2)

Photocopy of advertisement

In order for evidence to be admitted, it must be logically and legally relevant. However, just because an evidence is relevant, it does not mean it will automatically be admitted.

Logical Relevance

Any evidence that has the tendency to prove a fact of consequence more or less probable is logically relevant.

Here, Pedro brought a fraud and breach of contract claim against Gallery. Pefro purchased a painting from Gallery for $200,000 after seeing the evidence in question, an advertisement that bears Gallery's logo stating that the painting was the only painting by a noted 17th century artist available for sale in the world.

This advertisement is relevant to proving Pedro's claim of whether the painting purchased is fraud or not.

Thus, it is logically relevant.

Legal Relevance

Legal relevance is established if the probative value of an evidence substantially outweighs any unfair prejudice to defendant.

Here, Pedro's claim of fraud is dependent on the content of the advertisement and his reliance on it before making the purchase from Gallery. This evidence is highly probative to his claim and does not unfairly prejudict Gallery because it bears a logo on the advertisement.

Thus, the evidence is legally relevant.

Hearsay

A document is hearsay if it is an out-of court statement offered for the truth of the matter asserted.

Here, the document in question was made out of court, and it contains statements about a painting. This advertisement is also being offered to support a fraud and breach of contract claim that this advertisement existed and induced P into buying a painting, rather than whether or not the contents themselves of the advertisement are true.

Thus, this evidence is not hearsay.

Best Evidence Rule

Best Evidence Rule applies to evidence that must be produced, through original or photocopy, if trying to prove its contents, like that of a photograph.

Here, P is trying to admit the photocopy of an advertisement to prove its contents, namely that Gallery made certain claims and that were false.

Conclusion

Thus, the court should admit the photocopy of the advertisement.

Pedro's testimony about value of painting

Lay testimony

A person is competent to testify as long as they are knowledgeable of the matter, of age, and his testimony will be helpful to the jury decidinf the case.

Here, Pedro testified that the painting was worth only $10,000 because it was a reproduction of the original and that he based his valuation on the average of three appraisals of the painting by art dealers.

There is no evidence indicating Pedro is not competent to testify. His testimony is based on personal knowledge of his interaction with art dealers. This testimony is likely helpful to the jury in assessing the fraud claim and figuring out the damages that are due to Pedro.

The court may require Pedro to submit futher evidence as to reliability of his valuations and the appraisals of the art dealers, but this does not mean his own testimony will be denied.

Thus, Pedro's testimony should likely be admitted.

Pedro's testimony about age of the painting

Expert Testimony

An expert is someone who 1) provides scientific, technical, or specific expertise in the particular area of concern, 2) the expert's opinion must be based on scientific data, 3) be reliably based on scientific methods and principles, 4) be helpful to the jury when evaluating facts and evidence of the case.

Here, Pedro retained Rex, a chemistry professor, who had been retained by four art galleries to determine the age of paintings. Pedro did not call Rex as an expert, but Rex is testifying about a dispositive issue in the case, the age of the painting. Rex has conducting his own experiments, and has based his opinion on information that he claims to be reliable ans used by most experts in determining age of paintings. Rex's testimony is also helpful to the jury in determining the evidence of the case.

Thus, Rex's opinions will not be admitted as Expert testimony

Lay Opinion

Although Rex is not an expert, his opinion may be admitted as lay opinion.

See rule above.

Rex clearly as experience and personal knowledge in the field of determing age of paintings. He has confucting tests using a specific technique, XYZ, that he claims is realiable to determine the age of paintings. This testimony will be helpful to the jury in deciding the case.

Thus, Rex's opinion is likely to be admitted as lay opinion.

Excerpt

Expert Testimony - Treatise Exception

See rule above.

Here, both parties have stipulated that Marie is an expert. However, Marie's excerpt may not be admitted into evidence for the jury.

Experts may read from a treatise that is reliable to offer evidence helpful to the jury, but his evidence will not be admitted into evidence. This rule is to ensure that jury does not misread, misuse an evidence unfairly or in a prejudicial manner.

Thus, the court is unlikely to admit the excerpt into evidence.

Journal Article

Impeachment

Prior inconsistent Statement

Evidence that a party made a previous claim that contradicts the party's in-court testimony is admissible to impeach the party.

Here, Gallery offers a journal article authored by Rex that included a statement that the XYZ technique is not reliable for determining the age of works of art. This evidence would likely have impeached Rex's claim that XYZ technique was reliable and used by most experts to determine the age of the paintings. However, this evidence was introduced after Rex was excused and left the courtroom.

Without the opportunity to respond to this statement, Rex and in extension Pedro will likely be unfairly prejudiced. There is no reason provided as to why Galley did not use this evidence in front of Rex, which makes this evidence prejudicial. Rex making this statement in a journal that is publicly available, does offer direct contradicting evidence.

Unlike the publication offered by Marie, this evidence is likely to be read into evidence but not admitted as an exhibit. Since Rex is not available, it is unlikely to be read into evidence.

Thus, this evidence is likely to be highly prejudicial and not entered into evidence.

Question #2 Final Word Count = 1028

END OF EXAM