

Monterey College of Law – Hybrid

EVIDENCE

Midterm Examination

FALL 2025

Prof. H. Starr

General Instructions:

Answer Two Essay Questions.

Answer Twenty-Four (24) Multiple-Choice Questions in Examsoft.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

Question 1

Wilma was outside admiring the very rare snowfall that the City of San Luis Obispo had just gotten. As she sat on her porch with a warm mug of mulled cider, she saw her neighbor, Pamela, going for a run. Pamela saw Wilma and raised her hand to wave to Wilma. As Pamela smiled at Wilma, she tripped over a piece of uneven sidewalk in front of Dennis' house. Dennis was the neighbor across the street from Wilma. Pamela slammed down onto the concrete, and because of the slippery snow, slid headfirst into Dennis' mailbox. Dennis rushed outside to help Pamela. As Dennis lifted Pam up, he could tell Pam was irate. Pam looked at Dennis, then at the large crack in the sidewalk outside Dennis' yard, and said, "Dennis, I can't believe you would let this dangerous condition on your property go on like this. I could have died! I might have a concussion! My friend is in law school, and she told me I could sue people over this. I am going to call my lawyer right now and I am going to sue you!" Dennis profusely apologized and brought Pamela a blanket and a cup of hot chocolate. Dennis then thought about the threat of a law suit and said, "Look, I know you are going to sue me. How about we just settle this right now. I have \$10 thousand dollars in my safe and I can give it to you to settle this right now." Pamela felt much better after Dennis' kind behavior and the warmth of the hot chocolate. She said, "Never mind, Dennis. I know this wasn't your fault. It's the City's fault. I was just angry. I can't take your money."

The very next day, Dennis purchased supplies at the local hardware store and fixed the crack in the sidewalk. Two weeks later, Dennis received service of process. Pamela was suing him on the basis of premises liability. Dennis' defense is that he did not have ownership or control over the sidewalk, and that the City should be sued instead.

The following are proffers made during the trial:

- 1) Pamela calls Wilma to testify that she heard Dennis offer to "settle the lawsuit" for \$10 thousand dollars cash.
- 2) Wilma would also testify that she saw Dennis leave his home, come back with materials to fix the sidewalk. She also saw him fix the sidewalk so that no crack was left.
- 3) After Pamela testified as the final witness for the plaintiff, Dennis starts his case-in-chief by calling Charlie, Pamela's former best friend. Charlie would testify that she has known Pamela for 23 years, and that Pamela has a reputation among her former friends for lying about the severity of her injuries.

What objections could or should be made and how should the trial judge rule? Answer according to the Federal Rules of Evidence. DO NOT ADDRESS HEARSAY.

Question 2

Officer Wix is a San Francisco Police Officer assigned to a special anti-fentanyl trafficking task force assigned to the San Francisco metropolitan area. For two weeks, in association with the FBI, California Highway Patrol, and California National Guard Counterdrug Task Force, Officer Wix conducted “controlled buys” in the area of Market Street and 8th Street, on the south side of the area commonly known as “The Tenderloin.” A “controlled buy” is the practice of an undercover agent using marked bills to purchase illicit drugs from drug dealers while under surveillance, allowing officers to make an arrest for drug related offenses. On December 7, 2023, task force agents including Officer Wix were conducting surveillance on Dario and saw him make multiple hand-to-hand exchanges, which they suspected were drug transactions. Officer Wix and his partner, Officer Unruh, were undercover, both of whom were equipped with hidden, body-worn cameras (BWC). Other agents watched the events unfold through binoculars from a nearby building. Officer Unruh approached Dario and asked for “some crack, Fety (the street name for Fentanyl), and some meth.” Dario took marked bills from Officer Unruh, walked to a nearby transient, dug into the backpack the transient was wearing, removed drugs, and provided them to Officer Unruh, as Officer Wix and other agents watched. After the controlled buy, Officers Unruh and Wix arrested Dario and found hundreds of grams of various drugs in the backpack worn by the transient and several hundred dollars in small denominations in Dario’s front pockets. Dario was charged with possession of sale of narcotics and sale of narcotics in California Superior Court in San Francisco where the California Evidence Code applies. On the eve of trial in state court, Officer Unruh was struck by a vehicle while pursuing a fleeing suspect and was later pronounced deceased.

