

San Luis Obispo College of Law/Hybrid

EVIDENCE

Final Examination

Spring 2023

Prof. S. Lizardo

General Instructions:

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

QUESTION 1

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

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

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

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

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

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

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

QUESTION 2

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

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

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

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

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

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

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

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

QUESTION 3

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

The following proffers were made at trial:

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

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

**EVIDENCE-ANSWER OUTLINE E- SLO-HYB-MCL
FINAL EXAMINATION
SPRING 2023**

QUESTION 1 -OUTLINE- Prof. Lizardo

SUMMARY ANSWER OUTLINE- Alley Op

SUMMARY ANSWER OUTLINE- Alley Op

Please note students may offer different outcomes or rules. This summary is intended to highlight the major issues and rules.

1. Testimony Of Alley -Op (A-O)

As per CEC 350, only relevant evidence is admissible.

Logical Relevance/ CEC 250 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.

Negligence claim includes consists of duty, breach of a duty, causation, and damages. Product liability theories include negligence that involve inadequate warnings and manufacturing or design defects.

Here, A-O was using the exercise ball as a foreseeable use because it was while exercising. It does not appear he was misusing the product. His testimony tends to establish the breach of duty by Mighty Ball since a defective product was provided.

Thus, A-O's testimony is logically relevant and admissible.

Legal Relevance/Balancing Test CEC 352- the trial court has discretion to exclude evidence if the probative value is substantially outweighed by the danger of unfair prejudice.

Here, Alley -Op is a percipient witness to his fall and the injuries. Therefore, the probative value of A-O's testimony greatly outweighs any unfair prejudice. It does not seem likely Alley-Op's testimony would confuse, mislead or be a substantial danger of undue prejudice or a waste of time for a jury.

Thus, the trial court will rule the evidence is legally relevant and admissible.

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 Alley -Op sustained a concussion, felt dizzy, had a left-hand fracture, and pain, it does not appear this injury affected his memory or communication skills. His testimony is relevant because he is a percipient witness. Therefore, his competency is not compromised, and he may testify regarding his fall and injuries.

Lay opinion must be based on rationally based perceptions. The fact that Alley -Op was working out when the injury occurred will be admissible.

Writing- Gym Journal: "Left hand hurts and feels dizzy."

Under CEC, the definition of a "writing" is broad and includes, but is not limited to handwriting, typewriting, electronic mail, or other forms of communication.

Here, the gym journal is a writing under CEC because it is a handwriting. The journal may be relevant as to how A-O was feeling right after the fall (dizzy). Since A-O is right handed there is a reasonable inference that he wrote the notes with his right hand. The fact that it was A-O 's left hand was injured should not prevent him from writing with his right hand.

Authentication

This provides that the proponent must provide sufficient information that the item is what it purports to be, Alley-Op's gym journal.

Here, Alley-Op is a witness with personal knowledge since the gym journal are his notes, so this satisfies the sufficiency test. Therefore, he can easily recognize his notes in the journal.

Secondary Evidence Rule

Under the CEC, the Secondary Evidence Rule is applied when the contents of a writing are in issue. Writings may include documents, photos, or recordings. At times, copies may be used if it is a reproduction of the original writing.

Here, the gym journal is the original notes written by A-O and is available. There has been compliance with the rule and is admissible.

Hearsay- "The pain in my left hand is excruciating, it happened when the ball popped, and I fell!"

Defined as an out-of-court statement offered to prove the truth of the matter asserted. This is offered for the truth of the pain and how the fall occurred. It is inadmissible unless there is an exception. Below are some exceptions.

Spontaneous Statement Exception

Defined as a statement by the declarant that describes, explains or narrates an act or event that happened when the declarant was under the stress of excitement of an event.

Here, within minutes of the fall, Alley-Op is in the emergency room telling Dr. Bones that his left-hand pain was excruciating. Since A-O, a basketball player, experienced hand pain due to a fall, this will be deemed a stressful event.

Most likely he realized what an injury would do to his basketball season that caused additional stress.

Defense will argue that too much time has gone by since it took time for A-O to get to the emergency room. Therefore, the statement lacks spontaneity. However, Plaintiff will contend that the pain was ongoing and only minutes went by. To fulfill the stress requirement.

The trial court will rule the statement is a spontaneous statement and admissible.

Contemporaneous Statement Exception

Requires a statement to describe or explain an event as it is occurring. It is like the spontaneous statement exception but does not involve a stressful event.

Here, it may be argued by Plaintiff that pain was ongoing so it was during the event, the fall. However, Defense will argue that time went by so the event ended.

The trial court will rule the statement is a contemporaneous statement and is admissible.

State of Mind Exception

Requires the statement by a declarant's (here Alley-Op) then existing state of mind, emotion or physical sensation may be admissible.

Here, A-O is telling Dr. Bones during a medical treatment or diagnosis meeting that he is in excruciating pain only minutes went by from the fall to the ER visit. It does not appear that A-O had time to concoct how the fall happened. The defense will argue that the portion of the statement involves ball popping may be stricken since it does not deal with a medical purpose. However, Plaintiff will counter that how the fall happened, the distance A-O fell and what he was doing is part of diagnosis and treatment.

The trial court will rule this exception applies and the statement of pain is admissible including how the fall happened with the weights and the ball. However, the court may give a limiting instruction regarding how the fall occurred. In short, the jury may not use the how the ball burst to hold the manufacturer liable by itself. Other elements of the civil case must be proven.

2. Dr. Bones Testimony about the injury and the X-rays

Logical Relevancy- defined above.

Dr. Bones' testimony tends to show that A-O's injury was a fractured hand and a concussion. He is a qualified orthopedic surgeon and has expertise in the subject matter of bones. The X-rays are writings and part of the tools Dr. Bones used to diagnose the injuries.

