

San Luis Obispo College of Law

EVIDENCE

Mid Term Examination

FALL 2021

Professor S. Lizardo

General Instructions:

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

QUESTION #1

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.
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

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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.

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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.

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Answer according to California Law.

1. During direct testimony, Bianca testified that the manager expressed sympathy to her and Graham for their pain and suffering. Also, that the manager gave the go ahead for the outdoor wedding.

2. Then, the couple's attorney introduces an authenticated premises insurance liability policy, that included premises liability insurance for the "Tie the Knot Resort" and included coverage for vendors, such as the tent company.
3. Next, the attorney introduced a properly authenticated letter from the resort offering \$153,000 to resolve the case. Bianca and Graham rejected the offer.
4. Next, the couples' attorney introduced evidence that the resort no longer permits outdoor events and that the manager is no longer employed there.

QUESTION #1 ANSWER OUTLINE BIANCA AND GRAHAM

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

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

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

As per CEC 350, only relevant evidence is admissible.

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

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

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

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

However, see below under Special Relevancy.

Legal Relevancy/Balancing Test CEC 352

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

Special Relevance- Relevant Policy Exclusion CEC 1160

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

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

2. THE PREMISES LIABILITY INSURANCE POLICY INCLUDES VENDOR COVERAGE

As per CEC 350, only relevant evidence is admissible.

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

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

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

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

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

Special Relevance-Relevant Policy Exclusions

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

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

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

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

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

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

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

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

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

Her testimony is based on personal knowledge and is admissible.

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

Logical Relevancy- defined above

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

The offer by "Tie the Knot" of \$153,000 may be considered a settlement offer and has a tendency 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 not longer works at the resort, this is evidence he was negligent and was likely fired.

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

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

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Question 2 – Prof. Davenport

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.**

PLEASE NOTE: Students may argue different outcomes, so long as they hit the issues. This essay is about hearsay exceptions and exemptions under the FRE

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

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.

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4. 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.

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5. 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.

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10. At trial the witness cannot completely and accurately recall the facts even after reviewing the document.

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1. Bianca's Testimony - Expressions of sympathy

Relevancy

Logical Relevancy (Tendency Test)

CEC 210 - Evidence having a tendency to prove or disprove a disputed fact of consequence. Here, the manager knew that there was a terrible storm coming through during Bianca and Graham's event at Tie the Knot Resort. After he heard that they both were injured from the storm from the collapse of the large outdoor tent he expressed sympathy to the couple for their pain and suffering. The evidence of the statement has a tendency to prove a disputed fact because it goes to the actual event of the collapse of tent and injuries. Evidence is logically relevant.

Legal Relevancy (Balancing Test)

CEC 352 - Evidence may be excluded if the probative value is substantially outweighed by the dangers of unfair prejudice, waste of time, or jury confusion. Here, there is no facts to indicate that the evidence places any dangers of unfair prejudice, waste of time, or confuse the jury. Therefore, the evidence of the expression of sympathy is legally relevant.

Special relevancy

Expressions of sympathy

Statements of expression of sympathy for pain or injury to victim are inadmissible, but other statements of fact by defendant are admissible. Here, the manager expressed sympathy for the couple's pain and suffering when he learned of their injury from the

collapse of the outdoor tent during their ceremony. Generally, these types of expressions are inadmissible. However, the couple might argue that the manager knew of the terrible weather conditions because he had heard of the forecast that predicted gusty winds, rain, and lightning. Yet he gave the "green light" to move forward with the outdoor event. The defendant may argue that this was a special day for the couple and that they try their best not to stop any functions because they understand the money and time that are poured into these types of events. Defendant could also argue that even though they knew of the forecast that they believed it would not have been as ferocious or would not have been as disruptive. With all that being said, the couples still is able to use the fact that the Tie the Knot knew of the storm, knew the area and the conditions of similar storms, yet still okayed the outdoor event. The manager's expressions of sympathy may not be admissible, but the facts related to the cause of those injuries should be admissible.

Very good

2. Insurance liability policy

Relevancy

Logical Relevancy (Tendency Test)

CEC 210 - Evidence having a tendency to prove or disprove a disputed fact of consequence. Here, the evidence of liability insurance has a tendency to prove the disputed fact of the company having some liability over control and ownership. Evidence is logically relevant.