The following are proffers made during the trial:

- 1) Officer Wix testified that his BWC was inadvertently covered by his jacket during the controlled buy. The prosecutor therefore produced Officer Unruh’s BWC of the controlled buy and sought to admit it during Officer Wix’s testimony.
- 2) Officer Wix testified that the day after the arrest, he went inside the Chase Bank and viewed surveillance footage from the bank. Wix testified that he saw Dario repeatedly performing the sales by obtaining contents from the backpack carried by the transient prior to completing the sale, though Dario was not charged with these sales. Officer Wix never seized the surveillance footage from Chase, and it was deleted after 30 days according to the surveillance system programming.
- 3) The prosecutor called Conner, a 7-year-old boy whose father sold hot dogs at the same corner as the arrest. Conner would testify that Dario had given the transient the backpack at the beginning of the night.

Question 1 Outline

1) Settlement Offer

a. Logical Relevance

- i. Tends to show Dennis accepted fault for the injury
- ii. Conclusion: relevant
- iii. Dennis should object
- iv. Objection likely overruled

b. Legal Relevance

- i. Since it may fall under impermissible uses of settlement negotiations, there is substantial prejudice. Once that use is gone, there is little else it can be used for
- ii. Conclusion: likely excluded
- iii. Dennis should object
- iv. Objection likely sustained

c. Settlement negotiations (408)

- i. Offers to settle cannot be used to prove liability for or invalidity of the claim or its amount.
- ii. Timing – there must be a dispute in existence.
 - 1. Because Pamela said she would be suing, and Dennis responded specifically to the idea of a lawsuit, courts would likely interpret this as there being a dispute in existence.
- iii. Dennis should object
- iv. Likely sustained

2) Fixing the sidewalk

a. Logical relevance

- i. Tends to show that Dennis had the ability to fix the sidewalk
- ii. Tends to show that Dennis had control over the sidewalk
- iii. Tends to show that Dennis' liability (acknowledgement of the dangerous condition)
- iv. Dennis should object
- v. Likely overruled

b. Legal relevance

- i. There is one impermissible use: tendency to show liability
- ii. There are two potential uses with probative value: ownership/control and feasibility, but Dennis did not argue non-feasibility, so that leaves on.

- iii. These two things are roughly equal, and so the result is likely no exclusion.
 - iv. Dennis should object
 - v. Likely overruled
 - c. Subsequent remedial measures (407)
 - i. Dennis should object under 407
 - 1. If it is being used to show liability
 - ii. Pamela should respond:
 - 1. It shows that Dennis had control over the sidewalk
 - 2. It can show that fixing it was feasible
 - a. This was not placed at issue, and therefore unlikely a proper use
- 3) Pamela is a faker
- a. Logical relevance
 - i. Pamela should object
 - ii. Has a tendency to prove that Pamela is exaggerating her claim against Dennis
 - iii. Likely overruled
 - b. Legal relevance
 - i. Pamela should object
 - ii. Impermissible use: propensity; without the impermissible use, it is hard to imagine much probative value, though students will get points for creativity that is near the mark
 - iii. Likely sustained
 - c. Pamela should object to character evidence
 - i. General rule: character evidence is inadmissible to prove an act in conformity therewith
 - ii. Is this character evidence: yes, reputation among Pamela's former friends
 - iii. Is it being used to prove an act in conformity with the allegation?
 - 1. Yes: This evidence would suggest that Pamela is exaggerating the claim
 - 2. No: Dennis' defense is that he did not have control over the sidewalk. However, if it is not being used for propensity, it likely lacks any relevance.
 - iv. Likely sustained
 - d. Dennis should respond:
 - i. MIAMICOP evidence: unlikely that any exception is applicable, but students will get additional points for any attempts that accurately align facts with rules
 - ii. The original objection is probably sustained

