

Q1 85 Q2 80 MBE 80

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Blue Book

NAME

SUBJECT Evidence

INSTRUCTOR Kinnison

EXAM SEAT NO.

SECTION

DATE

GRADE

10^{7/8} x 8^{1/4}

50-16 PAGE

Question #1

Vic tells Gina he is afraid.

~~This would be~~ ^{Defense} ~~Prosecution~~ objection is hearsay, an out of court statement offered for the truth of the matter stated. Prosecution would use it

indirectly ~~to~~ through Declaration by

crime victim. They would argue it

shows that Vic would not have been

in a situation with Ace willingly.

Defense would object on relevance.

Relevance is evidence that tends

to prove or disprove a material issue

at trial. The victim's state of mind

directly or indirectly used in a murder

trial is irrelevant. Prosecution may then offer the statement as a then existing state of mind. Once again the defense would raise the issue of relevancy. The judge would rule in favor of the defense and ~~deem~~ deem it inadmissible.

2. Vic's statements to Wendy about whacking Ace, and bank robbery.

Prosecution would object on hearsay grounds. Defense would say offered for non-hearsay purpose to show a course of action. Vic's statements to

Ace's wife could surely have gotten back to Ace allowed them to raise the issue of self defense. It could also be offered for the non-hearsay purpose of showing Ace had knowledge his life was in danger making him more apt to defend himself. The Prosecution may also object on character evidence grounds. Character evidence is evidence offered to prove someone acted in conformity with a trait on the given instance.

~~Defenses would argue its~~ They could say being a bank robber and

makes the victims moral tergiteude an issue in the case which it is not.

The defence would invoke the 1103 exception to character evidence, Evidence of victims conduct which tends to exonerate the defendant. All three types of character evidence, specific instances, opinion and reputation are allowed to be used. Here the evidence presented is not conduct therefore 1103 would not work. The ~~prosecution~~ prosecution would also argue relevance. Being a bank robber is not relevant

of a material issue in a murder trial. The prosecution may also argue 352, where the probative value of the evidence is substantially outweighed by the prejudicial nature. Here the probative value of the statement is very low. Being a bank robber is not probative and where the defense has not raised the issue of self-defense it is not probative, therefore its prejudicial nature substantially outweighs the probative value. Prosecution would also say since Wendy is unavailable to

to the statements, it violates the prosecution's right to cross examine.

~~The~~ For these reasons the judge would make the evidence inadmissible.

3. Ace did nothing when Wendy said Vic had it coming.

The prosecution would offer this as an adoptive admission. Where a reasonable person would object to the statement who was not guilty, the accused stays silent. The defense would object on hearsay grounds. Ⓢ

Ace's silence could be perceived by

a reasonable person to be an admission.

The defense would argue Ace was invoking his 5th Amendment rights.

The defense may also raise Crawford because Wendy is unavailable to testify and there was no prior opportunity to cross examine. This would not work because an adoptive admission is as if the ~~per~~ accused themselves said it. The judge would rule this evidence to be admissible.

5. The guns and rifles seized from the home of Ace as well as the

marijuana.

The defense would object on character evidence grounds and relevancy grounds as well as 352. Defense would say jury will convict for possessing guns and growing an illegal drug, rather than whether Ace actually murdered Vic.

The guns are irrelevant because Vic was killed with a shotgun and the only guns seized were hand guns and rifles. The ~~marijuana~~ marijuana is irrelevant because this is a murder trial, not a possession of drugs trial.

Therefore neither item proves or disproves any relevant issue at trial.

The 352 objection would hinge on the lack of probative value both items have to the issue and the fact that people look down on fire arms and drugs. Therefore, the prejudicial nature of this evidence would substantially outweigh its probative value.

~~Prosecution may argue that's its being offered to show opportunity.~~

For all the reasons stated the judge would rule the items as inadmissible.

7. The book on Grief counseling

The defense would object on hearsay grounds. The prosecution would say its being offered to show the accused's state of mind, through knowledge or intent.

~~Anyone who plans on killing their best friend would most likely have a difficult time coming~~ Anyone who plans on killing their best friend would most likely have a difficult time coming

to ~~terms~~ terms with it. Therefore it is indirectly showing that the accused ~~to~~

had knowledge he was going to kill

his friend or the intent to kill him.

The defense would then raise 352.