Legal Relevancy (Balancing Test)

CEC 352 - Evidence may be excluded if the probative value is substantially outweighed by the dangers of unfair prejudice, waste of time, or jury confusion. Here, there are no facts

to prove that there is unfair prejudice, waste of time, or jury confusion. Evidence is legally relevant.

Special relevancy

Liability Insurance

Evidence of liability insurance is inadmissible to prove negligence or ability to pay, but admissible to prove ownership and control. Purpose to encourage people to carry insurance. In this case, the liability insurance cannot be admissible as to the negligence lawsuit against the Tie the Knot Resort. However, it can be admissible to show that the resort had ownership and control over the it's vendors. Specifically, the tent company that they used for Bianca and Graham's event. The tent company denied liability claiming the company pitched the outdoor tent properly. However, the manager removed the center support pole because it disrupted the dancers. It could be argued that there should have been some type of warning or instructions to not remove the pole for fear of it collapsing under pressure. Therefore, the evidence of liability insurance should be admissible to prove ownership and control. *very good use of the facts*

3. Resolution of case

Relevancy

Logical Relevancy (Tendency Test)

CEC 210 - Evidence having a tendency to prove or disprove a disputed fact of consequence. Here, the evidence to offer to resolve the case has a tendency to prove or disprove the disputed fact of the event. Therefore, it is logically relevant.

Legal Relevancy (Balancing Test)

CEC 352 - Evidence may be excluded if the probative value is substantially outweighed by the dangers of unfair prejudice, waste of time, or jury confusion. Here, there is no evidence to show that there would be jury confusion, waste of time, or unfair prejudice. The evidence is legally relevant.

Special relevancy

Offers to compromise and settlement negotiations

In civil cases, settlements and related negotiations are inadmissible to prove liability. Purpose is to encourage settlements out of court. In California, discussions during mediation also inadmissible. Here, the resort offered \$153,000 to resolve the case through a letter that Bianca and Graham rejected. Bianca and Graham's attorney may argue that this offer was to recover their loss on the event and their injuries. However, this statement still plays into liability and is inadmissible. Therefore, the evidence to settle is not admissible.

4. No longer outdoor events

Relevancy

Logical Relevancy (Tendency Test)

CEC 210 - Evidence having a tendency to prove or disprove a disputed fact of consequence. The evidence of the discontinued outdoor events has a tendency to prove or disprove the facts of the event because it goes to show what occurred after it took place. Therefore, it is logically relevant.

Legal Relevancy (Balancing Test)

CEC 352 - Evidence may be excluded if the probative value is substantially outweighed by the dangers of unfair prejudice, waste of time, or jury confusion. Here, there are no facts to indicate the evidence would be unfair, a waste of time, or confuse the jury. Therefore, the evidence is legally relevant.

Special relevancy

Subsequent remedial measures

Having taken measures to make a harm or injury less likely to occur. Inadmissible to prove negligence, culpable conduct, product defect, or need for warning. In California, redesign of a product is admissible to prove defect, but not admissible to prove negligence. Here, after the accident occurred Tie the Know Resort no longer permitted outdoor events and that the manager no longer worked at the resort. The acts of the manager and the resort being vicariously liable do show elements of negligence and culpable conduct. As well as a need for warning on the center support pole of the tent. However, all of these are not admissible under subsequent remedial measures. Bianca and Graham's attorney could argue that by removing outdoor events it was sort of like redesigning its events and moved them indoor. This could play into proving that there was a defect into how the events were run and that there is evidence of vicarious liability by the decisions of the manager and the use of the vendor.

very good use of the facts

Conclusion

Bianca's testimony, liability insurance, and the evidence of the resort no longer having events outdoors are admissible because they go to prove aspects of liability that should be

considered in court. However, the offer to compromise through the letter should not be admissible because an offer can't prove liability.

