

KERN COUNTY COLLEGE OF LAW

MIDTERM EXAM QUESTION

FALL 2021 EVIDENCE

PROFESSOR H STARR

General Instructions:

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

QUESTION 1

Kyle and Demetrius are roommates at a college in Rome, GA. One night, they decide to drive over the state line to Alabama to pick up a girl. They drive across state lines and stop at a liquor store where they purchase a 750ML bottle of liquor. They split the bottle of liquor, which was the equivalent of more than 8 beer's worth of alcohol to each roommate. In a state of extreme inebriation, Kyle and Demetrius go to the junior college of the next town. There they meet Lilia. The two roommates abduct Lilia, killing her boyfriend, Bart, drive her to a remote area outside of town, and rape her. After raping her, Kyle confides in Demetrius that they should do something to Lilia so she cannot report them. Kyle and Demetrius cut off Lilia's hands and remove her tongue and leave her for dead. Lilia lives and is found by good Samaritans.

Lilia's father, Tim, and his son, Gill, track down the two roommates with Lilia's help. Tim kills Kyle, cooks him into a pie, and is arrested trying to send Kyle's cooked remains through Uber Eats to Kyle's family. Gill finds and attacks Demetrius, but lets him live to face arrest and trial. Both Tim and Demetrius are arrested. Tim is arrested for the murder of Kyle. Demetrius is arrested for the abduction, rape and disfigurement of Lilia, the murder of Bart, and the murder of Kyle under a theory of provocative-act murder. In the first trial, Tim is found not guilty by reason of temporary insanity. In the later criminal trial of Demetrius, the following evidence proffers are made:

- 1) The prosecution calls Marcus. Marcus, now retired, will testify that he was the presiding judge in a prior case involving Demetrius. He would testify that Demetrius was tried and convicted of sexual assault two years prior.
- 2) The prosecution calls Lilia. Lilia is unable to speak verbally or sign. The Prosecution proposes to have Lilia testify using a keyboard and a single prosthetic hook with which she can press letters to answer questions. Lilia will testify that Bart was a kind and gentle person and would never hurt anyone, and to the gruesome details of her rape and disfigurement.
- 3) The defense calls Aaron. Aaron will testify that he is Demetrius' friend of two years. Aaron will testify that he received a text message of a video from Demetrius the night of the incident. In the video, Bart was yelling obscenities at Kyle and Demetrius and threatening to kill them for no reason apparent from the film. Aaron will testify that,

unfortunately, the video was on his phone that he lost in a tragic boating accident a week after the charges were filed.

Discuss all objections and responses under the Federal Rules of Evidence. How is the court likely rule on the admissibility of this evidence? Do **not** discuss hearsay.

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Question 2

David is prosecuted for the crime of trespass in the case of People of the State of California v. David. It is alleged that David entered Valerie's residence without her permission. Valerie rents her home from Walter. David is Walter's property manager.

At David's trial, the Prosecution calls the alleged victim of the trespass, Valerie, as their first witness. Valerie testifies that on June 1, 2021, at 11:00 a.m. she was napping at her home when she heard knocking at the front door. David was there to measure the bathroom sink for Walter. Valerie said that it was not a good time for David to come into the house because she was still in her pajamas and she had not received any advance notice of the request to come onto the property. Valerie stated that David pushed into the home and entered without permission.

Valerie further testified that on June 1, 2021, at 1:00 p.m. David posted a letter on her front door stating that Valerie's tenancy at the home was terminated due to deplorable conditions inside the home. Valerie denies that the home was in a deplorable condition. Valerie called the police to report the trespass on June 1, 2021 at 5:00 p.m.

David's defense is that Valerie gave David permission to enter the home and that she fabricated the trespass story after David served Valerie with a notice of eviction.

Assume that the following occurred in the jury trial of David. 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. Apply the California Rules of Evidence.

1. David calls his former employer, Sally, testifies that David worked as her property manager for 10 years and that he has an excellent reputation for being professional. She testifies that in her opinion, David is a law-abiding person.
2. During cross examination, the prosecutor asks Sally, "Are you aware that David frequently violates traffic laws"? When Sally answers, "No" the prosecutor seeks to introduce David's properly authenticated traffic citations for speeding.

3. The prosecution seeks to admit the fact that, a year prior, David entered a plea of guilty to a trespassing charge. David later withdrew his plea and the case was dropped.
4. In rebuttal, Valerie testifies that on her copy of the lease agreement she remembered that the entry clause required 24 hours' notice without tenant waiver of notice before landlord could make entry. The prosecution disputes this claim, stating no such provision existed in the agreement.

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Question 3

At the "Tie the Knot Resort", Bianca and Graham were just pronounced husband and wife and were dancing under an outdoor event tent. Suddenly, a ferocious storm swept in, causing the large outdoor tent to collapse when several support poles toppled over. As the support poles collapsed, Bianca sustained a concussion and Graham sustained blunt force trauma injuries to his forehead.

On the day of the wedding, there was a weather forecast predicting terrible weather conditions that included gusty winds, rain, and lightning. The manager was aware of the weather forecast but gave the "green light" for the wedding to proceed. When the manager learned the couple were injured, he called for an ambulance and expressed sympathy to the couple for their pain and suffering.

After this incident, the couple learned that the resort had discontinued outdoor events. Instead, all events are now indoors. Also, they learned that the manager was no longer employed by the resort.

Bianca and Graham filed a negligence lawsuit against the "Tie the Knot Resort" and the tent company, "Got You Covered." The resort denied liability and claimed the tent company was solely responsible for any maintenance and construction of the tent.

