

**Monterey College of Law - Hybrid**

**EVIDENCE II- SEC. 1**

Final Examination  
Spring 2025

Prof. S. Chronister

**General Instructions:**

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

\*\*\*\*\*

HYB  
Evidence -Sec1  
Spring 2025  
Prof. S. Chronister

## QUESTION ONE

Dan and Vinnie were childhood friends. As adults they had stayed close, even buying houses on the same street. Five years ago Dan and Vinnie met Wendy at a bar. Both Dan and Vinnie wanted to date Wendy, but ultimately Vinnie and Wendy began a relationship. Four years ago Vinnie confronted Dan about the relationship, resulting in a physical altercation. Neither party pressed charges, but the two had not spoken since that fight.

One year ago Vinnie and Wendy got married. The day after their wedding while Vinnie and Wendy were packing for their honeymoon, Vinnie received a call from an unknown number. Vinnie answered it, and after listening for a minute he became angry and hung up. As soon as he hung up, Vinnie told Wendy the following: "That was Dan, he didn't identify himself but I know it was him. He told me that I don't deserve you and he was going to find me and make you a widow!"

Six months later, Vinnie and Wendy were walking down their street when they passed Dan walking the opposite way on the other side of the street. Dan yelled a curse word at the couple and kept walking. Vinnie then crossed the street and walked up to Dan, shoving his shoulders. The men then both exchanged blows. Dan punched Vinnie in the face who fell backwards and hit his head on the curb. Vinnie was knocked unconscious immediately and died 3 days later at the hospital from his head wound. Dan was charged with manslaughter in California Superior Court.

At Dan's trial, the prosecution called Wendy, who testified about Vinnie's description of the phone call with Dan six months before the fight.

During cross-examination of Wendy, the defense introduced into evidence a certified copy of a felony perjury conviction Vinnie had from 2020.

During the defense's case, Dan claims that he acted in self-defense. He testified that he'd heard about a fight between Dan and a prior girlfriend, where Dan slapped the girlfriend and knocked her out. Dan testified that he'd heard about this fight years ago, when Dan and Vinnie were in college.

Assuming that all appropriate objections were timely made, should the California Superior Court have admitted:

1. Wendy's testimony about Vinnie's statement regarding the phone call? Discuss.
2. The certified copy of Vinnie's 2020 felony perjury conviction? Discuss.
3. Dan's testimony about the fight involving Vinnie and a prior girlfriend? Discuss.

Answer according to California law.

\*\*\*\*\*

HYB  
Evidence -Sec1  
Spring 2025  
Prof. S. Chronister

## QUESTION TWO

Harry and Whitney are married. Whitney and Harry woke up one morning in March 2024 to find Vance, a work colleague of Whitney's, shot in the head in their kitchen. Whitney called the police, and after an investigation Harry was charged with Vance's murder. Harry & Whitney met with Adam, an attorney to discuss Harry's defenses and legal representation at trial. During the meeting, in the presence of Adam and his paralegal, Harry said to Whitney "How could you not know what happened in the house; didn't you hear me and Vance fighting?" Whitney did not respond to Harry, but told Adam that she had no knowledge of the murder or of Vance being in her home. The prosecution's theory is that Harry was angry at Vance for trying to sleep with his wife. Harry's theory is self-defense, arguing that Vance broke into their home and threatened Harry with a gun.

Assume the following occurred in California state court. Discuss all evidentiary issues and arguments that would likely arise in each section below, including objections, if any, and likely trial court ruling on the admissibility of the evidence.

Answer according to California law.

1. During the Prosecution's case-in-chief, Whitney voluntarily testified about what Harry said to her while in the meeting with Adam, the attorney and his paralegal.
2. On cross-examination, the Defense asked Whitney if she had ever seen a gun in their home, and Whitney testified that yes, Harry always kept a gun in his nightstand and had shown it to her before.
3. On cross-examination of Harry, the prosecution then introduced into evidence a certified copy of a felony assault with a deadly weapon conviction Harry suffered in 2020, after he denied having any felony convictions.

\*\*\*\*\*

### QUESTION THREE

At trial, in Federal Court, Pablo testifies in his case in chief that he was driving through an intersection when Bailey, an employee of defendant's company, Daniela's Daytime Catering, ran through a red light and hit Pablo. Bailey was driving a company car when the crash occurred. Pablo broke both of his arms, fractured his skull, and had to be hospitalized. Pablo was out of work for 6 months following the accident.

Pablo then called Willa, a doctor, who testified that she treated Pablo at the hospital. Willa testified that Pablo told her that Bailey ran a red light. When Bailey's car hit him the impact of the car broke his arms, and his head flew forward and hit the steering wheel, fracturing his skull. Willa took notes on the conversation for Pablo's hospital record, a standard hospital procedure. Willa is a qualified witness who can testify to the nature and production of the hospital record she made for Pablo. Pablo moved to enter the hospital record into evidence.

During the Defense's case in chief, Bailey testified that Pablo was speeding through the intersection, right as she entered it. Bailey could not see Pablo's light from her position, but she testified that Pablo must have entered the intersection on a yellow or red light because her light was green. Bailey further testified that in her opinion, Pablo was recklessly speeding. Bailey testified that her father was a police officer, and she knew how to tell when someone was speeding on sight, because she had ridden in her father's cop car a few times as a kid.

Pablo then testified that at the scene of the crash, Bailey told Pablo "I was so distracted by listening to my podcast, I just started driving when I heard the car behind me honk – I assumed that meant I had the green light!" Pablo also testified that Daniela visited him in the hospital and told Pablo that she was so sorry their company van hit him, and offered to pay some of Pablo's medical bills as well as pay for his loss of work. Pablo thanked Daniela and said he would think about it.

Assume all appropriate objections and motions to strike were timely made.

Did the court properly admit:

1. The hospital record? Discuss.
2. Bailey's testimony about the accident? Discuss.
3. Pablo's testimony about Bailey's statements at the scene of the accident? Discuss.
4. Pablo's testimony about Daniela's statements at the hospital? Discuss.

Answer according to the Federal Rules of Evidence.

\*\*\*\*\*

HYB  
Evidence -Sec1  
Spring 2025  
Prof. S. Chronister

## SAMPLE OUTLINE - Q1

### 1. Wendy's testimony about Vinnie's phone call

#### Logical Relevance

Logical: Evidence having any tendency to make the existence of any *disputed* fact of consequence to the determination of the action more or less probably than it would be without the evidence.

Analysis: W's testimony relevant to prove D's intent to hurt V. W's testimony makes it more likely that V believed D wanted to hurt him.

#### Prop 8 / Legal Relevance

Under Prop 8, any evidence that is relevant may be admitted in a criminal case. However, prop 8 makes an exception for balancing under CEC 352, which gives the court discretion to exclude relevant evidence if its probative value substantially outweighs the risk of unfair prejudice, confusion of the issues, misleading the jury.

Analysis: Here the probative value tends to show D had a preexisting intent to hurt V, and that V believed it. No indication that the evidence poses a risk of unfair prejudice...

#### Authentication of Phone Call

Personal knowledge / authentication – was D actually on the phone?

Rule: Oral statements must be authenticated in cases where the identity of the speaker must be shown to make the statement relevant. Phone calls can be authenticated by: testimony that the listener recognized the speaker's voice, that the speaker has knowledge of facts only they would know, or the speaker identified himself.

Analysis: P will argue V knew D for most of their lives, likely recognizes his voice, even if the call was from an unknown number. D might have identified himself.

#### Hearsay within Hearsay

Rule: Out of court statement offered for the truth of the matter asserted. Hearsay within hearsay is admissible only if both the outer and inner layers fall within a hearsay exception.

