

1)

All evidence is admissible unless it is objected to.
Evidence should be objected to unless it is relevant.

Relevant evidence is evidence that tends to prove or disprove a disputed fact. It does not need to prove the entire case, just any little bit which would provide a brick in the wall.

1) Prosecution (P) called Ace's Lawyer (L) to testify against Ace about a conversation they had while Ace was in jail that told L about a certain book that would help him get out of jail. L will object that this book is irrelevant and it has nothing to do with Ace's case. P will argue that it shows that Ace is not an honest guy and is trying to get out of jail. This might show consciousness of guilt. L will say that this conversation shows nothing and besides it is privileged.

Privileges are evidentiary handicaps as they allow people not to testify to evidence that might and often is extremely relevant. However, they have been justified to promote certain professional communications that need to be confidential in order to be effective.

Attorney/client privilege is a communication privilege that protects all confidential communication that is for legal advice between an attorney and their client. The client is the holder of the privilege, but the attorney can assert it on their behalf.

This communication was privileged as it was in during an interview in Jail. Ace believed it was confidential and it was for legal advice.

P will argue that this was not for advice, it was to try to escape from jail early, so it was either a tool or some sort of note that would help him escape. It is a crime to try to escape from jail, so this conversation is for the purpose of soliciting the help of the lawyer to escape. The privilege does not cover conversations that are seeking help with crime. Ace has waived the privilege.

L will argue that the book would not have helped Ace escape, it was merely to help him escape mentally by giving him better reading.

P will be able to admit this conversation based on the crime/fraud exception.

L will argue that he has a professional duty not to testify against his client and should not be forced to be an advocate for his client and a witness: ethically this is not sound and is opposite. The rules of professional ethics would prevent him from testifying.

P will argue that this is his problem and ethically he should testify than help a client commit a crime. The testimony will be admitted.

2) Testimony of Wife Wendy (W)

This is relevant as it would show identity.

Hearsay: an out of court statement offered to show the truth of the matter. This is presumably inadmissible.

W has asserted her spousal privilege. There are two types, she is using the privilege to not testify against her spouse. She is the holder of this privilege. *Trammel*

P will counter that W has waived her privilege by testifying to the Grand Jury. Even though she might not have known that it would waive the privilege, once the testimony is out, the door of privilege does not work.

L will assert that this testimony is a violation of Ace's confrontation rights, so her testimony can't come in because she will not be testifying. A grand jury does not allow the accused to confront the witness, even though it is under oath it does not afford confrontation. *Crawford*. If she does not testify then Ace will not have a change to confront his witness thus her former testimony is not allowed.

P will thus argue that confrontation rights are stronger than privilege rights and thus the privilege must bend and W must testify. Further, if she does not testify he will use the exception to the hearsay rule, Former Testimony, since she did testify already.

L will also argue that it is hearsay:

Hearsay: an out of court statement offered to show the truth of the matter. This is presumably inadmissible.

L will argue that there is no exception because again there was no confrontation which is necessary to use the former testimony rule, thus it is inadmissible. This will fail.

W will have to testify due to the waiver of the privilege.

3) Police officer statement:

P wants to use Police Officer (PO) statement if W's is not admissible.

L will say that the PO statement was taken in anticipation of litigation and it is hearsay.

P will argue that the Official Records exception applies because the PO had a duty to report accurately in the course and scope of his employment and it was taken at the time of the crime. This is a record that made with personal knowledge and it is trustworthy.

L will say that according to *Oates* and *Palmer*, PO reports are inherently not trustworthy and are taken in anticipation of litigation, thus the exception does not apply. Besides it was taken after the fact by a day.

P will argue that W willingly gave it and there were no charges at the time.

L will argue that the statement is testimonial in nature and that again this would violate *Crawford*, since W is not available and there has been no chance to meaningfully confront her. This will not be allowed via the PO. W will have to testify.

4) Vic's Impeachment:

Vic is the victim and a witness. When someone is a witness at trial their credibility is at issue. The jury will be judging what they say and how they act, everything will go to the weight of the evidence.

