

Monterey College of Law

EVIDENCE – SECTION 1

Mid Term Examination

FALL 2021

Professor J. Davenport

General Instructions:

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

QUESTION #1

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

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

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

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

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

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

Answer according to California Rules of Evidence.

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

QUESTION #2

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

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

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

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

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

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

Continued....

3. The defense seeks to admit into evidence an email written by David to Walter on June 1, 2021 at 12:00 p.m. which states:
“Walter, I went by to measure the sink and found the house filthy dirty. Best to terminate the tenancy while we are under a year and we can give her 30 days’ notice. Thanks! David.”

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

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

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

QUESTION #3

Danny is prosecuted for robbery in the case of People of the State of X vs. Danny. It is alleged that Danny approached Vincent on a city street on January 1, 2021. Danny demanded Vincent's wallet. When Vincent refused, Danny hit Vincent in the head with a brick knocking him unconscious. It is alleged that Danny then stole Vincent's wallet and fled the scene in a vehicle.

Vincent was taken to the hospital where he remained unconscious for three days. When Vincent regained consciousness, he spoke with Paul, a police officer, about the incident. Paul showed Vincent a photo lineup and Vincent picked Danny out of the lineup.

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

1. The prosecution calls Vincent as a witness. Vincent testifies that he has suffered long term memory loss as a result of the head injury he sustained during the robbery. Vincent testifies that he saw the assailant prior to the attack, but that he cannot remember anything that occurred after his head injury. The prosecution asks Vincent if he identified Danny as his assailant in a photo lineup and Vincent answered that he cannot remember. The prosecution then calls Paul as a witness. Paul testifies that Vincent identified Danny in a photo lineup.
2. Next, the prosecution calls Wanda as a witness. Wanda was standing across the street at the time of the robbery. She testifies that she did not get a good look at the robber, but that she was close to the vehicle that the robber jumped into to flee the scene. Wanda saw the license plate of the vehicle and called police. At trial she testifies that the vehicle was a black Honda Civic, but she cannot remember the license plate number. The prosecution then calls Perry, the police officer who took the report from Wanda, and asks the police officer to state the license plate number – A12 F34 – he wrote in his police report.
3. The parties stipulate that on December 31, 2020, Wally had his black Honda Civic, license plate A12 F34, stolen from outside of his home. The prosecution then calls Paula, a police officer who testifies that on January 2, 2021 Danny was arrested for auto theft after being caught driving Wally's car.

EVIDENCE ANSWER OUTLINE

MIDTERM EXAMINATION

FALL 2021

QUESTION #-Prof. Lizardo

QUESTION #1 ANSWER OUTLINE BIANCA AND GRAHAM

PLEASE NOTE: Students may argue different outcomes, so long as they hit the issues. This essay is more about the Special Relevancy Issues and Policy Exclusions as per CEC. The students should know CEC 352 and 250, but specifically listing the code section number is not required.

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

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

As per CEC 350, only relevant evidence is admissible.

Logical Relevance/CEC 210 Tendency Test- evidence is logically relevant if there is a tendency to prove or disprove any disputed fact that is of consequence.

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

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

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

However, see below under Special Relevancy.

Legal Relevancy/Balancing Test CEC 352

The trial court has discretion under CEC 352 to exclude evidence if the probative value is substantially outweighed by the danger of unfair prejudice. It does not seem that an expression of sympathy by the manager would confuse, mislead or be a waste of judicial time. However, see below under Special Relevancy.

Special Relevance- Relevant Policy Exclusion CEC 1160

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

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

2. THE PREMISES LIABILITY INSURANCE POLICY INCLUDES VENDOR COVERAGE

As per CEC 350, only relevant evidence is admissible.

Logical Relevance/ CEC 210 Tendency Test- evidence is logically relevant if there is a tendency to prove or disprove any disputed fact that is of consequence in the determination of the action.

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

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

See below under Special Relevancy, where some relevant evidence has limitations.

Legal Relevance/Balancing Test CEC 352- the trial court has discretion under CEC 352 to exclude evidence if the probative value is substantially outweighed by the danger of unfair prejudice. It does not seem likely that the premises liability insurance policy would confuse, mislead or be a substantial danger of undue prejudice or a waste of time for a jury.

Special Relevance-Relevant Policy Exclusions

The general rule is that an insurance policy cannot be admissible to establish negligence. However, there is an exception where a party is denying "ownership or control" over the premises.