Analysis: Outer layer (V's statement to W) is hearsay because it is being offered for its truth – that D called and threatened V. Inner layer is hearsay (statement on phone from D) is hearsay if offered for its truth, that D was planning to make W "a widow." Prosecution could argue that D's statement was not hearsay because its only offered to show the effect on V – make him afraid, less likely to attack D.

#### Outer layer – Vinnie's statements to Wendy

#### Contemporaneous statement

Rule: Statement made at the time of occurrence, by a declarant made to explain, qualify, or make understandable their own conduct, while the declarant is engaged in the conduct.

Concl: does not apply because V not describing his *own* conduct.

### Spontaneous Statement

Rule: Declarant must have made the statement under the stress of excitement caused by a startling event, and the statement must concern the immediate facts of the startling event.

Analysis: threatening nature of the call = startling event, made V angry, V recounted the details of the event to W immediately afterwards.

### Inner layer – Dan’s statement to Vinnie

### Opposing Party Statement

Rule: Statements by a party, offered against them by the opposing party at trial.

Analysis: Applies \*if\* D’s statements are properly authenticated

### State of mind (“then existing mental, emotional, physical)

Rule: A statement of a declarant’s then-existing physical or mental condition is admissible to show the condition of the declarant’s mindset.

### Effect on the Hearer (non TOMA purpose)

Analysis: If V believes call was from D, shows he was fearful, and less likely to be the aggressor. D’s statement doesn’t need to be authenticated if used for this purpose, because V believed it was D, even if it wasn’t.

### Limited Admissibility

Rule: If evidence is admitted for one purpose, it is not excluded just because there is a danger that the jury might consider it for the other improper purpose. If the court determines that even with a limiting instruction the probative value of the evidence with respect to the legitimate purpose is substantially outweighed by unfair prejudice with respect to the incompetent purpose, the evidence can still be excluded.

Analysis: Here, the court may decide that W’s testimony is prejudicial because the jury might assume D is the caller.

Concl: Limiting instruction likely sufficient.

### Spousal Testimony Privilege

Rule: A married person has the privilege not to testify against their spouse. This privilege is held by the witness spouse, meaning the personal being called to testify. There are common exceptions to this privilege: a spouse chooses to testify against their partner, lawsuits between the spouses (ex: custody suits).

Analysis: W is V’s widow; they were married. Does not apply here since W’s testimony is offered against D, not V.

### Marital Communication Privilege

Rule: A spouse has a privilege during and after a marriage, to refuse to disclose and to prevent others from disclosing a confidential communication made during the marriage. Like the spousal testimony privilege there are common exceptions like waiver by the privilege holder (either spouse), and the crime fraud exception where communications made in furtherance of enabling or aiding anyone commit a crime or fraud are not privileged.

Analysis: Might apply. Even though V is dead, confidential communications made during marriage are privileged and inadmissible. But if W is willing to give the testimony D can’t stop her because D is not a holder of the privilege.

## **2. Certified Copy of Vinnie’s 2020 Felony Perjury Conviction**

### Logical Relevance

Logical: Evidence having any tendency to make the existence of any *disputed* fact of consequence to the determination of the action more or less probably than it would be without the evidence.

Analysis: Shows V is not truthful.

### Prop 8 / Legal Relevance

Under Prop 8, any evidence that is relevant may be admitted in a criminal case. However, prop 8 makes an exception for balancing under CEC 253, which gives the court discretion to exclude relevant evidence if its probative value substantially outweighs the risk of unfair prejudice, confusion of the issues, misleading the jury.

### Authentication

Rule: In order to be admissible, a document must be authenticated by proof that the document is what the proponent says it is. A document can be authenticated by the testimony of a person who sees the document being prepared / executed. A certified conviction is self-authenticating, and does not require additional testimony.

Analysis: Copies of public records are self authenticating document, no issues

### Character evidence (\*bonus issue to identify, but mainly impeachment)

Rule: Criminal defendant may introduce evidence of a V's character to prove the V acted in conformity with that character on the occasion in question. California law allows reputation, opinion, or specific acts evidence of the V's character on direct or cross examination. Prop 8 allows for admissibility of victim's character in a criminal trial whenever relevant, subject to balancing test.

Analysis: Perjury conviction not substantive character evidence, not being offered to prove V acted a certain way (i.e. the fight), offered to prove V is a liar, making it impeachment evidence not character evidence.

### Impeachment

Rule: CEC allows litigants in both civil and criminal cases to impeach a witness with any felony conviction (whether or not it involves dishonesty or false statements), subject to: 1) the conviction has not been expunged or pardoned, 2) the felony must involve moral turpitude, and 3) the conviction's impeachment value is not substantially outweighed by its dangers.

Analysis: Here, V's felony conviction for perjury is a crime of moral turpitude. There are no facts showing the conviction was expunged or that V was pardoned. The conviction was significant value, no indication that its value is substantially outweighed by any other dangers.

Conclusion: D can use V's perjury conviction to impeach V's hearsay statements about the telephone call.

## **3. Dan's testimony about the fight between Vinnie & prior girlfriend**

### Logical Relevance

Logical: Evidence having any tendency to make the existence of any *disputed* fact of consequence to the determination of the action more or less probably than it would be without the evidence.

Analysis: Logically relevant because tends to show V was a violent person, more likely that V was the aggressor & that D acted in self-defense. Also relevant to prove D's state of mind during the fight with V. To succeed in self-defense claim, D will need to prove her had reasonable fear of V.

### Prop 8 / Legal Relevance

Under Prop 8, any evidence that is relevant may be admitted in a criminal case. However, prop 8 makes an exception for balancing under CEC 253, which gives the court discretion to exclude relevant evidence if its

probative value substantially outweighs the risk of unfair prejudice, confusion of the issues, misleading the jury.

Analysis: Balancing test – is a risk of prejudice, causes inference that V has a character for violence.

However, character evidence is permissible under these circumstances so likely relevant.

Concl: Court may exclude for risk of unfair prejudice.

### Personal Knowledge

\*ISSUE, no personal knowledge of the fight, we don't know where he heard it from. Used for another purpose? See below

Rule: Person must have personal knowledge of the matters they testify to.

Analysis: D heard about the fight from someone, he did not witness it

Concl: Because no personal knowledge, cannot be admitted to show V's character for violence. CAN be admitted for another purpose (effect on hearer)

### Character evidence

Rule: Character evidence is inadmissible to show the victim acted in conformity with that character trait, unless an exception applies. D can "open the door" to character evidence by introducing evidence of his own good character, or V's character for violence. Character evidence can be in the form of reputation, opinion, or specific acts. Under CEC, defendant can use any of these methods to show evidence of V's bad character.

Analysis: D's testimony would be evidence of specific acts, since he is testifying to V's actions during a particular fight. However, like discussed above, D does not have personal knowledge of the fight, and therefore the testimony is not admissible for this purpose.

### Effect on Hearer

Rule: Testimony may be admissible for a different purpose – to show D's state of mind. D heard about the fight, may have created fear of V, goes to prove his self-defense claim.

---

## SAMPLE OUTLINE – Q2

### **1. W's testimony about H's Statements**

#### Logical Relevance

Rule: Evidence having any tendency to make the existence of any disputed fact of consequence to the determination of the action more or less probably than it would be without the evidence.

#### Prop 8 / Legal Relevance

Rule: In CA, all relevant evidence is admissible during a criminal trial, unless it is subject to an exclusion such as hearsay or privilege. Court must balance the probative value of the evidence against the danger of unfair prejudice, confusion of the issues, misleading the jury, or undue consumption of time. If prejudice is substantially greater than the probative value of the evidence the court will exclude the evidence.