Legal Relevancy- defined above

The trial court has the discretion to weigh the probative value of the letter offer against the unfair prejudicial effect.

Hearsay - rule above. State of Mind exception on pain only (The pain in my left hand ...) See above exceptions under call #1.

Doctor-Patient Privilege

The Dr.- Patient privilege protects confidential communications between a doctor and patient if the communication was for medical diagnosis and treatment.

Here, the patient, A-O is seeking medical assistance due to a fall. Therefore, the privilege would apply unless there is an exception. The X-rays are part of A-O's medical records and likely admissible because they will show the fracture of the hand.

Exception to Privilege: Tort

Alley -Op is seeking damages due to Mighty Ball's defective design of the exercise stability ball. He placed his injuries and damages in issue, so this serves as an exception to the privilege. Dr. Bones may testify to the injuries and show the jury the X-rays.

3. Saul introduces documents.

(a) Similar Happenings/Mighty Ball on Notice - the 752 prior complaints.

In general, similar happenings are when a business has numerous other claims for a similar accident, fall, etc. The fact of other accidents may establish that Mighty Ball has notice or knowledge of a defective product and did nothing to prevent future injuries. Thus, the 752 prior claims could help establish that Mighty Ball has breached a duty of care by providing a defective product, an exercise stability ball, to consumers.

Here, A-O wants to establish that Mighty Ball was on notice and had knowledge that the ball would burst even at a low weight. Further, the ball was defective because it could not hold 600 pounds. This is relevant for product defects. The 752 prior complaints occurred before the present lawsuit. However, the prior complaints are being used to establish knowledge of a defective exercise ball, not fault.

The defense may argue the present injuries resulted due to a misuse of the product by A-O. However, Plaintiff will counter arguing that A-O is a professional basketball player and is aware of how to properly use sports equipment. Also, the fact that other professional athletes suffered injury may help establish there was not a misuse of the ball.

The trial court will rule the prior complaints are admissible for notice or knowledge only. A limiting instruction may be given to limit how the jury may use the evidence.

(b) Special Relevancy- Subsequent Remedial Measures

Logical Relevancy- defined above.

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, managers, or manufacturers should fix a problem. Taking action to fix prevent future harm is good public policy. Remedial measures taken before an accident do not implicate policy concerns.

The changed product design tends to establish that Mighty Ball knew of the defect problem and did nothing to fix the problem until after A-O's lawsuit. However, the public policy against using this changed design will be deemed inadmissible to prove negligence.

Legal Relevancy-defined above.

The trial court has discretion to weigh the probative value of the prior claims against unfair prejudice. Due to the special relevancy rules, the changed design is too prejudicial and will not be admissible.

Q2 - O'Keefe: SPRING 2023 EVIDENCE EXAM QUESTION AND ANSWER

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

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

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

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

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

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

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

1. In their case in chief, the People call Nurse Nan to testify to Victor's statement.

Relevance: Evidence is relevant if it has some tendency to make the existence of a fact of consequence more or less likely than it would be without the evidence. Nurse Nan's testimony is relevant because Darryl's statement establishes the timeline of and cause of the crash and identifies a male driver leaving the scene.

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

Dying Declaration: FRE 804(b)(2) allows dying declarations in a prosecution for homicide or in a civil action or proceeding. The declaration needs to be made while the declarant believed his or

her death was imminent, and it needs to concern the cause or circumstances of what he or she believed to be his or her impending death.

Analysis: The statement is not admissible as a dying declaration because a dying declaration requires that the case is either a homicide prosecution or a civil case

1. The case is a prosecution for a homicide or a civil case
2. The declarant is the victim named in the pleading.
3. At the time of the statement, the declarant had a sense of impending death.
4. At the time of trial the declarant is unavailable
5. The statement relates to the event inducing the declarant's dying condition
6. The statement is factual in nature.

Residual Exception: a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804:(1) the statement has equivalent circumstantial guarantees of trustworthiness;

(2) it is offered as evidence of a material fact;

(3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and

(4) admitting it will best serve the purposes of these rules and the interests of justice.

(b) **Notice.** The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.

Note: No other hearsay exception would apply

2. The People call Hillary to testify regarding her observations of Darryl, the statements he made to her and his false report to police.

Relevance: Hillary's testimony would establish Darryl is the driver.

Spousal Immunity- Privilege Not to Testify in Criminal Cases. A defendant's spouse has a privilege to refuse to testify at the trial of his or her spouse. When the privilege of spousal immunity is invoked, a married person whose spouse is the defendant in a criminal case may not be called as a witness by the prosecution and a married person may not be compelled to testify against his spouse in any criminal proceeding. Only the witness-spouse may invoke the privilege against adverse spousal testimony. Thus, one spouse may testify against the other in criminal cases, with or without the consent of the party spouse, but the witness-spouse may not be compelled to testify, nor may she be foreclosed from testifying (except as to confidential communications)

Immunity may be asserted only during the marriage. It terminates upon divorce or annulment. If the marriage exists, the privilege can be asserted even as to matters that took place before the marriage.

Analysis: In the present case, Hillary wants to testify against Darryl because he is cheating on her. They are currently married. Darryl cannot assert this privilege to prevent her from testifying.

Privilege for Confidential Marital Communications. In any civil or criminal case, either spouse, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication made between the spouses while they were married. The rationale is to encourage open communication and trust and confidence between spouses.

Both spouses hold the privilege. Either can refuse to disclose the communication or prevent any other person from disclosing the confidential communication.

Elements of the privilege:

1. **Marital relationship.** The communication must be made during a valid marriage. Divorce will not terminate the privilege retroactively, but communications after divorce are not privileged.
2. **Reliance on intimacy.** Routine exchanges of a business nature, abusive language and misconduct directed to the spouse are not privileged. If the communication was made in the known presence of a stranger, it is not privileged. The confidential communication does not need to be spoken but may be made by conduct intended as a communication.

