

QUESTION 4.

1. Whether Court properly admitted
Pg 1-4 of the Notes.

Relevance

Proposition 8

In CA, any relevant evidence offered
in a criminal trial is admissible under
Prop 8. However, there are exceptions to
this rule. Such exceptions are: hearsay
rules, "open the door" Evidence, confrontation
clause, privilege, rape shield laws.



Here Des has been charged w/ possession w/ intent to distribute cocaine in CA Superior court. B/c this is a ~~Criminal~~ Criminal trial in CA court, Prop 8 will apply.

1(a) Whether Pages 1-4 was properly admitted by the court

Relevance

Under CEE, Evidence is logically relevant when it tends to show that a disputed fact is more or less probable than w/o the evidence



Here the Pages 1-4, is logically relevant b/c it tends to show that Des is likely guilty of possession w/ intent to distribute cocaine.

Under CEC 352 balancing test, evidence is legally relevant if the probative value is not substantially outweighed by unfair prejudice.

Here, nothing in the facts suggest that Page 3-4 is unfairly prejudicial to Des. However Pg 1-2 may be unfairly prejudicial to Des b/c it was notations based on sales to other people besides Des.

Thus, Page ~~1-2~~³⁻⁴ is logically + legally relevant and may be admissible.

However, Pg 1-2 is not legally relevant b/c introducing it has prejudicial to Des.
Personal Knowledge

A witness has personal knowledge to what she is testifying to if she has first hand knowledge + has personally observed or saw the event.

Here, Carol has personal knowledge as to pg 1-4. She has first hand knowledge b/c she kept track of the income herself and personally saw

What was written in the notes.

Thus, Carol had personal knowledge.

Authentication

A documentary evidence is authenticated when the proponent purports it to be true. Evidence can be authenticated by Personal Knowledge, extrinsic Evidence or Expert or lay testimony.

Here Carol has Personal Knowledge as to what is written on pg 1-4 in the notebook.

Therefore, the pg 1-4 has been authenticated.

Hearsay

Hearsay is an out of Ct statement by Declarant that is offered for its truth

Hearsay is generally inadmissible, b/c it is difficult to ascertain the veracity of the out of Ct declarant's statement when made.

However, there are Exceptions to hearsay where out of Ct statements are admissible.

~~Business Records~~

Multiple Layers of Hearsay

When evidence of a note or record is offered into evidence, multiple

hearsay arises.

Under multiple hearsay, ~~both~~ all levels of hearsay must fall under some exception to be admissible.

Level 1 - notations

Business Record Exception

Under the business record, exception hearsay is admissible if the statement was made ^① in the course of business ^② made by someone who had duty to record, ^③ based on personal knowledge.

^④ At the time ^{statement} ~~hearsay~~ is made. The unavailability of declarant is immaterial.

Here the notations were made in the ① course of business as they were notations of all the Cocaine sales from Jan-April 2019. ~~the~~ and May-Oct 2019.

② Carol had duty to record b/c it was necessary for her job as "distributor"

③ Carol has personal knowledge b/c she kept track of income + expenses relating to Cocaine sale as each occurred.

④ Was made at time of each sale.

Thus, the notations fall under business records exception to hearsay.

Level 2 - notebook.

Business Record

See rule above.

① Kept in course of business by Carol.

② Carol ~~has~~ had duty to record

③ C had Personal Knowledge

b/c she ~~was keeping~~ ^{identified} the notebook as hers.

④ Made at time of each sale.

Thus both levels of hearsay fall under exception. and is admissible.

Secondary
Best Evidence Rule

-Under SER, if W is introducing contents of a document into evidence she must produce the original or a copy into evidence.

Here, the facts indicate C identified the notebook + its contents in court.

Thus, it was properly admitted under SER.

Q. 1 (b) Whether D's conviction for forgery
was properly admitted.

Relevance

See Relevance rule above.

Here, ~~the~~ D's conviction for forgery
is logically relevant b/c it tends
to show that D ~~had~~ likely would lie
and deny the charges.

It is ^{not} legally relevant b/c its ~~probative~~ probative
value is prejudicial to D, as he was
charged w/ possession, ^{w/ intent to distribute} not a crime involving
dishonesty. However, it may be argued
that possession w/ intent to distribute

may be a dishonest crime. In that case it is legally relevant to ~~s~~ b/c no prejudice to D.

Thus it is likely logically + legally relevant to show that D is likely to lie.

Character Evidence

→ Character Evidence is evidence that proves that a person ^{conformed} ~~acted~~ w/ his conduct therein. Such evidence is Inadmissible as substantive evidence.

However character Evidence may be admissible to impeach a defendant.

Question 4 continued.

Impeachment

A witness may be impeached to cast an adverse shadow on the W's veracity.

The following types of Evidence may be used to impeach a witness: reputation opinion and specific acts

only

Opinion + Reputation evidence is

permitted on direct examination + cross exam.

Specific Acts evidence is only admitted on cross examination

As For Specified Acts, evidence of prior convictions is admissible so long as they are less than 10 yrs old, and either any felony or dishonest ~~mis~~ misdemeanors.

Here. Evidence of D's conviction for forgery was introduced on cross, so it was proper. However it is not admissible bc the conviction was more than 10 yrs old. Even if it was a felony involving a dishonest act, the fact that it was 11 yrs old would be prejudicial, and thus the conviction evidence will not be admitted.

Therefore, it did not properly admit D's conviction for forgery

Hearsay

See hearsay rules ^{+ exceptions} above

Exceptions

Prior Convictions

Prior convictions are admissible as exceptions to hearsay. The ^{unavailability} ~~awa~~ of declarant is immaterial.

Here, D's conviction may be admissible as a ~~hearsay evidence~~ ^{exception} as a prior conviction.

Thus, D's conviction is admissible, b/c it is a hearsay exception.

→ Conclusion here

2. whether the Ct properly admitted

denied the Atty-Client Privilege assertion

Atty-Client Privilege

Atty-Client privilege exists to protect
any testimonial communications btw Atty
and client during the course of their
Atty-Client relationship. An atty is
prohibited from testifying as to any
privileged communications made btw Atty
and client. ~~att~~ Only the client may
break the privilege.

However, an atty ^{must} ~~may~~ break this
privilege if the atty knows the client is

using his services to commit a crime or fraud, or to prevent death or substantial bodily harm.

Any communication that is made in the presence of a third party is not privileged, even made in the course of the Atty-Client relationship.

Here, in trial only the client and her attorney ~~and anyone who is~~ is allowed to assert the Atty-client privilege.

Here, Abe ~~was~~ ^{testified} to reduction of charges ag. Carol in exchange for C agreeing to testify ag. Des.

Here the facts indicate that the ~~star~~ Carol exchanging testimony, ag. Des for a reduction of charges is not protected under Atty-Client privilege b/c it was likely made to Pete, the prosecutor, a third party. Pete is not Carol's attorney and the fact this was communicated to someone other than Abe + Carol renders that communication non-privileged. Also Pete could not have asserted Atty-Client privilege b/c he was not C's atty.

Therefore, the Ct properly denied the Atty-Client privilege assertion b/c it was not

privileged communication, and Pete could
not assert the privilege on ~~E's~~^{C or A's} behalf
b/c he was not their attorney.

STOP. END OF
QUESTION 4.

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QUESTION
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