Analysis: Here, the evidence is legally and logically relevant to show that H had knowledge of a fight between H and V

#### Witness comp / personal knowledge

Rule: Witnesses presumed to be competent until contrary demonstrated. A witness needs to have personal knowledge of the facts to which they are testifying.

### Hearsay

Rule: An out of court statement offered for the truth of the matter asserted. Inadmissible unless an exception applies.

Analysis: Here, W is repeating what her husband said in a meeting with their attorney. If the statement is offered for its truth, that guys were coming and going to the house, then it is hearsay and must fall within an exception.

### Opposing party statement

Rule: A statement is not inadmissible when offered against the declarant in a case where he is a party.

Analysis: Here, H is the declarant and the defendant. The prosecution, the opposing side, is offering the testimony.

### Declaration against interest

Analysis: If H refuses to testify, he would be deemed "unavailable" for the purposes of a hearsay exception. Here, H's statement is against his pecuniary interest.

### State of mind (Non TOMA)

Rule: If the statement is offered for something other than its truth, like to show the defendant's knowledge, it can be admissible for that limited purpose.

Analysis: Here, H's statements could be admissible to show that he had knowledge of the fight, and that he feared V. The other side would argue that H's statement doesn't seem to show fear.

### Spousal Testimony privilege

Rule: A spouse cannot be compelled to testify against his/her spouse. This privilege can only be invoked by the witness-spouse and can only be claimed during the marriage. There are common exceptions to this privilege: a spouse chooses to testify against their partner, lawsuits between the spouses (ex: custody suits).

Analysis: Here, W is choosing to testify against her husband.

### Marital Communications privilege

Rule: This privilege protects confidential spousal communications and survives the marriage even if the couple divorces. Like the spousal testimony privilege there are common exceptions like waiver by the privilege holder (either spouse), and the crime fraud exception where communications made in furtherance of enabling or aiding anyone commit a crime or fraud are not privileged.

Analysis: H and W are legally married at the time of W's testimony, which she is giving voluntarily.

However, the statements at issue were not said in a confidential setting. A and P were also present. H could not prevent W from testifying to this communication.

### Attorney client privilege

Rule: Communication between an attorney and client are confidential and cannot be disclosed.

Analysis: While H is the represented party, H will argue W is a necessary 3<sup>rd</sup> party, along with the paralegal. cannot testify to what H said to his attorney in confidence. The prosecution could argue that the paralegal would be a 3<sup>rd</sup> party, but the paralegal works for the attorney and their presence does not break the privilege. The prosecution could also argue that W is not a necessary 3<sup>rd</sup> party.

Concl: W's statement would likely not be allowed into evidence if it can be shown that she was a necessary 3<sup>rd</sup> party.

## **2. W's testimony re: the gun**

### Logical Relevance

Rule: Evidence having any tendency to make the existence of any disputed fact of consequence to the determination of the action more or less probably than it would be without the evidence.

#### Prop 8 / Legal Relevance

Rule: In CA, all relevant evidence is admissible during a criminal trial, unless it is subject to an exclusion such as hearsay or privilege. Court must balance the probative value of the evidence against the danger of unfair prejudice, confusion of the issues, misleading the jury, or undue consumption of time. If prejudice is substantially greater than the probative value of the evidence the court will exclude the evidence.

#### Witness comp / personal knowledge

Rule: Witnesses presumed to be competent until contrary demonstrated. A witness needs to have personal knowledge of the facts to which they are testifying.

#### Spousal testimony privilege

Rule: In general, a married person has the privilege not to testify against their spouse in any proceeding. This privilege is held by the witness spouse. There are exceptions to this privilege, like if a spouse chooses to testify against their partner, if the lawsuit is between the spouses (ex: custody suits).

Analysis: W choosing to testify, she is the holder of the privilege.

#### Marital communications privilege

Rule: A spouse has a privilege during and after a marriage, to refuse to disclose and to prevent others from disclosing a confidential communication made during the marriage. Like the spousal testimony privilege there are exceptions like waiver by the privilege holder (either spouse), and the crime fraud exception where communications made in furtherance of enabling or aiding anyone commit a crime or fraud are not privileged.

Analysis: W testifying about something she saw, not a confidential communication.

Concl: Privilege would not apply

### **3. H's 2020 Felony Assault Conviction**

#### Logical Relevance

Rule: Evidence having any tendency to make the existence of any disputed fact of consequence to the determination of the action more or less probably than it would be without the evidence.

#### Prop 8 / Legal Relevance

Rule: In CA, all relevant evidence is admissible during a criminal trial, unless it is subject to an exclusion such as hearsay or privilege. Court must balance the probative value of the evidence against the danger of unfair prejudice, confusion of the issues, misleading the jury, or undue consumption of time. If prejudice is substantially greater than the probative value of the evidence the court will exclude the evidence.

#### Authentication

Rule: In order to be admissible, a document must be authenticated by proof that the document is what the proponent says it is. A document can be authenticated by the testimony of a person who sees the document being prepared / executed. A certified conviction is self-authenticating, and does not require additional testimony.

Analysis: Self-authenticating, no issue.

#### Impeachment with Felony Conviction

Rule: Defendant may be impeached by evidence of felony conviction under certain circumstances. In CA criminal cases under Prop 8, parties can offer specific instances of misconduct to prove honesty not limited to felony convictions, subject to a balancing test. Prop 8 did not overturn CEC 788, convictions under 788 to prove dishonesty still must be felonies involving moral turpitude. Extrinsic evidence is admissible to impeach.

Analysis: In this case, H on cross examination denied having any felony convictions. The prosecution now wants to introduce evidence of his prior felony conviction. Because we are in CA criminal court, Prop 8 applies. Prop 8 allows in extrinsic evidence. The defense will argue that the conviction is too prejudicial because... The prosecution will argue it is not because...

---

## SAMPLE OUTLINE-Q3

### 1. Hospital Record

#### Logical Relevance

Rule: Evidence having any tendency to make the existence of any fact of consequence to the determination of the action more or less probably than it would be without the evidence.

#### Legal Relevance

Rule: Even if evidence is relevant, the Court must balance the probative value of the evidence with any unfair prejudice, confusion of the issues, misleading the jury, or undue consumption of time.

Analysis: Here, the hospital record would be logically and legally relevant to show the extent of P's injuries.

#### Authentication

Rule: In order to be admissible, a document must be authenticated by proof the document is what the party says it is. Can be authenticated by testimony of the person who saw the document prepared or executed.

Analysis: Here, W testifies that he prepared P's hospital notes and record. This would be enough foundation to authenticate the document.

#### Hearsay within hearsay:

Rule: An out of court statement offered for the truth of the matter asserted. Inadmissible unless an exception applies. When a hearsay statement contains another hearsay statement within it (like a hospital record and the statements written in the hospital record), both layers of hearsay must fall within an exception to be admissible.

#### Hospital record - outer layer

#### Business records

Rule: 1) recording of an act or event, 2) made by a person with personal knowledge, 3) made at or near the time of the event or act, 4) by a person under a duty to keep the records in the ordinary course of business.

Concl: admissible.

#### P's statements – Inner layer

#### Statements for medical diagnosis / treatment

Rule: A statement that is made for (and reasonably pertinent to) medical diagnosis or treatment, and describes medical history, past or present symptoms or sensations, their inception, or their general cause is an exception to the rule against hearsay.

Analysis: Here, the hospital record contains P's statements to W regarding his symptoms and their cause.

Concl: admissible.

#### Statement of mental / physical condition (State of Mind)

Rule: A statement of a declarant's then-existing physical or mental condition is admissible to show the condition of the declarant's mindset.

Analysis: Here, P's statements would also fall under the state of mind exception, because P was telling W his then existing physical condition.

Concl: Admissible.