Analysis: Darryl can assert this privilege. This privilege only protects confidential communications that are made during a valid marriage. Darryl and Hillary were married at the time of the communication. Darryl's statements that he hit another car and rolled down a ravine, and that he was able to hitchhike home would fall within this privilege because they were confidential communications.

Hillary could still testify to other events and conversations. Hillary could testify that she observed Darryl come home at 3:00 a.m. and that she observed he was drunk. These are not confidential communications that fall within the privilege.

Hillary could also testify to what she heard of Darryl's conversation with police. This is not a confidential communication because the statement was made by a third party.

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

Statement of a Party Opponent: FRE 801(d)(2)(A) authorizes the admission of personal admissions. It permits the proponent to introduce a statement when "the statement is offered against a party and is ... the party's own statement, in either an individual or representative capacity ..." Since the People are offering Darryl's statement through Hillary, it would qualify as a statement of a party opponent.

Prior Bad Acts. The basic rule is that when a person is charged with a crime, extrinsic evidence of his other crimes or misconduct is inadmissible if such evidence is offered by the prosecution solely to establish a criminal disposition. The prosecution may not show the accused's bad character to imply criminal disposition. The reason the rules preclude this use of character evidence is due to the danger that the jury may convict the defendant because of past crimes rather than because of her guilt of the offense charged.

Admissible if Independently Relevant. Although evidence that could lead to a conclusion about someone's character is kept out if offered to show action in conformity with that character on a specific occasion, it can be admitted if it is introduced for other purposes. FRE 404(b) states that such prior acts or crimes may be admissible for other purposes (such as to show motive, opportunity, intent, preparation, knowledge, identity absence of mistake or lack of accident) whenever those issues are relevant in either a criminal or a civil case. Upon request by the accused, the prosecution in a criminal case must provide reasonable notice prior to trial (or during trial if pretrial notice is excused for good cause shown) of the general nature of any of this type of evidence the prosecution intends to introduce at trial. Thus, if the evidence is logically relevant to a fact in issue other than character, and the probative value of the evidence is not substantially outweighed by its prejudicial effect (FRE 402), the prosecution may introduce evidence of the uncharged act.

Analysis: Darryl false report that his vehicle stolen is relevant as to the identity of the driver. It's probative value on that issue is substantially outweighed by the prejudicial effect. It will be admissible on that issue

3. The People call Eugene Einstein, the author of a book on the application of the law of physics to colliding billiard balls and other objects. Einstein would testify that the black car was the cause of the crash based on the application of billiard ball physics to the angles of the vehicles located in the crash. Einstein has a PhD in physics. There are no peer reviewed studies that have applied his theories to vehicle crashes.

Expert testimony: A person can qualify as an expert witness by a showing of knowledge or experience. An expert's opinion can be based on any data that experts in the field ordinarily use, but it must apply reliable principles to sufficient data related to the case. An expert may state an opinion or conclusion based on the facts the expert believes to be true or may answer a hypothetical question that asks the expert to make assumptions.

A witness who is qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise if:

1. The expert's scientific, technical or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
2. The testimony is based on sufficient facts or data;
3. The testimony is the product of reliable principles and methods; and
4. The expert has reliably applied the principles and methods to the facts of the case.

Daubert: when scientific testimony is offered, the court must first make an assessment of whether the testimony is based on scientifically valid reasoning or methodology, and whether the testimony can be applied properly to the issue at hand. The court provided guidance as to various considerations the trial court may review in determining admissibility, including:

1. Whether a theory or technique can be and has been tested
2. Whether the theory or technique has been subject to both peer review and publication
3. The known or potential error rate of the method
4. The existence and maintenance of standards controlling its operation
5. Whether it has attracted widespread acceptance within the relevant scientific community

Analysis: *Students should apply the Daubert factors to this testimony.*

Q3 (H. Starr): SPRING 2023 EVIDENCE EXAM QUESTION AND ANSWER

Proffer 1 is worth about 40% of the points

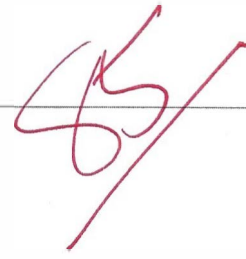
Proffer 2 is worth about 30% of the points

Proffer 3 is worth about 30% of the points

1) Proffer 1 – Recantation and BWC footage

- a. *Initial testimony (this should be a small percentage of the weight for this proffer)*
 - i. *Relevance – students should find this relevant. Students should not use objective truth of the statements as a factor when determining whether it is relevant.*
 - ii. *Character – (red herring) students should not be performing in-depth analysis on character evidence.*
 - iii. *352 – Students should not use truth of the testimony as a factor to consider.*
 - iv. *Overall – students should see the relevance of the initial testimony.*
 1. *Students will be ahead of the curve if they identify and communicate that, tactically, 1) defendant would not object to testimony that benefits him and 2) prosecution will not object because they want to use the hearsay exception of prior inconsistent statement.*
- b. *Personal Knowledge – While it is not intended to be tested, if students can competently discuss why Vicky’s unconsciousness might raise an issue of personal knowledge, they should receive points.*
- c. *Body-worn camera footage*
 - i. *Relevance (small percentage of the total points for this proffer) – Students should immediately see that it is relevant both as impeachment and for the truth of the matter asserted*
 - ii. *Hearsay (primary source of points for this) –*
 1. *Hearsay for statement one – student should recognize that it is hearsay as it is being used for the truth of the matter asserted*
 - a. *Students who also recognize that even as non-hearsay (not for TMA and used as impeachment) are doing quite well.*
 2. *Hearsay exceptions for statement one*
 - a. *Spontaneous statement – students should find it does apply*
 - b. *Prior inconsistent statement – students should find it does apply and can be used to impeach AND for TMA*
 - i. *Any other hearsay exceptions that student competently identifies and can actually link to the facts should be given more points, but not if they are just running through exceptions finding them inapplicable based on “no facts supporting”*
 3. *Crawford Analysis for Statement one – Important part is that they spot the issue. Conclusion is likely does not violate Crawford as being non-testimonial and witness is present for cross exam.*