1) Officer Unruh's BWC

- a. Logical Relevance
 - i. Tends to show Dario selling
 - ii. Conclusion: relevant
 - iii. Dario should object
 - iv. Objection likely overruled
- b. Legal Relevance
 - i. High probative value since it shows the controlled buy
 - ii. Low to zero unfair prejudice
 - iii. Conclusion: likely admitted
 - iv. Dario should object
 - v. Objection likely overruled
- c. Identification/Authentication
 - i. Evidence must be sufficient for a finder of fact to determine the exhibit is what it purports to be.
 - 1. Officer Unruh is unable to testify and therefore do the identification/authentication
 - 2. Officer Wix saw the transaction, and is therefore able to authenticate the exhibit
 - ii. Dario should object
 - iii. Likely overruled

2) Chase Surveillance

- a. Logical relevance
 - i. Tends to show that Dario was in control of the backpack
 - ii. Tends to show that Dario was selling narcotics
 - iii. Dario should object
 - iv. Likely overruled
- b. Legal relevance
 - i. The probative value is high since it explains the relationship between the backpack and Dario, since Dario could argue he was not in possession of the narcotics
 - ii. The fact that the other sales were not charged may confuse the jury, and students would do well to object to the additional sales as "inflaming the passions and prejudices" because fentanyl is so dangerous and this testimony would show multiple other sales
 - iii. Potential for both elements with regard to propensity, which goes to unfair prejudice, and MO, which goes to probative value
 - iv. Dario should object
 - v. Likely overruled
- c. Secondary Evidence Rule
 - i. Dario should object

1. Oral testimony of the contents of a writing is inadmissible to prove the contents unless the original or otherwise admissible secondary evidence has been produced.
 2. The surveillance footage is a writing under the rule.
 3. Officer Wix did not seize the footage and therefore it is not available for production
 4. Objection likely sustained
 - ii. Prosecutor should respond:
 1. Destroyed by no fault of the prosecution
 - a. Likely rejected, since the failure to seize the evidence led to its erasure
 - d. Character evidence
 - i. Dario should object to the use of evidence of Dario's prior activity as impermissible character evidence (propensity)
 1. Character evidence may not be admitted to prove an act in conformity therewith
 2. To the extent that this evidence is used for propensity, it should be excluded.
 - ii. Prosecutor should respond: This shows Modus Operandi (MIAMICOP factors), showing that Dario was using the backpack on the transient to store the drugs
 - iii. Likely ruling: overruled
- 3) Conner's testimony
- a. Logical relevance
 - i. Dario should object
 - ii. Tends to prove that Dario was using the transient to hold onto the drugs and obtaining drugs from the backpack for sales, which in turn demonstrates MO and consciousness of guilt
 - iii. Likely overruled
 - b. Legal relevance
 - i. Dario should object
 - ii. Dario could argue that the act of using a transient to engage in drug transactions will enflame the passions and prejudices of the jury; students who make additional, cogent arguments will be awarded higher points
 - iii. Likely overruled
 - c. Dario should object to competency
 - i. Presumption of competency
 - ii. No age in which children are presumed incompetent, but they present unique issues
 1. Students should point out the fact that Conner will likely need voir dire as to his competency despite the presumption
 - iii. Likely overruled because the facts elicited from Conner tend to suggest his ability to perceive and understand reality, but students would also be correct if

they think there might not be enough information to conclude and provide a conclusion that depends on Conner's answer to the voir dire questions

1)

FRE

1) Wilma's Settlement Offer Testimony

D should object to W's testimony re settlement offer under relevance.

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

W's testimony has the tendency to prove that D offered to settle because he felt to he was at fault for P's injury because he was responsible for up keep of the sidewalk which is a fact of consequence because it shows D is in control of the premises and therefore liable for any injuries occurring on his premises.

OK

Objection overruled.

D should object to W's testimony re settlement offer under compromise offers and negotiations.

Evidence of settlement offers, offers to compromise, or negotiations are inadmissible for the purpose of proving or disproving the validity of the disputed claim, but may be used to prove witness bias, undue delay, or obstruction of a criminal investigation. Any statement of admission made during the settlement negotiations are also inadmissible.

