

1. Standing

show 1) Imminent/ present injury

2) Injury will be remedied

3) Caused by Δ

Organization standing

- 1) Each member would have standing
- 2) Purpose of association germane to members
- 3) Indiv. not required (all member gets same relief?)

11th Amendment? Exception to standing in fed ct where private pt v. state for drugs/inj.

win? → Dept would argue: It is a state actor; it enforces a state statute
ACA: It is not the state.

∴ Likely lacks standing b/c Dept state actor / not a state

2. Commerce Clause

Fed gov't may ^{broadly} regulate interstate commerce in 3 ways: ① instrumentalities, ② channels, ③ economic activities subst affect ISC

where Congress hasn't enacted legislation
States may regulate local tx affecting ISC if non-discrimination on COS + not unduly burden ISC + (safety needs)

✓ Incidentally burden ISC → 1) imp't gov't int - police work (based on NHTSA)
↳ explain why: doesn't favor local interests 2) no excess over state interest - can temp disable radar detector

Exceptions: Market participant x
Cong. auth x

burden: inconsistent reg
interest:

Ct rules for Dept

Also police power? Health, safety, welfare

Even if economic benefit to locals, may violate DCC if state crosses into "economic protectionism" at COS detriment

3. Supremacy Clause - Fed law supersedes if there's a conflict w/ state law.

State may enact a law that is more restrictive. → No conflict. All motor vehicles include STT trucks

Occupied the field? Cong can preclude any state/local reg in the area regulate even if not conflicting, unless traditionally in power of

→ No facts showing Cong intended to occupy. In fact, NHTSA is the entity promulgating, not Cong.

Ct rules for Dept

or prevents fed regs/objectives

2004 Feb 5

Civ Pro Q1 (7/2012)

0. Appeal: May appeal from final judgment

1. SMix

Fed ct hears on...

Fair/Dix

May bring up SMix @ any stage (cannot be waived)

May arise from Fair, Dix, Six.

Fair: Const treaties fed law. Limited jx.

→ Hit by truck; seek injuries
→ state A tort law, not fed

Dix: complete div of citizenship + AIC > 75k pled in GF (exclude int, costs)

Complete div exists where no Π is from the same state as any Δ .

→ Pam, Patrick = (A)

→ Corp domicile is state of inc and PPB

→ Inc in Canada → as alien, not domiciled in U.S.

→ PPB?
(conversion, HQ)
serve center or
muscle (manuf, serv)

default → Muscle test: (B) Only state C does biz
→ NC test: HQ in Canada (alien) } either way depends which test (A) uses

AIC may be combined for multiple claims. GF pleading?

→ Pam's: 70k + 10k → 75k

→ Patrick's: 6k < 75k

∴ Pat must seek another src of SMix

Six:

∴ Assuming muscle test used, Dix

GF? 60k judgment not unreas. discrepancy

Gives discretion over claims arising from a common nucleus of operative fact as the underlying claim that invoked SMix

→ Pat is not trying to add another claim arising from same circ as accident in (B)

∴ COA should rule no SMix over Pat, yes over Pam, yes Six: SMix

2. Pjx - in personam b/c C v. A, B power over particular Δ s

Trad: C x no consent, not present (no implied consent)

D x no business

P x not served in (A)

that states have enacted

to have jx over non-residents to extent permissible under const.

Stat: No mention of long-arm statute. Const basis?

Const: Int'l Shoe: minimum contacts test = such min contacts so as not to offend trad notions of FPJ

min contacts = purposeful availment + reas foreseeability of being haled

But freight biz - activities in (A)?

← No biz in (A)

of benefits & protection of forum states laws w/ forum

Trad FPJ = relatedness of claim to contact + fairness

Relatedness from sp jx? If claim is related to Δ 's contacts gen jx?

not related

but "cont, system contacts"

→ No contacts in (A)

P, P want \$ damages

Fairness factors: Interests of Π getting relief, Δ to avoid inconvenience^x state in providing redress x

↓
no connection w/ C

Workers in (B)
HQ in Can.

