

4)

1A) PETRA'S TESTIMONY

LOGICAL RELEVANCE

Logical relevance is evidence that either proves or disproves an element of the cause of action.

Here, Petra is suing Dave for negligence and this testimony will be demonstrative of the fact that she had notified him several times over a decade that the water tank was leaking and he failed to fix it. This will assist Petra in proving an element of negligence.

Therefore, Petra's testimony is logically relevant.

LEGAL RELEVANCE

Legal relevance occurs when the probative value of the evidence outweighs the prejudicial value of the evidence. Prejudicial evidence will mislead or confuse the jury and be a waste of court time.

Here, Dave will argue that Petra's testimony is not probative, it is simply her assertions that she has notified him the water tank was leaking. There is nothing to support these assertions which will cause Dave to argue that the evidence is prejudicial and will waste the court's time. However, Petra will argue that she should be allowed to testify to her version of the evidence and the statements are probative of whether Dave had notice of the leak and failed to take action. The court will hold that the information is legally relevant.

Therefore, Petra's testimony will be found to be probative and admissible.

HEARSAY

Hearsay is an out of court statement offered for the truth of the matter asserted. Hearsay is not admissible unless the statement falls into a hearsay exception.

Here, Petra's statement is that she had complained to Dave several times over the prior decade about the water leak. Petra will argue that this is a non-hearsay statement because she is not offering it to show that the water tank was leaking. She is offering it to show that she complained to Dave.

Therefore, the statement will not be considered hearsay and will be admissible.

PRESENT SENSE IMPRESSION

However, if it were hearsay, Petra will argue that this statement falls under the present sense impression exception to the Hearsay Rule. A statement is a present sense impression if it shows what the declarant believed to be occurring at the time it was made.

Here, Petra will argue that when she made this statement that she believed she was complaining to Dave so that he would fix the water leak before it became a significant problem. Dave will argue that this is simply her recounting how many times she discussed the problem over the last decade. It is not describing an actual event. This is not likely going to be considered a present sense impression.

Therefore, there is no present sense impression exception.

MENTAL STATE

However, if it were hearsay, The mental state exception to the hearsay rule allows testimony to be admitted that shows the declarants mental state at the time the statement was made.

Here, Petra will argue her testimony falls under the mental state exception because she is discussing the plethora of times that she complained to Dave about the water leak. However, this is more likely relating to her mental state at the time she testifies in court and not at the time the statement was made because if it was relating to the time the statement was made she would have to have the same mental state each time she complained over the decade. Which is arguably unlikely.

Therefore, there is no mental state exception.

1B) WALT'S TESTIMONY

LOGICAL RELEVANCE

Here, Walt's testimony shows that after the tank fell over Dave had the water tank fixed. This testimony will likely meet the threshold for logical relevance because it shows that Dave owned the water tank that caused the damage to Petra's land.

Therefore, Walt's testimony is logically relevant.

LEGAL RELEVANCE

Here, Walt's testimony will be considered probative because it shows that Dave owned the water tank in question which establishes Dave as a proper defendant.

Therefore, Walt's testimony is legally relevant and will be admissible.

SUBSEQUENT REPAIRS

Evidence of subsequent repairs can not be used to show liability it can only be used to show ownership.

Here, Walt's testimony will be evidence of a subsequent repair because Dave had him repair the water tank after it fell over. The water tank falling over is what caused the damage to Petra's retaining wall. Petra will argue that it shows that Dave knew the water tank was leaking and problematic. However, the most a jury can use Walt's testimony for is to show that Dave had ownership of the water tank.

Therefore, Walt's testimony would be admissible for the limited purpose of showing Dave's ownership of the water tank.

HEARSAY

Here, Walt's statement is not being offered for the truth of the matter. The only purpose it is admissible for is to show that Dave owned the water tank. There is nothing else that can be garnered from that testimony.

Therefore, Walt's statement is not hearsay and is admissible.

1C1) GWEN'S TESTIMONY REGARDING RETAINING WALL AGE

LOGICAL RELEVANCE

Here, Gwen's testimony about the retaining wall age is based on her observations as Dave's gardener. It is being offered to show that there was observable problems with the wall.

Therefore, Gwen's testimony regarding the age of the retaining wall will be logically relevant.

LEGAL RELEVANCE

Here, Gwen's testimony about her observations of the wall are probative because it could lead to an alternative reason as to why the retaining wall buckled. There is nothing prejudicial about the statement.