4. *Hearsay for statement two – Students should recognize hearsay within hearsay – Jewel’s statement and Vicky’s statement.*
 - a. *Jewel’s Statement – unlikely used for hearsay purposes, since that statement is not really trying to prove that the police were called and on their way, but to show effect on the listener or to explain what happened next.*
 - i. *Hearsay exceptions for Jewel’s statement*
 1. *Spontaneous statement likely applies*
 - b. *Vicky relating the statement – This is for the truth of the matter asserted, because it is Vicky’s statement to police that Jewel made the statement. Accordingly, students should recognize that it is hearsay*
 - i. *Hearsay exceptions for Vicky’s statement*
 1. *Spontaneous statement is unlikely to apply in this scenario – students should recognize that the crux of this issue is whether Vicky has calmed down enough that the statement does not apply*
 2. *Prior inconsistent statement likely applies, and the statement is admissible both as impeachment and for the truth of the matter asserted*
 - c. *Crawford for the BWC – Students should see that both witnesses are subject to cross examination, but only the statement to police after Vicky has calmed down is likely to be considered testimonial*
 5. *Students should NOT address authentication of the video because the facts say it is properly authenticated*
 - d. *352 – Students should competently identify why the proffer is highly probative and should conclude that 352 objection will likely be overruled. Depth of analysis here is key.*
- 2) *Proffer 2 – Jewel’s authentication and 9-11 call*
- a. *Relevance – Students should recognize that this evidence tends to show David’s guilt.*
 - b. *Competence – Students should address competence because Jewel is a minor. Students should focus on Jewel not being a small child, and her actions that prove she is a capable young adult (e.g., calling police, apparent ability to authenticate the exhibit, etc.)*
 - c. *Authentication – Students need not discuss authentication, but should earn a small bonus if they do so competently – they should point out Jewel’s ability to recognize her own voice and remember the events as sufficient to authenticate.*
 - d. *Hearsay – Students should understand that the prosecution is seeking to use Jewel’s statements for the truth of the matter asserted and that this is hearsay.*
 - i. *Exceptions – Spontaneous statement – This is the primary exception that students should find applicable*



1)

Call 1: Alley-Op's testimony to the injuries, statement to Dr. Bones, and his journal

Injuries

Logical Relevancy (Tendency Test)

Evidence is logically relevant if it has a tendency to prove or disprove a disputed fact of consequence.

Here, Alley-Op's ("Alley") testimony to the injuries suffered are logically relevant because they have a tendency to prove that he was injured, and they lay foundation to the cause of the injury. In this case, his testimony of the injuries to his hands set foundation for the X-Ray's discussed below. Opposing counsel will argue that the injuries inherently are not proving that the injury was caused by the ball or weights.

A court would find the testimony to the injuries logically relevant.

Legal Relevancy (Balancing Test)

Trial courts have the discretion to find evidence inadmissible if the probative value is substantially outweighed by the prejudicial effect of the evidence. The court may also find evidence inadmissible if the evidence can mislead the jury, confuse the issue, or cause a substantial waste of time.

Here, the probative value of Alley's testimony is legally relevant because the probative value of the witness and victim significantly outweighs any prejudicial effect on the jury. The opposition may argue that, again, the injuries may have occurred through other means.

A court would find the testimony of the injuries legally relevant.

Witness Competency

Competency is key to determine if a witnesses testimony is reasonable. Factors to test witness competency include: visual impairments, medical conditions, mental state.

Witnesses are deemed competent unless proven otherwise.

Here, Alley was exercising on the ball with weights, as advertised, when the ball suddenly popped, resulting in injury. One of the injuries, as found by Dr. Bones, was a concussion. Alley will assert that, as a professional athlete, he has the capacity to understand the events that unfolded, and is able to describe how the events occurred. Alley is a percipient witness. The opposition will argue that, as a result of the concussion, Alley is not competent to testify. Witnesses are competent unless proven otherwise. There is little in the fact pattern to dispute Alley's competency.

A court would find Alley is a competent witness.

Statements

Logical Relevancy (Tendency Test)

Evidence is logically relevant if it has a tendency to prove or disprove a disputed fact of consequence.

Here, the statement "The pain in my left hand is excruciating, it happened when the ball popped like a balloon, and I fell[,]" is logically relevant because it has a tendency to prove that the ball defect was the cause of the injury and where the injury occurred. Opposing counsel would argue that, as a professional athlete, people in his profession are likely to exaggerate to the severity of an injury.

A court would find that the statement is logically relevant.

Legal Relevancy (Balancing Test)

Trial courts have the discretion to find evidence inadmissible if the probative value is substantially outweighed by the prejudicial effect of the evidence. The court may also find evidence inadmissible if the evidence can mislead the jury, confuse the issue, or cause a substantial waste of time.

Here, the statement above is legally relevant because the probative value of how the injury occurred at the time it occurred, and where the pain is from the injury occurred is outweighed by any prejudicial effect. Opposing counsel would argue that going into great detail may make the jury empathize with Alley, causing substantial prejudicial effect.

A court would find the statement legally relevant.

Witness Competency

Competency is key to determine if a witnesses testimony is reasonable. Factors to test witness competency include: visual impairments, medical conditions, mental state. Witnesses are deemed competent unless proven otherwise.

Here, the witness, being a professional athlete, knows proper exercise routines and how to use equipment. The opposition will argue that the concussion makes Alley incompetent; however, witnesses are competent unless proven otherwise. There is little in the fact pattern to dispute Alley's competency.