W's testimony is that D attempted to settle the lawsuit for \$10,000, which is considered an offer to settle and would be used by P to prove the validity of her claim. Since W's testimony would not be used to prove witness bias, undue delay or obstruction of criminal investigation, the testimony is inadmissible. P may claim that D admitted guilt

*TIMING?
IS THIS
AN OFFER
TO SETTLE?*

LAWSUIT 2 WEEKS LATER?

and proved the validity of the claim by apologized profusely to P and telling her "Look, I know you are going to sue me," but these statements are also inadmissible.

Objection sustained.

D should object to W's testimony re settlement offer under legal relevance.

Otherwise admissible evidence may be made inadmissible if the probative value is substantially outweighed by the danger of undue prejudice and other factors.

While W's testimony is probative because it has the tendency to prove that D offered to settle because he felt to he was at fault for P's injury because he was responsible for up keep of the sidewalk which is a fact of consequence because it shows D is in control of the premises and therefore liable for any injuries occurring on his premises. This probative testimony is inadmissible because W's testimony would not be used to prove witness bias, undue delay or obstruction of criminal investigation. P may claim that D admitted guilt and proved the validity of the claim by apologized profusely to P and telling her "Look, I know you are going to sue me," but these statements are also inadmissible. The risk of undue prejudice is higher because it invites the impermissible inference that D only offered to settle because D has a valid claim and P was culpable, which is against public policy. ~~Defendants need to be encouraged to settle.~~

Objection sustained.

2) Wilma's Sidewalk Repair Testimony

D should object to W's testimony re sidewalk repair under relevance.

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

CONCLUSION

W's testimony is relevant because it has the tendency to prove that D repaired the sidewalk because he was at fault for P's injury because he was responsible for up keep of the sidewalk which is a fact of consequence because it shows D is in control of the premises and therefore liable for any injuries occurring on his premises.

Objection overruled.

D should object to W's testimony re sidewalk repair under subsequent remedial measure.

Evidence of subsequent remedial measures taken after an accident are inadmissible to prove negligence or culpability, but may be used to prove ownership, control, or feasibility. The remedial measure would have made an earlier injury or harm less like to occur.

D obtaining materials and fixing the sidewalk so that there was no crack left would have made P's injury of falling less likely to occur because there were no more cracks in the sidewalk. Thus, D's action was a subsequent remedial measure. W's testimony would be used to prove D was negligent or culpable for P's accident, which is inadmissible.

Objection sustained.

OWNERSHIP/
CONTROL
↓

Agreed! The P should respond to W's sidewalk repair testimony is admissible under the ownership or control exception of subsequent remedial measure rule.

Evidence of subsequent remedial measures may be used to prove ownership, control, or feasibility.

D's act of repairing the sidewalk can be used that he had the control over the sidewalk and it was feasible for him to repair it.

→ TO BE EXCEPTION, MUST APPLY IN THIS CASE. DOES IT?

D's subsequent remedial measure objection overruled.

D should object to W's testimony re sidewalk repair under legal relevance.

Otherwise admissible evidence may be made inadmissible if the probative value is substantially outweighed by the danger of undue prejudice and other factors.

W's testimony is ^{U.P.} probative because it has the ^{FAULT: NO} tendency to prove that D repaired the sidewalk because he was at fault for P's injury because he was responsible for up keep of the sidewalk which is a fact of consequence because it shows D is in control of the premises and therefore liable for any injuries occurring on his premises. This rebuts D's defense that he did not have control over the sidewalk. The city may still own the sidewalk, but D controls it because he was able to repair it. The probative value substantially outweighs the dangers of undue prejudice because it does not invite any impermissible inference by the fact finder.

Objection overruled.

3) Charlie's Pamela Dishonesty Testimony

P should object to C's testimony re P's dishonesty under relevance.

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

C's testimony has the tendency to prove that because P is lying about the severities of her injuries, which is a fact of consequence because if P lied before she must be lying again and was not severely injured when she tripped on D's sidewalk making him not liable.

