San Luis Obispo College of Law

EVIDENCE

Midterm Examination

FALL 2025

Prof. S. Lizardo

General Instructions:

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

Evidence – SLO & HYB

Fall 2025

Professor S. Lizardo

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.

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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.

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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 a 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."

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Evidence – SLO & HYB ANSWER OUTLINE

Fall 2025

Professor S. Lizardo

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 $45,000in 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 a 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.

1)

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Question 1)

Logical Relevance

Under CEC evidence is logically relevant if it has a tendency to prove or disprove a material fact in dispute that is of consequence to the determination of the action

Here, the evidence of S's injury is logically relevant because it tends to prove that that the stair case was negligently managed, and needed repairs were not made to ensure bystander safety. Her evidence of closed beach access and subsequent reopening is also logically relevant because it tends to prove that Oasis City was negligent as the owner of the staircase and responsible for its repairs

Legal Relevance

Evidence is legally relevant if the probative value is not substantially outweighed by the risk of undue prejudice, jury confusion, confusing the issue, or wasting the courts time

Here, S's testimony about her injury is legally relevant because the probative value of her testimony about her own injury is not substantially outweighed by any form of unfair prejudice, jury confusion, or a waste of the courts time. She is directly involved in her injury, and personally experienced it. Furthermore, her injury, is an paramount to her claim of negligence against Oasis and is directly legally relevant.

S's introduction of evidence against OC for closing the staircase and reopening it is legally relevant to the action of negligence, however it is substantially outweighed by undue

prejudice in that a reasonable jury may see that OC had closed the stairs right after the accident, had them repaired, and then reopened them. A reasonable person may conclude that this type of behavior is indicative of a feeling of fault ~~or guilt~~. (civil case)

Witness Competence

A witness must have first hand knowledge, and be competent to testify - meaning they are of sound mind, available, and not suffering from any mental illness or bias that would preclude them from honest testimony.

Here, there are no facts to indicate that S is an incompetent witness, and therefore her testimony will be admissible.

~~Past~~ Subsequent Remedial Measures

A defendant's past remedial measures are inadmissible to prove liability for negligence. Under certain circumstances past remedial measures may be deemed admissible for non liability purposes such as ownership, control, or notice. This would always be given with a **limiting instruction** under a **special relevance theory**.

Here, S attempts to bring in evidence that OC closed the stairs and later reopened them after repairs. This would be deemed inadmissible to prove liability as a matter of public policy. S may introduce this evidence for a non liability purpose such as to show that OC had control of the stair case, was the owner of the stair case, or had notice that the staircase needed repairs. OC would want this evidence barred and likely argue that they

were not the owner of the stairs. OC would argue that Step up Company was the owner of the stairs, and in control/aware of the condition of the stairs. Furthermore, the design of the staircase was changed. As a matter of public policy a design change is inadmissible to show liability.

Special Relevance

Evidence that typically is barred as a matter of public policy may be introduced for non liability purposes depending on the circumstances.

Here, S would want to bring in the evidence of the past remedial measure to show that OC was the owner of the beach stairway and did in fact have control and/or awareness over the stairs and that they needed repairs. S would **not** be able to bring this evidence in to show liability for negligence. This would be given with a limiting instruction.

Limiting Instruction

A judge may ~~offer~~ give a limiting instruction for one party for one reason and not the other party.

Here, S would want the judge to give a limiting instruction on the ~~past~~ subsequent remedial measure to show that OC had control over the stairs. S would want this to show that OC was the owner of the stairs and had notice that the stairs needed repairs. the limiting instruction would make clear to the jury that the evidence introduced is not being used for liability

purposes under negligence. Again, OC would want this barred as they would argue that they are not the owner.

Conclusion

S's evidence is both logically and legally relevant. She is competent to testify, and would bring in her testimony, and the evidence of the subsequent remedial measure as special relevance with a limiting instruction.

Question 2)

Logical Relevance

Defined supra

Here, ST's testimony that he responded to three prior calls is logically relevant as it tends to prove that OC was aware of the stairs, and chose to do nothing about it.

Legal Relevance

Defined supra

Here, ST's testimony is relevant to the issue, but may be outweighed by undue influence by the jury. ST's testimony weighs harshly in favor of the fact that OC had control of the

staircase, and did nothing about it despite numerous calls to medical workers involving the same fall that occurred to S.