∴ Ct rule no Pjx over C

PR Tort 2009/7-1
City Pro

Patty is in the business of transporting human organs for transplant in City. She is paid only upon timely delivery of a viable organ; the delay of an hour can make an organ nonviable.

David transports gasoline over long distances in a tank truck. Recently, he was hauling gasoline through City. As David was crossing a bridge in City, his truck skidded on an oily patch and became wedged across the roadway, blocking all traffic in both directions for two hours.

Patty was delivering a kidney and was on the bridge several cars behind David when the accident occurred. The traffic jam caused Patty to be two hours late in making her delivery and made the kidney nonviable. Consequently, she was not paid the \$1,000 fee she would otherwise have received.

Patty contacted Art, a lawyer, and told him that she wanted to sue David for the loss of her fee. "There isn't a lot of money involved," she said, "but I want to teach David a lesson. David can't possibly afford the legal fees to defend this case, so maybe we can put him out of business."

Art agreed and, concluding that he could not prove negligence against David, decided that the only plausible claim would be one based on strict liability for ultrahazardous activity. Art filed a suit based on that theory against David on behalf of Patty, seeking recovery of damages to cover the \$1,000 fee Patty lost. The facts recited in the first three paragraphs above appeared on the face of the complaint.

David filed a motion to dismiss. The court granted the motion on the grounds that the complaint failed to state a cause of action and that, in any event, the damages alleged were not recoverable. It entered judgment in David's favor.

David then filed suit against Patty and Art for malicious prosecution.

1. Did the court correctly grant David's motion to dismiss on the grounds stated? Discuss.
2. What is the likely outcome of David's suit for malicious prosecution against Patty and Art? Discuss.

1. Ultrahaz Activity ^{to TT} harm caused by
 Δ can be ^{strictly} liable for abnormally dangerous activities. Such harm must be a type associated w/ the ADA, and the harm must be foreseeable.
 Here Transport of gasoline is an abnormally DA b/c gasoline can ignite cause explosion. Causing delay $\rightarrow$ not type (nature of gas didn't cause harm)
 Unforeseeable $\rightarrow$ someone delivers time-sensitive organs $\rightarrow$ no proximate cause
 Court granted correctly on this

2. Malicious pros.
 A lawyer may not pursue frivolous claims for sole purpose of harassing the other pt. A TT wanted to put Δ out of business.
 Mal pros where TT intentionally files to use jud process to incur damages, w/o cause

2. Damages \$1k - damages must come from inherent danger of activity!
 Expectation damages = lost profits Comp: foreseeable, certain, mitigating
 Damages are ^{not} recoverable.
 Court didn't grant correctly on this ground.

K Q A (383)

Applicable law: Sale of goods → UCC ✓

✓ Merchants: Someone who deals in goods and holds oneself as having knowledge or skill peculiar to the practice or goods involved.
→ WS distributor → novelty supplier

Valid K? O, A, C mutual assent

✓ Offer: Comm'n ^{of promise} ~~exercising the power of~~ present intent to be bound by offeree's acceptance, signaling that acceptance will conclude the deal. Offer must have knowledge of comm'n.
w/ definite terms: Qty.

✓ Terms:
→ 30000 pens @ 50 cents
→ 1/2 delivery s/l, a/l

→ Preprinted forms indicate intent to be bound. Qty included → offer

Acceptance:

Termination: Offer not terminated. Offer s/l, reply s/l accepting by lapse, revocation, rejection

✓ Accept: Manifestation of assent comm'd to offer. Follow means of comm'n.

→ Means used by offer - preprinted form - confirmation

✓ Minor change: Under CL, terms must mirror offer terms; otherwise etc → added deliv date, but

✓ 2-207: If merchant ~~see~~ adds a term, it automatically becomes part of K, unless it expressly limits acceptance on new terms, other
② pt objects w/in reasonable time, or adds materially alters K.

→ No ①, ② → ③ Added arb clause, mat term → not pt of K

→ next comm was 6/30, not an objection beyond reasonable time.