Therefore, Gwen's testimony regarding the age of the retaining wall will be legally relevant and admissible.

IMPEACHMENT

Impeachment occurs when a witness can offer evidence that calls into question the truth of another witnesses testimony.

Gwen's testimony will also be admitted to impeach Petra's statement that the wall was a couple of years old. Gwen will be able to testify to the statement and her observations which will contradict Petra.

LAY WITNESS OBSERVATIONS

As a lay witness Gwen is qualified to speak of her observations regarding the state of the retaining wall which includes the age of the wall that was observable to her.

Therefore, Gwen's testimony is admissible relating to the retaining wall age.

1C2) GWEN'S TESTIMONY REGARDING RETAINING WALL CRACKS

LOGICAL RELEVANCE

Here, Gwen's observations about the retaining wall cracks will be relevant to disprove Petra's theory that the water tank falling over is the reason the retaining wall buckled.

Therefore, Gwen's testimony about her observations is logically relevant.

LEGAL RELEVANCE

Here, Gwen's observations about the retaining wall cracks are probative because they can raise doubts as to Petra's theory of the case.

Therefore, Gwen's testimony about her observations is legally relevant.

LAY WITNESS OBSERVATIONS

Here, Gwen's testimony about the retaining wall cracks are based on her personal observations of the retaining wall. Gwen can testify to her observations of the retaining wall.

Therefore, her statement is admissible as a lay witness observation.

1D) GWEN'S TESTIMONY ABOUT PETRA'S REPLY

LOGICAL RELEVANCE

Here, Gwen's testimony that Petra said the retaining wall was at least 30 years old is relevant to disproving Petra's theory that the water tank caused the retaining wall to buckle.

Therefore, Gwen's testimony regarding the age of the retaining wall will be logically relevant.

LEGAL RELEVANCE

Here, Gwen's testimony that Petra said the retaining wall was at least 30 years old is probative because it could lead to an alternative reason as to why the retaining wall buckled. There is nothing prejudicial about the statement.

Therefore, Gwen's testimony regarding the age of the retaining wall will be legally relevant and admissible.

HEARSAY

Here, Gwen's statement that Petra said the retaining wall is old is hearsay because it offered to show the truth of the matter (that the retaining wall was old). It will not be admissible unless there is a hearsay exception.

STATEMENT OF A PARTY OPPONENT

A statement of a party opponent is a statement made by the opposing side that is damaging to the party's case.

Here, Gwen is testifying for Dave which means that Petra would be a party opponent. This statement shows that Petra knew the retaining wall was old and needed to be replaced because of the structural cracks. This counters the statement that Petra made in her case in chief that the wall was only a couple of years old.

Therefore, this statements falls under the statement of a party opponent.

IMPEACHMENT

Impeachment occurs when a witness can offer evidence that calls into question the truth of another witnesses testimony.

Gwen's testimony will also be admitted to impeach Petra's statement that the wall was a

couple of years old. Gwen will be able to testify to the statement and her observations which will contradict Petra.

Therefore, Gwen's testimony about Petra's reply will be admissible.

2) DAVE'S MOTION TO DISMISS BASED ON LCK OF SUBJECT MATTER JURISDICTION

SUBJECT MATTER JURISDICTION

Subject Matter Jurisdiction refer's to the power of a court to hear a particular case. There are two methods to obtain Subject Matter Jurisdiction: (1) through Diversity Jurisdiction or (2) Federal Question.

DIVERSITY

Diversity Jurisdiction occurs when the plaintiff and defendant are **domiciled** in two different states and there is an amount in controversy over \$75,000. A domicile is the a parties place of residence.

Here, Dave is a citizen of California and Petra is a citizen of Nevada, which are two different states. Petra sued Dave for negligence in federal court seeking \$100,000; \$100,000 is over \$75,000 which means the amount in controversy is satisfied.

Therefore, there is diversity jurisdiction. The federal court has subject matter jurisdiction over the case.

FEDERAL QUESTION

Federal Question Jurisdiction occurs when the plaintiff is suing the defendant on a claim that arises under federal law.

Here, Petra sued Dave for negligence. Negligence is not a claim that arises under federal law.

Therefore, there is no federal question jurisdiction.

Therefore, there is Subject Matter Jurisdiction over this case and the court properly denied Dave's motion to dismiss for lack of subject matter jurisdiction.

Question #4 Final Word Count = 1654

END OF EXAM