## **2. B's testimony about the accident**

#### Logical Relevance

Rule: Evidence having any tendency to make the existence of any fact of consequence to the determination of the action more or less probably than it would be without the evidence.

Analysis: Relevant to show B might not have been at fault, and that P might have been speeding or driving through a red light.

#### Legal Relevance

Rule: Even if evidence is relevant, the Court must balance the probative value of the evidence with any unfair prejudice, confusion of the issues, misleading the jury, or undue consumption of time.

#### Witness comp / personal knowledge

Rule: Witnesses presumed to be competent until contrary demonstrated. A witness needs to have personal knowledge of the facts to which they are testifying.

Analysis: Personal knowledge issue here – B is testifying that she could not see P's light, but thinks he was running a red light or speeding through a yellow light. Based on inference, not one of her senses.

#### Lay Opinion Testimony

Rule: A witness may testify to their lay opinion if it is 1) rationally based on their perception, and 2) helpful to understanding the witness's testimony.

Analysis: Here, B could give her opinion that P was speeding, but "reckless" is beyond the scope of lay opinion, and goes to show fault or negligence. B claims she can tell when someone is speeding just based on sight, but this is arguably specialized knowledge, and she would need to be qualified as an expert witness.

#### Expert Opinion Testimony

Rule: 1) Must be qualified by skill, knowledge, or experience, and 2) must assist the trier of fact (the jury).

Expert witnesses do not need to have personal knowledge of the facts to which they are testifying. The expert's knowledge / skill can come from education or experience.

Analysis: Here, the facts do not show that B has been properly qualified as an expert witness.

## **3. P's testimony about B's statements**

#### Logical Relevance

Rule: Evidence having any tendency to make the existence of any fact of consequence to the determination of the action more or less probably than it would be without the evidence.

#### Legal Relevance

Rule: Even if evidence is relevant, the Court must balance the probative value of the evidence with any unfair prejudice, confusion of the issues, misleading the jury, or undue consumption of time.

Analysis: Here, P's testimony about B's statements would be legally admissible to show that B was not paying attention and didn't know if her light was green, and therefore was at fault for the accident.

#### Witness comp / personal knowledge

Rule: Witnesses presumed to be competent until contrary demonstrated. A witness needs to have personal knowledge of the facts to which they are testifying.

#### Hearsay

Rule: An out of court statement offered for the truth of the matter asserted. Hearsay statements are inadmissible unless an exception applies.

#### Opposing party admission

Rule: Statement may be admissible if made by a party and offered by the opponent. It does not need to be against the declarant's interest. The statement can be made by a person who is authorized by the party to make a statement on the subject, or by the party's agent or employee on a matter within the scope of that relationship while it existed.

Analysis: Here, B's statements could be considered an opposing party statement, because B was working for D when the accident happened.

Concl: Admissible.

#### Statement against interest

Rule: A statement that is against the penal, financial, or social interest of the declarant when it was made. Declarant must be unavailable.

Analysis: Here, not unavailable. Admissible as party admission, not statement against interest.

#### Present sense impression

Rule: A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

#### Excited utterance

Rule: A statement relating to a startling event or condition, made while the declarant was under the stress or excitement that it caused.

### **4. P's testimony about D's statements**

#### Logical Relevance

Rule: Evidence having any tendency to make the existence of any fact of consequence to the determination of the action more or less probably than it would be without the evidence.

#### Legal Relevance

Rule: Even if evidence is relevant, the Court must balance the probative value of the evidence with any unfair prejudice, confusion of the issues, misleading the jury, or undue consumption of time.

Analysis: Here, P's testimony about D's statements are logically and legally relevant to show that D acknowledged ownership over the company car, and potentially liability for the accident.

#### Witness comp / personal knowledge

Rule: Witnesses presumed to be competent until contrary demonstrated. A witness needs to have personal knowledge of the facts to which they are testifying.

### Hearsay

Rule: An out of court statement offered for the truth of the matter asserted. Inadmissible unless an exception applies.

### Opposing party admission

Rule: Statement may be admissible if made by a party and offered by the opponent. It does not need to be against the declarant's interest.

Analysis: D is a party to the action, and their statements are being offered by P, the opposing party.

Concl: admissible as an opposing party admission, but subject to policy exclusions discussed below.

### Offers to pay medical expenses / settlement offers

Rule: For public policy reasons, offers to pay medical expenses or offers of settlement are inadmissible to show liability.

Analysis: Here, P is offering D's statement that she would take care of some of his medical expenses and loss of work. This statement would be inadmissible under the public policy exception. Ownership: P may bring in statement to show D had ownership. D denied liability.

### Impeachment

Rule: Any party may attack a witness's credibility. Witnesses can be impeached or rehabilitated by either opinion or reputation evidence as to their veracity. Extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack their veracity. But on cross-exam, the court may allow a party to inquire into specific instances if they are probative of the character for truthfulness / untruthfulness.

Analysis: If D denied offering to pay medical expenses, P would be stuck with her answer, not able to admit extrinsic evidence to prove it.

Concl: Court erred in admitting this testimony without a limiting instruction, should be limited to impeachment evidence.

1)

### 1. Wendy's Testimony

#### Logical Relevance

✓ Evidence that tends to prove or disprove a disputed, material fact. ✓ Here, a call from Dan telling Vinnie that he would make Wendy a widow tends to show if Dan was at fault or had the motive to kill, and could be found guilty of manslaughter. ✓ Therefore, the evidence is logically relevant because it will assist the jury in making a decision.

#### Legal Relevance

✓ The probative value of evidence must not be substantially outweighed by the risk of unfair prejudice, confusing the issues, wasting time, cumulative, etc. ✓ Here, the probative value of determining fault/motive is significant. There is risk of unfair prejudice against Dan because treats to make someone a widow will likely make the jury consider Dan negatively. However, the risk of prejudice does not outweigh the probative value of finding motive. ✓ Therefore, the phone call and statements about it are legally relevant.

#### CA Prop 8

✓ All relevant evidence is admissible in criminal trials, subject to 352 balancing test. As discussed above, this evidence is admissible.

#### Witness Competency/Personal Knowledge

✓ Witnesses are presumed competent so long as they have personal knowledge and understand their responsibility to tell the truth. ✓ Here, Wendy has personal knowledge of

---

✓  
what Vinnie said after the phone call ended because "as soon as [Vinnie] hung up" he told Wendy about the conversation. This means that Wendy has personal knowledge of what Vinnie said and can testify about that. However, without more foundation being built, it is unclear if Wendy has personal knowledge of what "Dan" said on the other end of the phone. If proper foundation is laid, then Wendy can testify about "Dan's" statements, but with the current facts it is unlikely that she will be able to testify about "Dan's" statements.

good!

### Authentication

✓  
Non-testimonial evidence must be authenticated to be admissible. Convictions are self-authenticating. Here, the issue is not a conviction, it's a blocked phone call. Vinnie claims that Dan was on the other end of the phone, but it is unclear if this is true. If the phone call is able to be authenticated as Dan, then it will be admissible. Without authentication, then it will not be admissible. *Could be authenticated by ...  
couple examples*

### Hearsay - Double Hearsay

✓  
Out-of-court statements offered for their truth are inadmissible unless an exception applies. Here, the prosecution wants to admit both Vinnie's statements after the phone call and the purported statements from Dan on the other end of the call so that they can show Dan's intent to kill Vinnie to prove their case. Because the phone call and statements were all made outside of court, they are inadmissible unless an exception applies to each layer.

↓ missing analysis of whether or not the out of court statement is being offered for its truth

Outside Layer - Vinnie's Statement after the call

---

### Spontaneous Statement

✓ Statements made during or immediately after a startling event, made while under the stress of excitement, are admissible. Here, the facts state that Vinnie became angry and hung up after listening to the phone call for around a minute. After the call, Vinnie expressly stated that he confidently believed Dan was on the phone and making threats! Vinnie's statements were immediately after the phone call and he was clearly under the stress of the conversation. Therefore, it would qualify as a spontaneous statement.