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

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

The liability coverage policy is admissible to show that in fact, the resort did exhibit ownership and control of the event tent since the manager took down the center pole to provide unobstructed dancing on the dance floor. Also, the resort policy covers vendors. Most likely, the tent collapse will fall under the resort's insurance coverage.

LIMITING INSTRUCTION/ LIMITED ADMISSIBILITY- a limiting instruction is one where the court may restrict the proper scope of the evidence. In the admission of the liability policy, the jury may be instructed to consider the policy for the purpose that there is insurance on the resort and vendor premises, but the policy does not establish negligence.

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

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

Competency – for a witness to be competent to testify, under CEC it states that all people are qualified unless there is a disqualification due to: perception, memory, or the witness does not understand the "truth" or cannot communicate. In short, witnesses must have capacity to observe, recollect, communicate and affirm to be truthful.

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

Her testimony is based on personal knowledge and is admissible.

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

Logical Relevancy- defined above

To promote the policy of encouraging settlements in civil cases, CEC 1152 prevents the use of settlement offers or negotiations to prove liability in a negligence claim.

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

See below under Special Relevancy.

Legal Relevancy- defined above

The trial court has the discretion to weigh the probative value of the letter offer against the unfair prejudice to Tie the Knot Resort.

See below under Special Relevancy.

Special Relevancy- defined above

The offer by Tie the Knot Resort is likely an offer to compromise or settle the negligence lawsuit. The general rule is that settlement offers, offers to compromise or negotiations are inadmissible for the purpose of proving the validity of a claim or an amount of a disputed claim is inadmissible. Also, any statements made during the settlement negotiations are excluded as against public policy. The public policy is to have litigants settle cases and not be in fear of discussions or letters to be disclose to the jury.

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

4 SUBSEQUENT REMEDIAL MEASURES

Logical Relevancy- defined above.

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

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

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

See Special Relevancy below.

Legal Relevancy- CEC 352 defined above

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

See Special Relevancy below.

Special Relevancy- Subsequent Remedial Measures

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

Here, the resort decided not to hold outdoor events after the outdoor wedding tent collapsed. Also, the resort no longer employs the manager who green lighted the wedding. Plaintiffs will argue that the suspension of outdoor events is a subsequent remedial measure since it occurred after the tent collapsed. Also, since the manager no longer works at the resort, this is evidence he was negligent and was likely fired.

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

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

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Question 2 – Prof. Davenport

1. The prosecution calls Vincent as a witness. Vincent testifies that he has suffered long term memory loss as a result of the head injury he sustained during the robbery. Vincent testifies that he saw the assailant prior to the attack, but that he cannot remember anything that occurred after his head injury. The prosecution asks Vincent if he identified Danny as his assailant in a photo lineup and Vincent answered that he cannot remember. The prosecution then calls Paul as a witness. Paul testifies that Vincent identified Danny in a photo lineup.

Relevance: The police officer's testimony is relevant because it connects Danny to the robbery.

Hearsay: Hearsay is an out of court statement offered for the truth of the matter asserted. Here, Paul is relating Vincent's out of court identification for the truth of the matter asserted.

Prior Identification

- The declarant testifies and is subject to cross examination about the statement, and
- The declarant identifies a person as someone the declarant perceived earlier

Under the Federal Rules, a prior statement of identification that meets these requirements is not considered hearsay. Vincent made the prior identification three days after the robbery. Vincent was on the witness stand and subject to cross examination. Although Vincent has no present recollection of the man he identified, he does verify that he

observed the robber prior to the robbery. Thus, the statement of identification is admissible.

2. Next, the prosecution calls Wanda as a witness. Wanda was standing across the street at the time of the robbery. She testifies that she did not get a good look at the robber, but that she was close to the vehicle that the robber jumped into to flee the scene. Wanda saw the license plate of the vehicle and called police. At trial she testifies that the vehicle was a black Honda Civic, but she cannot remember the license plate number. The prosecution then calls Perry, the police officer who took the report from Wanda, and asks the police officer to state the license plate number – A12 F34 - he wrote in his police report.

Relevance. This evidence will help tie Danny to the robbery.

Present Recollection Refreshed. The prosecution should first attempt to refresh Wanda's memory with the police report written by Perry. If Wanda's memory is not refreshed, then the prosecutor can use the past recollection recorded hearsay exception.