L wants to impeach V with a past felony conviction.

P will argue that this is irrelevant as it does not relate to truth and veracity and does not show that Vic is not credible.

L will say that according to *Castro*, burglary and murder are crimes that involve moral turpitude and thus are allowed to be used to impeach. Proposition 8 gives all parties the right not to have relevant evidence excluded. Thus, this evidence is relevant and even though it is pretty prejudicial it should be allowed.

P will argue that even if the crime involves moral turpitude they were long ago, extremely remote and they have been expunged. The court has ruled that an expunged crime is no longer a crime, that it has vanished and thus cannot be used.

L should resort to *Chambers v. Mississippi* at this point and say that excluding this evidence would be a due process violation as it would not be a fair trial.

This argument should work, as a burglary and murder would certainly be something the jury should be able to know about, as it would affect his credibility to tell the truth. If you can steal and kill someone there is moral depravation in your heart and lying on the stand would not mean much. V will be impeached with this evidence.

V cheated on his taxes. This is a Bad Act and in Fed court it would be admissible since it involves dishonesty or false statement. Cal. does not adhere to the Bad Acts doctrine, however, because of Prop 8 this has been essentially overruled. This would come in to show

lack of honesty.

V was convicted with a theft misdemeanors three years ago.

P will argue that this should not be allowed since simple theft does not show moral turpitude and the crime will be looked at in the abstract. Thus this is just inadmissible character evidence and is not allowed.

L will argue that if you can steal you must be 'ready to do evil,' and honest people pay for their things they don't steal them.

P will argue that if theft were allowed to be moral turpitude then what will be next? Besides this was three years ago.

L will say that this plus the past expunged records added would certainly make Vic no trustworthy. This should at least come in since the expunged records didn't.

The judge should weigh this applying 352 judicial discretion. The probative value of this is not substantially outweighed by the prejudicial, as it will not take to long to admit, it is no cumulative, it is not misleading, and it does not unfairly sway the juries emotions. Apply 352 to this L will lose and the impeachment evidence will be allowed.

5) Ace tries to admit his own statement he made to W prior to the robbery.

P will argue this is hearsay without an exception.

L will argue that this is an admission.

P will say they only the party against the person can offer an admission.

L will argue that it is a prior consistent statement which is an exception to the hearsay rule.

P will finally say that since Ace never took the stand he has not been impeached and thus cannot bring in a consistence statement.

L will say that due to Prop 8 he can admit this.

P will say that Ace should take the stand to talk about the case.

L will call for a 352 ruling.

If there is a 352 ruling on this, after much thought, this should no be allowed in as Ace could take the stand and tell his story and should not resort to hearsay statements to support himself.

2)

This is a civil case involved personal injury and the sale of a car.

All evidence is admissible unless it is objected to. If evidence is not relevant it should be objected to.

Relevant evidence has a tendency to prove or disprove a disputed fact. It does not need to prove the entire case, just be a brick in the wall.

1) P offers Val's testimony about purchasing a car from D last year that was defective.

D will say this is irrelevant.

However, this is relevant as it shows that P has done this in the past and it wasn't an accident, which is what P will argue. It is relevant.

D will say this is bad character evidence. Evidence that shows that a person acted in conformity with his character is presumptively inadmissible, as a trial should be on the facts of the case, not on the party's personality or propensities. This is simple bad character evidence.

P will say, it is certainly bad character evidence, however it is not being admitted to show propensity, it is being admitted for the limited purpose of showing that this was not an accident. He did this last year, he sold a defective car- he knows that these cars are defective and just wants to make a buck.

The judge will probably allow it for this limited purpose, but if she doesn't P can try other things.

Another limited purpose for Val's testimony is a substantially similar occurrence. This could be used to show they he knew if would happen and was on notice.

D will object to this because this was only one occurrence in the past and that the circumstances were not similar, as they were different cars and different defects. The occurrences are not similar enough to use this limited purpose.

P will resort to common plan or scheme, which has been expanded since the ruling in Edwoldt. Obviously D buys cars that are junk and then sells them to make fast money. It is a plan to make money fast.

