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1. Should the following items be admitted into evidence:

a. Ben's (B) Testimony

Proposition 8

All relevant evidence is admissible in a criminal trial to the court's discretion under Evidence Code §352 unless the a constitutional or evidentiary rule, such as privilege or hearsay, applies. Here, D is facing criminal trial for murder. Since this case is a criminal case, Proposition 8 applies.

Relevance

Evidence must be both logically and legally relevant in order to be admissible. Evidence is logically relevant if it tends to make a fact of consequence more or less probable. Evidence is legally relevant if its probative value is substantially outweighed by a danger of 1) being unnecessarily cumulative 2) confusing the issues 3) undue delay 4) unfair prejudice 5) misleading the jury or 6) wasting time.

Here, B's testimony is logically relevant because it tends to make it more probable that Dan (D) committed the murder. B's testimony is also legally relevant since its probative value does not risk any of the dangers listed above.

Therefore, B's testimony is relevant and admissible under Proposition 8.

Hearsay

Hearsay is an out of court statement offered to prove the truth of the matter asserted therein. Hearsay is inadmissible unless it falls under an exception or exclusion. Here, B's testimony regards an out of court statement offered to prove that D murdered Victor (V). Therefore, it is inadmissible hearsay unless an exception or exclusion applies.

Statement by a Party Opponent

A statement made by a party opponent will be admitted over an hearsay objection. Here, B reiterated a statement made to him by D. Since D is a party opponent to the state, then the prosecution can introduce B's testimony over an hearsay objection.

b. Anita's Testimony

Relevant

Here, A's testimony regarding D's statement that he was with Frank the night of the murder is logically relevant because it tends to make it less probable that D murdered V since he was with Frank, his father. The probative value of A's testimony is also substantially outweighed by any dangers of injustice. Therefore, A's testimony is relevant and admissible under Proposition 8.

Hearsay

Here, A's testimony regards an out of court statement offered to prove that D was with his father, Frank, the day of the murder. Therefore, it is inadmissible hearsay unless an exception or exclusion applies.

Attorney-Client Privilege

The attorney-client privilege bars confidential communications made for the purpose of seeking and providing legal representation. Here, D made the statement to A during their interview in which they discussed D's defense. Since the statement was made in the course of D seeking legal representation from A, it will be barred by the rule against hearsay.

c. Anita's Testimony

Relevant

Here, A's testimony that she had received the bloody pants from B is logically relevant to show that bloody pants belong to D. A's testimony is also legally relevant because its probative value is substantially outweighed by any dangers of injustice. Therefore, A's testimony is relevant and admissible under Proposition 8.

Authentication

Physical evidence must first be authenticated before it can be admitted into evidence. Authentication can be established by 1) testimony of a witness with personal knowledge that the item is what it purports to be or 2) chain of custody. Here, the prosecution is attempting to authenticate the bloody pants through A's testimony. However, D will counterargue that A has no personal knowledge as to whether the pants belong to D or whether the blood on the pants belongs to V. Since A has no personal knowledge that the bloody pants is what it purports to be, A's testimony will not be admitted over an hearsay objection.

d. Anita's Testimony

Relevant

Here, A's testimony that B told her that D said that he killed V is logically relevant because it tends to prove that D killed V. However, the probative value of A's testimony is not substantially outweighed by the danger of being unnecessarily cumulative since B had already testified to D's statement that he killed V. Therefore, it would be unnecessarily cumulative to admit A's testimony regarding the same statement which was already testified to by B.

2. What ethical violations, if any, did Attorney Anita commit by:

a. Bloody Pants

Duty of Confidentiality

An attorney cannot disclose confidential information related to a client's representation without the client's informed consent. The scope of this duty is broader than the attorney-client privilege and applies to all confidential information, not just confidential communications, related to a client's representation regardless of the source. Here, B gave A D's bloody pants. Although A obtained the pants from B, a third-party, her duty not to disclose confidential information still applies regardless of whether the information came from a third-party who is not the client. Therefore, A violated her duty of confidentiality by turning over the bloody pants to the prosecutor.

b. Email Exchange

Duty of Confidentiality

Here, D replied to A's email regarding her concern that his alibi was weak and admitted that he had lied about his alibi. Not only would such a statement be protected under the narrower attorney-client privilege, but the statement is also protected by A's duty of confidentiality since the statement is related to D's representation. Therefore, A violated her duty of confidentiality by turning over the email exchange to the prosecutor.

Duty of Candor

A attorney cannot offer a false statement of fact or law, or false evidence, to the court. However, an attorney may refuse to offer evidence which they reasonably believe to be false. This rule does not apply to a criminal defendant's right to testify. Here, it was entirely within A's discretion not to offer the

alibi if she reasonably believed it was false. Nevertheless, such a belief did not entitle A to turn over the email exchange to the prosecutor. Therefore, A violated her duty of confidentiality despite her efforts to comply with her duty of candor.

c. Withdrawal

An attorney can permissively withdraw from a case under certain circumstances. Under the Model Rules, an attorney can withdraw due to fundamental disagreements with the client. Under the California Rules, an attorney can withdraw from a case in such circumstances but cannot disclose any confidential information about the client. Here, A withdrew from the case due to D's lies. Under the Model Rules, A was allowed to permissively withdraw under these circumstances. But under the California Rules, A could only permissively withdraw without disclosing confidential information about D, which she subsequently did. Therefore, A violated her ethical duties by withdrawing and disclosing confidential information about D.

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