### Contemporaneous Statement

✓ Statements made during an event, that describe or narrate the declarant's own conduct, are admissible. Here, Vinnie told Wendy about the phone call immediately afterward. None of what Vinnie said describes his own acts or emotions. Therefore, this exception does not qualify.

### Dying Declarations

Statements made by the declarant, before death, when the declarant reasonably believed in their imminent, impending death, are admissible. Here, Vinnie made these statements six months before his death and therefore this exception does not apply.

### Inside Layer - Dan's comments to Vinnie

### Opposing Party Statements

✓ Statements made by a party opponent, may be admitted against them in trial. Here, there is an authentication issue about if Dan was actually on the phone or not because it was a blocked number. If authenticated, then this would be admissible. If not authenticated, then it will not be admissible.

✓ why?  
Because it is a statement by Dan, a party, offered against them at trial by prosecution.

\* State of mind  
exception

\* Spousal testimony privilege

Confidential Marital Communications

✓  
Confidential communications made during marriage are privileged and each spouse cannot be compelled to testify. Here, Wendy and Vinnie were married at the time of the phone call and Vinnie's statements to Wendy (they were packing for the honeymoon, the day after their wedding.) The facts do not state that anyone heard them speaking and because they were packing for their honeymoon, it's safe to assume that these statements were made in confidence and are therefore privileged. However, each spouse holds the privilege and it can be waived. Therefore, Wendy's testimony is admissible.

Was it waived? why admissible if privilege applies?  
Because V is deceased + can't claim the privilege.

Non-Truth Purpose - Effect on the Listener.

✓  
Evidence that is otherwise hearsay, may be admissible for limited purposes like effect on the listener. Here, the prosecution could introduce the phone call and subsequent statements simply to show what effect the threat of making Wendy a widow had on Vinnie.

2. Vinnie's Felony Perjury Conviction

Logical Relevance

✓ ✓  
Rule supra. Here, the perjury conviction has a tendency to prove Vinnie's truthfulness or lack thereof, allowing the jury to weigh the evidence of the phone call and if it was true. Therefore, it is logically relevant.

---

### Legal Relevance

✓ Rule supra. ✓ Here, the probative value of determining Vinnie's truthfulness is important. This evidence does run the risk of confusing the issues for the jury because why would most jurors initially value if the victim had a perjury conviction; there is also an inherent risk of prejudice against Vinnie because a felony perjury conviction is deemed moral turpitude. ✓ However, the probative value is more important here so the jury can weigh the testimonial evidence accordingly and is therefore admissible.

### CA Prop 8

✓ All relevant evidence is admissible in criminal trials, subject to 352 balancing test. As discussed above, this evidence is admissible.

### Authentication

✓ Rule supra. ✓ Here, a felony perjury conviction is self-authenticating and is admissible.

### Character Evidence

✓ Evidence of the essential nature, quality, or trait of a person is inadmissible to show that they acted in accordance on a particular occasion. ✓ Here, the defense is attempting to admit this conviction to show that (1) Vinnie has a tendency for untruthfulness because he has a felony perjury conviction from 2020 (relatively recent) and (2) that Vinnie's statements to Wendy should be disregarded by the jury because Vinnie must have also

---

lied about those statements, just like the perjury conviction. Therefore, this is improper character evidence and inadmissible unless an exception applies.

Felony Convictions  
Impeachment

Substantively being used more for impeachment (that V is a ~~liar~~ lying) vs. character evidence. Conviction doesn't show V must have committed this crime because it is in his nature.

Prior felony convictions that involve moral turpitude, like perjury, are admissible<sup>for limited purpose of</sup>. Here, the defense is introducing the felony conviction against the victim and that conviction is impeach one of moral turpitude: perjury. Therefore, the conviction is admissible.

for impeachment

### Opening the Door

Where a criminal defendant claims self-defense and offers evidence of the victim's bad character, the prosecution may rebut. Here, Dan has not testified or claimed self-defense (yet) and therefore this exception does not yet apply.

### Impeachment

#### 3. Fight between Vinnie and Prior Girlfriend

##### Logical Relevance

Rule <sup>✓</sup>Supra. Here, the fight between Vinnie and a prior girlfriend has a <sup>✓</sup>tendency to show if Dan's self-defense claim is valid, an important question for the jury. Therefore, it is logically relevant.

##### Legal Relevance

✓  
Rule supra. Here, the probative value of determining if Vinnie was actually the aggressor, supporting Dan's self-defense claim, is very important. There is a risk of prejudice against Vinnie because evidence of a fight is likely to look bad within the jury's eyes. And there is a risk of confusing the issues: which fight does the jury need to pay attention to? ✓  
However, the probative value of determining the self-defense claim's validity is more important and is therefore legally relevant.

### CA Prop 8

✓  
All relevant evidence is admissible in criminal trials, subject to 352 balancing test. As discussed above, this evidence is admissible.

### Witness Competency/Personal Knowledge

✓  
Rule supra. Here, ✓ Dan states that he heard about a fight between Vinnie and a prior girlfriend where he slapped the girlfriend and knocked her out. Dan learned about this fight "years ago" while they were in college. But, this is third-party information. The facts do not state that Dan actually knows if this happened, only that he heard about it.

Without more foundation, this testimony is inadmissible because Dan does not have personal knowledge.

*Analysis for witness comp?*

*↳ could be relevant for another purpose, effect on listener*  
\*\*\*\*\*NOTE: Typo in fact pattern: "Dan heard about a fight between Dan and a prior girlfriend" Because this was a self-defense claim and the call of the question, I'm assuming this was meant to read: "Dan heard about a fight between Vinnie and a prior girlfriend."

### Hearsay

---

Rule Supra. Here, Dan is attempting to admit a rumor he heard from years ago, while in college for its truth: that the rumor was true. Therefore it's inadmissible unless an exception applies.

### Character Evidence

✓  
Rule supra. Here, Dan is attempting to show that Vinnie was the aggressor during this altercation, just like he was during the rumored fight during college. Therefore, it's inadmissible unless an exception applies.

*what exceptions might apply?*

### Non-Truth Purpose - Effect on the Listener

✓  
Rule supra. Here, Dan could introduce this simply to show what impact this rumor had on him, about Vinnie. This would be for the limited purpose of showing what effect the rumor had on him and nothing else.

*Analysis:  
What is the  
effect?*

2)

1. Is Whitney's testimony about what Harry said to her while in the meeting with Adam, the attorney and his paralegal admissible?

Relevance

In order for evidence to be admissible, it must be both logically and legally relevant. Here, Whitney is testifying that Harry said to her, "How could you not know what happened in the house; didn't you hear me and Vance fighting?"

Logical

Evidence is logical if it makes a fact of consequence more or less probable to have occurred. In California, that fact must be in dispute. Harry is on trial for potentially murder, and the statement is related to Harry and Vance's fighting. Because the statement may lead to more information being disclosed about the situation between Harry and Vance, this evidence is logically relevant. *what is the disputed fact?*

Legal

Evidence is legally relevant if its probative value outweighs its potential to be prejudicial, delay the jury, mislead the jury, cause confusion or be cumulative. The probative value regarding Harry's statement is that it may disclose the underlying facts and background of the fight. However, it may be prejudicial because it would lead to show that Harry and Vance were fighting the night Vance was found murdered. However, it is likely that the prejudicial probability does not substantially outweigh the probative value of the statement. *→ H admits this, but claims self defense*

Prop 8

*400 does it?  
not H's  
statement was  
that is the  
judicial vs.  
probative  
value w/o  
100 info.*

✓ In California, all evidence in a criminal proceeding is admissible, unless it falls under an exception. Because this is a criminal case in California, this rule would apply.