The tent company denied liability claiming the company pitched the outdoor tent properly, staked the center pole and other supporting poles. However, after the tent pitching, the manager removed the center support pole because it was disruptive to dancing on the dance floor.

Assume the following occurred in a jury trial in a California state court. Discuss all the evidentiary issues, objections and arguments that would likely arise in each section below. Assume proper objections were timely made. Also, assume Bianca and Graham have waived any conflict of interests. Do not discuss hearsay related issues. How would the trial court rule on each of the admissibility of the following evidence?

Answer according to California Rules of Evidence.

1. During direct testimony, Bianca testified that the manager expressed sympathy to her and Graham for their pain and suffering. Also, that the manager gave the go ahead for the outdoor wedding.
2. Then, the couple's attorney introduces an authenticated premises insurance liability policy, that included premises liability insurance for the "Tie the Knot Resort" and included coverage for vendors, such as the tent company.
3. Next, the attorney introduced a properly authenticated letter from the resort offering \$153,000 to resolve the case. Bianca and Graham rejected the offer.
4. Next, the couples' attorney introduced evidence that the resort no longer permits outdoor events and that the manager is no longer employed there.

KCCL - ANSWER OUTLINE – EVIDENCE -FALL 202 1-HSTARR

Chiron and Demetrius are roommates at a college in Rome, GA. One night, they decide to drive over the state line to Alabama to pick up a girl. They drive across state lines and stop at a liquor store where they purchase a 750ML bottle of liquor. They split the bottle of liquor, which was the equivalent of more than 8 beer's worth of alcohol to each roommate. In a state of extreme inebriation, Chiron and Demetrius go to the junior college of the next town. There they meet Lavinia. The two roommates abduct Lavinia, killing her boyfriend, Bassianus, drive her to a remote area outside of town, and rape her. After raping her, Chiron confides in Demetrius that they should do something to Lavinia so she cannot report them. Chiron and Demetrius cut off Lavinia's hands and remove her tongue and leave her for dead. Lavinia lives and is found by good Samaritans.

Lavinia's father, Titus, and his son, Quintus, track down the two roommates with Lavinia's help. Titus kills Chiron, cooks him into a pie, and is arrested trying to send Chiron's cooked remains through Uber Eats to Chiron's family. Quintus finds and attacks Demetrius, but lets him live to face arrest and trial. Both Titus and Demetrius are arrested. Titus is arrested for the murder of Chiron. Demetrius is arrested for the abduction, rape and disfigurement of Lavinia, the murder of Bassianus, and the murder of Chiron under a theory of provocative-act murder. In the first trial, Titus is found not guilty by reason of temporary insanity. In the later criminal trial of Demetrius, the following evidence proffers are made:

- 1) The prosecution calls Marcus. Marcus, now retired, will testify that he was the presiding judge in a prior case involving Demetrius. He would testify that Demetrius was tried and convicted of sexual assault two years prior.
- 2) The prosecution calls Lavinia. Lavinia is unable to speak verbally or sign. The Prosecution proposes to have Lavinia testify using a keyboard and a single prosthetic hook with which she can press letters to answer questions. Lavinia will testify that Bassianus was a kind and gentle person and would never hurt anyone, and to the gruesome details of her rape and disfigurement.
- 3) The defense calls Aaron. Aaron will testify that he is Demetrius' friend of two years. Aaron will testify that he received a text message of a video from Demetrius the night of the incident. In the video, Bassianus was yelling obscenities at Chiron and Demetrius and threatening to kill them for no reason apparent from the film. Aaron will testify that, unfortunately, the video was on his phone that he lost in a tragic boating accident a week after the charges were filed.

Discuss all objections and responses under the Federal Rules of Evidence. Do **not** discuss hearsay.

1) Marcus

- a. Competency
 - i. Competency of judges (605) – Inapplicable (not judge in current case)
- b. Relevance
 - i. Relevant to the rape (401) – sexual propensity
 - 1. Any other basis for relevance
- c. Character evidence
 - i. Propensity generally (404) – Depending on framing, objection likely overruled on the following analysis; however, if students sustain objection, that analysis should change later
 - ii. Response: MIAMI COP Exceptions (404) – Motive, intent, MO (not enough info), identity (not enough information on similarity) most likely
 - iii. Response: Prior sex offenses (413) – Likely applicable assuming discovery elements not violated
 - 1. Conclusion – No need for Miamicop when 413 available
- d. Legal Relevance (403)
 - i. Probative value vs. unfair prejudice
 - 1. Unfair prejudice hard to find given 413 and issues in instant case
 - 2. Highly probative
 - 3. Conclusion: admitted

2) Lavinia

- a. Competency in general (601)
 - i. Presumption of competence
 - 1. Evidence rebutting presumption is inability to speak or write
 - 2. Plan should overcome difficulties; no evidence suggesting she cannot understand questions
- b. Relevance – Bassianus character
 - i. Tends to show that there was no justification for killing Bassianus
 - 1. Students should not conflate relevancy rule with Character evidence rule. However, students might note that this evidence likely okay to rebut later defense witness Aaron, potentially to the issue of Best Evidence Rule application
- c. Character evidence of Bassianus
 - i. Propensity evidence (404) – General rule would keep this evidence out in the prosecution’s case-in-chief unless Chiron or Demetrius put self-defense at issue because this is a homicide case; later defense evidence from Aaron suggests they may be claiming self-defense.
 - 1. General Rule likely keeps this out
 - 2. Reanalyze after Aaron’s testimony (if admissible)
 - ii. MIAMICOP – None directly applicable
- d. Legal Relevance (Bassianus Character)

At David's trial, the Prosecution calls the alleged victim of the trespass, Valerie, as their first witness. Valerie testifies that on June 1, 2021 at 11:00 a.m. she was napping at her home when she heard knocking at the front door. David was there to measure the bathroom sink for Walter. Valerie said that it was not a good time for David to come into the house because she was still in her pajamas and she had not received any advance notice of the request to come onto the property. Valerie stated that David pushed into the home and entered without permission.