Objection overruled.

P should object to C's testimony re P's dishonesty under impermissible character evidence.

Character evidence is not admissible to prove an act in conformity therewith.

C's testimony about P is used to prove that P lied before so she must be lying again, which is impermissible under this rule.

Objection sustained.

D should respond that C's testimony re P's dishonesty is admissible under MIAMI COP exception.

Evidence of past acts, wrongdoing, or misconduct can be used to show motive, intent, absence of mistake, identity, knowledge, opportunity, or preparation.

C's testimony of P's past act of lying can be used to show intent because if she lied before and got away with it she intended to lie again and also get away with it by winning the lawsuit.

WHAT PART OF MIAMICOP
IS APPLICABLE?? HOW IS INTENT
ANALYZED?

Character objection overruled.

P should object to C's testimony re P's dishonesty under legal relevance.

Otherwise admissible evidence may be made inadmissible if the probative value is substantially outweighed by the danger of undue prejudice and other factors. The court may issue a limiting instruction for the jury to consider the evidence for another purpose.

C's testimony is probative because it has the tendency to prove that because P is lying about the severities of her injuries, which is a fact of consequence because if P lied before she must be lying again and was not severely injured when she tripped on D's sidewalk

making him not liable for any injuries. C's testimony will likely be used to show intent because if she lied before and got away with it, she intended to lie again and also get away with it by winning the lawsuit. The testimony may evoke emotion because P is a liar trying to get money out of her friendly neighbor, when D apologized and tried to do the right thing. However, the limiting instruction to only look at the evidence for intent will mitigate the undue prejudice.

Objection overruled.

END OF EXAM

- STRUCTURE GOOD
- ANALYSIS NEEDS IMPROVEMENT
- GOOD ISSUE SPOTTING & ISSUE STATEMENTS
- KEEP THIS UP + IMPROVE + YOU WILL DO WELL ON THE BAR

2)

PROFFER 1 - Prosecutor offers Officer's Unruh's body worn camera (BWC) video of the controlled buy during Officer Wick's testimony.

Relevance

Defense could object that the BWC video of the controlled buy is irrelevant.

Under CEC 210 "relevant evidence" means evidence having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. Under 350, no evidence is admissible except relevant evidence. Under 351, except as otherwise provided by statute, all relevant evidence is admissible

The BWC video depicts the controlled buy from Dario: Unruh asking for crack fentanyl and meth, Dario accepting marked bills, going to the transient's backpack, retrieving drugs, and handing them over. The prosecution must prove that Dario sold and possessed narcotics for sale. A video showing him accepting marked buy money and supplying narcotics directly tends to prove both sale and control over the drugs in the backpack. These are disputed facts of consequence.

The video is relevant; any relevance objection should be overruled.

Authentication/Identification

Defense should object that Unruh's BWC has not been properly authenticated.

Under 1400 "authentication of a writing" means the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent claims it is. Under 1401,

authentication of a writing is required before it may be received in evidence. Sections 1410-1421 provide nonexclusive methods of authentication, including testimony of a witness who saw it made or can identify it as what it is claimed to be. (1413, 1410, 1411)

A video recording is a "writing" under 250 because it is a means of recording images and sounds. The prosecutor can authenticate Unruh's BWC by having Wick testify that he is familiar with how the BWCs operate, the video fairly and accurately depicts what happened during the controlled buy, the time and date match the incident, and no alterations were made.

If Wicks personally observed the controlled buy and can confirm that what is shown on the video corresponds to what he saw, that is sufficient to "sustain a finding" that the recording is what the prosecutor claims it is: a recording of the controlled buy.

If Wicks lays that foundation, authentication is satisfied and the objection should be overruled.

Secondary Evidence Rule

Defense could object under California's Secondary Evidence Rule to using the video without additional foundation.