A court would find the witness competent.

Hearsay

Hearsay is an out of court statement used to prove the truth of the matter asserted.

Here, Alley made the statement "The pain in my left hand is excruciating, it happened when the ball popped like a balloon, and I fell!" This statement was made out of court and used to prove how the injury occurred. Exceptions below

Hearsay Exception: Spontaneous Statement

The spontaneous statement exception applies when a statement is made in an excited or stressful situation.

Here, the statement "The pain in my left hand is excruciating, it happened when the ball popped like a balloon, and I fell!" can be broken into three separate statements, all of which are the result of "excruciating" pain. The statement in it's entirety will likely be admissible under this exception because it was made after Alley fell and weights crushed his hand. Opposing counsel will argue that "it happened when the ball popped like a balloon" and "and I fell" are not under a spontaneous statement exception. ^{why not?} Alley will then assert that those statements, if not under Spontaneous Statement, will come in under contemporaneous statement and state of mind found below.

A court would likely admit the entire statement under spontaneous statement.

Hearsay Exception: Contemporaneous Statement

^{it is} A contemporaneous statement is a statement made by the declarant ^{describing his/her own conduct} as ~~to what is~~ occurring.

Here, the statement "The pain in my left hand is excruciating, it happened when the ball popped like a balloon, and I fell[,]" is a statement describing the event that occurred at the present moment, made by the declarant (Alley). The entire statement, or the three

individual statements, were all made at the time of the event. Opposing counsel will likely argue that the statements "it happened when the ball popped like a balloon" and "and I fell" are not admissible because they are overly descriptive, and may be part of the exaggeration.

A court would likely admit the entire statement or any of the sub-statements.

Hearsay Exception: State of Mind

The state of mind exception is a statement that the declarant made at the time of the event. *— the existing state of mind, emotion, physical condition.*

Here, the statements above, in part and in total, are describing what Alley was thinking at the time the event occurred. Opposing counsel would argue that the statements "it happened when the ball popped like a balloon" and "and I fell" are not admissible because they are overly descriptive, and may be part of the exaggeration.

A court would find the statement under this exception.

Doctor-Patient Privilege

Doctor-Patient Privilege arises when a person seeks medical attention without a third party (like an attorney) recommending them to see a doctor. Any communications between the doctor and the patient pertaining to the medical treatment ^{or diagnosis} of the injury is privileged. The injured person holds the privilege, and privilege is waived if the injured brings the injuries into dispute.

Here, the statements made by Alley to the doctor are privileged, but Alley is seeking damages on the injuries, bringing them into question, effectively waiving this privilege.

A court would find the privilege waived.

Journal Notes

Logical Relevancy (Tendency Test)

Evidence is logically relevant if it has a tendency to prove or disprove a disputed fact of consequence.

Here, the journal notes are logically relevant because they have a tendency to prove that his left hand hurts and he feels dizzy, and he is planning to go to the doctor to get medical attention. The notes read "Left-hand hurts and feeling dizzy. Going to Dr." Opposing counsel will likely argue that his competency is at issue based on his grammar in the journal, and this evidence does not show how the injury occurred.

A court would rule that the journal entry is logically relevant.

Legal Relevancy (Balancing Test)

Trial courts have the discretion to find evidence inadmissible if the probative value is substantially outweighed by the prejudicial effect of the evidence. The court may also find evidence inadmissible if the evidence can mislead the jury, confuse the issue, or cause a substantial waste of time.

Here, the information in the journal has significant probative value that would not be outweighed by prejudicial effect because Alley made the effort to document what kind of injury is being suffered. Additionally, a journal is typically something that is personal to individuals, and would typically be found to be truthful. The opposition would argue that the journal entry shows that Alley is not coherent, and the entry should not be allowed into evidence due to competency *issue*.

A court would find that the journal information is legally relevant.

Witness Competency

Competency is key to determine if a witnesses testimony is reasonable. Factors to test witness competency include: visual impairments, medical conditions, mental state. Witnesses are deemed competent unless proven otherwise.

Here, Alley is writing in short choppy sentences. A witness is deemed competent unless proven otherwise. Alley would assert that he was competent enough to discuss and acknowledge where the injuries were, and he was coherent enough to write in his journal. The opposition would assert that the sentences are short and choppy, and Alley directly discusses his mental state by writing "feeling dizzy."

A court would likely find Alley competent.

Writing

A writing is almost any recordable medium of information, including but not limited to journals, newspapers, podcasts, etc.

Here, the journal entries are written in a journal using Alley's right hand. Alley is right-handed.

A court would find the journal entry is a writing.

Authentication

Evidence is authenticated by means of personal knowledge or writings. Under some hearsay exceptions, like business records, writings are self-authenticated.

Here, the journal is "Alley's" journal. He wrote the notes with his dominant hand in his gym journal

A court would find the journal is authentic.

Secondary Evidence Rule

Under the secondary evidence rule, all writings or copies of said writings that are relevant are admissible unless the content of the writing itself is in dispute. *not - the rule applied because the content of the writing is disputed.*

Here, the journal is the best written evidence in relation to the injury. The opposition may dispute that the injuries are not caused from the ball, however, the journal injury makes no signal to the ball; the journal only discusses the injury. *is disputed.*

The court would find that the journal entry would be admissible under the secondary evidence rule.

** the gym journal writing is hearsay -
debates & contains exceptions.*

Call 2: Dr. Bones Testimony

Logical Relevancy (Tendency Test)

Evidence is logically relevant if it has a tendency to prove or disprove a disputed fact of consequence.

Here, the Doctors testimony and the X-Rays are logically relevant because they have a tendency to prove that the testimony by Alley regarding the injuries are accurate to the injuries suffered.

