Evidence Final Spring 2018 Question One, Issue Outline

The primary issues raised by the question related to CEC 1230, statements against interest and Confrontation Clause issues. There was also an issue as to whether the outside audit was a hearsay document and, if so, was there an exception to allow its admissibility.

1. Joanna's statements to Detective Clouseau: these statements raise both constitutional issues and an issue pertaining to the interpretation of CEC 1230 (FRE 804(b)(3)). As to the evidence code section, the difficulty arises because portions of JoAnne is statements that are relevant to chips prosecution pertaining to his illegal activities and are thus not directly against her penal interest. The problem of mixed statements has been variously resolved by courts over the years. See Williamson versus United States. The Williamson court established a cautious approach to statements against penal interest. Applying Williamson to the facts of our case, Joanna's declarations would be inadmissible because they are not sufficiently dis-serving to her interest. The fact that she made her statements to a detective and had agreed to testify against Chip indicates that she may have been trying to curry favor with law enforcement. It also appears from the facts that she was attempting to focus the blame on Chip.
2. Constitutional issues also suggest the inadmissibility of Joanna's statements. The confrontation clause contained in the sixth amendment guarantees the right "to be confronted with the witnesses against him." (See Crawford) here, statements similar to Joanna's, made to law enforcement and implicating the defendant Chip, violate both the hearsay rule under Williamson and the confrontation clause under Crawford.
3. The statements made to Waco are less likely to raise constitutional concerns. Joanna statements, made to Waco are not testimonial. They are not made to a police detective and there is no indication of a primary motive to have the statements used in any criminal prosecution. The US Supreme Court has held that the confrontation clause is only implicated by testimonial hearsay. (See Whorton v. Bocking)
4. The fact that the statement is not testimonial supports its admissibility under CEC 1230 and Rule 804(b)(3) after Williamson. The statement is not made to curry favor with law enforcement as it is made to her friend Waco. The statement has a tendency to be disserving, because it implicates both Joanna and Chip as acting in concert commit a crime.

Spring 2018 Evidence Issue Outline, Final Question 2

1. The testimony of the Tesla engineer that he had made improvements to the passing gear of the $$$ would normally be excluded by the subsequent repair rule contained in CEC 1151 and Rule 407. However, in California, the Supreme Court in Ault v. International Harvester held that the term "culpable conduct" contained in 1151 does not embrace strict liability. Since Tesla is sued on a theory of strict liability, the engineer's testimony is not barred by 1151. However, the engineer's testimony would be barred in federal court sense rule 407 specifically provides that subsequent remedial measures are not admissible to prove, inter alia, a defect in product or product design.
2. The statement of the Tesla representative during mediation would be inadmissible under CEC 1119. The federal rules do not have a specific section protecting statements made during mediation, but the statement would probably be in admissible to prove liability since it is a statement made in compromise negotiations regarding the claim under rule 408.
3. The statement of Whitney in the police report is not admissible in California or federal courts. Although the police report itself might comply with the foundational requirements of a business record contained in CEC 1271 and rule 803 (6) the statement of Whitney is hearsay and is not admissible unless it falls within a recognized exception to the hearsay rule (e.g. excited utterance) because the person with firsthand knowledge, Whitney, did not have a duty to report her observations to the police officer,
4. Defendant should be allowed to introduce the prior inconsistent statement of Frank made to the insurance investigator under CEC 1235. Pursuant to CEC 770, Defendant is required to give Frank as opportunity to explain or deny the statement to be sure that he is not excused from giving further testimony if defendant decides to produce the statement after Frank leaves the witness stand. Under Rule 801(d)(1)(A), defendant cannot introduce the prior inconsistent statement for the truth of the matter stated since the statement was not given under oath at a trial, hearing, or other proceeding or deposition. The defendant can impeach Frank with the statement but the judge should then give an instruction to the jury that the statement can only be considered for its impeachment value.
5. Upon impeachment of Frank by the defendant, as above, plaintiff should then be allowed to introduce the consistent statement of Frank made to the police officer that the plaintiff had the green light, under CEC 1236. Pursuant to EC 791, a prior consistent statement can be used to support Frank's credibility because his credibility has been attacked by the inconsistent statement and the consistent statement was made before the inconsistent statement. Under Rule 801 (d)(1)(B), the prior consistent statement can be offered for the truth of the matter stated even though was not made under oath.
6. The defendant's statement at the scene is hearsay but the first part of the statement "Gee, that light turned yellow very quickly" would be admissible as a party admission under CEC 1220 and Rule 801(b). The words "I'm sorry" should be redacted as an expression of sympathy which is not admissible under CEC 1160, and the last part of the statement "but don't worry I have insurance" should also be redacted since it is inadmissible under CEC 1155 and Rule 411.

7. The evidence that the defendant had three prior speeding tickets is not admissible underCEC 1101(a) and Rule 404, because it is evidence of defendant's character or trait of character offered to prove his actions on a specified occasion. Also, the evidence would not appear to be relevant to some other issue in the case such as motive, opportunity, intent, plan, etc., under CEC 1101(b). It might be argued that the three are speeding ticket show habit or custom with the in CEC1105 and Rule 406, but it is doubtful that a court would be convinced that that three prior speeding tickets fall within the definition of habit, which is a regular response to a repeated specific situation.
8. Evidence that Frank was convicted of a felony is admissible to attack his credibility so long as the crime meets the requirements of CEC 788 and Rule 609.