Valerie further testified that on June 1, 2021 at 1:00 p.m. David posted a letter on her front door stating that Valerie's tenancy at the home was terminated due to deplorable conditions inside the home. Valerie denies that the home was in a deplorable condition. Valerie called the police to report the trespass on June 1, 2021 at 5:00 p.m.

David's defense is that Valerie gave David permission to enter the home and that she fabricated the trespass story after David served Valerie with a notice of eviction.

Assume that the following occurred in the jury trial of David. 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. Apply the **California Rules** of Evidence.

1. David calls his former employer, Sally, testifies that David worked as her property manager for 10 years and that he has an excellent reputation for being professional. She testifies that in her opinion, David is a law-abiding person.

Relevance: Evidence is relevant if it has some tendency to prove or disprove a material fact.

David is attempting to introduce character evidence that he is a law-abiding person and has an excellent reputation for professionalism as circumstantial evidence that he did not commit the trespass.

Character Evidence: The general rule is that information about a person's character may not be introduced to suggest that the person did something because he or she has a propensity to do such things. Both the federal rules and California prohibit the use of character to prove conduct in conformity with that character (propensity). See FRE 404(a)(1), CEC 1101(a).

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

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

California Evidence Code §1102 permits a defendant to introduce evidence of "a trait of his character" that is relevant to the crime with which he or she is charged and character evidence "of the defendant's character" generally.

David's reputation for professionalism is not relevant to the charged crime of trespass. This proposed character evidence will not be permitted. However, Sally may testify to her opinion of David's general law-abiding character.

2. During cross examination, the prosecutor asks Sally, "Are you aware that David frequently violates traffic laws"? When Sally answers, "No" the prosecutor seeks to introduce David's properly authenticated traffic citations for speeding.

Relevance: The prosecution is seeking to impeach the character witness's opinion of the defendant as law abiding.

The prosecution may introduce character evidence for certain limited purposes *after* the defendant does so to rebut what defendant tried showing through character evidence and to offer evidence of the defendant's same trait. The prosecutor may rebut the defendant's character

evidence either through cross examination of the defendant's character witness or by calling other witnesses to testify as to the defendant's bad reputation.

Cross Examination: The prosecutor can cross examine the defendant's character witness by asking him or her have they heard, or did they know of particular instances of the defendant's misconduct that relates to the trait in question. The prosecutor must have a good faith belief that the defendant committed the acts which the prosecutor is inquiring about. If the witness denies knowledge of these specific instances of conduct, the prosecutor may not introduce extrinsic evidence of the conduct. The prosecutor is limited to inquiry on cross examination.

Thus, the prosecutor's question to Sally is proper. The prosecutor may not offer the traffic citations to prove David is not law abiding.

3. The defense seeks to admit into evidence an email written by David to Walter on June 1, 2021 at 12:00 p.m. which states:

"Walter, I went by to measure the sink and found the house filthy dirty. Best to terminate the tenancy while we are under a year and we can give her 30 days' notice. Thanks!
David."

Relevance: The email is being offered by the defense to support the defense position that the alleged victim fabricated the trespass after being evicted for keeping the home in a deplorable condition. Thus, the email is being offered for its truth.

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

Business Record

For an email to be admissible as a business record, the email must have been 1.) sent or received at or near the time of the event recorded in the email, 2.) sent by someone with knowledge of the event documented in the email, 3.) sent or received in the course of a regular business activity,

4.) it must be the regular practice to send or receive emails that record the type of event documented in the email and 5) a custodian or qualified witness must attest that these conditions have been fulfilled or an appropriate declaration. Finally, the objecting party is permitted to argue that the email should be excluded due to concerns of lack of trustworthiness.

Analysis: The student should discuss these elements. The email will be admissible as a business record.

4. In rebuttal, Valerie seeks to introduce a copy of the lease agreement, which states in relevant part:

Entry: Tenant shall make premises available to landlord or landlord's representative for the purpose of entering to make necessary or agreed repairs or improvements. Landlord and tenant agree that 24 hour written notice shall be sufficient unless the tenant waives the right to such notice".

There is a handwritten note made by Valerie next to the "Entry" provision which states: I do not consent to less than 24 hours' notice at any time. Testimony establishes that the note was written after the lease agreement was entered.

Relevance: Valerie is seeking to introduce the lease to establish that David could not lawfully enter the home without 24 hours advance notice.

Hearsay: The lease agreement, including the provision stating, "Entry" is a legally operative document and thus is considered non-hearsay.

However, there is a layered hearsay issue as the written note next to the "Entry" provision was written after the lease is signed, so not part of the contract. It is an out of court statement being offered for truth of the matter asserted. There is no hearsay exception which would apply, so that part of the document would need to be redacted if Sally admits the lease into evidence.

ANSWER OUTLINE EVIDENCE – QUESTION BY S. LIZARDO

At the “Tie the Knot Resort”, Bianca and Graham were just pronounced husband and wife and were dancing under an outdoor event tent. Suddenly, a ferocious storm swept in, causing the large outdoor tent to collapse when several support poles toppled over. As the support poles collapsed, Bianca sustained a concussion and Graham sustained blunt force trauma injuries to his forehead.