Witness Competence

Defined Supra

Here, there are no facts to indicate that ST is an incompetent witness. His testimony is valid.

Hearsay

Hearsay is an out of court statement made used to prove the truth of the matter asserted. Hearsay is inadmissible without a recognized exception.

Here, ST's testimony involves 3 prior calls made to medical services regarding falls that happened on the same set of stairs. These calls are out of court statements made by additional witnesses to ST regarding their experience with the set of stairs this month that is the subject of litigation. At face value this is inadmissible. An exception may apply in the form of similar happenings.

Prior Similar Happenings 7 this is not HS.

An exception to the hearsay rule is evidence of prior similar happenings. This cannot be used to prove liability, but can be used to show Notice, or feasability of repairs.

Here, S would argue the testimony of ST falls under the similar happenings ~~exception~~ doctrine and is specially relevant as it shows the City was or should be on notice that this is a common theme. S would argue that this happened three times within the span of one month and that OC, as the owner, was or reasonably should have been on notice. S would likely argue that because OC was on notice of these similar happenings that as the owner OC should have decided if repairs were feasible, or if the stairs should be shut down until repairs were feasible. OC would argue that They were not the owner of the stairs, Step up Company is, and ~~this hearsay should~~ not be admitted to show notice or feasibility of repairs. Non-Truth purpose → Knowledge/Notice is not HS b/c non-Toma

Special relevance

Defined supra

Here, Prior similar happenings are specially relevant as they are a repeating pattern of activity that is directly related to the nature of the litigation. ~~They~~ The jury would be given with a limiting instruction by the Court.

Limiting instruction

Defined Supra

Here, the judge may give a limiting instruction in the form of OC being aware that people falling on stairs was a recurring theme. It would not be used to prove liability on the part of OC. OC would again argue they are not the owner and this instruction should be disallowed.

Conclusion

ST's testimony would likely be admissible under ~~the hearsay exception of~~ prior similar happenings, and be given a limiting instruction under special relevance to show that OC was on Notice.

Question 3)

Logical Relevance

Defined Supra

Here, S introducing Liability insurance is not directly relevant to whether or not OC was negligent in their handling of the stairs. It does not have a tendency to prove that OC was negligent in its management of the stairs. Insurance could be directly relevant on the issue of damages as it would tend to prove the liquidity of OC and S's ability to recover for harm suffered based on the amount claimed. Additionally it would be logically relevant to

prove that OC was named on the insurance as an owner/controller of the stairs. As such the insurance is logically relevant.

Legal Relevance

Defined Supra

Here, the insurance policy would be deemed legally relevant as the probative value of OC being the owner of the stairs is not substantially outweighed by undue prejudice against OC for negligence, jury confusion or wasting time. The insurance policy does not prove that OC was negligent in managing its stairs it proves that OC was named on the policy which includes the beach access staircase. as such the evidence is legally relevant.

Hearsay

Defined Supra.

Here S seeks to introduce an insurance policy. This is a written record made out of court. This record cannot be used to assert liability as it would constitute hearsay outside of a recognized exception. S will seek to introduce this insurance policy as a business record.

Business Records.

Business records are deemed admissible when they are made in the regular scope of work done by the business and can be properly authenticated by having proper foundation laid by a custodian of record of functional equivalent.

Here S would seek to introduce the liability insurance policy as a business record. The facts do not indicate if the policy has been properly authenticated by a custodian of record, or if the parties have stipulated in a pre trial motion in limine that the policy has been authenticated. As such S would need a custodian of records to testify that the policy is true and correct, made in the scope of business the insurance company regularly practices in which would properly authenticate the document. The facts do not indicate this has happened, and ~~we~~ it cannot infer ed it has happened. As such the insurance policy is likely **inadmissible** as it has **not been properly authenticated by a custodian of record**. OC would argue that is has not been authenticated and as such should be excluded from evidence. Don't personalize "we" (No points taken off)

Conclusion

The liablity insurance is logically and legally relevant but does not fit a hearsay exception. It has not been properly authenticated and as such is inadmissible.