A court would find the evidence logically relevant

Legal Relevancy (Balancing Test)

Trial courts have the discretion to find evidence inadmissible if the probative value is substantially outweighed by the prejudicial effect of the evidence. The court may also find

evidence inadmissible if the evidence can mislead the jury, confuse the issue, or cause a substantial waste of time.

Here, a court would find that the probative value of the X-Ray's from an expert orthopedic surgeon do not cause any prejudicial effect on the jury. The X-Ray's simply show that there was in fact a real injury.

A court would find the evidence legally relevant.

Witness Competency

Competency is key to determine if a witnesses testimony is reasonable. Factors to test witness competency include: visual impairments, medical conditions, mental state. Witnesses are deemed competent unless proven otherwise.

The doctor is extremely competent. He is listed as an expert witness, and there is nothing in the fact pattern that states otherwise.

A court would find the doctor competent.

Writing

A writing is almost any recordable medium of information, including but not limited to journals, newspapers, podcasts, etc.

Here, the X-Ray's are considered a writing, as they are a tangible medium that shows information. Writings are not limited to just words. They can be symbols or even videos. The X-Ray is recorded.

A court would find the X-Rays to be a valid writing.

Authentication

Evidence is authenticated by means of personal knowledge or writings. Under some hearsay exceptions, like business records, writings are self-authenticated.

The X-Ray's are self-authenticated writings. They came directly from a medical office, and the doctor is testifying to the validity, as an expert, to the credibility of the X-Rays.

A court would find the x-rays authentic.

Secondary Evidence Rule

Under the secondary evidence rule, all writings or copies of said writings that are relevant are admissible unless the content of the writing itself is in dispute. *the contents are in dispute*

Here, there is no dispute as to the validity of the X-rays showing the fractured left and and concussion.

A court would find the X-Rays admissible under the secondary evidence rule.

Call 3: Saul (a)

** need Dr. - Patient Priv. as
issue in Call #2 (Dr. Boxes)
Exception to Priv. - Tort due to
prod. defect*

Logical Relevancy

See above

Here, the 752 verified prior complaints about the exercise ball bursting is logically relevant because it has a tendency to prove that the company knew or should have known that the ball was defective. *Similar Happenings / Notice*

A court would find the evidence admissible

Legal Relevancy

See above

Here, the probative value of the 752 complains substantially outweighs any prejudicial effect on the jury because over 700 people have complained. The company knew or should have known the ball was defective.

A court would find that the evidence is legally relevant.

Call 3: Saul (b)

Logical Relevancy

See above

Here, the company changing the design after the law suit has a tendency to prove that the company is aware of the defect and is making attempts to change it to avoid further legal actions.

A court would find the evidence logically relevant

Legal Relevancy

See above

Here, the probative value of the company changing the design would not have any prejudicial effect on the jury.

A court would find the evidence legally relevant.

Subsequent remedial measures

When a company knows or should have known of a defect, and does not make effort to change it until after injury has occurred, they may be found liable. Changing a defect after injury does not prove ~~guilt~~ *liability (civil case here)*

Here, the company changed the design after injury occurred. Although this does not prove ~~guilt~~ *liability*, it does show that the company is aware of the defect.

A court would find the changing of the design admissible.

END OF EXAM

- overall, very good.*
- Discussed all main issues.*
- Careful - on Secondary Evid Rule - it applies b/c the contents of a writing are in dispute.*
- Some incomplete rules*

2)



1. Nurse Nan Testimony

Logical Relevance

Logical relevance is the tendency to prove or disprove a fact of consequence.

Here, Nurse Nan (NN) was the treating nurse when Victor (V) was brought to the hospital. The statements made by a patient to a medical professional in the course of their treatment are recorded and taken into account when determining how a patient will be treated. The patient knows how they were injured and how they are feeling.

Thus, NN testimony is logically relevant as V is deceased.

Legal Relevance

Legal relevance is the balancing of the probative value of the evidence against the risk to unfair prejudice, undue delay, or confusing the jury.

Here, as V is deceased the injured patient is not able to testify. NN is the only person in the facts to hear what V said when he was admitted into the hospital. These statements are highly probative.

Thus, the statements are legally relevant.

Witness Competency

Witnesses are generally presumed to be competent. A witness needs to be capable of communicating, observing, recollecting, and understand the importance of telling the truth. A witness must swear under oath to testify truthfully.

Here, NN is testifying in court and there are no facts to suggest any communication or competency issues.

Thus, NN is a competent witness.

Hearsay

Hearsay is an out of court statement offered to prove the truth of the matter asserted.

Spontaneous Statement

A spontaneous statement (SS) is a statement made under the stress of a exciting event.

Here, V is run off the road by Daryl Driver (DD) and transported to a hospital with major injuries. Anyone who has been in a major car accident knows it is a startling and stressful event even if there are no injuries. But, when major life threatening injuries are involved that stress is compounded. DD will not want NN statements to come into evidence as DD would likely say that someone with major injuries is not in their right mind and you cannot trust what they will say. The prosecution will argue that V was still under the stress of the accident when he spoke to NN.

Thus, V's statements to NN will be admissible as a hearsay exemption

Contemporaneous Statement

A contemporaneous statement (CS) is a statement regarding an event made at, or near the time of the event.

Here, based on the facts NN was the first person V had a chance to recollect the events to. As the statements were made near the time of the accident and recorded by NN, they would be contemporaneous. DD would argue that the hours from the time of the accident to the transportation to the hospital allowed too much time to elapse and the statements would not be trustworthy.

Thus, the statements would likely be inadmissible as a CS as so many hours elapsed.

Statements for Medical Treatment/Diagnosis

Statements made to medical professionals regarding treatment or the nature of injuries are admissible as a hearsay exemption.