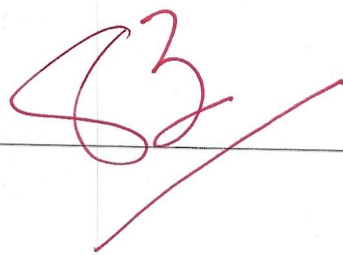
END OF EXAM

*Overall very good
Use of the facts -
very complete analysis,
Correctly stated the
law.*

(Could have discussed:

- Limiting instruction*
- Competency (Bianca's Concussion)*

But these are minor issues)



2)

1. Sally's character testimony is admissible, but opens the door for Prosecution to rebut.

CEC 250 LOGICAL RELEVANCY: Tendency Test

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

Sally's offers of positive character evidence for David in Defense's case in chief is logically relevant to show David's lack of guilt for the crime at hand.

CEC 352 LEGAL RELEVANCY: Balancing Test

Trial courts may exclude relevant evidence if the probative value is substantially outweighed by the danger unfair prejudice, necessitating undue time, or misleading the jury.

Sally's offers of positive character evidence for David is legally relevant to show David's lack of guilt for trespass, and to offer credibility to Defense's strategy of calling Prosecution's case a "fabrication." Sally's offers are not overly prejudicial because they are offered in Defense's case in chief, before any character evidence is introduced by Prosecution to rebut the claims for the character traits offered by Defense.

CA PROPOSITION 8

In all criminal trials conducted within California state courts, all relevant evidence is admissible.

David is being "prosecuted for the crime of trespass" indicating a criminal trial is taking place. ~~We know~~ It is a California state court as evidenced in the party name "People of the

State of California." Sally's offers are admissible because they are relevant as character evidence relating to a particular trait at issue, honest and professionalism as a landlord; breaking into tenant's dwellings (as Valerie claims) is not likely to be seen as professional.

PERSONAL KNOWLEDGE

All witnesses must have personal knowledge of what they testify to. Personal knowledge is information derived from eyewitnesses to an event or a person. Personal knowledge is information gained by one directly experiencing or interacting with something or someone.

As David's "former employer," Sally has "10 years" of personal knowledge of David within the capacity as Sally's "property manager". She has personal knowledge of David's character.

WITNESS COMPETENCY

In all California trials, all witnesses may testify so long as they are able to perceive, remember, and recount events, as well as the ability to know the difference between a truth and a lie, ~~and right and wrong~~. Opinion or character witnesses must have a history of personal knowledge of the person they testify for. Very young witnesses must be able to tell the difference between truth and a lie. *+ consequences of a lie.*

Here, nothing in the facts demonstrates Sally is incompetent as a witness. As David's "former employer," Sally has personal knowledge of David personally and among their shared business community, with a rich history of personal knowledge dating back "10 years."

CHARACTER EVIDENCE: REPUTATION TESTIMONY OPENS THE DOOR

Defendants in criminal trials may always introduce character evidence, at the risk of Prosecution rebutting what the character trait is offered for. Generally, all character evidence (whether by opinion, reputation, or specific instances of conduct) is inadmissible to prove Defendant's conduct in conformity to the charge Defendant is being tried for. Character evidence may be admitted with an exception if a person's particular character trait or essential nature is at issue. Defendants must offer character evidence first. Prosecution cannot offer impeaching evidence against the character trait UNLESS Defense "opens the door" to rebuttal by first offering character evidence. Reputation is what is commonly known or believed to be true of someone amongst community members (business, professional, school communities, etc).

Sally's offer is reputation evidence because her assertion is based on more than her own personal beliefs. In Defense's case in chief, Sally offers positive character evidence for David, in the form of his Reputation amongst business community that Sally was part of. Defense strategy is to decry Valerie's claim as a "fabrication." David's character for Honesty is thus at issue in this case. Being "professional" among a group of people tends to show one's trait for honesty. David offering positive character evidence for having "an excellent reputation for being professional" opens the door for Prosecution to introduce evidence against David to impeach his validity for being a "professional" person "David push[ing] into" Valerie's home and "enter[ing] without permission."

CHARACTER EVIDENCE: OPINION TESTIMONY OPENS THE DOOR

Defendants in criminal trials may always introduce character evidence, at the risk of Prosecution rebutting what the character trait is offered for. Generally, all character evidence (whether by opinion, reputation, or specific instances of conduct) is inadmissible to prove Defendant's conduct in conformity to the charge Defendant is being tried for. Character evidence may be admitted with an exception if a person's particular character trait or essential nature is at issue. Defendants must offer character evidence first.