On the day of the wedding, there was a weather forecast predicting terrible weather conditions that included gusty winds, rain, and lightning. The manager was aware of the weather forecast but gave the “green light” for the wedding to proceed. When the manager learned the couple were injured, he called for an ambulance and expressed sympathy to the couple for their pain and suffering.

After this incident, the couple learned that the resort had discontinued outdoor events. Instead, all events are now indoors. Also, they learned that the manager was no longer employed by the resort.

Bianca and Graham filed a negligence lawsuit against the “Tie the Knot Resort” and the tent company, “Got You Covered.” The resort denied liability and claimed the tent company was solely responsible for any maintenance and construction of the tent.

The tent company denied liability claiming the company pitched the outdoor tent properly, staked the center pole and other supporting poles. However, after the tent pitching, the manager removed the center support pole because it was disruptive to dancing on the dance floor.

Assume the following occurred in a jury trial in a California state court. Discuss all the evidentiary issues, objections and arguments that would likely arise in each section below. Assume proper objections were timely made. Also, assume Bianca and Graham have waived any conflict of interests. Do not discuss hearsay related issues. How would the trial court rule on each of the admissibility of the following evidence?

Answer according to California Law.

1. During direct testimony, Bianca testified that the manager expressed sympathy to her and Graham for their pain and suffering. Also, that the manager gave the go ahead for the outdoor wedding.
2. Then, the couple’s attorney introduces an authenticated premises insurance liability policy, that included premises liability insurance for the “Tie the Knot Resort” and included coverage for vendors, such as the tent company.
3. Next, the attorney introduced a properly authenticated letter from the resort offering \$153,000 to resolve the case. Bianca and Graham rejected the offer.

4. Next, the couples' attorney introduced evidence that the resort no longer permits outdoor events and that the manager is no longer employed there.

QUESTION #1 ANSWER OUTLINE BIANCA AND GRAHAM

PLEASE NOTE: Students may argue different outcomes, so long as they hit the issues. 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.

Also, Authentication is not meant as an issue because that is covered next semester. This is the reason that the call of the questions said- "properly authenticated."

1 MANAGER'S EXPRESSION OF SYMPATHY TO BIANCA AND GRAHAM; Go Ahead on Wedding

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.

Here, the manager is expressing sympathy for Bianca's concussion and Graham's forehead injuries. When sympathy is expressed by someone who is potentially at fault in a negligence claim, this may seem like it is an acknowledgement of fault, especially since the manager gave the go ahead on the outside wedding knowing of the weather alert.

Also, the manager's knowledge of the weather forecast may have a tendency to prove notice of the terrible weather coming in. Since the manager elected to go ahead with the wedding, this may establish breach of the duty to keep the couple and their guests safe.

The court will likely find the manager's expression is logically relevant. Also, it will likely be admissible that the manager gave the go ahead on the wedding to show a breach of duty.

However, see below under Special Relevancy.

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 an expression of sympathy by the manager would confuse, mislead or be a waste of judicial time. However, see below under Special Relevancy.

Special Relevance- Relevant Policy Exclusion CEC 1160

Although the manager's sympathy expression sounds like a fault acknowledgement, under CEC 11360, to avoid discouraging humane expressions that may help resolve civil litigation, these sympathy expressions are deemed inadmissible.

However, the manager's knowledge of the weather conditions may not be subject to a special relevancy exclusion. The go ahead by the manager will likely be held admissible.

2. THE PREMISES LIABILITY INSURANCE POLICY INCLUDES VENDOR COVERAGE

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 in the determination of the action.

Here, the Tie the Knot Resort insurance policy has a tendency to establish that the resort does in fact own or control the premises and vendors. Since the coverage includes vendors, it is likely the "Got you Covered" Tent Company is included.

Part of a negligence claim includes duty, breach of a duty, causation and damages. Therefore, the policy may prove liability. Since the insurance policy has a tendency to establish a duty, it may be significant in the disputed claim or a blame shift to the tent company.

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.

Special Relevance-Relevant Policy Exclusions

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, The Tie the Knot Resort, a party, is denying that the business has any dealings with the maintenance, construction of the tent. To prove otherwise, the policy will be admitted in since the premises maintenance is disputed. The resort is "blame shifting" to the tent company. The premises liability policy is highly relevant because it tends to establish that resort is in fact doing business with the tent company and even includes vendors in the insurance coverage. Since the business is denying liability, the policy may help establish "ownership or control" of the tent area.

However, the resort may argue that it is not the owner or manager of the tent because it is the company's responsibility. This is a weak argument because a business does not tend to insure premises where it has no business interest therein.

The liability coverage policy is admissible to show that in fact, the resort did exhibit ownership and control of the event tent since the manager took down the center pole to provide unobstructed dancing on the dance floor. Also, the resort policy covers vendors. Most likely, the tent collapse will fall under the resort's 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 that there is insurance on the resort and vendor premises, but the policy does not establish negligence.

Thus, the policy is admissible to prove that the resort had “ownership or control” over the event tent, but not that the resort was negligent.

COMPETENCY AS A WITNESS (WEATHER CONDITIONS, Bianca’s concussion)

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.

Here, although Bianca sustained a concussion by the tent pole striking her, it does not appear this injury affected her memory. Her testimony is relevant because she is a **percipient witness** of the tent pole striking her and is one of the plaintiffs in this civil negligence cause of action.

Her testimony is based on personal knowledge and is admissible.

3. TIE THE KNOT LETTER: OFFER OF \$153,000 TO RESOLVE CASE

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 “Tie the Knot” of \$153,000 may be considered a settlement offer and has a tendency to establish that the resort was negligent in proceeding with the wedding when there was a weather alert. Also, the resort manager’s go ahead on the wedding can bind in the resort through *respondeat superior*. The letter is highly relevant to establish fault or negligence of the resort and its manager.