The books probative value as to what the defendant's mind set was is not substantially outweighed by its prejudicial effect and it would be admissible.

Question #2

1. Pat seeks to admit Ollie's statements to the paper.

The Defense would object on hearsay grounds. Hearsay is an out of court statement offered for the truth of the matter. Ollie was not in court. Prosecution would argue authorized admission. Authorized admission, are admissions made by employees

made while in the course and scope of their employment admissible against their employer. When removing Pat, Ollie was in the course and scope of his employment as an officer and clearly admitted he used too much force. The judge would allow this as an authorized admission. The prosecution would also argue ~~that~~ the statement was an excited utterance. Excited utterance is a statement made while ~~in~~ one's reflective powers are in abeyance. In California, it must narrate ~~the~~ or describe the situation.

Federally, it only needs to be prompted by the event. Here the tone is unclear at which the statement is made but it was immediately following the incident.

It would seem his ability to realize he wanted to be like the other officers would be proof that he could reflect on his thoughts. The judge would rule it inadmissible as an excited utterance.

The prosecution could argue the statement is reflective of Ollie's state of mind.

They would use his feeling pressure to ~~get~~ get rid of the scum indirectly.

shows why he used to much force on
Pat. The judge would rule this evidence
~~is~~ admissible. ~~The plaintiff may~~

~~The judge would rule this~~

2. The Former Testimony of Ollie.

The Defense raise the objection of

hearsay. The ~~plaintiff~~ plaintiff would

say its admissible because Ollie is

unavailable and there was a prior

chance to cross examine with similar

interests. The defense would argue

Ollie's inability to recall is not unavailability,

The Plaintiff would argue a witness

who is intentionally not answering the question is considered unavaliable as well as one which in good faith cannot ~~remember~~ remember. Defense would then say the interests ~~is~~ when the former testimony was given were not similar. This would be a failing argument since it was another occupy camper ~~with~~ with a mirror image lawsuit.

The only thing the defense could do since they were an new party would be object to the for of the question and answer since they had not had

a previous chance to do so. Had it been the same parties, the defendant not objecting in the first situation would have been a waiver. The judge would admit the former testimony.

3. Detective Don's police report.

The Defense would object to the police report on hearsay grounds.

The plaintiff would argue the report is admissible under the hearsay exception for business ~~by~~ records, this requires the person preparing the records to have a duty to report accurately,

the record be created in the normal course of business, it be close to the event in time and the custodian of the records to lay the foundation for the way it was prepared. Detective Dan had a duty to report accurately, it was close in time and its conceivable that the custodian of police records could lay the foundation, but it may not be considered to have been made in the normal course of business.

The defense would argue ~~to~~ the report was created by a special

detective investigating the events between campers and police rather than an arresting officer reporting on one event that occur in the course of normal police business. The plaintiff would argue investigations are done on a regular basis and are normal police work. The judge would rule the business record inadmissible because it was made with an eye towards litigation.

The plaintiff may then try to offer it as an official record. The defense

would again argue hearsay. An official record requires the person who recorded it to have a duty to report accurately, be a public employee and lay a foundation for its admissibility.

Detective Don ~~was~~ was a public employee being apart of the police department, he did have a duty to report accurately and no where does it state he is unavailable. Therefore the judge would allow this in as an official record.

4. Pat telling Don about his physical condition.

The defense would call these statements hearsay. The prosecution would argue declarations about a physical condition.

The statements made were contemporaneous with the physical feelings he uses have at that time. The defense would say Detective Don is not a doctor, or family member. The plaintiff would argue this doesn't matter, because these statements could be offered not for their truth but to show why a course of action was taken. The course of action being why Pat went

to the hospital. The judge would admit the evidence for the non-hearsay purpose.

6. Pat saying he had been hit with a night stick.

The defense would argue hearsay.

The plaintiff would say it was not being offered for the truth of the matter stated, but to show Pat had knowledge he had been accosted.

The judge would admit the evidence.

F. Ten different compers.

The defense would say this is

bad character evidence and irrelevant
(proves or disproves a material issue
to the case).

The plaintiff would argue its
being offered as a custom. The
police routinely beat occupiers. Custom
is a business practice, done by
nearly any type of organization. The
police can ~~be~~ can have business
practices. The defenses argument

~~is relevant and not~~

352

Time