### Witness Competency/Personal Knowledge

✓ A witness is deemed to be competent unless they are disqualified from testifying. In California, they should also know they have a duty to tell the truth and can understand that duty. ✓ The witness must also have personal knowledge of the situation, which they can obtain through one of their five senses. ✓ The facts do not state that Whitney is incompetent as a witness, and because she was present during the conversation, she has personal knowledge of the meeting.

### Hearsay

✓ Hearsay is an out of court statement offered for the truth of the matter asserted. ✓ Here, Harry's statement to Whitney occurred during a meeting with Adam and Adam's paralegal, outside of court. It is being offered to show that Harry and Vance had been fighting, which is the truth of the statement. ✓ This would be inadmissible unless an exception applies.

good ✓ An opposing party statement occurs when a party in a case offers a statement of another party in the case against them. Here, if to me applicable, ~~Vance~~ would have to be the one offering the statement against Harry. Because Vance is dead, this exemption does not apply.

Prosecution is offering evidence in the form of witness testimony - does apply

good A party makes a statement against their interest when the statement directly conflicts against their own pecuniary, proprietary or penal interest. Harry stated that he and Vance were fighting, and because Vance was found shot in their kitchen, it could lead to believing Harry made a statement against his own interest. However, this applies to an unavailable witness, and is most likely not an exception.

\* could also analyze state of mind

Privilege

Marital Communications privileges are to protect confidential communications between spouses while they are married. Whitney and Harry are married, but their conversation occurred in front of Adam and his paralegal. Although the conversation may fall under attorney-client privilege, Adam and his paralegal are unnecessary third parties in this instance. This privilege does not apply.

*who holds the privilege? Exceptions?*

The adverse spousal testimony privilege allows spouses the ability to not testify against the other. However, one spouse can waive this right and has the ability to testify if they so choose. While Adam may object to Whitney's testimony, each spouse holds the privilege and has the ability to waive it if they choose. This privilege does not apply.

*b/c W chose to testify*

Attorney-Client Privilege occurs when clients and attorneys have confidential communications during the scope of the professional relationship. A third party may not necessarily waive the privilege. Whitney, being Harry's wife, may be an unnecessary third party, however, it is likely that because Vance was found shot in their home, they believed they both needed representation and sought professional representation from Adam. Because Adam's paralegal works for him and is under the same duty to keep matters confidential, she is also a necessary third party. This would be the best option for Harry to raise privilege.

*likely not a necessary party*

*Facts tell us the meeting is for H's defenses only, W not a party or being repped*

2. Is Whitney's testimony regarding seeing a gun in her home, and that Harry had shown it to her before admissible?

Relevance

In order for evidence to be admissible, it must be both logically and legally relevant. Our evidence being admitted here is Whitney's statement about seeing a gun in their home and that Harry had kept it in his nightstand and shown her before.

### Logical

✓  
Evidence is logical if it makes a fact of consequence more or less probable to have occurred. In California, that fact must be in dispute. Here, our disputed fact is whether or not Harry acted in self defense that resulted in Vance's murder. Because Whitney knew there was a gun in the house, it may lead a person to believe that Harry had a propensity for violence or that it was the murder weapon used. Because the evidence of a gun may make that fact more or less probable, it is logically relevant.

### Legal

✓  
Evidence is legally relevant if its probative value outweighs its potential to be prejudicial, delay the jury, mislead the jury, cause confusion or be cumulative. The probative value that this evidence is being offered for is to show that there was a gun in the house in Harry's possession. However, it may be very prejudicial to enter this information into evidence, because Vance was found shot and Harry had previously shown Whitney the gun. Although this does tip the scale towards being prejudicial, we will continue to see if the statement can be admitted.

### Prop 8

✓  
In California, all evidence in a criminal proceeding is admissible, unless it falls under an exception. Evidence that Whitney knew Harry had a gun would be admissible, unless the judge did find it to be prejudicial, which would also exclude it under prop 8.

### Witness Competency/Personal Knowledge

✓  
A witness is deemed to be competent unless they are disqualified from testifying. In California, they should also know they have a duty to tell the truth and can understand that duty. The witness must also have personal knowledge of the situation, which they can

*OK less likely to have acted quickly in self defense if he had to go get his gun / escalated a fight with a weapon*

*can expand on this - why prejudicial if H admits self defense?*

obtain through one of their five senses. <sup>✓</sup>Again, Whitney has not been disqualified from being a witness due to incompetency, and <sup>✓</sup>she has personal knowledge because she saw the gun at her house.

### Hearsay

*Not a  
issue here*  
Hearsay is an out of court statement offered for the truth of the matter asserted. Here, Whitney's statement is made in court, but is also offered for its truth. Because it does not fall into both prongs of hearsay, this is not a hearsay statement.

### Privilege

*good*  
Harry will most likely argue the marital privileges. First, being the marital communication privilege. During marriage, any communications between spouses are confidential and privileged. However, this privilege applies to communications, not <sup>or observations</sup> gestures. Harry showed Whitney the gun before, but it is not stated that Harry and Whitney spoke about the gun. Because there is no actual communication here, this privilege does not <sup>✓</sup>apply.

The adverse spousal testimony privilege states that spouses <sup>✓</sup>cannot be forced to testify against each other while married; however, a spouse can waive this privilege if they so choose. <sup>✓</sup>Although Harry can object to Whitney's testimony against him, she can choose to testify anyways, because she also holds privilege that can be waived. Further, Whitney was called to the stand by the Defense, therefore, she may not be called to testify against Harry, but just as a witness in general. <sup>✓</sup>Because Whitney voluntarily testified at trial, she waived her privilege, and this would be the best way to have her testimony admitted.

**3. Is the certified copy of Harry's felony assault with a deadly weapon admissible?**

### Relevance

---

In order for evidence to be admissible, it must be both logically and legally relevant. Here, the evidence being offered is a certified copy of a felony assault with a deadly weapon that Harry had been convicted of in 2020.

Logical

Evidence is logical if it makes a fact of consequence more or less probable to have occurred. In California, that fact must be in dispute. Because Harry is stating he acted in self defense, it would be logically relevant to show that he has had previous felony convictions dealing with moral turpitude. Because Vance is not here to argue against Harry stating he acted in self-defense, the fact is also in dispute.

relevant to show witness credibility

Legal

Evidence is legally relevant if its probative value outweighs its potential to be prejudicial, delay the jury, mislead the jury, cause confusion or be cumulative. The prosecution is offering this evidence to show that Harry had been violent in the past, and therefore would be violent in the future. The prejudicial value would be that the jury would assume the same, that Harry would be violent now because he had five years ago. Although the evidence is prejudicial, it likely will fall into a category for impeachment or character evidence that can likely get it brought in.

→ it might argue this, but P will say its offered for limited purpose of attacking its credibility

Prop 8

In California, all evidence in a criminal proceeding is admissible, unless it falls under an exception. Because this case is in California court's ~~it is admissible~~.

Witness Competency/Personal Knowledge

analyzing a conviction, not testimony here

Hypo tells us this conviction is being offered after it denies prior felonies = impeachment

A witness is deemed to be competent unless they are disqualified from testifying. In California, they should also know they have a duty to tell the truth and can understand that duty. The witness must also have personal knowledge of the situation, which they can obtain through one of their five senses. Harry has not been deemed incompetent or unable to testify, so he is a competent witness. He also is testifying on personal matters, so he would have personal knowledge as to what he is testifying about.