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 Tie the Knot Resort.

See below under Special Relevancy.

Special Relevancy- defined above

The offer by Tie the Knot Resort 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 in fear of discussions or letters to be disclose to the jury.

Here, the letter offer by Tie the Knot was for \$153,000 in settlement of Bianca and Graham's negligence claim. The fact of the offer and the couple's rejection of the offer should be inadmissible as it is against public policy.

4 SUBSEQUENT REMEDIAL MEASURES

Logical Relevancy- defined above.

The fact that the resort suspended all outdoor events has a tendency to establish that knew of the weather and the problems associated with pitching a tent in bad weather.

The problem is more of a changed policy than fixing or repairing a condition. However, since there was a change in the resorts' policy regarding outdoor events, this may constitute a remedial measure.

Here, the tent company may argue that they properly pitched the tent with all support poles, including the center pole in place. By the manager removing the center pole was an act which offset the balance of the tent. The resort will argue that the tent was defective, or the pitching was not done properly. The weather may be an Act of God, but the problem is the manager knew of the forecast and breached a duty.

See Special Relevancy below.

Legal Relevancy- CEC 352 defined above

The trial court has discretion to weigh the probative value of the suspension of outdoor events and use of a tent against the unfair prejudicial harm it may cause the resort.

See Special Relevancy below.

Special Relevancy- Subsequent Remedial Measures

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

Here, the resort decided not to hold outdoor events after the outdoor wedding tent collapsed. Also, the resort no longer employs the manager who green lighted the wedding. Plaintiffs will argue that the suspension of outdoor events is a subsequent remedial measure since it

occurred after the tent collapsed. Also, since the manager not longer works at the resort, this is evidence he was negligent and was likely fired.

However, the resort will argue that the suspension of outdoor events was due to extreme weather conditions, not any fault on its part. Also, the manager no longer works at the resort, but this is not relevant.

It is likely the trial court will find a subsequent remedial measure was taken by the resort, so it will be inadmissible. The fact the manager no longer works at the resort may be deemed not relevant.

BE CAREFUL OF YOUR WORDING - IT CAN LEAD TO MISAPPLICATION OF RULES

1)

Demetrius should object that the presiding judge testimony is irrelevant.

Evidence is relevant if it has any tendency to make a fact of consequence more or less probable than it would be without the evidence. Material includes witness credibility, element to a claim or defense or damages.

STAND ALONE FACT - Demetrius was involved in a prior case involving sexual assault and was convicted. This is a case involving rape of Lilia (so the presiding judge testimony highly is probable to this case at issue.) CONCLUSION

The objection should be overruled as relevant.

AN ANALYSIS SHOULD EXPLAIN WHY THE TESTIMONY MAKES A FACT OF CONSEQUENCE MORE/LESS PROBABLE

Demetrius should object to the the presiding judge as to impermissible character evidence.

In general, character evidence is not admissible to show conduct in conformity with the particular character trait on a particular occasion. In criminal cases only the defendant can open the door to character evidence. The character trait must be pertinent to the case.

CROSS RULE

The presiding judge is testifying about a case involving Demetrius in a prior sexual assault case. The prosecution cannot open the door to character evidence because this is a criminal case.

NOT STRICTLY ACCURATE - QUANTIFY SEX STATUTES

STAND ALONE FACT

The objection should be overruled.

BUT YOUR "ANALYSIS" SAYS IT CAN'T DO THIS. OBJECTION SHOULD BE SUSTAINED BASED ON YOUR ANALYSIS... VERY WEAK ANALYSIS

The prosecution should object to similar crimes

Allows the admission of evidence of prior similar crimes of sexual offenses that the defendant has committed in the past.

Demetrius was tried and convicted of sexual assault which is a prior similar type of crime of case he is being tried for now which is rape, abduction, and disfiguration of Lilia.

The objection should be sustained.

THIS IS A POOR RULE STATEMENT. TECHNICALLY ACCURATE BUT WEAK/INCOMPLETE

WEAK ANALYSIS, BUT IT IS ANALYSIS

Demetrius should object to 403.

Evidence can be excluded if the probative value is substantially outweighed by the danger of unfair prejudice, waste of time, misleading the jury, undue delay, needlessly cumulative presenting evidence.

CROSS RULE STATEMENT

WHY WOULD YOU OBJECT TO THIS? DO YOU MEAN RESPOND?

BEING SUCCESSFUL AND FAILING TO PROVIDE IN-DEPTH ANALYSIS ARE NOT THE SAME

WHERE IS MY COP?

Demetruis will object that allow the presiding judge testimony of his prior conviction is highly prejudicial because it will sway the jury to automatically convict him again for this conviction. The jury will hear and react with emotion towards him that he has committed this crime before so he should be convicted again. The prosecution will argue that the conviction has to come in because it is a prior conviction that can be allowed as prior similar offenses.

THIS IS JUST A RESTATEMENT OF THE ISSUE. DON'T WASTE YOUR TIME

GOOD, YES

NOT WELL STATED

If the conviction comes in, Demetruis can request the court for limiting instructions for the jury on how the evidence can be used. This will help limit the danger of unfair prejudice.

THIS IS PART OF A, APPLYING A RULE TO FAILED TO INCLUDE IN YOUR "R" NO COMPETENCY OBJECTION FOR MARCUS.

CONCLUSION?

Demetruis should object to Lilia testimony as irrelevant.

Evidence is relevant if it has any tendency to make a fact of consequence more or less probable than it would be without the evidence. Material includes witness credibility, element to a claim or defense or damages.

Lilia is the victim to the case and her testimony is high probable to the case.

