

**3) Please type the answer to Question 3 below. (Essay)**

Here, the case at hand is a civil case brought in Federal Court, therefore, the California Proposition 352 nor any CEC rules will be relevant. The below pieces of evidence will be analyzed according to the Federal Rules of Evidence (FRE).

**I. HOSPITAL INTAKE FORM****Logical Relevance**

At law, evidence is relevant if it makes the case more or less probable.

Here, Pete (P) offered this evidence to show the extent of his injuries, which is in support of his claim that - due to Donna's Pizza's negligence, he suffered serious injuries. In addition, with the evidence being a record from the hospital, its credibility makes the case more probable.

Therefore, the hospital intake form is logically relevant.

**Legal Relevance**

Legal relevance refers to the balancing test the court does in order to ensure that the probative value is not substantially outweighed by undue prejudice, confusing the issues, or waste of time by presenting overlapping cumulative evidence.

Here, undue prejudice is usually referred to evidence that casts the defendant in such a negative light that it would likely smear their credibility in a unfair manner. That does not apply here. The hospital intake form also does not seem to be confusing the issues, since it was the only piece of evidence that P moved into evidence.

Therefore, the hospital intake form is legally relevant.

**Authentication**

In order to move a document into evidence, the document has to be properly authenticated. Here, P called upon Nellie (N), who was the nurse who treated P when he was at the hospital and made the subsequent intake form. The testimony shows sufficient chain of command and knowledge since N was the one who filled out the intake form.

Therefore, the hospital intake form was properly authenticated.

### **Witness**

A witness has to have personal knowledge about the matter at hand. Here, N was the nurse who personally treated P at the hospital. Therefore, she has personal knowledge of P's situation and is qualified to testify.

### **Hearsay**

Hearsay is an out of court statement offered for the purposes of the truth and matter asserted in the case. Hearsay is usually inadmissible unless it falls under a Hearsay Exception or Exemption. In addition, if the statement contains double hearsay, each statement made must have an exception or exemption in order to be admissible.

Here, P is offering the hospital intake form for the truth and matter asserted in the case that he sustained serious injuries. Therefore, the intake form is hearsay and will therefore be inadmissible unless it falls under a proper hearsay exception or exemption under the FRE.

### **Public or Business Record**

Under the FRE, public or business records made in the regular course of business are exceptions to the Hearsay Rule. Here, N stated that the form was recorded according to standard hospital procedure, and not for the purposes of litigation.

Therefore, because the form was prepared under standard procedure, the intake form is admissible hearsay.

**Statement Offered in the Course of Seeking Medical Treatment**

Under the FRE, statements offered in the course of seeking medical treatment are also exceptions to the Hearsay Rule. Here, P made those statements that N then recorded in the course of seeking appropriate medical treatment for his head injuries.

Therefore, because the statements on the form were also made in the course of seeking treatment, it is admissible hearsay.

**Conclusion**

In conclusion, the hospital intake form is admissible hearsay under both the Business Record Exception and the Statement Offered in the Course of seeking Medical Treatment exceptions.

**II. P'S TESTIMONY ABOUT ERIN (E)'S STATEMENT AT THE ACCIDENT SCENE**

**Logical Relevance**

At law, evidence is relevant if it makes the case more or less probable.

Here, P offers E's statement in support of his case that E ran the red light and collided with his car, causing his injuries. Because E's statement to P was an admission that she ran the red light, it makes his negligence case more probable.

Therefore, E's statement is logically relevant.

**Legal Relevance**

Legal relevance refers to the balancing test the court does in order to ensure that

the probative value is not substantially outweighed by undue prejudice, confusing the issues, or waste of time by presenting overlapping cumulative evidence.

Here, undue prejudice is usually referred to evidence that casts the defendant in such a negative light that it would likely smear their credibility in a unfair manner. That does not apply here. Nor does this statement seem to be an unduly waste of time.

Therefore, E's statement is legally relevant.

### **Witness**

A witness has to have personal knowledge about the matter at hand. Here, P heard E's statements personally. Therefore, he has personal knowledge of what she said to him and is qualified to testify.

### **Hearsay**

Hearsay is an out of court statement offered for the purposes of the truth and matter asserted in the case. Hearsay is usually inadmissible unless it falls under a Hearsay Exception or Exemption. In addition, if the statement contains double hearsay, each statement made must have an exception or exemption in order to be admissible.

Here, E's statement is offered to prove that she was negligent in running the red light - which is the truth and matter asserted in the case. Therefore, it is inadmissible hearsay unless it falls under a hearsay exception or exemption. In addition, because E's statement was offered by P, this constitutes double hearsay and therefore must meet an exception/exemption in each situation.

### **Statement by Party**

Under the FRE, statements made by the party or the party opponent are admissible as non-hearsay exemptions. Here, the statement made by E is

offered by P, who is the party in the case at hand. Therefore, this statement is admissible under the first level of hearsay.