→ Isn't there a special relevancy exception for ownership & control based on blaming step-up G — Rebutted that Daniel did have exclusive access standard? No HS needed

Question 4)

Logical Relevance

Defined Supra

Here S introduces evidence of an authenticated letter of a $45,000 settlement. this is logically relevant as it has a tendency to prove that OC felt responsible for the accident, and wanted to avoid a lawsuit by settling out of court.

Legal Relevance

Defined Supra

Here, the settlement offer's probative value is substantially outweighed by undue prejudice. A reasonable jury would see this settlement offer and think that OC is liable for negligence for offering to settle. They would base this assertion on the fact that a reasonable defendant would not offer to settle a case for $45,000 if that defendant did not feel like they were responsible.

Hearsay

Defined Supra

Here S introduces her offer to settle. She may argue that the letter is a statement of fault and should be admitted not to prove negligence, but that instead this an admission of a party opponent. While this may be true, a party admission is trumped by public policy by way of offers to compromise. Offers to compromise or settle are inadmissible hearsay with no recognized CEC exception.

Offers to Compromise/Settle

S is introducing an authenticated written document offering to settle outside of court. She is offering this as proof as to the truth of the matter asserted, or as a party admission. OC will seek to exlcude this evidence on the grounds of settlement offers. OC has a strong argument to exclude this evidence. S's only recourse would be a statement of a party oponent to show a statement of fault. The court would likely reject this argument and exclude the evidence as hearsay. Special Relevancy rules apply.

Conclusion

1) S's testimony is likely admissible as special relevance with a limiting instruction. 2) ST's testimony is likely admissible as special relevance with a limiting instruction. 3) S introducing the insurance policy is likely inadmissible as a business record as it has not been properly authenticated. 4) S introducing a settlement offer is likely inadmissible as a matter of public policy.

overall - good

END OF EXAM

80

2)

Question 1)

Logical Relevance

Under CEC evidence is logically relevant if it has a tendency to prove or disprove a material fact in dispute that is of consequence to the determination of the action

Here, the evidence is logically relevant as it tends to prove the people identified are the robbers. Further, due to the specific nature of the watches it tends to prove the watches recovered by police are the watches that belonged to Bling On, and as such the people in posession of the watches are the robbers. Also, the specific identification of the yellow mustang tends to prove that the drivers of the yellow mustang are the robbers. Similarly, the statement "go go go, we've got 3 minutes" tends to prove that the people saying it knew they were engaged in a robbery. Finally the identification of the tattoos tends to prove that the people with the tattoos are the same people who robbed the store.

Legal Relevance

Evidence is legally relevant if the probative value is not substantially outweighed by the risk of undue prejudice, jury confusion, confusing the issue, or wasting the courts time

Here the probative value of the of S's testimony is high, and so is the prejudice against the defendants. The defendants were identified with stolen watches, in a distinct car, with distinct tattoos making conversation indicative of someone committing a crime. While the prejudicial value is high, it does not outweigh the probative value of the evidence offered.

Witness Competence

A witness must have first hand knowledge, and be competent to testify - meaning they are of sound mind, available, and not suffering from any mental illness or bias that would preclude them from honest testimony.

Here, there are no facts to indicate that S is incompetent, and as such, his testimony is proper.

Prop 8

Under prop 8, for California criminal cases, all relevant evidence comes in unless barred by public policy.

Here the evidence is relevant, and public policy in the form of hearsay will be discussed below.

Hearsay

Hearsay is an out of court statement made to offer the truth of the matter asserted. Hearsay is inadmissible without a recognized exception under CEC rules.

Here, S testifies to the watches, description of the robbers, the yellow mustang, and statements made by one robber to another. S's testimony about the statements made to one another is the only out of court statement being brought in. All of S's other testimony is being used for a non truth purpose.

Prior Bad Acts Doctrine (MIMIC)

The doctrine of Prior bad acts can be used to establish a non truth of the matter asserted purpose such as Motive, Intent, Lack of Mistake, Identity, and Common Scheme or plan.

Here, Sparkles testifies as to his watches stolen, the mustang, description of the robbers, and the shark tattoos. The most likely candidate for S testifying to a non truth purpose is Identity, and Intent.

Intent

Intent is a non truth purpose that can be used to infer that the defendant acted in a way purposefully and intended to get away with the crime.