DO YOU MEAN PROBATIVE?

THIS IS AN EXAMPLE OF FAILURE TO CONDUCT YOU ANALYSIS. FACT AND NO STATED A CONCLUSION; NO APPLICATION

The objection should be overruled as relevant.

Demetruis should object to Lilia competency

A witness is competent to testify if they have personal knowledge of the matter and sworn an oath or affirmation to testify truthfully. Disqualification of a witness is due to perception, memory, and lack of understanding the truth or able to communicate.

WHERE IS MENTION OF PRESUMPTION?

The defense will say that Lilia cannot communicate because she cannot speak verbally or sign. She will be testifying using a keyboard with a single prosthetic hook to answer questions. She has suffered so much trauma that she most likely doesn't remember the gruesome details of her rape and disfigurement. Usually when someone has suffered a traumatic event they tend to black out and not remember exactly what happened because of the trauma.

THIS USES FACT & RULE THIS IS ALL JUST TALKING ABOUT FACTS WHO APPLYING THE RULE? CONCLUSION IS SHE COMPETENT?

YOUR GRAC SUPPLE NO SOLUTION

The parties will ask the judge to vore dire Lilia to ensure to understand truth and can communicate.

ALL OF IT?

Demetruis should object to Lilia's testimony as impermissible character evidence.

In general, character evidence is not admissible to show conduct in conformity with the particular character trait on a particular occasion. In criminal cases only the defendant can open the door to character evidence. The character trait must be pertinent to the case.

NOT TECHNICALLY ACCURATE. SHOULD YOUR RULES BE MORE PRECISE

WHAT BART'S CHARACTER? (This is a criminal case, so Lilia has opened the door to character evidence) The pertinent character evidence to the case is Demetruis raped, abducted, and disfigured Lilia. She will testify the gruesome details of what happened when she was attacked.

The objection should be sustained.

Demetruis should object to 403

DOES NOT LOGICALLY FLOW FROM ANALYSIS (DUE TO WEAK ANALYSIS)

THIS ANALYSIS IS ESSENTIALLY USELESS. IT DOES NOT TELL ME HOW TO APPLY THE RULE TO THE FACTS.

Evidence can be excluded if the probative value is substantially outweighed by the danger of unfair prejudice, waste of time, misleading the jury, undue delay, needlessly cumulative presenting evidence.

WEAK CONCLUSORY Demetruis will argue that by Lilia testifying and seeing that she cannot speak, she uses a prosthetic hook, the emotion of the jury will be swayed to want to convict him. It will be very prejudicial for him.

Demetruis should object to Aarons testimony as irrelevant

YOUR ISSUES ARE GENERALLY WELL WRITTEN & CLEAR

Evidence is relevant if it has any tendency to make a fact of consequence more or less probable than it would be without the evidence. Material includes witness credibility, element to a claim or defense or damages.

WEAK CONCLUSORY Aarons testimony is probable to the case because he received a video from Demetruis.

The objection should be sustained as relevant. *THIS MAKES NO SENSE.*

Demetruis should object to Aaron's testimony as to the best evidence rule *GOOD CATCH!*

When the content of a writing, recording, or other document is at issue the original document is the proffered to show its content.

WHAT? Here, Aarron is testifying that he received a text message video from Demetruis. The original document cannot be proffered because he lost it in a boating accident.

The objection should be overruled.

WHY? YOUR ANALYSIS TELLS ME NOTHING

↓ NO ANALYSIS

STAND-ALONE FACT

EXCEPTIONS?

Demetruis should object to impermissible character

In general, character evidence is not admissible to show conduct in conformity with the particular character trait on a particular occasion. In criminal cases only the defendant can open the door to character evidence. The character trait must be pertinent to the case.

THERE ARE 2 DISTINCT SUBJECT MATTER OR TRAIT EVIDENCE

Here Aaron is testifying to Demetruis conduct in conformity to what happened on the particular occasion. This type of evidence is inadmissible.

The objection should be sustained as to character evidence

THIS IS EITHER A RULE (GENERALLY APPLICABLE) OR CONCLUSION. NOT ANALYSIS

DESPITE ITS BREVITY, THIS IS A BETTER ANALYSIS THAN ALMOST THE ENTIRE RESPONSE

WHY PUT THIS IN YOUR CONCLUSION. UNNECESSARY TIME-WASTING VERBIAGE

OVERALL, YOUR STRUCTURE WAS IMPRESSIVE. EASY TO FOLLOW. YOUR ISSUE STATEMENTS WERE MOSTLY CLEAR AND SOLID. YOUR RULES SOMETIME LACKED PRECISION. YOUR ANALYSIS WAS GENERALLY POOR, LACKING DEPTH, AND FAILED TO BE ANALYSIS. YOUR CONCLUSIONS WERE SOMETIMES CONFUSING OR DID NOT FLOW FROM ANALYSIS. YOU MISSED SEVERAL SUB-ISSUES AND THIS RESPONSE FEELS INCOMPLETE BECAUSE OF IT.

2)

1. Sally's Testimony

ANSWER IS "YES"
ALWAYS
YOU SHOULD
MORE USEFUL STATEMENTS
OFFENSE

Could the prosecution object to Sally's testimony as logically irrelevant?

CEC 201 provides that evidence is relevant if it has any tendency to make a fact of consequence that is in dispute more or less probable than it would be without the evidence.

Sally's testimony has a tendency to prove that David would not trespass since he is a law-abiding citizen.

The prosecution could object, but the court would overrule the objection.

PROFESSIONALISM?

Could the prosecution object to Sally's testimony as improper character evidence?

CEC 1102 provides that a defendant can use character evidence to prove either a specific trait of his character or the defendant's character generally.