Here, V said to NN "I am in so much pain and I don't think I am going to make it. I was driving home from my night-shift job at 1:00am on Jan 2nd when a black car came flying down the road. The car hit me and we both went down the ravine. I saw a male driver get out of the black car." The only statements here that is relevant to the treatment/diagnosis is "I am in so much pain and I don't think I am going to make it" and "The car hit me" as the level of pain and the fact that V was in a car accident are relevant to how he is treated. DD would object to the rest of the statements as they are not relevant to treating V.

Thus, only the statements "I am in so much pain and I don't think I am going to make it" and "The car hit me" would be admissible under this exemption.

Dying Declaration

A dying declaration is a statement made under the belief of imminent and certain death at the time the statements were made and the declarant is not unavailable.

Here, V stated "I am in so much pain and I don't think I am going to make it" which show V thought he was going to die. DD would object that V simply stated he didn't think he would make it, thus that is not as certain as saying "I am going to die." So DD would say that V did not truly believe he was going to die. But, as a person can only die once, until one knows what it feels like to die, they cannot for sure know what death feels like.

Thus, V's statements to NN would come in under the dying declaration exemption.

2. Hillary Testimony

Logical Relevance

See rule above.

Here, DD is married to Hillary (H) and as H observed and heard things relevant to prove whether DD is telling the truth or not that his car was stolen, H's testimony would tend to prove or disprove facts of the case.

Thus, H's testimony is logically relevant.

Legal Relevance

See rule above.

Here, there were only two people involved in an accident and one is dead. Thus, any further information that can be brought to trial to build on other facts are legally relevant.

Thus, as H has information that is highly probative and has a low risk of undue prejudice, H's testimony is legally relevant.

Witness Competency

See rule above.

Here, there are not facts to indicate that H would not be a competent witness.

Thus, H is presumed to be a competent witness.

Lay Witness

A lay witness is generally excluded from testifying. Though a lay witness can give their opinion if their opinion is based on their perception, the opinion is helpful to a clear understanding of their testimony, and their testimony is not based on scientific knowledge or technical expertise. Lay witnesses can give their opinion on things like intoxication levels, speed of objects, and whether a person is acting rationally.

Here, H simply wants to testify to what he observed of DD on the night of the accident and to what she heard DD say after the fact. H could testify to DD's level of intoxication and more.

Thus, H is a lay witness that would be allowed to testify.

Privileges

Spousal Privilege

The spousal privilege allows for a spouse to refuse to testify against a spouse while is a valid marriage.

Here, H seems to want to testify and DD would not be able to prevent H from testifying if she chooses to do so.

Thus, if H wanted to testify the spousal privilege would not prevent her from doing so.

Confidential Martial Communications

Confidential Martial Communications are protected communication between spouses made during a valid marriage. Each spouse hold the privilege and can prevent the other spouse from testifying about communication during a marriage.

Here, DD would attempt to assert this privilege as DD and H are still married at this time and the communications between DD and H were intended to be private. The exception to this privilege is communications about a future crime are not protected. As H heard DD file a false police report, that is a crime and the privilege does not protect that speech.

Thus, H statements would not be prohibited by this privilege.

3. Eugene Einstein (EE) Testimony

Logical Relevance

See rule above.

Here, as the accident was not able to be investigated due to heavy rain, experts would need to be brought in to try to determine the cause. Accident recreation and accident experts are commonplace in court settings.

Thus, EE's testimony would be logically relevant.

Legal Relevance

See rule above.

Here, things like skid marks, or lack of skid marks, how far a car rolled, and damage to vehicles can be used to piece together an accident scene. As the accident was not properly investigated an attempt to bring light to the nature of the accident is highly probative. DD will object that EE is speculating.

Thus, as the jury can determine the credibility of EE's testimony, EE's testimony would be legally relevant.

Expert Witness

An expert witness is qualified by having a specialized knowledge or skill level in a certain field. A degree or certification is not necessary. An expert may assist the trier of fact with their specialized knowledge, based on facts and data, produced in a reasonable manner, and applied to the case at hand.

Here, EE is not an expert on vehicle crashes but on billiard ball physics. Though the laws of physics are constant the nature of a billiard ball is not obviously applicable to vehicle crashes. As EE is bringing in an area of expertise that is not generally accepted (such as DNA, ballistics, etc) there would be a need for a Daubert hearing to qualify his testimony.

Daubert

A *Daubert* hearing assess the relevance of a new area of expertise such as billiard ball physics. The test is whether the new methods are sufficiently tried and tested, who the error rate and repeatability of the method are, whether the method is accepted in the field, and whether the expert is relying on peer reviewed publications.

Here, there is not data on the methods being sufficiently tried or tested, there is not data on the error rate and repeatability of the methods, there is not mention of whether the method is accepted in the field of accident recreation, and EE has no peer reviewed publications.

Thus, as EE would fail the *Daubert* hearing EE would not be allowed to testify.

END OF EXAM

3)

Call 1 (a): Footage showing Vicky yelling "He tried to kill me!"

Logical Relevancy

Evidence is logically relevant if it has a tendency to prove or disprove a disputed fact of consequence.

Here, the body cam footage lawfully obtained by Officer West has a tendency to prove that Vicky came out of the house saying "He tried to kill me!"

A court would find this evidence relevant.

Legal Relevancy

Trial courts have the discretion to find evidence inadmissible if the probative value is substantially outweighed by the prejudicial effect of the evidence. The court may also find evidence inadmissible if the evidence can mislead the jury, confuse the issue, or cause a substantial waste of time.

The probative value of the statements on the body cam significantly outweigh any prejudicial effect because the body camera shows Vicky exiting the house in the state she is, screaming "he tried to kill me!"

A court would find the body cam footage of Vicky relevant.

Prop 8

In California Criminal Cases, all evidence is admissible unless an exception applies.

Here, the body cam footage is admissible because it was taken by an officers body camera showing statements by Vicky and Jewel.

A court would find this evidence admissible.

Hearsay

Hearsay is an out of court statement used to prove the truth of the matter asserted.