Past Recollection Recorded: A record that is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately; was made and adopted by the witness when the matter was fresh in the witness's memory, and accurately reflects the witnesses' knowledge.

1. The witness formerly had personal knowledge of the fact or event recorded
2. The witness subsequently prepared (or adopted) a record of the fact(s).
3. The witness prepared the record while the events were still fresh in his or her memory
4. The witness can vouch that when he or she prepared the record, the record was accurate.
5. At trial the witness cannot completely and accurately recall the facts even after reviewing the document.

Because in this situation Paul, prepared the record, additional steps are required to lay the foundation for this hearsay exception. In this situation, Wanda will need to verify that she gave an oral report to Paul. Paul must testify that he accurately transcribed the oral report. If these steps are taken, the license plate number can be read into evidence but the report cannot be received into evidence unless offered by the defense.

3. The parties stipulate that on December 31, 2020, Wally had his black Honda Civic, license plate A12 F34, stolen from outside of his home. The prosecution then calls Paula, a police officer who testifies that on January 2, 2021 Danny was arrested for auto theft after being caught driving Wally's car.

Relevance. The fact that the robber got into Wally's recently stolen vehicle at the scene of the robbery and Danny was caught a day later driving Wally's stolen vehicle is circumstantial evidence that Danny was the robber in this case.

Stipulation. A stipulation is a voluntary agreement entered between the attorneys for the parties regarding some matter that is before the trial court. An evidentiary stipulation acts to admit or concede specified facts, relieving a party of the burden of making full scale proof. Stipulations can relate to either procedure or to evidence.

Prior Bad Acts. The basic rule is that when a person is charged with a crime, extrinsic evidence of her other crimes or misconduct is inadmissible if such evidence is offered by the prosecution solely to establish a criminal disposition. Although evidence that could lead to a conclusion about someone's character is kept out if offered to show action in conformity with that character on a specific occasion, it can be admitted if it is introduced for other purposes. FRE 404(b) states that such prior acts or crimes may be admissible for other purposes (such as to show motive, opportunity, intent, preparation, knowledge, identity absence of mistake or lack of accident) whenever those issues are relevant in either a criminal or a civil case. Upon request by the accused, the prosecution in a criminal case must provide reasonable notice prior to trial (or during trial if pretrial notice is excused for good cause shown) of the general nature of any of this type of evidence the prosecution intends to introduce at trial.

Here, the non-propensity theory of admissibility is identity. Evidence, that connects the defendant to the crime is admissible.

QUESTION3 – PROF. DAVENPORT

Relevance: The police officer's testimony is relevant because it connects Danny to the robbery.

Hearsay: Hearsay is an out of court statement offered for the truth of the matter asserted. Here, Paul is relating Vincent's out of court identification for the truth of the matter asserted.

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- The declarant testifies and is subject to cross examination about the statement, and
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Under the Federal Rules, a prior statement of identification that meets these requirements is not considered hearsay. Vincent made the prior identification three days after the robbery. Vincent was on the witness stand and subject to cross examination. Although Vincent has no present recollection of the man he identified, he does verify that he observed the robber prior to the robbery. Thus, the statement of identification is admissible.

4. **Relevance.** This evidence will help tie Danny to the robbery.

Present Recollection Refreshed. The prosecution should first attempt to refresh Wanda's memory with the police report written by Perry. If Wanda's memory is not refreshed, then the prosecutor can use the past recollection recorded hearsay exception.

Past Recollection Recorded: A record that is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately; was made and adopted by the witness when the matter was fresh in the witness's memory, and accurately reflects the witnesses' knowledge.

6. The witness formerly had personal knowledge of the fact or event recorded
7. The witness subsequently prepared (or adopted) a record of the fact(s).
8. The witness prepared the record while the events were still fresh in his or her memory
9. The witness can vouch that when he or she prepared the record, the record was accurate.
10. At trial the witness cannot completely and accurately recall the facts even after reviewing the document.

Because in this situation Paul prepared the record, additional steps are required to lay the foundation for this hearsay exception. In this situation, Wanda will need to verify that she gave an oral report to Paul. Paul must testify that he accurately transcribed the oral report. If these steps are taken, the license plate number can be read into evidence but the report cannot be received into evidence unless offered by the defense.

5. **Relevance.** The fact that the robber got into Wally's recently stolen vehicle at the scene of the robbery and Danny was caught a day later driving Wally's stolen vehicle is circumstantial evidence that Danny was the robber in this case.