Here, S would argue that the guns being used by the men are indicative of their intent to get away with robbery. S would argue that the people who robbed his store were carrying guns and people who robs stores with guns intend to get away with it. S would also argue that the watches found in the car are the same watches stolen from his shop, further indicating the defendants intent to get away with robbery.

Identity

Identity can be used as a non truth purpose to show that the alleged defendant is who the declarant says they are. It must be such that able to be distinguished by specificity, distinctness and uniqueness.

Here, S would argue that the description of the robbers wearing black ski masks with wrap around beanies matches the identity of the people arrested. S would argue it is the same unique style of sunglasses on a ski mask. S would further argue that the yellow

mustang driven by the robbers was the same yellow mustang driven by the men who were arrested. S would also argue that the shark tattoos on the hands of the men are the same shark tattoos on the men who were arrested due to the uniqueness of the tattoos. S would also argue that the watches found in the seat of the car of the men arrested match the watches stolen from his shop due to S losing four Rolex watches, and four Rolex watches being found in the defendants car. S would also likely have familiarity with the watches based how unique they are. The facts do not indicate if the watches have any serial numbers or identifiers, but if they did this would only bolster S's argument. Defense would want to exclude this evidence by saying that it is not unique. Defense would assert that many people own sunglasses, many people own ski masks, and a yellow mustang is not a unique enough car to fall under this exception. Defendant would likely not be able to object to the guns or the watches or the tattoos.

Co Conspirator Statements

(organization – put this #5 exception after Hearsay)

Statements made by a co-conspirator during the attempt or commission of a conspiracy, are admissible as exceptions to the hearsay rule. "in furtherance + during

Here, S seeks to introduce into evidence statements made by the defendants during the robbery. The statement of "go go go! we've got three minutes" indicates that the robbers are runing out of time to get away, and they are in full understanding and agreement that they are currently engaged in a conspiracy to commit robbery. The defense may object that this is improper because no conspiracy is taking place, and thus the statement should be excluded. This is a weak argument and will likely be rejected.

Conclusion

S's testimony is logically and legally relevant and falls under ~~an exception~~ relevant evidence of Intent and Identity, and co conspirator statements.

Question 2)

Logical Relevance

Defined Supra

Here R's testimony is logically relevant as it tends to prove that R arrested the men who robbed S's store. Further

Legal Relevance

Defined Supra

Here R's testimony is legally relevant as the probative value of R substantiating his recollection of the arrest against the defendants is not outweighed by unfair prejudice against the defendants, it does not confuse the issue, mislead the jury or waste the courts time. R is testifying to his memory of the stop, arrest, and search of defendants which is directly relevant to the robbery.

Witness Competence

A witness must have first hand knowledge, and be competent to testify - meaning they are of sound mind, available, and not suffering from any mental illness or bias that would preclude them from honest testimony.

Here, there are no facts to indicate that R is an incompetent witness. R forgets the specifics of his police report which will be discussed later. At face value R is a competent witness.

Prop 8

Under prop 8, for California criminal cases, all relevant evidence comes in unless barred by public policy.

Here the evidence is relevant, and public policy in the form of hearsay will be discussed below.

Hearsay

Defined Supra

here R testifies to his recollection of the events during the stop, arrest, and search of the defendants. R is not an expert, as he is giving witness testimony as a police officer. R testifies that he cannot recall the number of watches he seized, and the prosecution gives him a copy of his police report to refresh his memory. The police report is a written document used for the purpose of refreshing R's memory.

Past Recollection recorded

A past recollection recorded can be used as an exception to the hearsay rule even if a witness cannot now remember the events.

Here, R's police report is a recollection of the events happening during his testimony about the robbery. R cannot remember the amount of watches stolen, and refers to the police report to refresh his memory. This is a valid exception to the hearsay rule and can be used to substantiate R's testimony.

Conclusion

R's testimony is valid and his memory refreshing by using his arrest report as a past recollection recorded is admissible.

Question 3)

Logical Relevance

Defined Supra

Here the testimony of DG is logically relevant as it tends to prove that the defendants arrested are the same defendants who committed the additional robberies due to their similarity.

Legal Relevance

Defined Supra

Here, the testimony is legally relevant as it has a high probative value as compared to its risk of prejudice. The testimony is prejudical, but not so that it outweighs the probative value offered by DG. DG is testifying to the fact that this is the same kind of robbery as

four prior robberies due to how similar in nature they are. Courts allow this under certain ecxeptions.

