

Question 4

1.

a. Did the court properly admit pages 1-4 of Carol's notebook?

Pages 1-2

Evidence is relevant if it has any tendency to make a material fact of consequence more or less likely and is probative. Here, Pages 1-2 of Carol's notebook details her income and expenses related to cocaine sales between January through April of 2019. This evidence is relevant to show she was in the business of selling cocaine. It is also relevant to show who she was dealing with during that time frame who further agreed to sell the cocaine.

Relevant evidence can be excluded, by determination of a judge, if the probative value of the ^{relevant} evidence is substantially outweighed by waste of time, confusion to jury, etc. Here, Pages 1-2 account for ^{Carol's} drug income and expenses related to people other than Des during the time frame of January through April 2019. The court might find that this information that doesn't pertain to Des

as information that could confuse the jury and would be unduly prejudicial to Des.

Therefore, ^{although relevant,} page 1-2 would likely be excluded because the ^{probative value.} substantially outweighed by confusion to jury resulting in the evidence being unduly prejudicial. Thus, the court did not properly admit pages 1-2 of Carol's notebook.

Pages 3-4

(See legal and Logical Relevance Rules above.)

Pages 3-4 are relevant to show Des' connection with Carol and her drug sales; and directly relate to Des and are therefore probative as to Des' ^{drug} connection.

Therefore, pages 3-4 are relevant and probative.

Thus, the court properly admitted pages 3-4 of

Carol's notebook.

Hearsay

Hearsay is an out of court statement offered for the truth of the matter asserted.

Here, Carol's full notebook is an out of court statement since it was not made at the current trial - that is being offered for the truth

of the matter asserted that Des was, in fact, had the intent to distribute cocaine, by the record of income and expenses and persons detailed in Carol's notebook

Hearsay is not admitted, unless it is an exemption or falls under a hearsay exception.

the Carol might argue that it falls under a business record ~~or present sense~~ or another exception, however these will fail. Because the notebook is being used for the information detailed in it against Des - and not for present recollection or past recollection recorded - it will qualify as hearsay, and, Thus, ~~not~~ will not be admitted.

*she can read from it and refresh her memory but the evidence cannot be admitted.

Pages 1-4 of Therefore, as to Carol's notebook, the court has improperly admitted the evidence because it is hearsay and does not fall within any exceptions or exemptions.

b. Evidence of Des's conviction for forgery?

Previous Bad Acts

Evidence of previous, ^{felony} convictions that are 10 yrs or under can be properly admitted. Crimes of ^{fraud} deceit or lying can come in outside of the 10 year window. ~~Other convictions~~

~~The defendant is a criminal that can open the door to character, by introducing evidence of testimony, and when the prosecution can cross examine relating to the defendant's character about his good character.~~

Here, Des's forgery conviction happened 11 yrs ago - falling outside of the 10 year window. However, because the forgery conviction deals with lying, fraud, deceit it can come in.

The judge can exclude the evidence if he finds that because the crime Des is being charged with is ^{possession with} intent to distribute is not a crime dealing with fraud or deceit or forgery - that they are unrelated and don't have the same underlying behavioral - and that it is unduly prejudicial. However, because crimes dealing with forgery or where lying is an element of the crime usually can come in, the judge will likely let the evidence be admitted.

~~However, if it is shown that the defendant did not open the door~~

Thus, Des's conviction for forgery ~~was~~ was properly admitted.

2 Attorney - Client Privilege

The attorney-client privilege protects ^{confidential} communication made between a lawyer and his client.

The communications protected must not have been made in the presence of a third party and the statements cannot have been made for the purposes of a crime or in furtherance of a crime. The privilege is held by the client.

Here, Des's attorney called Carol's attorney, Abe, to ask whether the prosecutor, Pete, offered her, ^(his client Carol) a reduced sentence in exchange for her testimony.

Here, Pete who is the prosecutor asserted the attorney-client privilege improperly. The attorney-client privilege is held by the client, and only by the client's consent, can it be waived. Here, Carol would have been the correct person to assert attorney-client privilege for the communications between Carol and Abe, not Pete. Pete is a prosecutor and the attorney for the government, not Carol.

Here, Abe could've asserted it on behalf of Carol or Carol could have asserted attorney-client privilege. And neither Carol or Abe asserted attorney-client privilege ^{which they should have} ^{that was} asserted by Pete. Thus, the court improperly denied the attorney-client privilege. 5

Use blue or black ink. Write on both sides of each page.