The defendant, David, is currently offering testimony to his own good character. This is permitted but he is opening the door for the prosecution to refute his good character claims with their own evidence.

The prosecution could object, but the court would overrule the objection.

PERMANENT
PROFESSIONALISM?

Could the prosecution object to Sally's testimony as legally irrelevant?

CEC 352 states that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

Sally's testimony does not include any statements that would unfairly prejudice the jury.

The prosecution could object, but the court would overrule the objection, and the evidence would be admitted.

PROFESSIONALISM

2. David's Traffic Citations

Should the defense object to the question and attempted introduction of David's traffic citations as logically irrelevant?

CEC 201 provides that evidence is relevant if it has any tendency to make a fact of consequence that is in dispute more or less probable than it would be without the evidence.

This introduction of traffic citations has no tendency to make a fact of the current trespass case more or less probable.

The court should sustain the objection.

WHAT ABOUT SALLY'S OPINION??
IT DIRECTLY REBUTS AS EVIDENCE

Should the prosecution refute the defense's objection by stating that it is not being used for the truth of the matter, but rather, as a means of impeachment of character?

CEC 1103 states that once a defendant offers evidence of his own character, the prosecution is permitting to introduce evidence to the contrary.

This introduction of traffic citations refutes the previously-introduced fact that David is a law-abiding citizen.

If the court accepts this argument, the judge should propose a limiting instruction in order to not prejudice the jury. Thus, the defense's objection would be overruled and the evidence would be admitted with a limiting instruction.

Should the defense object to the question and attempted introduction of David's traffic citations as legally irrelevant?

CEC 352 states that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

David's "frequent" violation of traffic laws may make the jury see David as a troublemaker who frequently disregards small, insubstantial laws--like trespassing. Thus, the jury would decide the outcome of the current case using David's propensity to break the law rather than the actual facts of the case.

NO

HEARSAY??

ADMISSION OF CHARACTER RELEVANT CITATIONS

The evidence is unfairly prejudicial and the court should sustain the objection.

3. David's Guilty Plea

Could the defense object to the introduction of David's trespassing plea as logically irrelevant?

CEC 201 provides that evidence is relevant if it has any tendency to make a fact of consequence that is in dispute more or less probable than it would be without the evidence.

David's guilty plea to trespassing implies that David will trespass again in the future.

The court should overrule the objection.

SUBSTITUTION ANALYSIS

SALLY'S TESTIMONY?

Could the defense object to the introduction of David's trespassing plea as impermissible evidence under CEC 1153?

CEC 1153 states that withdrawn guilty please are inadmissible against a defendant.

David's guilty plea to trespassing implies that David will trespass again in the future, which is propensity evidence and, thus, is inadmissible.

The court should sustain the objection.

Should the prosecution refute the defense's objection using California's Proposition 8?

Proposition 8 allows pleas to be admissible in criminal proceedings.

Subject to the CEC 352 test, discussed below, David's withdrawn guilty plea may be admissible in the current criminal trial.

Should the defense object to the introduction of David's trespassing plea as legally irrelevant?

CEC 352 states that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

David's withdrawn guilty plea to trespassing will cause the jury to decide the outcome of the current case based on the facts of the previous trespassing case; the jury would most likely rely on this propensity evidence, which is unfairly prejudicial to David.

The court should sustain the objection and exclude the evidence, despite Proposition 8.

4. Entry Clause

Could the defense object to Valerie's testimony as logically irrelevant?

CEC 201 provides that evidence is relevant if it has any tendency to make a fact of consequence that is in dispute more or less probable than it would be without the evidence.

The existence of an entry provision has a tendency to prove that David violated this provision when he entered Valerie's residence illegally.

The defense could object, but the court would overrule the objection.

Should the defense object to Valerie's testimony regarding the provision as impermissible under CEC 1500?

CEC 1500 allows the introduction of duplicates and other written evidence, with a preference for the original.

Valerie's testimony and even the prosecution's dispute of said testimony both revolve around a provision in the lease agreement that has not been offered into evidence. It is unlikely that the lease agreement is destroyed, so the lease agreement itself (or a copy) must be offered into evidence before Valerie's testimony can even be considered.

The court should sustain the objection and exclude the evidence.

Could the defense object to Valerie's testimony as legally irrelevant?

CEC 352 states that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

Valerie's testimony is prejudicial, but it is not *unfairly* prejudicial--her testimony would simply show that David violated the law as well as the lease agreement. It is more substantial to violate the actual law, so Valerie's testimony would have no additional prejudicial effect that would outweigh the effect of being on trial for breaking the law.

The defense could object, but the court would overrule the objection.

75

3)

SEE 28 USC 1391

(1) Selma and Patty's motion to transfer venue from State X to State Y.

(a) Transfer of Venue

An action may be transferred to another district where the action "might have been brought". The transferee court must have PJ over defendant and subject matter jurisdiction (SMJ) over the action. The case should also be transferred in the interest of justice. Transfer of venue is allowed if (1) the original court is improper, or (2) the original court is proper but inconvenient.

(1) Personal Jurisdiction

Personal jurisdiction (PJ) is the power of the court over defendant's person and property. PJ may be imposed consistent with due process if the suit is filed against the defendant where they are domiciled, consents to service, or is served in the forum state.

(A) Traditional Basis

PJ can be met through through a traditional basis if defendant (1) consents to jurisdiction, (2) is domiciled in the forum state, or (3) is personally served in the forum state.

(1) Consent

When a defendant consents to jurisdiction in the forum state, the court may have jurisdiction over the defendant.