Hearsay Exception: Admission

An admission is a statement made where the declarant is admitting to an act.

Here, Vicky is admitting that there was a male figure attempting to kill her. She came out of the house with injuries on her face and neck that EMT's came to tend to. The opposition would argue that it is undefined who was attempting to kill her.

A court would find Vicky's statements to be an admission that she was beat by a male figure.

Hearsay Exception: Spontaneous Statement

The spontaneous statement exception applies when a statement is made in an excited or stressful situation.

Here, Vicky came running out of the house with injuries making a statement indicating that she was getting beat, which is a stressful situation.

The statements Vicky made would likely be admissible under this hearsay exception.

Hearsay Exception: Contemporaneous Statement

A contemporaneous statement is a statement made by the declarant as to what is occurring.

Here, the footage shows Vicky coming out of the house making statements describing an event that recently occurred.

A court would find these statements admissible.

Hearsay Exception: State of Mind

The state of mind exception is a statement that the declarant made at the time of the event.

Here, the body cam footage shows the state, both physically and mentally, that Vicky was in at the time of the act. Vicky was in distress at the time of the event, screaming "he tried to kill me."

A court would find these statements admissible.

Writing

A writing is almost any recordable medium of information, including but not limited to journals, newspapers, podcasts, etc.

Here, the police body camera footage would be considered a writing because it is a recorded and tangible document.

A court would find the evidence admissible.

Authentication

Evidence is authenticated by means of personal knowledge or writings. Under some hearsay exceptions, like business records, writings are self-authenticated.

Here, the body-camera footage would be authenticated by means of personal knowledge. The footage was taken from the officer's body camera, which is government equipment used for the purposes of keeping both the officers and the citizens on camera safe. If needed, Officer West can also authenticate the footage if placed on the stand.

The body camera footage will likely be admissible.

Secondary Evidence Rule

Under the secondary evidence rule, all writings or copies of said writings that are relevant are admissible unless the content of the writing itself is in dispute.

Here, the footage from the body camera is the best evidence in the case to show the statements made by Vicky are as they appear to be, and the video of the situation is as it appears to be.

A court would find the evidence admissible

Spousal Privilege (assuming they're married)

In a criminal trial, a spouse cannot be forced to testify against their spouse. If they decide to testify on their own volition, they waive privilege. Both spouses are holders of the privilege, and either one of them is able to waive that privilege at any time.

Confidential Marital Communications (assuming they're married)

Confidential marital communications are any communications held between spouses in their own privacy. If statements are made that others can hear, those statements are not protected under confidential marital communications. Both spouses hold the privilege.

Call 1 (b): Footage showing "Cops on the way" "Footage showing Vicky telling Officer West that Vicky was regaining consciousness when Jewel yelled." Is the footage for Vicky or Jewel?

Logical Relevancy

See above.

Here, the body camera footage has a tendency to prove that Vicky was regaining consciousness at the time the statement "you better get off of her" was made.

A court would find the evidence logically relevant.

Legal Relevancy

See above.

Here, the probative value of showing Vicky regaining consciousness when the statement was made outweighs the prejudicial effect on the jury. The camera footage shows that Vicky was in fact beat to a point of passing out.

A court would find the evidence legally relevant.

Hearsay

See above.

Hearsay Exception: Spontaneous Statement

See above.

The statement made by Jewel was made in a stressful situation. Jewel is 14 years old and just witnessed a traumatic domestic battery.

The court would find the statements admissible.

Hearsay Exception: Contemporaneous Statement

See above.

Jewel was stating that the police were on their way, which is describing the events at the present sense as they appear.

A court would find the evidence admissible.

Hearsay Exception: State of Mind

See above

Here, the body cam footage shows Jewel and Vicky in their present state at the time of the events. Jewel was making the statement and Vicky was on the ground regaining consciousness.

The statement would be admissible

Writing

See above.

Here, the police body camera footage would be considered a writing because it is a recorded and tangible document.

The court would find this to be a writing.

Authentication

See above.

facts state "properly authenticated"

Here, the body-camera footage would be authenticated by means of personal knowledge. The footage was taken from the officers body camera, which is government equipment used for the purposes of keeping both the officers and the citizens on camera safe. If needed, Officer West can also authenticate the footage if placed on the stand.

Secondary Evidence Rule

See above

Here, the footage from the body camera is the best evidence in the case to show the statements made by Vicky are as they appear to be, and the video of the situation is as it appears to be.

A court would find the evidence admissible.

Call 2: Authentication of Jewel's 9-11 call

Logical Relevancy

See above.

The 911 call is logically relevant because

why? incomplete .

Legal Relevancy

See above.

incomplete on analysis

Authentication

facts stated properly authenticated.

See above.

Jewel is able to authenticate the 9-11 call. assuming she meets the requirements listed below.

A court would find the 9-11 all authenticated.

- Prior inconsistent statement impeachment

Child witness

Children witnesses (under the age of 18) must be verified, and understand the difference between right and wrong and the difference between a truth and a lie.

Here, the court or the attorney who called Jewel to the stand must first verify that Jewel knows the difference between right and wrong and she must demonstrate that she knows the difference between the truth and a lie. Jewel is 14 years old, so she likely knows the difference between the truth and lie. Jewel is also a percipient witness. She made the 911 call and spoke to the dispatcher about the events that were unfolding. The dispatcher made notes of what sounded like an adult male screaming and woman crying in the background. Jewel is the best witness to call to the stand to best determine the events that unfolded at the scene.

A court would likely find Jewel's statements to be admissible.

*missed
• He says -
Exception needed*

Call 3: Priscilla's Testimony

Logical Relevancy

Legal Relevancy

Witness Competency

*missed
• Character is main issue
- D.V. prior conduct*

Hearsay

END OF EXAM

- missed issues
- incomplete analysis on some issues