Prosecution cannot offer impeaching evidence against the character trait UNLESS Defense "opens the door" to rebuttal by first offering character evidence. Opinion evidence is what an individual personally believes to be true of someone or something.

Sally's offer as her own belief is opinion evidence. In Defense's case in chief, Sally is allowed to offer positive character evidence for David, in the form of her opinion evidenced that "David is a law-abiding person." Law abiding shows the trait of honesty. Defense strategy is to decry Valerie's claim as a "fabrication." David's capacity for Honesty is thus at issue in this case, as his defense relies on it. Sally opens the door for Prosecution to introduce evidence against David to impeach his validity for being an honest person.

2. David's speeding tickets are admissible to impeach Sally's prior opinion testimony.

CEC 250 LOGICAL RELEVANCY: Tendency Test

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

Evidence of David's speeding tickets is logically relevant because it has a tendency to disprove or rebut his offered character evidence traits for professionalism and law-abiding nature.

CEC 352 LEGAL RELEVANCY: Balancing Test

Trial courts may exclude relevant evidence if the probative value is substantially outweighed by the danger unfair prejudice, necessitating undue time, or misleading the jury.

Evidence of David's speeding tickets ^{are} is legally relevant because ^{they are} it is highly probative against the character evidence offered by David, and is unlikely to be overly prejudicial against David (misdemeanors compared to the possibly felony crime he is being tried for) or mislead the jury.

CA PROPOSITION 8

In all criminal trials conducted within California state courts, all relevant evidence is admissible.

David is being "prosecuted for the crime of trespass" indicating a criminal trial is taking place. We know it is a California state court as evidenced in the party name "People of the State of California." Rebuttals by Specific Instances offered against Sally's testimony are admissible because they are relevant as character evidence relating to rebut Defense's claims for a particular trait at issue, honest and professionalism as a landlord.

PERSONAL KNOWLEDGE

All witnesses must have personal knowledge of what they testify to. Personal knowledge is information derived from eyewitnesses to an event or a person. Personal knowledge is information gained by one directly experiencing or interacting with something or someone.

As David's "former employer," Sally has "10 years" of personal knowledge of David within the capacity as Sally's "property manager". She has personal knowledge of David's character.

WITNESS COMPETENCY

In all California trials, all witnesses may testify so long as they are able to perceive, remember, and recount events, as well as the ability to know the difference between a truth and a lie, and right and wrong. Opinion or character witnesses must have a history of personal knowledge of the person they testify for. Very young witnesses must be able to tell the difference between truth and a lie. *Know consequences of a lie.*

Here, nothing in the facts demonstrates Sally is incompetent as a witness. As David's "former employer," Sally has personal knowledge of David personally and among their shared business community, with a rich history of personal knowledge dating back "10 years."

WITNESS IMPEACHMENT

Witness's credibility for honest testimony may be impeached by proffers that disprove the Witness's claims. Impeached witnesses' testimony may not be considered by jury, and will be struck from the record.

Sally's validity for character evidence testimony as to David's law abiding and professional nature is impeached by the Prosecution offering evidence of David's "frequent" traffic tickets, that Sally did not know about or disclose.

CHARACTER EVIDENCE: SPECIFIC INSTANCES OF CONDUCT

Defendants in criminal trials may always introduce character evidence, at the risk of Prosecution rebutting what the character trait is offered for. Generally, all character evidence (whether by opinion, reputation, or specific instances of conduct) is inadmissible to prove Defendant's conduct in conformity to the charge Defendant is being tried for. Character evidence may be admitted with an exception if a person's particular character trait or essential nature is at issue. Defendants must offer character evidence first.

Prosecution cannot offer impeaching evidence against the character trait UNLESS Defense "opens the door" to rebuttal by first offering character evidence.

Specific instances of conduct are admissible if offered for a NON propensity, NON conduct in conformity, purpose. Specific instances are admissible when offered by Prosecution to show a NON propensity, NON conduct in conformity purpose in a criminal trial, such as Defendant's motive, intent, lack of mistake, identity, or common scheme or plan.