Under CEC 250, a "writing" includes any means of recording letters, words, pictures, sounds or symbols. Video is a writing. Under 1520, the content of a writing may be proved by an otherwise admissible original. Under 1521(A), the content of a writing may be proved by otherwise admissible secondary evidence unless (1) a genuine dispute exists and justice requires exclusion, or (2) admission of the secondary evidence would be

unfair. Under 1523(a), oral testimony is generally not admissible to prove the content of a writing, subject to exceptions in 1523 (b-d)

Here, the prosecutor is not trying to prove the content of a writing by oral testimony; they are introducing the original BWC recording itself. Under 1520, the content of a writing may be proved by an otherwise admissible original. There is no requirement to produce a "better" writing. There is no indication of a genuine dispute over the accuracy of the recording or that admission would be unfair under 1521(a)

The secondary evidence rule is satisfied; any objection under 1520 - 1523 should be overruled.

*IS ORAL TESTIMONY
PERMISSIBLE SECONDARY
EVIDENCE?*

352

Defense could object that the BWC video should be excluded under CEC 352.

Under 352, the court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury

The BWC directly depicts the charged conduct. Its probative value on identity, sales and control of the backpack drugs is extremely high. There is minimal risk of confusing the issues or misleading the jury; it is a straightforward depiction of the event. While all incriminating evidence is prejudicial, 352 only permits exclusion where undue prejudice substantially outweighs probative value. Here, that standard is not met.

352 Objection overruled.

PROFFER 2 - Wicks testifies about Chase Bank surveillance footage he viewed the day after the arrest, showing Dario doing additional sales with the transient's backpack. The footage was never seized and was automatically deleted after 30 days.

Relevance

Defense should object that the Chase surveillance is irrelevant.

CEC 210 defines relevant evidence as evidence having any tendency in reason to prove or disprove any disputed fact of consequence. CEC 350 bars admission of irrelevant evidence. *PROP 8 TRUTH IN EVIDENCE?*

The surveillance showed Dario repeatedly performing additional sales using the same backpack system with the transient. Though he is not charged with those specific sales, the evidence tends to prove Dario exercised control over the backpack and its contents, he was engaged in an ongoing pattern of drug sales, supporting intent to sell rather than mere possession. Control and intent are facts of consequence for the narcotics charges. So the evidence has at least some probative value.

The evidence is relevant; relevance objection overruled.

Personal Knowledge

Defense should object that Wicks lacks personal knowledge to describe the events depicted on the Chase footage.

Under CEC 702(A) the testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter. Personal knowledge may be shown through the witness's own testimony.

Wicks personally went into the Chase bank and watched the footage. He can testify to what he saw on the monitor - that the video showed Dario repeatedly going to the transient's backpack before completing drug sales. The observation is based on his own senses and meets 702's requirement.

*INTERESTING
TAKK*

Personal knowledge satisfied; objection overruled

Secondary Evidence Rule

Defense should object under Secondary Evidence Rule and CEC 1523 that Wicks cannot testify to the content of a video recording that was not preserved.

CEC 1520 - the content of a writing may be proved by an otherwise admissible original.

CEC 1521(a) - the content of a writing may be proved by otherwise admissible secondary evidence unless (1) a genuine dispute exists and justice requires exclusion, or (2) admission would be unfair

CEC 1523 (a) Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing

CEC 1523 (b-d) provide exceptions where oral testimony may be used if the original is lost or destroyed w/o fraudulent intent, not reasonably procurable, or involves numerous writings where only a general result is sought

The bank surveillance video is a writing under 250. The prosecution is attempting to prove the content of that writing (what the video showed) through Wick's oral testimony, not by offering the original or a duplicate. On its face 1523(a) bars oral testimony to prove the content of a writing. However, the footage was automatically deleted after 30 days and was never seized. There is no indication of fraudulent intent by the prosecution or by Wicks in allowing the deletion. Because the recording no longer exists and cannot be obtained by court process, the situation fits within 1523 (b) -(c): (b) oral testimony is admissible if the proponent does not have possession or control of a copy and the original was lost or destroyed w/o fraudulent intent. (C)(1) oral testimony is admissible if the original and any copy were not reasonably procurable by courts process or other means.