Here, the facts show that Patty and Selma consented to jurisdiction in State Y because they requested the transfer of the case to State Y.

Therefore, State Y has PJ over Selma and Patty.

(B) Service of Process

For service to be adequate, defendant must be served in a manner reasonably calculated, to apprise interested parties of the pending action and offer them an opportunity to be heard.

Here, the facts show that Homer successfully obtained service of process upon Selma and Patty.

(2) Subject Matter Jurisdiction

2 AN ISSUE ARISE ON VENUE / 28 USC 1391, etc?

Subject Matter Jurisdiction (SMJ) is the power of the court over the subject matter of an action. Because federal courts are courts of limited jurisdiction, there must be a jurisdictional basis: (1) arising under Federal Law, or (2) Diversity.

(A) Federal Law

A claim arises under Federal Law if the claim is (1) created by a federal law, or (2) created by state law but depends on a substantial federal question.

Here, the claim does not involve a federal law or a state law.

As such, this claim does not have SMJ through a federal law.

(B) Diversity Jurisdiction

Diversity jurisdiction requires complete diversity between the parties, and the amount in controversy must exceed \$75,000.00. Citizenship is determined when the action is filed. Individuals are citizens where they are domiciled. Domicile is where one resides and intends to state.

Here, the facts show that Selma and Patty are domiciled in State Y and Homer is domiciled in State X. Homer is suing Patty and Selma for \$100,000.

As such, State Y has SMJ through diversity over Selma and Patty.

(3) The Forum is Improper or Inconvenient

The court might rule that transfer of venue to State Y would be proper.

(b) Venue

Venue is the geographic location of the court. Venue is proper in one of three ways: (1) in a judicial district where any defendant resides, if all defendants are residents of the state, (2) where the bad act, or substantial portion of the act occurs, and (3) if no district satisfies (1) or (2), where any defendant is subject to personal jurisdiction (PJ). Venue speaks to residence, not citizenship. It is determined by domicile for individuals or, for corporations, where they are subject to PJ.

(1) Residence

Residence for venue is determined by domicile for individual.

Here, Patty and Selma live in State Y. They are defendants in this case because Homer is suing them for \$100,000 in damages.

(2) Substantial Portion of the Act

Here, Homer is suing Patty and Selma because he alleges that they breached an oral and implied contract and did not share one-third ownership of Maggie's Margs. Maggie's Margs is a business located in State Y.

Therefore, Homer's injury occurred in State Y.

(3) Personal Jurisdiction

Supra

State Y has PJ over this case if transferred as discussed above.

(c) Forum Non Conveniens

If venue is proper in the transferor court, moving to another venue would be done via the court's discretion based on forum non conveniens. The venue choice of the plaintiff is prioritized but great inconvenience is a reason for the court to transfer. Such reasons could be access to evidence, convenience of witnesses, where the harm occurred, etc.

Here, the court may allow the transfer of the case to State Y because Venue is proper in that state.

(2) Maggie's Marg's motion to transfer venue from State X to State Y.

(a) Venue

Venue is the geographic location of the court. Venue is proper in one of three ways: (1) in a judicial district where any defendant resides, if all defendants are residence of the state, (2) where the bad act, or substantial portion of the act occurs, and (3) if no district satisfies (1) or (2), where any defendant is subject to personal jurisdiction (PJ). Venue speaks to residence, not citizenship. It is determined by domicile for individuals or, for corporations, where they are subject to PJ.

(1) Residence

For venue purposes, a corporation is deemed to reside in any judicial district in which it is subject to PJ at the time the action is commenced. If a state has more than one judicial district, the corporation

← 1391: SUBSTANTIAL PART OF SEVERE OR OMISSIONS TOOK PLACE — HERE, CONSULTING DONE IN STATE X OR STATE Y? BREACH IN STATE X OR STATE Y BY OMISSION TO MAKE HOMER A 1/3 PARTNER?

FALSHIP HERE, NOT A CORP

is deemed to reside in any district in the state where the corporation's contacts would be sufficient to subject the corporation to PJ.

A state may have PJ over a defendant corporation if the defendant corporation is domiciled--where it is incorporated and the state in which it holds its principle place of business and engages in systematic and continuous activity.

Here, Maggie's Margs does business in State Y. It has its principle place of business and engages in systematic and continuous activity.

(2) Substantial Portion of the Act

Here, Homer is suing Patty and Selma because he alleges that they breached an oral and implied contract and did not share one-third ownership of Maggie's Margs. Maggie's Margs is a business located in State Y.

(a) Transfer of Venue

An action may be transferred to another district where the action "might have been brought". The transferee court must have PJ over defendant and subject matter jurisdiction (SMJ) over the action. The case should also be transferred in the interest of justice. Transfer of venue is allowed if (1) the original court is improper, or (2) the original court is proper but inconvenient.

(1) Personal Jurisdiction

Personal jurisdiction (PJ) is the power of the court over defendant's person and property. PJ may be imposed consistent with due process if the suit is filed against the defendant where they are domiciled, consents to service, or is served in the forum state.

(A) Traditional Basis

PJ can be met through a traditional basis if defendant (1) consents to jurisdiction, (2) is domiciled in the forum state, or (3) is personally served in the forum state.

(1) Consent

When a defendant consents to jurisdiction in the forum state, the court may have jurisdiction over the defendant.

Here, the facts show that Maggie's Margs consented to jurisdiction in State Y because they requested the transfer of the case to State Y.

Therefore, State Y has PJ over Selma and Patty.

(B) Service of Process

For service to be adequate, defendant must respond within 21 days.

END OF EXAM

TIMING OF SAEN OF (3) DEF'S MOTIONS FOR
TRANSFER OF VENUE >