Evidence of David's authenticated traffic citations from certain, separate instances are specific instances of David's conduct that are not being proffered to show conduct in conformity with the trespass he's on trial for.

CHARACTER EVIDENCE: PROPENSITY

Character evidence for a propensity to act a certain way may NOT be offered to prove Defendant's guilt for the crime Defendant is charged for.

David "frequently violating traffic laws" tends to show his propensity to act unlawfully. It is admissible because it is NOT being offered to prove David acted unlawfully in conformity with the trespass charge that he is being tried for against Valerie, just to show David's capacity for unlawful behavior.

HEARSAY

Hearsay is out of court statements offered to prove the truth of the matter asserted. Without an exception, (or exemption in FRE), hearsay is inadmissible.

The traffic tickets are non hearsay because they are authenticated, and under the public records hearsay exception. See below.

AUTHENTICATION: Traffic Tickets

Here, while the traffic tickets are "properly authenticated," authentication requires that a witness besides the party proffering the evidence vouch for the document's authenticity. Authentication witnesses must have either eyewitness knowledge of the document's contents, or have knowledge the document was made in the course of regular business measures or conduct required by law. The tickets are admissible as nonhearsay public records exception. See Below.

? not really

PUBLIC RECORDS HEARSAY EXCEPTION

Public records are non hearsay if the documents or statements were made in the scope and course of conduct as required by law. Public records are those made by public employees, including police officers.

David's Traffic tickets are a fitting public records exception because presumably the citations were made in authorized conduct by a police officer.

3.

CEC 250 LOGICAL RELEVANCY: Tendency Test

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

David's email to Walter is logically relevant as it tends to prove Valerie did not get evicted unlawfully, for which David is currently on trial for trespass for.

CEC 352 LEGAL RELEVANCY: Balancing Test

Trial courts may exclude relevant evidence if the probative value is substantially outweighed by the danger unfair prejudice, necessitating undue time, or misleading the jury.

David's email to Walter is legally relevant because it is highly probative of whether a valid eviction occurred, probative of David's guilt as a trespasser or lack of guilt as a landlord.

PERSONAL KNOWLEDGE

All witnesses must have personal knowledge of what they testify to. Personal knowledge is information derived from eyewitnesses to an event or a person. Personal knowledge is information gained by one directly experiencing or interacting with something or someone.

David has personal knowledge of the emails he sent.

WITNESS COMPETENCY

In all California trials, all witnesses may testify so long as they are able to perceive, remember, and recount events, as well as the ability to know the difference between a truth and a lie, and right and wrong. Opinion or character witnesses must have a history of personal knowledge of the person they testify for. Very young witnesses must be able to tell the difference between truth and a lie.

Here, nothing in the facts demonstrates David was incompetent at the time of his email to Walter.

WITNESS IMPEACHMENT

Witness's credibility for honest testimony may be impeached by proffers that disprove the Witness's claims. Impeached witnesses' testimony may not be considered by jury, and will be struck from the record.

HEARSAY

Hearsay is out of court statements offered to prove the truth of the matter asserted. Without an exception, (or exemption in FRE), hearsay is inadmissible.

David's email is a statement because it uses words that seeks to assert a claim David is making. The email is hearsay because it is a ^{statement} document made out of court.

*Is there an Exception to Hearsay?
- Business Records -*

AUTHENTICATION

Authentication of documents requires a witness to testify as to the validity or truth of the document. Authentication looks to who was responsible within the chain of custody of a document. Authentication witnesses must have either personal knowledge of the document's contents, or have made the document in the scope and scale of regular business or conduct required by law.

The email's chain of custody is established by timestamp on "June 1, 2021 at 12:00pm." It is stated that David sent the email to Walter.

6TH AMENDMENT: CONFRONTATION CLAUSE

In all criminal trials, the accused has a constitutional right to face and confront those who testify as adversary witnesses against him.

*OK - But why is this
in issue at all?*

4. Inadmissible for lack of chain of custody, but may be admissible to prove a non-truth purpose, such as state of mind.

CEC 250 LOGICAL RELEVANCY: Tendency Test

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

The lease agreement has a tendency to prove that David did in fact violate the 24h waiting period, and trespassed. The handwritten note has a tendency to prove Valerie's trespass claims are true against David.