Witness Competence

Defined Supra

Here, there are no facts to indicate that DG is incompetent, and thus his testimony is proper.

Prop 8

Under prop 8, for California criminal cases, all relevant evidence comes in unless barred by public policy.

Here the evidence is relevant, and public policy in the form of hearsay will be discussed below.

Hearsay

Defined above

Here, DG is offering testimony about prior robberies that occurred, and attempting to link the defendants to robberies other than the one they are charged with. The facts indicate that the defense has been given notice of this and provided with police reports regarding the incidents.

Residual Exception NO

Under the residual exception relevant hearsay may come in for a non truth purpose provided it is material, necessary, authenticated, and proper notice is given. No

Here, Prosecution has given defense notice of the police reports. Further the reports are material and necessary in that the accused defendants are being provided with evidence of prior robberies occuring in the exact same fashion. Given that they are police reports, it is inferred that police officers can properly authenticate them during trial. This is a valid exception to the hearsay rule and serves as the "catch all" for hearsay that does not fall under the scope of any of the other exceptions. No Call was for CEC, this is FRE.

Prior Bad Acts Doctrine (MIMIC)

The doctrine of Prior bad acts can be used to establish a non truth of the matter asserted purpose such as Motive, Intent, Lack of Mistake, Identity, and Common Scheme or plan.

Here, DG testifies to the seizing of the Tarot Cards and getting information from sparkles on the present robbery. The prosecution will use The Tarot Cards to show Identity as ~~an exception to hearsay~~ relevant misconduct. They will argue that the Tarot Cards are so specific and act as a "calling card" to the prior robberies commited, and as such are deemed trustworthy to prove identify. The defense may argue mistaken identity and that the defendants just happen to like tarot cards. due to the totality of the circumstances this argument will likely be rejected. Furthermore The information used by Sparkles may be used to further bolster identity because Sparkles can testify to the amount of watches stolen, the type of car driven, the tattoos on the defendants hands, and the guns used during the robbery.

The "calling card" is common scheme & plan. Can be identity also — but not MS

Conclusion

All of DG's testimony will likely be admissible.

Question 4)

Logical Relevance

Defined Supra

Here the 911 dispatcher log is relevant as it tends to prove that Bling store was robbed by the accused defendants because it includes a description of the defendants.

Legal Relevance

Defined Supra

The evidence is legally relevant as it has a high probative value that is not substantially outweighed by unfair prejudice, jury confusion, or wasting the courts time. The evidence presented corroborates statements made by S as well as officers who have testified.

Witness Competence

Defined Supra

Here, there are no facts to indicate the 911 Operator is incompetent and thus the testimony is proper.

Hearsay

Defined Supra

Here, the dispatcher offers a written and audio log of the 911 call. This is an out of court statement being offered by the prosecution. The prosecution would want to use this as an official record, which is an admissible exception to the hearsay rule.

~~Official records~~ no → Bus. Records HS exception

Ofiicial records may be used as an exception to hearsay provided that they have a custodian of record who can properly authenticate them, and are made in the regular scope of practice.

Here, the 911 dispatcher can properly authenticate the 911 log as it was the call she was directly involved in. Furthermore the call is regarding the robbery which is directly in the regular scope of practice for the 911 operator. This is admissible as a hearsay exception.

missed Crawford

Conclusion

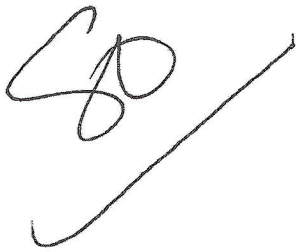
1) S's testimony is admissible, 2) R's testimony is admissible, 3) DG's testimony is admissible. 4) 911 Dispatch testimony is admissible.

overall good —
• missed some issues

END OF EXAM

3)

1.



RELEVANCE

All relevant evidence is admissible.

LOGICAL RELEVANCE

Evidence that is logically relevant tends to prove or disprove a material fact of consequence. Wendy's testimony tends to show that the fight occurred and that Dan did not start the fight. Wendy's testimony is logically relevant.