### **Statement by Opposing Party**

Under the FRE, statements made by the party or the party opponent are admissible as non-hearsay exemptions. Here, E is a party opponent through her employment with Donna's Pizza. Under the law, an employee is a party opponent through the doctrine of respondeat superior, where the employee's negligent act occurred while she was in the course of business supervised by the employer. Here, E was driving a company van to deliver pizzas when she collided with P - which was done under her employment with Donna's Pizza.

Therefore, E is an opposing party under respondeat superior, and her subsequent statement is then admissible under a hearsay exemption.

### **Prior Inconsistent Statement**

Under the FRE, prior inconsistent statements are admissible as a exemption to the hearsay rule. Here, E's statement offered by P directly contradicts what she said about her having the green light and P having the red light.

Therefore, because this statement offered by P directly contradicts E's earlier testimony, it is admissible under the Prior Inconsistent Statement hearsay exemption.

### **Impeachment**

In addition to offering the statement as evidence, P can also offer E's statement to impeach her as a credible witness. If done so, the statement is a hearsay exception.

### **Conclusion**

In conclusion, E's statement offered by P is admissible under the Hearsay

Exemptions of Statement by Opposing Party, Prior Inconsistent Statement, or for Impeachment purposes.

### **III. P'S TESTIMONY ABOUT DONNA (D)'S STATEMENTS AT THE HOSPITAL**

#### **Logical Relevance**

At law, evidence is relevant if it makes the case more or less probable.

Here, P offers D's statement in support of his case that E ran the red light and collided with his car, causing his injuries - thus making D responsible for his injuries. Because D's statement to P is likely to be viewed as an admission of guilt, it makes his negligence case more probable.

Therefore, D's statement is logically relevant.

#### **Legal Relevance**

Legal relevance refers to the balancing test the court does in order to ensure that the probative value is not substantially outweighed by undue prejudice, confusing the issues, or waste of time by presenting overlapping cumulative evidence.

Here, undue prejudice is usually referred to evidence that casts the defendant in such a negative light that it would likely smear their credibility in a unfair manner. That does not apply here. Nor does this statement seem to be an unduly waste of time.

Therefore, D's statement is legally relevant.

#### **Witness**

A witness has to have personal knowledge about the matter at hand. Here, P heard D's statements personally. Therefore, he has personal knowledge of what she said to him and is qualified to testify.

### **Hearsay**

Hearsay is an out of court statement offered for the purposes of the truth and matter asserted in the case. Hearsay is usually inadmissible unless it falls under a Hearsay Exception or Exemption. In addition, if the statement contains double hearsay, each statement made must have an exception or exemption in order to be admissible.

Here, D's statement is offered to prove that because E was negligent in running the red light (the truth and matter asserted in the case), D offered to pay for P's medical expenses. Therefore, it is inadmissible hearsay unless it falls under a hearsay exception or exemption. In addition, because D's statement was offered by P, this constitutes double hearsay and therefore must meet an exception/exemption in each situation.

### **Statement by Party**

Under the FRE, statements made by the party or the party opponent are admissible as non-hearsay exemptions. Here, the statement made by D is offered by P, who is the party in the case at hand. Therefore, this statement is admissible under the first level of hearsay.

### **Statement by Opposing Party**

Under the FRE, statements made by the party or the party opponent are admissible as non-hearsay exemptions. Here, D is a party opponent as the owner of Donna's Pizza and employer of E. As mentioned above, under the law, an employee is a party opponent through the doctrine of respondeat superior, where the employee's negligent act occurred while she was in the course of business supervised by the employer. Here, E was driving a company van to deliver pizzas when she collided with P - which was done under her employment with Donna's Pizza. Therefore, Donna's Pizza and D by association are also opposing parties.

Therefore, D is an opposing party under respondeat superior, and her subsequent statement to P in the hospital is then admissible under a hearsay exemption.

### **Prior Inconsistent Statement**

Under the FRE, prior inconsistent statements are admissible as a exemption to the hearsay rule. Here, E's statement offered by P directly contradicts what she said about her offering to pay any of P's medical expenses.

Therefore, because this statement offered by P directly contradicts E's earlier testimony, it is admissible under the Prior Inconsistent Statement hearsay exemption.

### **Impeachment**

In addition to offering the statement as evidence, P can also offer P's statement to impeach her as a credible witness. If done so, the statement is a hearsay exception.

However, while it seems that D's statement offered by P is admissible under the Hearsay Exemptions of Statement by Opposing Party, Prior Inconsistent Statement, or for Impeachment purposes - it can be inadmissible still if it runs counter to public policy purposes, such as the one talked about below.

### **Offers to Pay Medical Expenses**

Under the FRE, offers to pay medical expenses are inadmissible as evidence since it runs contrary to public policy purposes. Here, D's statement made to P was that Donna's Pizza would take care of all his medical expenses, which falls under this rule.

Therefore, because D's statement was an offer to pay medical expenses, it is inadmissible to the court, however, the fact that D did visit P in the hospital may



be admissible still.

#### **IV. CONCLUSION**

In conclusion, the hospital intake form and P's testimony about E's statements at the accident are admissible hearsay, but P's testimony about D's statements at the hospital are not admissible.

-----  
Question #3 Final Word Count = 1965

**END OF EXAM**