CEC 352 LEGAL RELEVANCY: Balancing Test

Trial courts may exclude relevant evidence if the probative value is substantially outweighed by the danger unfair prejudice, necessitating undue time, or misleading the jury.

The lease agreement and handwritten note are highly probative to the issue of David's unlawful entry and Valerie's lack of consent to an entry under 24h notice, both of which are the key issues in the case.

This belongs under logical relevancy & is more a tendency argument.

AUTHENTICATION

Authentication of documents requires a witness to testify as to the validity or truth of the document. Authentication looks to who was responsible within the chain of custody of a document. Authentication witnesses must have either personal knowledge of the document's contents, or have made the document in the scope and scale of regular business or conduct required by law.

The handwritten note is not authenticated and there is no established chain of custody as to who was in possession of the document "after the lease agreement was entered" and who signed the handwritten note.

STATE OF MIND

Witness's state of mind evidenced by their own belie

END OF EXAM

*overall
good-*

3)

(1)(a) Vincent

Logical Relevance

Logical relevance is the tendency for offered evidence to make the occurrence of a materially disputed fact more or less likely to have occurred.

Here, Danny's testimony is logically relevant because it tends to show that Danny was the victim of a crime and that he was a victim to that crime.

Legal Relevance

The judge ~~has the option of making inadmissible otherwise admissible relevant evidence~~ ^{Balances} when ~~the~~ unfair prejudicial value of the evidence ^{verses} greatly outweighs the probative value.

Evidence is unfairly prejudicial when it is unfairly prejudicial (i.e. heavy emotional association), confuses the issues, misleads the jury, or unduly wastes time.

Here, V's testimony is not unduly prejudicial because it is not emotional in nature and can be introduced quickly without confusion.

Competence

A witness is competent if they have first hand knowledge of an event, are able to communicate, can recall, take an oath, and understand the legal duty of the truth.

Here, the defense will argue that V is not competent to testify because he does not have the requisite memory or ability to recall. The prosecution will counter that the victim is only testifying that what he does actually remember, which can be anything that occurred prior to the attack. The Court will agree with the prosecution, as a result the victim's

Why?

testimony will not be made inadmissible for this reason. No other facts have been provided, so we will assume that the victim is able to communicate, can take an oath, and can understand the legal duty. The victim is a percipient witness, so has first hand knowledge of the events.

~~Prop 8~~

Essay called for FRE

~~Proposition 8 is a California law that requires all relevant evidence be admitted for use in a criminal trial, excluding hearsay.~~

~~V's testimony is relevant and will therefore not be excluded.~~

(1)(b) Officer Paul

Logical Relevance

Rule, see above.

Officer Paul's testimony is relevant because it tends to demonstrate that the victim identified the defendant as the assailant.

Legal Relevance

Rule, see above.

Officer Paul's testimony is legally relevant because it is not unduly prejudicial.

Competence

Hearsay

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

Victim's statement to the police is hearsay because it is being offered by the police for the truth of the matter asserted, that the victim positively identified the defendant in the lineup.

Prior ID Exemption

Prior statements are exempted from the hearsay rule under the FRE when the statements by the declarant identify a person.

Here, the statement by the victim qualifies because it identifies the defendant.

Crawford

In a criminal trial, the defendant has the right to confront their accusers. Therefore, if otherwise admissible hearsay is testimonial in nature, the declarant is unavailable to testify, and there was no opportunity to cross-examine, then the evidence may not be admitted. A statement is testimonial if the primary purpose of the statement is to be used in prosecution. To be unavailable, a declarant must be out of the jurisdiction of the state, refuses to submit to a subpoena, dead or ill, is privileged, or is unable to recall

Here, the statement made by the victim to the police will be considered testimonial because it was made in the course of a police investigation. There was no emergency purpose in providing the ID and a reasonable person would have understood that the nature of the identification would later be used by the state in demonstrating the defendant's guilt. Furthermore, the declarant is unavailable. The declarant is unable to recall their memory of the identification, and while the police did make a record of it, it is

testimonial and therefore the 6th amendment requires that the declarant be available to testify as to the accusation they made.