### Authentication

✓ A document needs to be authenticated to show that it is what the proponent says it is. A certified document from a court is self-authenticating. The document is a certified copy of a felony assault with a deadly weapon. Because we are told the document is certified, it is self-authenticating ~~and admissible.~~

### Character Evidence

Evidence of a person's character is inadmissible if the evidence is to show the person acted in conformity with that trait. The prosecution is offering this evidence because they want to show that because Harry had been violent in the past, it is more likely that he would be violent now. However, unless the character evidence falls into an exception, it is not admissible. *Does it?*

### Impeachment

✓ A witness's character for untruthfulness, bias, specific instances of misconduct, inconsistent statements and mental deficiency can be used to attack or rehabilitate their credibility when it is at issue. Here, Harry not only has a crime of moral turpitude that must be admitted into the case, but he lied about having any felony convictions. This evidence can be used to show his specific instance of misconduct (the crime, which is explained below) and his untruthfulness. If the actual copy of the assault is not admitted,

*hypo does not say this, but this could be his argument*

*incomplete rule: witness can be impeached with a conviction involving moral turpitude*

Harry's denial of having the felony should be admitted for the limited purpose of impeachment.

Prior Convictions

*this is the same analysis & issue  
impeachment (with a prior conviction)*

In California, prior criminal convictions are admissible if they are crimes of moral turpitude. Here, Harry's conviction of felony assault with a deadly weapon would be considered a crime of moral turpitude and should be offered into evidence to show his propensity for violence. Even if the contents of the document are found to be inadmissible, the conviction itself is admissible which will lead the jury to find that he has acted in a vial way in the past.

3)

FRE: Civil Trial

**Question 1: Willa's Testimony re: Hospital Record**

Relevance: Evidence must be logically and legally relevant to be admissible.

✓  
Logical Relevancy: a tendency to prove or disprove a fact of consequence

✓  
Here, Pablo is attempting to get the hospital record into evidence because it shows Pablo's extensive injuries due to the accident between him and Bailey. There is a disagreement between the two parties as to who is at fault for the accident and this is being tried in federal civil court.

✓  
Because this record would tend to prove that P was injured in the accident it is logically relevant ~~and admissible~~.

✓  
Legal Relevancy (Balancing Test): Evidence may be excluded if it's probative value is significantly outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury or wasting time.

✓  
Here the probative value of the record is high, it is an extensive documentation of Pablo's injuries. There is really no significant danger of unfair prejudice, yes it can make Bailey look bad because she was involved in an accident that cause so much damage but this is highly probative, it is on point with the issue, it won't waste time or confuse the jury.

✓  
This evidence is legally relevant.

Personal Knowledge/Witness Competency:

---

A witness's testimony must be based on their personal knowledge which is to say they must have experienced what they are testifying about with at least one of their five senses. A witness is presumed competent unless contrarily demonstrated.

While this is specifically about the hospital record, the qualified witness is Willa and she has personal knowledge of the record because she was the one who created it and no facts show she is incompetent.

This passes the PK/WC test.

Authentication: ✓ Demonstrative or Tangible evidence must be authenticated as genuine. A qualified witness can be used to authenticate a business record.

✓ Here, Willa is in court and can testify to the fact she treated Pablo and she took the notes. She's a qualified witness who can testify to the nature and production of the hospital records she made about Pablo.

✓ This hospital record can be authenticated.

Best Evidence Rule: To prove the contents of a writing, recording, or photograph an original must be submitted or a photocopy of the record may also be substituted if there is not a dispute over authenticity.

Here, Pablo is wanting to enter the contents of the hospital record into evidence. While we don't know if this is the actual hospital record (unlikely because hospitals need to keep their records) even a copy would be ok because this record has been authenticated by the testimony of Willa the doctor who created it.

✓  
Double Hearsay is when one out of court statement by a declarant references another out of court statement by another declarant. In order to admit the document both layers must be analyzed for admission into the evidentiary record.

↳ incomplete rule:  
out of court statement  
offered for its truth

✓  
Here, we have a hospital record which is an out of court statement being offered for the truth of Pablo's injuries. <sup>→ other side will argue?</sup> And there are two layers, one the record created by the doctor which included her physical exam and medical diagnosis as well as another layer of Pablo's comments about the accident. Both layers will need to be analyzed to see if the record can be admitted because all of this happened outside of the courthouse.

↓  
are they  
being offered for  
their truth?

Therefore, this is a double hearsay situation, let's analyze the layers.

Layer 1: Outer Layer (business record)

Business Record:

- ✓
- 1) a recording of an act or event
  - 2) by a person with personal knowledge
  - 3) at or around the time of the act or event
  - 4) by a person with a duty to keep the record in the ordinary course of business.

good ✓  
Here, this was a record that was created at the hospital treating Pablo shortly after his accident, the doctor was hearing Pablo's account and also taking a physical exam of Pablo so she had personal knowledge, and we are assuming that this record was created during the exam of Pablo because the facts tell us Willa took notes on the conversation for the record. Finally Willa had a duty to keep the record because the facts tell us it was standard hospital procedure which is also what is happening during the ordinary course of

business. When patients come to the hospital for treatment a record of their symptoms and care is created as a standard procedure.

Therefore, this outer layer can qualify for a hearsay exception of a business record.

Inner Layer: Pablo's comment about Bailey running a red light, and the broken arms and skull fracture.

✓ **Opposing Party Admission:** A statement by one party being used by the other party against them.

Here the comment that Bailey had run a red light is being spoken by Pablo. However, this isn't a statement that was said by Bailey, it was something that Pablo said.

Therefore this would not qualify as an OPA.

✓ **Medical Diagnosis and Treatment:** A hearsay exception that allows evidence for the purpose of medical diagnosis and treatment.

✓ Here, Willa is listening to the conversation and recording it in the record. She is also examining and treating Pablo. What is recorded in the record is his broken arms from the impact of the accident and his head being fractured by hitting the steering wheel. Bailey might try to object, but the FRE ~~doesn't have a doctor-patient privilege~~ and furthermore these facts are being used for the purpose of treating Pablo's injuries. *statutory, but does*

Therefore, the information about his injuries will qualify to be entered under the hearsay exception for medical diagnosis and treatment.

\* *state of mind*

Conclusion: Both layers qualify for a hearsay exception and so the hospital record will mostly be admitted. The only objection that Bailey's attorney will make is that the comment that Bailey ran the red light does not qualify for the purpose of medical

---

diagnosis or treatment. And the judge should rule for that so everything else in the record is admissible except that one statement.

## Question 2: Bailey's Testimony About the Accident

Logical Relevancy, <sup>✓</sup>Supra

<sup>✓</sup>This is a case about a car crash and who is responsible for the accident. there appears to be a disagreement of whether someone was speeding and what color the light was at the time of the accident so her testimony is likely to make these facts of consequence more or less probable.

<sup>✓</sup>Therefore this evidence is logically relevant.

Legal Relevancy, <sup>✓</sup>Supra

<sup>✓</sup>Here, Bailey is testifying that Pablo is speeding through the intersection. And she is also testifying as to the color of the light. This is highly probative information that the jury needs to hear to make a determination on culpability. And there isn't much danger of significant unfair prejudice, speeding is a common occurrence we have all done it at one time or another, and it's very on point for the topic of who caused the crash so its not wasting time or misleading the jury.

<sup>✓</sup>This material is legally relevant.

Personal Knowledge/Witness Competency, <sup>✓</sup>Supra

Here Bailey has personal knowledge because she was involved in the accident with Pablo and nothing in the facts imply she was not competent to testify. In regards to whether the light was red or yellow or as Pablo states green that is a matter of fact for the jury to

*B testifies she couldn't see P's light, she makes an inference based on her own light. This is a personal knowledge issue.*

---

decide not a matter of law. And it will come down to who is more credible, who the jury will believe.

