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A.

1. Pursuant to Evidence Code section 352, evidence is admissible if it is relevant to the issues in the case and not unduly prejudicial, unless it is excludible under another statute or rule. The question "Has Paul sued Dell before" is both relevant and prejudicial. It is relevant because (along with the following question) it tends to show that Paul may have not fallen, and only pretended to fall in order to recover from Dell. For the same reason, it is highly prejudicial because the jury would be considering evidence that does not directly relate to the present action. Paul's attorney can object on the grounds that the evidence is highly prejudicial and that evidence of prior bad acts is inadmissible to show present conduct. It is unlikely that Dell's attorney can enter it into evidence for other purposes other than to show Paul's tendency to file suits. Mark, as a lay witness, can testify as to what he personally observed. If "I personally know about" the prior actions means that he was a participant (deponent, witness, investigator, etc), his testimony would be allowed, subject to the other rules. Here, the court would likely exclude the testimony about prior suits because it is both highly prejudicial and because it is testimony of prior bad acts.

.2. Paul's attorney can object to Mark's testimony that a thorough investigation was unable to find anyone who saw Paul fall on the stairs on the ground that this is not something that Mark personally observed. The contents of the investigation would also be hearsay--an out of court statement presented in court for the truth of the matter asserted. Dell's attorney could argue that the investigation could be admitted as a business records exception to the hearsay rule--investigations are made routinely in the regular course of business, but this argument will likely fail--it is Mark's testimony, and not the investigation report that is at issue, and accidents are likely rare in the course of Dell's business and not routine. This testimony should be excluded.

3. Asking Mark if he was fired by Paul is an appropriate question at cross-examination for impeachment to show bias on the part of the witness. Other than for impeachment purposes, cross-examination is limited to the subjects of direct examination. Dell's attorney can object that this testimony should be excluded as evidence of prior bad acts, but it is not being introduced to show tendency to commit similar acts--it is being presented for impeachment purposes. This evidence should be admitted.

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4. Dell's attorney can object to the testimony that the stairs were repaired the day after Paul fell on the grounds that evidence of remedial repairs can be excluded. This rule supports the policy of encouraging safety and preventing further accidents. This testimony should be excluded.

5. The evidence that Carol exclaimed "Oh no! a man just fell on that broken step" is also hearsay--Mark would be testifying as to Carol's out of court statement. Dell's attorney could object on this ground, but there are exceptions to the hearsay rule for present sense impressions and excited utterance. An objection on the grounds that Carol is not an expert on broken steps would not be sustained--whether a step is broken is normally within the common experience of non-expert witnesses. This evidence should be admitted.

B.

Dell's attorney could object to entering the insurance company's report into evidence on two grounds--hearsay and attorney work product. The report is hearsay because once again, an out-of-court statement "Steps on the stairs at the store are in very poor condition," is being presented for the truth of the matter asserted. But the report could be admitted as a business records exception to the hearsay rule--the insurance company routinely makes these reports in the course of its business. Dell's attorney could also object that the report should be excluded as an attorney work product. But that objection will likely be overruled. The reports are prepared "in case we get sued." This condition means that the report was not prepared for Dell's attorney, and was not prepared specifically in preparation for or in the course of litigation. This evidence should be admitted.

Question #1 Final Word Count = 697

**END OF EXAM**