The prosecution will counter that there is not a Crawford issue because the primary purpose of the identification was for emergent purposes. The attacker was still "on the loose" and the police needed to capture a dangerous felon. This argument will be unsuccessful however because the emergent situations are a proportional between degree of danger/risk and the amount of time that has proceeded. As such, given the 3 days of unconsciousness, there is too much time elapsed to justify the primary purpose as being non-testimonial.

As a result the testimony of Officer Paul will be disallowed.

(2)(a) Wanda

Logical Relevancy

Rule, See above.

Here, Wanda's testimony is logically relevant because it makes it more likely that the assailant used a black honda civic.

Legal Relevancy

Rule, See above.

Here, Wanda's testimony is legally relevant because it does not present any prejudicial effects.

~~**Prop 8**~~

~~Rule, See above.~~

FRE called for not CEC

Here, Wanda's testimony is relevant and so will not be excluded.

Competency

Rule, See above.

Here, Wanda is competent to testify to the items which she remembers. She does not testify to the things that she can not remember and therefore will not be excluded on these grounds.

(2)(b) Officer Perry

Logical Relevance

Rule, see above.

This evidence is logically relevant because it tends to show that Wanda identified the license plate that she did, which is material to identifying the Defendant.

Legal Relevance

Rule, see above.

This evidence is not prejudicial because it does not have any emotional value or confusion potential. Therefore it will not be made inadmissible on these grounds.

Hearsay

Rule, see above.

This evidence is being admitted for the truth of the matter asserted because it is seeking to demonstrate that the license plate that Wanda identified are the numbers of the car that she witnessed.

Hearsay Exception - Public Records

Public records are excluded from hearsay when they describe the activities of that office, are made pursuant to the scope of the department as made by law or within the scope of an investigation as identified by law, and the individual making the record is a public employee. In the FRE, police records of investigation may not be admitted under this exception.

Here, these are police records attempting to be admitted in a criminal trial and therefore do not qualify under this exception.

Crawford

Rule, see above

Here, the declarant is unavailable because they do not have memory of the event. The defense has not had the opportunity to cross examine, and the hearsay is testimonial because the primary purpose of providing the statement would be for a later prosecution by the state.

(3) Stolen Car Stipulation

Logical Relevance

Rule, see above.

It's logically relevant because it tends to demonstrate that the defendant was in possession of the vehicle previously identified as fleeing the scene, increasing the odds that he was the individual that committed the crime.

Legal Relevance

Rule, see above

The probative value of this evidence is very high because it tends to show that the defendant was the individual witnessed fleeing the scene of the crime. The prejudicial value of the evidence is relatively low, because it's easy to understand, and is not emotional.

Hearsay

Rule, see above.

Here, this record is hearsay because the officer is testifying as to the nature of Defendant's background. The facts do not provide if this officer was the officer who arrested him and so we will assume that she is reading into the record Defendant's RAP sheet. As such, this is hearsay because it (the record) is being admitted for the truth that the record is trying to convey, that defendant was previously arrested for driving Wally's car.

Hearsay Exception - Public Records

Rule, above.

Here, we can not determine if these will qualify due to insufficient facts.

Admissibility of Prior Criminal Convictions

Character evidence

Character evidence purports to demonstrate the general nature of a person. It is generally inadmissible to demonstrate conduct in conformity. Character evidence is admissible when it is independently legally relevant.

Here, the prosecution is attempting to admit prior acts of the defendant. While character evidence is generally not admissible to demonstrate conduct in conformity, the evidence is being admitted to demonstrate some other legally operable fact, chiefly identity. The prosecution is admitting this evidence to demonstrate that Defendant stole the car, which was used in the robbery, not that the Defendant is a criminal and therefore more likely to behave as one.

The defense will argue that admission of such evidence is prejudicial, that the jury will use it for conduct in conformity purposes, arguing that they will be unable to parse the evidence and use it properly. This argument will fail because the jury should be able to understand the purpose of admitting such evidence because the nature is not particularly emotional or confusing.

Limiting Instruction

When providing evidence to the jury, the judge may provide a limiting instruction to limit the use of evidence for certain purposes.

Here, the judge will provide a limiting instruction that the jury should consider the use of prior acts for the limited purpose of considering the identity of the assailant, rather than for conduct in conformity purposes.

END OF EXAM