

Evidence

Professor Hardcastle

Issues Outline

Midterm, Fall 2010, Question #1

You were to answer according to California Law and this was a criminal prosecution. In California Proposition 8 provides that relevant evidence shall not be excluded in any criminal proceeding.

1. Wilma's testimony about the April 1 telephone call: The court properly admitted Wilma's testimony about Vic's side of the phone call since she had personal knowledge of what Vic said and exceptions to the hearsay rule apply. The evidence is relevant under CEC 210 as it has a tendency in reason to prove or disprove any disputed fact that is of consequence. Wilma's testimony about Vic's demeanor and his statements are relevant to the issue of self defense. Wanda has personal knowledge under CEC 702. Hearsay, CEC 1200: Vic's statements are made out of court and are offered for the truth of the matter stated, therefore they are hearsay. Exceptions under 1240, Excited utterance; 1241 Present Sense Impression and 1250 Statements of a then existing mental state all appear to apply to the facts.
2. Welfare Fraud conviction: This should probably be excluded as irrelevant. It has nothing to do with the claim of self defense. If Vic's testimony (as a hearsay declarant) is being attacked then there is some relevance. However, it is unlikely that Vic would have lied to his wife about the call and his anger would have been faked. Frankly, there does not appear to be a plausible reason to attack Vic's credibility and the judge would have the discretion to keep the evidence out under 352. Vic's welfare fraud conviction is not relevant to the charge of criminally negligent homicide and to try and use it in the self defense claim by Dalbert amounts to improper character evidence under CEC 1103.
3. Dalbert's claim of self defense and Vic's Character:
 - a. Vic's reputation as a hot head: May be admissible under 1103(a) (1)
 - b. Vic's breaking a guy's nose and swinging the baseball bat may also be admissible under the same code section. Additionally, Dalbert would argue that the evidence is admissible to show the effect it had on Dalbert so that it would not be hearsay as to what he had heard about Vic's prior acts.
4. Known drunk testimony: appears to be inadmissible character evidence since Vic's sobriety was not an issue. Dalbert might argue that it made it more likely Vic was going to fight if he was drunk. Dalbert would argue the drinking on the 4th of July was "habit" not "character" and it would then be up to a judge to balance the evidence against its prejudicial impact under CEC 352.
5. Dalbert's assault conviction and possession of marijuana conviction: Dalbert has attacked the character of the alleged victim and has therefore opened the door to an attack on the same character issue. (CEC 1103(b)) The assault conviction is relevant to disprove Dalbert's self defense claim. The evidence of the marijuana possession conviction is irrelevant.

Evidence

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Issues Outline, Fall 2010, Question #2

1. Officer Friendly testimony:
 - a. Charles' statement about going to the liquor store and his boss's drinking each night: Windows would have objected claiming Charles' statement was hearsay. Paul would argue that it is an admission that Charles was acting as an agent/servant and his driving was within the course and scope of his employment and not driving for his own purposes. FRE 801(d)(2)(D) is applicable for the proposition that statements made by agents in the course and scope of their agency are attributable to the principal. Court may give limiting instruction to disregard of the fact finder does not conclude Charles was in course and scope.
 - b. Paul's statement that he could not remember the accident and would not survive a life estate plus 21 years. Paul's statement at the scene is hearsay, but there are several possible exceptions: Present Bodily Condition, FRE 803(3); Excited Utterance, FRE 803(2); Present Sense Impression, FRE 803(1); and the Catch-All exception in FRE 807 are the most obvious. A Dying Declaration (FRE 804(b)(2)) does not apply as Paul is not unavailable as a witness.
2. Paul's testimony:
 - a. Officer Friendly's report about Aunt Bea's statement: FRE 803 (8) would apply however this is multiple hearsay and there does not appear to be an applicable hearsay exception for Bea's statement recorded by the Officer.
 - b. Paul remembers having the green light: Relevant and admissible, this is simply his trial testimony. The Officer's testimony as to Paul's statement at the scene could be offered to impeach.
 - c. Windows paid the medical bills and offered to settle for \$150,000.00: Evidence that a party paid the injured party's medical expenses is not admissible to prove liability. FRE 409. Evidence of offers to compromise is inadmissible to prove liability of a claim that is disputed as to validity or amount. FRE 408.
3. Window's testimony that he does not drink alcohol: Is relevant on the issue of agency. It would be offered to impeach the testimony of Charles as to the reason he was driving at the time of the accident. The reasons for the lack of "motive" to drink could be subject to either an FRE 403 objection or a request for a limiting instruction if one felt Windows was attempting to offer impermissible positive character evidence. (FRE 404)
4. Charles' testimony that he was going to donate blood and the blood was going to a child burn victim: Where Charles was going is relevant on the issue of agency. The fact that he was going to donate blood might be subject to a FRE 403 objection or a request for a limiting instruction. The fact that the blood might go to a child burn victim is irrelevant and therefore inadmissible.