D will also argue that this is only one other person and they are not connected in space or time. This is not a plan, but two random acts that are unrelated and irrelevant.

This will be admitted to show lack of accident.

2) What about those giant's statement.

This is relevant as it shows that D is trying to avoid the topic of whether the car was good or not.

D will argue that this is hearsay, an out of court statement offered for the truth of the matter.

P will clearly object as this is not being offered to prove the truth, it is non-hearsay because it is not an assertion of anything, other than avoidance of a crucial topic.

Furthermore, it is non hearsay because it is an admission and D can take the stand and explain. A person should be held accountable for what they say- this is an admission.

D will argue that it does not admit to anything, other than the fact that D likes the Giants.

P will say that this is an implied admission because he is avoiding the topic by not answering it.

This is a sentence that a reasonable person would have answered under the circumstance and he didn't answer it, he avoided it. Thus, it is similar to silence on the topic. When a reasonable person would answer and the person doesn't the silence is like the assertion that they are guilty of something. This is an implied admission for consciousness of guilty of selling her a bad defective cars. This will be admitted.

3) Dr. testimony.

This is relevant as P is suing for pain and suffering, the Dr view on whether there is pain is relevant.

D will say that this is simply hearsay hidden within a Dr. statement. It is not helpful to the jury and P can say the same thing.

P will argue that this is a necessary expert witness testimony as to a disputed fact of consequence, whether there was pain or not. The jury does not have the common knowledge to determine the amount of pain someone has.

D will concede that a Dr. testimony is important to establish pain, however in this case that is not what the Dr. is doing. This doctor is simply re asserting what P said, it is hearsay. Besides,

pain does not need to be established by an expert for a jury to understand. This testimony is irrelevant hearsay and the jury is capable of determining pain without a doctor's permission slip. This evidence will only be allowed if statements for current physical condition are allowed in. In Fed. court this will be allowed as an exception, but in Cal. court it is only allowed if you are under 12.

This is not admissible.

4) D wants to introduce hospital records.

These are relevant to the circumstance of the injury.

P will object on the grounds of hearsay. Defined supra.

D will argue the Business Records Exception.

The hospital routinely makes records of patients who come in for treatment and diagnosis. It is the nurses' duty to adequately report this information. She had personal knowledge and made them at the time of the visit. This is a valid exception.

P will argue that the part about the security guard is multiple hearsay and he is under no duty to report that accurately so that portion should not be allowed. She did not have personal knowledge of that and he had no duty to report it. *Lutz* said this type of multiple hearsay was not allowed.

D will argue that this was an admission from P and he should take the stand and talk about it or explain it.

It will be admitted as an admission within the business records exception to hearsay.

P should argue it is privileged as it is between a dr/patient.

D will counter that it was not for purposes relating to diagnosis or treatment, but prior to the visit and in the parking lot. The security guard is not an agent of the Doctor. This is not covered in the Doctor patient privilege.

P will say it related to the purpose of diagnosis and in Fed court it might be allowed.

D can say that no way does a statement to a security guard apply to the diagnosis, it is an admission with not exception or privilege.

Admitted.

5) D wants to call Elie (E)

Elie wrote something in her diary about the accident because she saw it happen although she can't remember it.

P will argue this is hearsay.

D will say this is Past recollection recorded. It was written down by someone at the time of the accident who can take the stand and say that she wrote it accurately, however she can't remember. If E is available then this will be allowed.

P will object as E has no duty to report it accurately.

D will say that this does not matter because it is a contemporaneous statement/ present sense impression. It was written at the time of an event and it relates to the event and there was not reflection therefore it is reliable and trustworthy.

P will say that by the words themselves it is reflective, she says "I saw the strangest thing...." this is reflective and thus not reliable.

D will say that it was at the time and those are just words you use in a diary, besides, she is going to take the stand and testify to it.

P will say California does not have this exception and he should have sued in Fed Court to get this in. California only allows this if it is about yourself, not something around you.

This will be admitted under the past recollection recorded exception.

END OF EXAM