Stipulation. A stipulation is a voluntary agreement entered between the attorneys for the parties regarding some matter that is before the trial court. An evidentiary stipulation acts to admit or concede specified facts, relieving a party of the burden of making full scale proof. Stipulations can relate to either procedure or to evidence.

Prior Bad Acts. The basic rule is that when a person is charged with a crime, extrinsic evidence of her other crimes or misconduct is inadmissible if such evidence is offered by the prosecution solely to establish a criminal disposition. Although evidence that could lead to a conclusion about someone's character is kept out if offered to show action in conformity with that character on a specific occasion, it can be admitted if it is introduced for other purposes. FRE 404(b) states that such prior acts or crimes may be admissible for other purposes (such as to show motive, opportunity, intent, preparation, knowledge, identity absence of mistake or lack of accident) whenever those issues are relevant in either a criminal or a civil case. Upon request by the accused, the prosecution in a criminal case must provide reasonable notice prior to trial (or during trial if pretrial notice is excused for good cause shown) of the general nature of any of this type of evidence the prosecution intends to introduce at trial.

Here, the non-propensity theory of admissibility is identity. Evidence, that connects the defendant to the crime is admissible.

1)

Question 1

1. Bianca & Graham v. Tie the Knot Resort & Got You Covered

CA Civil Case for Negligence

Relevance

Evidence must be relevant to be admissible.

Logical Relevance

Evidence is logically relevant if it has any tendency to prove or disprove (probativeness) a fact of consequence in the case (materiality).

Here, Bianca is testified the manager expressed sympathy, and the manager gave the go ahead for the wedding. Bianca's testimony is relevant to prove that the manager instructed the couple to go ahead by giving them the "green light." This would be relevant in establishing the manager instructed the couple to proceed with the wedding. Additionally, Bianca would like to admit the manager's statement of sympathy to demonstrate fault for allowing the couple to have the wedding and getting hurt.

Legal Relevance- CEC 352 Balancing Test

A trial court can exclude legally relevant evidence if the probative value is substantially outweighed by the danger of unfair prejudice.

Here, the court will need to decide if the manager's statement will be outweighed by prejudice. The statement is considered under special relevancy exclusions below. The

court will likely allow the statement about the manager's giving the couple the okay to have the wedding because there is very little chance unfair prejudice.

Special Relevancy Policy Exclusion- Statements of sympathy CEC 1106

good!
In CA statements of sympathy by a party opponent are generally inadmissible. The public policy is that statements of sympathy should not be scrutinized to equate guilt.

Here the manager is expressing sympathy to the couple. However, this expression of sympathy does not equate to guilt. Furthermore, there is a high likelihood the jury could mistake the Manager's words for liability or guilt in causing the accident.

Competency of Witness - Layperson

In CA all witnesses are presumed competent, unless there is a disqualification for memory, perception, inability to communicate, or the witness does not have the ability to tell the truth from a lie. A lay person must have personal knowledge of incident.

Here, Bianca sustained a concussion. However, there are no facts to indicate that she is not competent to testify. Therefore, Bianca will be deemed competent. Also, Bianca was at the wedding and can give testimony on what she personally perceived.

Conclusion

Therefore, the manager's statement of sympathy would not be admissible. However, the testimony regarding the go ahead for the wedding would be admissible.

Great job!

2. Premises Liability Insurance for Tie Knot

Logical Relevance-

See supra.

Here, the evidence is logically relevant because proves the Tie Know resort has liability insurance, which also covers vendors. This evidence is highly probative in determining if Got You Covered was also covered by the liability insurance.

Legal Relevance

See supra.

There is a chance the jury could deem liability insurance with fault. See Special Relevance and Limiting Instruction below.

Special Relevance- Liability Insurance

Great!
Liability insurance is not admissible to demonstrate negligence or culpability of fault. However, a premises liability insurance coverage can be admitted to show control or ownership when that is at issue.

Good
Here, Tie Knot is refusing to accept liability for the tent company "Got you Covered." Additionally, the resort claimed the tent company was solely responsible for maintenance and construction of the tent. The liability coverage includes vendors such as the tent company. Furthermore, the manager removed the center pole after the tent company constructed the tent so even without the vendor coverage the resort is still liable for the tent. This policy would be admitted to prove "control" of the tent.

Limiting Instruction

Great
A judge can instruct the jury to only allow the evidence for a limited scope to avoid unfair prejudice.

