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Evidence Generally:

Rules: All relevant evidence should be admitted by a court, subject to exceptions for hearsay, character evidence, privilege, exclusionary rule, and certain others. Evidence is relevant if it is logically relevant and legally relevant. Evidence will be logically relevant if it tends to prove or disprove a fact which would be determinative on the outcome of a case. Legal relevance means that the evidence should have probative value which outweighs unfair prejudice - the court will exclude evidence which is unfairly prejudicial.

1. Should the court have admitted the photocopy of the advertisement?

Issue: Did the photocopy satisfy the Best Evidence Rule?

Rules: When admitting a document into evidence, the best evidence rule applies. This states that the original of a document should be introduced into evidence as the best evidence. Where this is not possible, a copy of the evidence may be submitted. Documentary evidence is subject to authentication. The threshold for authentication of written documents is low.

Analysis: The advertisement is logically relevant, because it tends to show that the gallery was claiming the painting in question was a genuine painting by the artist. There is no unfair prejudice which would outweigh the probative value. We are not told here why only a photocopy of the advertisement was produced - presumably an original of the advertisement would still be available? But it may have been impractical to provide the original. In any case, the facts seem to suggest it is a photocopy of the actual advertisement and so authentication is not at issue.

Conclusion: The photocopy of the advertisement is admissible if it is the best evidence of the advertisement

2. Should the court have admitted Pedro's testimony about the value of the painting?

Issue: Was Pedro's testimony admissible as lay opinion?

Rules: Lay opinion testimony is opinion of a lay person, without specialist skill or knowledge, and is admissible when it is helpful to explain the witness's testimony, is not based on specialist knowledge, and is based on opinions and perceptions.

Analysis: Pedro's testimony is logically relevant, because it goes to the reason for his claim: whether or not the painting is a genuine work, worth \$200,000. It could be said that it is confusing, or prejudicial to the Gallery claim, because he is not an expert to be able to state the true value, and the facts don't state who the art dealers were or whether they were qualified to make the opinion.

In any case, the facts do not state that Pedro himself is an expert because Pedro testified that the painting was only worth \$10,000, not the full value he paid for it, being \$200,000. This means his testimony is lay opinion. He states that this valuation was based on the average of 3 appraisals of the painting by art dealers, which means his opinion is potentially based on specialist knowledge rather than his own perceptions and opinions, which would not meet the criteria for lay opinion being admissible.

Conclusion: The court shouldn't have admitted Pedro's testimony

3. Should the court have admitted Rex's testimony about the age of the painting?

Issue: Is Rex's testimony admissible as expert opinion?

Rules: An expert may give expert opinion testimony when it is reasonably based on reliable theories rationally applied, and they are qualified to provide the opinion, and the theories are tested, and the tests are tested for reliability, and tests and theories are generally accepted in the field of experts relevant (the Daubert theory).

Analysis: Rex is a chemistry professor, who had previously been retained by 4 art galleries to determine the age of paintings, suggesting he was qualified to give an opinion as to the age of the paintings. In line with the requirements for expert witness testimony, Rex confirms that the XYZ technique he used is also reliably used by most experts to determine age of paintings. His testimony therefore qualified as expert witness testimony as to the age of the painting.

It should be noted that Rex also testified as to the genuineness of the painting - this is not something he was a qualified expert to testify about, as the facts do not suggest he had this type of expertise.

Relevance: the evidence is both logically and legally relevant as it has a tendency to prove Pedro's claim, and there is no unfair prejudice.

Conclusion: The Court should admit the testimony as to the age of the painting only, and not whether it is genuine.

4. Should the court have admitted the excerpt from "The Science of Dating Works of Art"?

Issue: Is the excerpt a learned treatise?

Rule: A learned treatise is a book which is written by known and reliable authorities on a particular subject, and generally accepted to be accurate and reliable. A learned treatise may be admitted to evidence generally.

Analysis: here, the learned treatise is logically and legally relevant, because it puts in dispute whether the determination of the painting was actually reliable, and this also has probative value.

Issue: Was the excerpt hearsay?

Rules: Hearsay is an out of court statement, asserted to prove the truth of the matter within. Hearsay is not generally admissible unless it falls within an exception or is non-hearsay. Evidence that is introduced to show the effect on the listener, or to state knowledge of declarant, is not hearsay.

Analysis: the excerpt is being offered to show knowledge of facts, and is therefore not hearsay.

Issue: Was the learned treatise admissible to impeach Rex as a witness?

Rules: A witness may be impeached with extrinsic evidence, but should be given the ability to rebut on cross.

Analysis: We are told that Rex left the courtroom prior to Gallerie calling Marie, who introduced the book, which was read into court and admitted by motion to the court. this means that Rex did not get the opportunity to examine and rebut.

Conclusion: If the book was admitted to impeach Rex, it should not have been admitted

5. Should the court have admitted Rex's journal article?

Issue: Is Rex's journal article hearsay:

Rules: Hearsay is an out of court statement, asserted to prove the truth of the matter within. Hearsay is not generally admissible unless it falls within an exception or is non-hearsay. A previous inconsistent statement is not hearsay and is admissible to impeach a witness, and also, where made under oath, eg at a former hearing, or a deposition, can be used for a substantive matter. Where being used to impeach a witness, the witness need not be available.

Analysis: There is nothing to suggest that Rex's article was made under oath, therefore it cannot be used to prove whether the technique was reliable, however it can be used to impeach Rex. He doesn't need to be available.

Conclusion: The court can admit to impeach Rex only.

Question #2 Final Word Count = 1142

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