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Proposition 8 - Under prop 8, any criminal cases in California allow certain evidence to be admitted even though it may not be admitted. But it does not except hearsay and constitutional right of the criminal defense. In this case, Dan is on trial for murder of Victor, thus prop 8 will apply.

### 1A **Ben's Testimony - Dan's Admission**

#### **Logical Relevance**

Evidence is relevant when there is a tendency to prove the fact of consequences than would be without it. The probable value must be material to the case. In CA, the evidence must also need to be in dispute in order to be admitted.

**Legal Relevance** - are the court's discretion to not admit the evidence even it was probable when the probable value is substantially outweighed by the unfair prejudice.

Here, Ben is the witness for the prosecution. Ben has firsthand personal knowledge regarding Dan's statement because he is Dan's roommate. Ben testimony about what Dan told him is relevance because it address the controversy at issue - that is Dan murdered Victor. Because all testimony against the defendant will be prejudicial, but not unfair prejudice. Since the probable value here did not outweigh the prejudice, it was

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admissible.

### **Hearsay**

Hearsay is an out of court statement, offers to prove the truth of the matter asserted. Here, Dan made a statement to Ben was out of court. It was offered for the purpose for the truth as asserted that Dan did kill Victor. Unless, it is exempt or excluded under hearsay.

In California, a statement of a party opponent is hearsay exception. Here, Dan made a incriminating statement to Ben. Dan is the party on the instant matter. As such, the statement will be used against Dan as a party opponent.

Thus, Dan's statement to Ben will be admitted under this hearsay exception.

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### **1B Anita's Testimony re Dan's Statement re Alibi**

**Logical Relevance** - Anita's testimony regarding Dan's statement that he was with Frank the night of the murder is relevant to show that Dan had a defense of alibi. The defendant has the right to defend himself with affirmative defense. Because this evidence is in dispute, it would be admissible. There is no prejudice in admitting such evidence.

### ***Hearsay***

An out of court statement, offers to prove the truth of the matter

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asserted. While Anita had personal knowledge about Dan's alibi claim. However, Anita was not offering it to prove the truth of the matter asserted by Dan. In fact, Anita did not believe Dan's alibi claim and subsequently withdraw from representation of Dan.

As such, Anita's testimony will be admitted simply to testify to her personal knowledge, but not as the truth.

**1C Anita's Testimony re Receipt of Bloody Pants from Ben**

**Logical Relevance** - the physical evidence of the bloody pants is relevant because it has the probative value than Dan was the killer. Anita also has personal knowledge when she visited Ben, who turned over the bloody pants to her. Because Anita was not trying to prove the truth of the matter asserted that the pants belong to Dan, but rather only testifying the communication and physical exchange she had with Ben, it would not be unfairly prejudicial.

Physical evidence can has probative value, but it is a factual determination to be decided by the jury. Thus, Anita testimony has been authenticated by her personal knowledge and will be admissible.

**1D Anita's Testimony re Ben's Statement that Dan Said to Ben that Dan Had Killed Victor**

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**Logical Relevance** - Anita's testimony regarding what Ben told her about the statement made by Dan is relevant to show that there is likelihood that Dan did kill Victor. However, it may be unfair prejudicial because Dan did not made the statement directly to Anita. Instead, Ben is relating to anita about what Dan had said.

***Hearsay within a Hearsay***

When there is hearsay within a hearsay, each layer must have a hearsay exception in order for the evidence to be admitted. The inner layer involves what Dan had told Ben. This is not hearsay or hearsay exception because Dan is a party opponent. But, the outer layer where Ben told Anita what Dan said does not have a hearsay exception.

Thus, this testimony is not admissible.

**2. Ethical Violations of Anita**

**A. Turning Over the Bloody Pants to the Prosecutor**

A lawyer has a duty to be fair to the judiciary and the opposing counsel. A lawyer is prohibited from withholding evidence that she is certain to be an instrument of a crime.

Here, Anita turned over the bloody pant the very next day upon receipt from Ben. Since Anita is required under the duty of fairness and candor to the judiciary and opposing counsel, she did exactly what she was required to do under the code of

professional responsible.

Anita did not violate any ethical duty.

**B. Turning Over the Email Exchange Re Dan's Alibi to the Prosecutor**

**Duty of Confidentiality**

A lawyer must not disclose her client confidences and secret. This duty is very broad and has no limit in scope and time. It survive the death of the client under ABA and in Ca, it ends when the client's estate has settled and the executor is discharged.

Here, Anita sent an email to Dan expressing her concern that his alibi claim was weak. Although Dan replied to Anita email and admitted that had lied about the alibi, Anita must not disclose such email to anyone because doing so would violate the duty of confidentiality. Especially in California where the lawyer is under oath to be inviolative in disclosing client's confidence under peril.

Anita has violated Dan's duty of confidentiality.

**C. Withdrawing from Representing Dan**

A lawyer is not obligated to represent a client. There are certain circumstance that the lawyer must withdraw, including that representation of the client would substantially impairs the lawyer's mental and physical states. Also, when a client is

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insist the lawyer help in facilitation a crime or disciplinary action. Also, a lawyer might not be able to withdraw if the court deny it or if withdraw will be substantailly effect the client.

Here, there is no evidence showing that Anita was under the threat which would substantially impair her ability to prepresentation of Dan. Rather, she was tired of Dan's lies. On the other hand, it is arguably that Anita may seek permission withdraw. Under permission withdrawal, when a client insist the lawyer to commit to something that is repugance, she may withdraw. Since it was still early on the litigation, the court granted Anita's petition to withdraw.

Without more fact showing that Dan would be prejudice due to Anita's withdraw, Anita did not violate any ethical duty because she sought the court for permission to withdrawal.

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**END OF EXAM**