Here, the judge would most likely give a limiting instruction so the insurance policy is only used to prove ownership and control of the tent.

Conclusion

The insurance policy will be admitted to show the resort had control and ownership over tent vendor because the resort is denying liability of vendors.

3. Offer to Compromise from resort for \$153K

Logical Relevance

See supra.

Here, evidence of the letter would make it more probable that the resort was guilty of negligence because they are offering to make a payment for \$153K to resolve the case.

Legal Relevance

See supra.

Here, the court will find the offer highly prejudicial in that the jury could presume guilt based on the offered amount by the resort. See Special Rel. below.

Special Relevance- Offer to compromise

Good
Offers to compromise with the opposing party are inadmissible. The public policy behind this is to promote negotiations agreements made outside of court.

Here, the letter of compromise by the resort is not admissible. The resort will contend this offer was not based in guilt, but rather to avoid litigation and bad publicity to the

resort. The offer is not an admission of fault by the resort. Therefore, the offer letter will not be admissible.

Conclusion

Special Relevancy factors of public policy make the offer letter inadmissible.

4. Subsequent Remedial Measure

Logical Relevance

See supra.

Good
Here, the couple would like to introduce the fact that outdoor events are no longer permitted and the employee is no longer there to show that after the couple's incident the resort took measures to correct their liability for the accident.

Legal Relevance

See supra.

Here, there is a substantial probability the jury could misinterpret the resort's actions (no more outdoor events and manager no longer employed) as guilt.- See Spec. Rel. below

Special Relevance- Subsequent Remedial Measure (SRM)

Great!
A subsequent measure taken by the defendant after the incident cannot be admitted for the purpose of demonstrating guilt. However, SRM can be used to show ownership, control, or feasibility when at issue. The public policy behind this exclusion is that landlords and business owners should make establishments safe and not be penalized for taking steps to better safety.

Here, the resort is no longer hosting outdoor events. Also, the manager is no longer employed. The defense will contend the safety of guests is important to the resort, which is why they decided not have outdoor events. Also, the manager's employment status may be completely unrelated to the incident. Therefore, the court will likely find the SRM of prohibiting out door events and manager's employment with resort inadmissible.

Conclusion

The evidence of resorts events being no longer permitted outdoors is inadmissible. Also, the manager's employment will be inadmissible.

2)

1. Sally's testimony

Relevance:

Evidence is relevant if it has any tendency to prove or disprove a material fact at issue, and that fact is of consequence.

Evidence is logically relevant if the probative value is not substantially outweighed by the risk of unfair prejudice (misleading the jury, confusing the issue, presenting cumulative repetitive evidence etc)

This evidence is relevant because it goes to the issue of David's character of being a property manager. The court would likely hold that this evidence does not substantially outweigh the risk of unfair prejudice. The evidence has a tendency to prove the fact at issue.

The court would likely admit this evidence as relevant.

Character evidence:

Character evidence is allowed but only when the defendant opens the door to their character first. ^{Generally,} Propensity is not allowed: that's when the attorney is offering evidence that shows the person has a tendency to act in a certain way, and likely conforms with how that person would act in the same instance at the current trial. When the D opens the door, the prosecution can cross-examine the witness and ask that witness if they have heard of specific instances. The prosecution can then put their own witness on the stand and ask the witness about the defendant's character in the form of reputation and opinion only.

An exception to the general rule against propensity is ~~the~~ a criminal defendant's ability to introduce char. evidence to show he did not commit the charged crime

ask on own statement

Competency of Witness:

In CA witnesses are presumed to be competent. Usually competence becomes an issue once the witness is untruthful or has some form of mental incapacity which makes them incapable of being able to answer and relay questions. The witness must have personal knowledge meaning they seen, heard, tasted, or smell the issue at hand.

Here, David calls his former employer Sally to testify about his character. This can only be done in the form of reputation and opinion only. In California, evidence of a person's general law abiding character is allowed (unlike FRE). So when Sally says "David worked as her property manager for 10 years, and has an excellent reputation for being professional...and is a law-abiding citizen." This was proper testimony given by Sally and is admissible in CA courts.

2. Cross exam of Sally

Relevant

it is relevant for the prosecution/defense to be able to cross examine the witness. It is not prejudicial or is it outweighed by the risk of unfair prejudice. The evidence has a tendency to prove the fact at issue.

