yelling at David, “you better get off her, the cops are on their way!” That is when David got off her and went outside to smoke. David was arrested and the District Attorney charged him with felony domestic violence against Vicky under the California Penal Code.

The following proffers were made at trial:

- 1) During the prosecution’s case-in-chief, Vicky testified that she lied to the police about David hurting her, and that she had made the whole thing up because she thought David was cheating on her. In response, while she was on the stand, the prosecutor played two segments of the properly authenticated footage from Officer West’s body-worn camera:
 - a. Footage showing Vicky coming out of the house and yelling that David tried to kill her
 - b. Footage showing Vicky telling Officer West that Vicky was regaining consciousness when Jewel yelled “you better get off her, the cops are on their way!”
- 2) During the prosecution’s case-in-chief, Jewel was called to authenticate her 9-11 call. The prosecution then played her 9-11 call for the jury.
- 3) During the prosecution’s case-in-chief, the prosecutor called Priscilla, David’s former girlfriend, who would testify that David had beaten her in the past, though he had never been charged.

Discuss the potential objections, and responses to objections, to the proffers. Answer according to California Law.