LEGAL RELEVANCE

The trial court has the discretion to exclude evidence when the probative value is substantially outweighed by the danger of unfair prejudice, undue waste of time, juror confusion, or misleading the jury. Wendy's testimony is highly probative to Dan's defense that Victor fell on the broken bottle and that Dan did not cause the injury. good

WITNESS COMPETENCY

A witness must be able to observe, remember, communicate, and appreciate the obligation to tell the truth. There are no facts that question Wendy ability to perception, memory, ability to communicate or her obligation to tell the truth. The defense will argue that Wendy may have been under the influence and her perceptions may be skewed. Ultimately, she will be deemed a competent witness. No facts state this

~~DIRECT EVIDENCE~~

HEARSAY

Hearsay is an out of court statement, by a person, offered to prove the truth of the matter asserted. Hearsay is inadmissible unless it is offered for a non TOMA purpose or there is a relevant exception. — So, analyze

HEARSAY WITHIN HEARSAY

Both inner and outer hearsay must be an exception

PRESENT SENSE IMPRESSION

Present sense impression. Wendy witnessed the fight first hand. THe defense may question the accuracy of the fight. Her testimony will be admissible as present sense impression.

EXCITED UTTERANCE

An excited utterance is made during a stressful or startling event. The man's statement was made during a fight, arguably a stressful event. It will be admitted as an excited utterance. Wendy is not the original declarant — she is repeating the statt. So — does this exception still apply? Fully discuss

2.

RELEVANCE

All relevant evidence is admissible.

LOGICAL RELEVANCE

Evidence that is logically relevant tends to prove or disprove a material fact of consequence. The screenshot is relevant to prove that Vic may have been trying to warn that Dan was dangerous. The screenshot is logically relevant.

LEGAL RELEVANCE

The trial court has the discretion to exclude evidence when the probative value is substantially outweighed by the danger of unfair prejudice, undue waste of time, juror confusion, or misleading the jury. The screenshot is unlikely to cause unfair prejudice, undue delay or confuse or mislead the jury and will be admitted.

HEARSAY

See definition above.

WRITTEN HEARSAY

Hearsay can be spoken or written. Here, Vic wrote the hearsay statement, offered to prove the truth of the matter, that Dan was trouble and potentially dangerous. To be admitted a hearsay exemption must apply.

PRESENT STATE OF MIND

Present state of mind allows an out of court statement of the declarant's then existing emotional or physical state. The screenshot describes Vic's concern that Dan is at the Rusty nail and that he fears there will be trouble.

HEARSAY WITHIN HEARSAY

Hearsay within hearsay includes an inner and other hearsay. Both must meet a hearsay ~~exemption~~ exception to be admissible. Vic's message said that Dan told him last week that he "carries a knife and would use it if he saw me" is hearsay with Dan as the declarant. 2 hours before fight

STATEMENT BY PARTY OPPONENT

Any statement by a party opponent is admissible. The reasoning is that they are available to testify to refute the statement. Dan allegedly told Vic he carries a knife and would use it he say him again. Dan's statement will be admissible as a statement by a party opponent.

3.

RELEVANCE

All relevant evidence is admissible.

LOGICAL RELEVANCE

Evidence that is logically relevant tends to prove or disprove a material fact of consequence. Dr Drews statement tends to prove that Victor's injury occurred and was severe. Dr Drew's testimony is logically relevant.

LEGAL RELEVANCE

The trial court has the discretion to exclude evidence when the probative value is substantially outweighed by the danger of unfair prejudice, undue waste of time, juror confusion, or misleading the jury. Dr Drew's testimony is highly probative to the cause of his injury and who caused it. It also refutes Dan's claim that he did not stab Victor, rather, Victor fell on a broken bottle. Dr. Drew's testimony is unlikey to be deemed a waste of time or cause confusion of the issues or mislead the jury. See Expert Witness below.

WITNESS COMPETENCY

A witness must be able to observe, remember, communicate, and appreciate the obligation to tell the truth. There are no facts that question Dr Drews's perception, memory, ability to communicate or his obligation to tell the truth. Dr Drew will be deemed a competent witness.

EXPERT WITNESS

An expert witness has had their qualifications tested and may testify to their opinions. There is some concern that labelling the doctor an expert will give his testimony undue weight. However, doctors are known for the competent treatment and diagnosis of injury. Dr will likely be deemed a reliable and competent expert witness.