See cross exam rule above

Here, David should object to the prosecutor seeking to introduce the properly authenticated traffic citations for speeding. Although the prosecutor can ask the D's witness about specific instances, once that witnesses declines having knowledge of the specific act, the prosecutor has to leave it at that. This will show the jury/judge that the person either lying about the character or does not know the defendant that well.

Great

Hearsay

Hearsay is an out of court statement; of a person; offered to prove the truth of the matter asserted. Hearsay is inadmissible unless an exception of exemption applies.

Here, the defense could also object to the speeding ticket because it is hearsay. It was an out of court documented statement by an officer, used to prove the truth of the matter asserted (that D is not a law abiding citizen)

Business Records Exception

It's a business; has a duty to report that information; the person reporting it must be an employee of the business with personal knowledge about the facts/events that are being asserted; the information was recorded when it was fresh in their mind, and it was routine practice and under the regular course of business to record that type of information (not for the purpose of future litigation). It has to be properly authenticated. *Great!*

The police agency is a business. The speeding ticket was reported by an employee officer, who had personal knowledge that the D was speeding. The citation was recorded promptly (usually during the traffic stop) and it is routine practice and the regular course of business to document this information. However, police reports are not allowed under the business record exception so the court would likely overrule this objection by the prosecution.

(Also Not admissible as extrinsic evidence under the character evidence rules)

3. Email written by David to Walter.

Relevance:

see rule above

Good

This evidence is relevant to prove that Valerie's house was filthy and disgusting, which is the reason for evicting her. The probative value is not substantially outweighed by the prejudicial effect.

The court would likely hold that this evidence is relevant.

Hearsay:

See rule above

This evidence is hearsay because it is a statement out of court, offered to prove the truth of the matter asserted. The prosecution would likely object to having this email entered into evidence.

Business Records exception

It's a business; has a duty to report that information; the person reporting it must be an employee of the business with personal knowledge about the facts/events that are being asserted; the information was recorded when it was fresh in their mind, and it was routine practice and under the regular course of business to record that type of information (not for the purpose of future litigation). It has to be properly authenticated. Grant

Here, the D would object if the judge did believe the email to be hearsay, and state that it should be admissible as evidence under the business record exception. The D works for Walter who is the business's home owner. D has a duty to record the information as a property manager. And it is routine practice and under the regular course of business for the D to report his findings to Walter (the home business owner). The custodian of records could properly authenticate this email as a true. Grant

The prosecution might object to this being a business record if Walter does not run his home owning under a business. However, this will likely fail since establishing a place as a business has an extremely low threshold and usually home owners maintain and run their property management through a business.

The court would likely admit this record into evidence under the business records exception.

4. Rebuttal, Valerie's note "entry provision"

Relevance

see rule above

This evidence is relevant to prove that Valerie did not waive her right to 24 hours notice. This evidence's probative value will not be substantially outweighed by the prejudicial effect on the fact finder.

The court would likely admit this into evidence as being relevant.

Hearsay:

See rule above.

Here, the defense would likely object to the handwritten note as being hearsay since it is an out of court statement (in a document) offered to prove the truth of the matter asserted (that Valerie did not waive her right to 24hr notice.)

The court would likely rule that the note is hearsay since it's out of court and offered to prove that V did not consent to entry (which is TOMA)

If the D's objection is overruled, then the prosecution could have Valerie testify on the stand on her own behalf about her not waiving the right to notice before the landlord or property manager makes entry into her house.

Competency:

see rule above

The court would likely hold that Valerie is competent. Since Valerie is the one who signed the note, she would be allowed to testify on her own behalf that she did not waive her right.

If Valerie testifies about the provision, she could state whether she agreed or waived her rights to the notice. Since the note was established to have been written after the lease agreement was entered into, this could be a problem for Valerie since anything added into a lease, or crossed out needs to be signed and acknowledged to by both parties.

Regardless, the prosecution would argue that since there is no evidence that Valerie waived her rights to 24hr notice, and since she could also testify that she didn't, then there was not an explicit waiver for the property manager to enter the house. She also told the property manager "this is not a good time to come in because I'm in my pajamas" that is also another indication that Valerie did not consent. This information further establishes that Valerie did not consent to D entering the premises. The landlord/manager needed to give her 24hr notice and since measuring the sink is not an urgent matter, this further shows that it is more likely that D made forced entry into Valerie's home.

3)

1.