Here, the original was automatically overwritten; Wicks cannot retrieve it now. There is no evidence of bad faith or fraudulent non preservation. The prosecution can argue that oral testimony is permissible secondary evidence of the content of the video under these exceptions. Defense could respond that it is unfair under 1521(a)(2) to allow summary testimony about unpreserved video that cannot be cross-checked. However 1521 gives the judge discretion; the loss appears to be routine deletion rather than tactical destruction.

A 1523 objection should be overruled bc the footage was lost w/o fraudulent intent and is not reasonably procurable; oral testimony is permissible secondary evidence. The court may admit the testimony under 1521 and 1523.

Character 1101

Defense should object that the bank surveillance evidence is inadmissible character or propensity evidence under 1101.

CEC 1101 prohibits evidence of a person's character, including evidence of specific instances of conduct, when offered to prove his conduct on a specified occasion. However 1101(b) allows evidence of uncharged acts when relevant to prove some fact other than disposition, such as intent, knowledge, identity, or common plan.

The chase footage shows other uncharged drug sales by Dario using the same backpack method. If the prosecutor offers this solely to argue that Dario is a drug dealer, so he must have sold drugs in this case, this is forbidden under propensity reasoning.

However, the prosecution can articulate non-character purposes: intent - repeated sales using the same method to show that when he possessed drugs on the charged date, he did so with intent to sell, not personal use. Knowledge and control - the pattern of going to the same transient's backpack to retrieve drugs supports that Dario knew what was in the backpack and exercised control over its contents. Common plan - using the transient's backpack as a stash point in multiple transactions shows a recurring plan.

Once articulated as proof of intent/knowledge/common plan the evi falls within 1101(b)

If offered to show Intent, knowledge common plan rather than disposition, the 1101 obj should be overruled and analyzed under 352.

352

D should object that the bank video based testimony should be excluded under 352

352 permits exclusion if the probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, confusing the issues or misleading the jury

PV - the uncharged sales occur in the same area, using the same backpack and transient, close in time to the charged conduct. they significantly bolster Prosecution theory that Dario controlled the backpack and was engaged in sales, not mere possession.

There is a risk that the jury will punish Dario for uncharged offenses. Because the original video is gone, the jury must rely on Wick's description, which may invite over-reliance on a unreliable source, potentially misleading the jury

CA courts are generally willing to admit 1101(b) evi where it is closely related to time and method to the charged offense, esp in narcotics cases subject to a limiting instruction. the judge can give a limiting instruction telling the jury to consider the evi only for intent/knowledge not as proof of bad character.

352 obj should be overruled, and the court may admit the testimony with a limiting instruction on its proper purpose

PROFFER 3

Competency

Defense could object that Conner is incompetent to testify

700 - except as otherwise provided by statue, ever person, irrespective of age, is qualified to be a witness and no person is disqualified to testify to any matter

701 - a person is disqualified to be a witness if they are incapable of expressing themselves concerning the matter so as to be understood, either directly or through interpretation or unable of understanding the duty of a witness to tell the truth

age alone doesn't disqualify a witness in cali. the court must determine whether conner can communicate so as to be understood and whether he understands he must tell the truth. this is through voir dire. judge may ask conner if he knows the diff between a truth and a lie and whether he promises to tell the truth

if conner can give simple narrative answers and show an understanding to tell the truth he meets competency

conner isn't disqualified by age alone - obj overruled if he passes voir dire

relevance

210 - relevant evidence has any tendency in reason to prove or disprove a disputed fact of consequence

prosec. theory is that dario controlled the backpack and its contents during the controlled buy. evidence that dario originally gave the backpack to the transient support the inference that the transient was holding dario's drugs and dario retained possession over the contents. its related to possession for sale

evidence is relevant; obj overruled

352 - defense could object under 352 that young child testimony is confusing or unduly prejudicial

rule (SUPRA)

conner's testimony is straightforward and probative of who controlled the backpack. while he is young, the factfinder can assess his credibility like any other witness. there is no graphic or inflammatory content. the risk of undue prejudice does not outweigh prob value.

352 overruled