HEARSAY

Hearsay is an out of court statement, by a ~~person~~ declarant, offered to prove the truth of the matter asserted. Hearsay is inadmissible unless it is offered for a non TOMA purpose or there is a relevant exception.

MEDICAL RECORD

Medical records and statements are a hearsay exception if they are made during the course of diagnosis or treatment for the matter at issue. Dr Drew's testified that Victor was in pain and that Dan came at him with a big switchblade. Though not stated, the switchblade was likely the cause of the three deep stab wounds Victor was treated for. The defense will argue that a switchblade would not constitute a "big knife" and would likely not cause deep stab wounds. However, the Dr Drew's testimony on Victor's medical history will be admitted as nonhearsay. The jury will decide whether the switchblade was the cause of the injury. See limited admissibility below.

facts do state "3 deep stab wounds consistent w/ a knife." & "It was Dan - He came at me w/ a big switchblade"

HEARSAY WITHIN HEARSAY

Hearsay within hearsay includes an inner and other hearsay. Both must meet a hearsay exemption to be admissible. Victor's statement that "It was Dan" is not related to his medical diagnosis but could be admissible under another hearsay exemption. likely not

EXCITED UTTERANCE

Excited utterance is a hearsay exception that allows statements made during a stressful or startling event. They are deemed reliable because there is little time to craft another statement. Victor was recently in a bar fight and was stabbed (or fell on a broken bottle). A bar fight and injury requiring emergency treatment are arguably stressful. Victor's statement that "It was Dan" may be deemed admissible as an excited utterance. ~ But the Dr. cannot testify to ID

LIMITED ADMISSIBILITY

Evidence that is admitted for one purpose but not another. If Victor's statement identifying Dan is not admissible as excited utterance, it will not be admitted. The jury will need a limiting instruction to show Victor was injured by a switchblade but not that he identified Dan as the culprit. NO This call was for Dr. Drew - he cannot testify as to ID of Dan. So V is not testifying in Call #3 ☹

4.

RELEVANCE

All relevant evidence is admissible.

LOGICAL RELEVANCE

Evidence that is logically relevant tends to prove or disprove a material fact of consequence. The bar record tends to prove that a fight did actually happen. The fact that

Victor was intoxicated and significant broken glass was found underneath him tends to prove that Dan's defense is credible. The bar record is logically relevant.

LEGAL RELEVANCE

The trial court has the discretion to exclude evidence when the probative value is substantially outweighed by the danger of unfair prejudice, undue waste of time, juror confusion, or misleading the jury. The bar record is a regularly kept record that is highly probative to the circumstances of Victor's injuries and Dan's defense. It will not cause unfair prejudice and be considered an undue waste of time or cause juror confusion or mislead the jury. The bar record is legally relevant.

HEARSAY

Hearsay is an out of court statement, by a person, offered to prove the truth of the matter asserted. Hearsay is inadmissible unless it is offered for a non TOMA purpose or there is a relevant exception.

BUSINESS RECORDS

Business records are a hearsay exception if they are taken in the scope and course of regular business. The facts state the bar kept the Incident log in the regular course of business for insurance purposes. The record must be taken by a custodian of the record. However, the record can be authenticated by someone knowledgable about the recordkeeping and need not have actually witnessed the event. Here, the security officer was written by the security guard, presumably a regular requirement of his job, and could be authenticated by the bar's authorized individual responsible for maintaining the record, such as a manager or human resources.

UNAVAILABLE WITNESS

An unavailable witness is a witness unavailable due to privilege, refusal to testify, incapacity, death, or, in this case, unavailable.

FORMER TESTIMONY

The facts do not say the defense's efforts made to procure the security guard but presumably they made reasonable and diligent efforts. The prosecution may argue that the security guard's record was testimonial in nature, that is, in preparation for trial. The record was not made under oath and the prosecution did not have the opportunity to cross-examine the witness and his statement. This would violate the Confrontation Clause. However, this a criminal case and it is the accused's right to confront his witness. Here, the security guard's record is beneficial to the defendant and the Confrontation Clause would not be implicated. The court is likely to admit the record as a business record and not former testimony.

END OF EXAM

overall - good