However, Bailey passes the PK and WC tests and her testimony is admissible.

### Lay Opinion Testimony

- ✓ 1) rationally based on the witness's perception
- 2) helpful to the trier of fact
- 3) not about specialized, technical or scientific testimony.

✓ Here Bailey is testifying that "in her opinion" Pablo was recklessly speeding. So this is opinion testimony. The trick is determining whether this is lay opinion or not. Also she is saying that Pablo is "recklessly" speeding. Using the word recklessly is an opinion as to the ultimate issue, was Pablo being reckless? That's not for Bailey to decide that's for the jury to decide. Also, just because her father was a police officer and she road in her father's cop car doesn't make her an expert, however, it is reasonable to believe that she could tell someone was speeding or not because we all have driven in cars and are all generally aware noticing when someone else is speeding. Let's analyze expert testimony.

### Expert Opinion Testimony

- ✓ 1) qualified by specialized experience, education, or knowledge (doesn't need personal knowledge)
  - 2) helpful to the trier of fact (aka the jury) in understanding the evidence
  - 3) based on established scientific doctrine (in this case it's FRE so the judge would use the Daubert principles to help determine if this was expert testimony)
- 

is B's  
"opinion"  
based on her  
perception?

✓ Here, it is unlikely that the fact that her father was a police officer and she could tell if someone was speeding on sight because she had ridden in the dad's cop car a few times does not qualify her to be an expert witness, not by far. By comparison her father, who was a police officer would have obtained a lot more education and training and experience on how to determine if someone was breaking the law by, for example speeding.

Overall, when analyzing lay or expert testimony it would be helpful to the jury to state that she felt he was speeding, and knowing if someone is speeding is within a lay expert's opinion because we all can usually tell if someone is speeding. However, the idea that Bailey would be qualified as an expert witness is laughable. And she cannot opine on the ultimate issue which is whether or not Pablo was reckless..that's the jury's job.

Conclusion: Bailey's testimony about the accident will be admitted in a limited fashion which is to say she can state she believed in her opinion that Pablo was speeding and she can state that her personal knowledge meant she believed the light was green but her credibility is up to the jury to decide.

### Question 3: Pablo's Testimony about Bailey's comments

✓ Logical Relevancy, Supra

✓ Here, the question is who is at fault for the accident and so testimony about a confession as to Bailey being distracted by a podcast would be really relevant.

✓ This evidence is logically relevant.

Why? need that analysis, what does her testimony show?

✓ Legal Relevancy, Supra

---

✓  
Here, this is a statement Bailey made and its really probative in value because she is admitting (if assumed true and allowed into the evidence) that she caused the crash. The danger of unfair prejudice is it makes her look like a bad driver who caused an accident that injured Pablo. The high probative value isn't significantly outweighed by the danger of the prejudice.

✓  
Therefore, this evidence is admissible as legally relevant.

Personal Knowledge/Witness Competency, <sup>✓</sup>Supra

✓  
Here Pablo is the one testifying and he heard this statement by Bailey with his own ears.  
✓  
Also no facts suggest he is incompetent.

Therefore this passes the PK/WC test and is admissible.

✓  
Hearsay: out of court statement being offered for the truth of the matter asserted, inadmissible unless an exception applies.

✓  
Here this is an out of court statement that Bailey told Pablo at the scene of the crash. That is outside the court house and it's being offered to prove who was at fault in the accident.

✓  
Therefore it's hearsay and inadmissible unless an exception applies.

✓  
Opposing Party Admission: A statement by one party being used against them by the other party. <sup>at trial</sup> An employee/agent while acting in the scope of their employment can speak on behalf of the company.

✓  
Here Pablo is offering up Bailey's statement of admission for being distracted. Daniela might try to argue that she is the one being sued and she didn't say this. While it is true

---

Bailey is the employee and Pablo is suing her boss, Daniela, Bailey was still acting within her scope of employment when she was driving the catering company van.

✓  
Therefore, this qualifies as an opposing party admission and can be admitted

✓  
Excited Utterance: A statement made while under the stress of a startling event.  
*about the startling event*

✓  
Here Bailey is saying I was so distracted I just started driving. This was said at the scene of the crash and that would be a startling event. There is also an exclamation point in the statement so that implies being startled or under stress.

✓  
This would qualify as an excited utterance

Present Sense Impression: A statement made about an event while the declarant was experiencing the event  
*or immediately after*

✓  
This is also a statement made by Bailey that is narrating what she experienced that she was distracted and listening to a podcast, heard a car honk and assumed that the light was green!  
*when did the statement happen*

✓  
This statement will qualify as a present sense impression.

Conclusion: Pablo's testimony about Bailey's Statements qualify under numerous hearsay exceptions and will be allowed.

#### Question 4: Pablo's Testimony About D's statements in Hospital

Logical Relevancy, <sup>✓</sup>Supra

Here this is a conversation that happened at the hospital and it involves Bailey<sup>D</sup> stating she was sorry for the accident and offering to pay for medical bills and loss of work. This is really relevant to proving the fact of consequence of who is responsible for the accident.

---

✓  
Therefore this is logically relevant.

✓  
Legal Relevancy, Supra

This statement by Daniela is highly probative because she is saying she is sorry the van being driven by an employee hit him and offered to pay medical bills and for loss of work. This does make Daniela look bad because it makes her look like she hired bad employees who are at fault for the accident. However, that unfair prejudice does not significantly outweigh the extremely probative value of her statement. It doesn't waste time it's on point and it won't confuse the jury.

→ why is this probative. What does it prove

✓  
This statement is legally relevant.

\* witness comp / personal knowledge  
Hearsay, Supra

✓  
Here Pablo's testimony about Daniela's statement is in the hospital which is not the courthouse and it's being offered to prove who is at fault.

✓  
Therefore it's hearsay and inadmissible unless an exception applies.

✓  
Opposing Party Admission, Supra: Here we have Daniela who is the defendant in this case (aka the Bailey's Boss) who is admitting that the van hit Pablo.

does she? But not needed for OPA

✓  
Therefore it can be admissible under an OPA exception.

Public Policy Exceptions: There are times when public policy wants to foster good behavior and not penalize people who are trying to do the right thing. In this case there are two examples of potential public policy exceptions in this situation: expressions of sympathy, offers to pay medical bills, and offers of settlement. Under the FRE there is not a public policy exception for expressions of sympathy or offers to pay medical bills.

---

However, this is a FRE public policy exception around offers of settlement not being allowed into evidence.

Daniele will argue that her expression of sympathy was part of the negotiation in paying Pablo's expenses. Because she was the boss she has the ability to negotiate with Pablo and nothing that she said in the hospital should be allowed to be entered into the public record. Pablo will argue that he was in no condition to negotiate a settlement because he was in the hospital, recovering from significant injuries and furthermore the FRE doesn't allow expressions of sympathy to be excluded (I'm so sorry) and furthermore she admitted that the company van hit him which should very much be included into the evidence. He will claim Daniele tried to take advantage of him (perhaps he was on pain medications and unable to consider a settlement).

Conclusion: because this happened in the hospital and not under typical negotiating situations, while some of these statements could trigger some public policy exceptions (maybe the offer to pay for loss of work because that's not associated with medical bills) the "company van hitting Pablo" will be admitted under the hearsay exception for opposing party admission. The "I'm so sorry" and offer to pay Pablo's medical bills isn't an FRE public policy exception and while Daniele could argue that it was just her feeling bad for this poor person, not an admission of liability on her party, it would be up to the jury to determine credibility. The payment for loss of work could be excluded as negotiating, but it doesn't particularly matter because the key part about the company van hitting Pablo will be admitted and that's the most damaging part of the testimony.

**END OF EXAM**

---