Vincent Identification of Paul

Relevance

In order for evidence to be relevant the evidence must be both material and probative. A piece of evidence is material if is offered to a material fact in the case and it is probative it has a tendency to prove or disprove that material issue.

Good Vincent's prior identification of Danny is relevant to prove the material issue in the case of Danny's identity. The testimony is relevant.

Hearsay

Hearsay is an out of court statement offered to prove the truth of the matter asserted. Hearsay can be spoken or written by declarant outside of court. There was no chance to cross examine the statement which makes the out of court statement less trustworthy.

The prior identification of Danny is hearsay because it was made outside of the courtroom and it is being offered to prove the truth of matter of Danny's identity.

Prior Identification (FRE)

The declarant made a prior identification. The identification was made while fresh in declarant's mind. The declarant does not have to remember the identification at the time of the trial under Federal rules of evidence. ** Not a correct rule Stmt*

Vincent picked Danny out of a lineup that was shown by him to Paul. The robbery was fresh in Paul's mind because he had just regained consciousness after being hit in the head

by Danny. Although Vincent does not remember the identification now, Paul can properly testify to the identification made to him. The prior identification is admissible.

Credibility of Paul as a witness

2.

License plate number written in Police Report

Relevance

See above

The license plate of the get away car is relevant to prove the identity of the person who robbed Danny. The evidence is relevant to the case.

Hearsay

See above

The license plate number that the police officer wrote in his police report is hearsay because it was written out of court and is being offered by the prosecution to assert that the license plate matches the one the robber used to get away.

Past Recollection Refreshed

The witness/declarant does not remember the statement made. The prosecution can use anything to refresh the witness memory but it cannot go on the trial record or be shown to the jury. *Good*

The license plate of the black honda was written in the police report by the police officer who answered Wanda's call. Wanda was a witness to the robbery and called the police when she saw the license plate. Perry took the report from Wanda and has personal knowledge to the plate number she described. The plates were fresh in the mind of Perry because he took the report from Wanda as she spoke. Wanda does not remember the license plate number. The prosecution asks the police officer to state the license plate number which makes the plate number on the trial record to refresh the memory of the witness. However Perry stating it puts the past recollection refreshed on the record and may not be admissible.

Past Recollection Recorded

The record was made by someone with personal knowledge. The record was accurately made while the events were fresh in their mind. The witness/declarant does not remember the statement made even after using the record in a past recollection refreshed.

The license plate of the black honda was written in the police report by the police officer who answered Wanda's call. Wanda was a witness to the robbery and called the police when she saw the license plate. Perry took the report from Wanda and has personal knowledge to the plate number she described. The plates were fresh in the mind of Perry because he took the report from Wanda as she spoke. Wanda does not remember the license plate number and is not shown the report to refresh her memory. The license plate may not be admissible because the Prosecutor entered the plate onto the record without attempting to refresh the recollection of Wanda. *Good!*

3.

Danny auto theft of Wally's car

Relevance

See above

The auto theft of Wally's car by Danny is relevant to prove the material fact of the who possessed the car he used in the alleged robbery.

Prior Criminal Charges

Prior criminal charges can not be used to show the defendant has a propensity to commit crimes. The prior criminal charge can be offered to show another circumstantial reason. The prosecution may offer proof of prior charges to show Identity, motive, modus operandi, plan. *Good!*

The prosecution offers testimony of Paula that Danny was arrested for auto theft after being caught driving the car with the same plates used in the current robbery case. The prosecution may offer this to show the plan of Danny to use the car in the robbery. However, there are no facts stating that Danny planned to use a car in the robbery of Vincent. The prosecution may use the prior arrest for the identity of Danny. Danny was seen driving a car with the license plate A12F34 and was also caught driving the stolen car with the same license plate. The offer of the prior arrest to prove the Identity of Danny in both crimes will likely be admissible. *Great job*

402 Analysis

The court must assess the evidence to see if the probative value is substantially outweighed by prejudicial effect. If the probative value is substantially outweighed the evidence is inadmissible.

Danny will argue that the prior auto theft charge will prejudice the jury because they will assume that if he commits an auto theft he will commit a robbery. The value of the evidence is the identity of Danny. It is unlikely that a court will find the probative value is

substantially outweighed by the prejudicial effect on the jury. The court may issue a limiting instruction so the jury can only use the prior charge to identify the car in the robbery but may not use the auto theft to decide Danny's culpability of the robbery.

END OF EXAM