✓ Consid: Bargained-for exchange, of legal detriment and benefit. Since J agreed to pay 50 cents, and C agreed to deliver 30k pens.

∴ Valid K w/o arb clause ← J would argue no K; C argues K

✓ Modification unlike CL → preexisting duty

Under UCC, modification of a K possible in good faith.

→ 45¢ to negotiating. Not indic whether true, but he "intended" to switch. Probably did ~~intend~~ have another offer. C was not coerced but goodly modified. GT doesn't require that pts don't haggle.

∴ Valid mod ← C argues no mod; J argues mod ✓

✓ SOF - defense to enforcement

sale of goods > 500 ✓ → requires written signed by pt (sig'd (J) or SWAP sp man goods - to be spimprinted but there are reg pens

C argues written conf.

J total part part

written confirmation by merch - C sent to J, had reason to know J had it. (Even if not, part part)
admission - X
part part - up to Q publisher (15k)

30k under written conf

Anticip Repud / Breach: Unequiv indic no part → AR → sure/wait/disch
Excuse for part discharges both from part

Impress

Imprais

/ comm impress (UCC)

✓ Frustr: Dramatic/total reduction of value of part.

Nonocc of contingency, basic ass'n of K ✓

Principal purp
subst/all frustrated?

✓?

C argues 50% is not subst

J " 100% of 2nd batch frustr'd →

→ C

Remaining 15k @ 45¢

K Q7 (425)

A F D T P R E T

(← Quick checklist of major issues)

✓ Applicable law: Services → CL

✓ Formation of K valid? O, A, C

Disco agrees: Remove waste w/in 48 hrs of notice } Bargained-for exchange
Lab agrees: \$40k/yr x 5 yrs

Defenses? S OF requires K in writing for certain categories of K

- not w/in 1 yr: K cannot be completed unless 5 yrs

- Under CL: Writing signed by pt to be charged → signed ✓
Essential terms → terms ✓

Part perf may satisfy S OF where partial payment + conduct that signals a K has been formed (acts explainable only by K's exist)

Terms, in relevant part

• D agrees • L agrees (see above) → Course of perf: Express terms are overridden by any course of perf (conduct blw pts w/in the K) → gone beyond 48h

Cond vs promise

Cond (precedent) is an occurrence of event that triggers, limits or extinguishes an abs duty to perf. or not

Constitutive or promissory cond: Performance is conditioned on other pt's promised perf

Express cond: Happening of event beyond pts' control

Promises arise from words of pt whose perf is required

→ Const cond b/c Lab's notice triggers removal w/ 48 h

→ Promise b/c D agreed to remove upon notice w/in 48 h

Failure of ~~cond~~ cond → releases promisor from ~~part~~ oblig to perf
promise → breach, gives rise to liability

Time of essence? If K specifies TOE or critical nature of deadline, express cond. If no clauses, presumed NOT TOE. Any breach → agg pt can recover, but agg still must perf.

✓ PER bars intro of evid of oral negot contemp/prior to formation of completely intey K (final, complete, exclusive expression of terms) Except: ambig terms

✓ Waiver of cond by conduct

Mod? No consid → lose on this issue

Rem \$9k recoverable due to minor breach causation, foreseeable, certain, unavoidable

→ Not ambig. Says 4P

Implied cond of GF, FD
- wait until 4:30 Fri.
- 90% full

2. Ethical issues

✓ Atty's duty not to threaten w/ crim liability [CA] to gain adv in civil liab. ABA allows use of threats of crim pros in a civil action, provided warranted by law + facts

Duty of EIT dealing w/ other pt

emp likely to cause

Org is client - report up chain of command if substantial injury

ABA: May reveal info

CA: Must resign but cannot reveal violation

Org as client:

Conf
Comm

Conflict of int

Competen

Cash (safe keep)

Fees

Duty of loyalty: Col ble ^{F's} possible defense of coercion by IBU

Conc Col

Representing joint

Confidentiality

Under ABA/CA rules

✓ Duty to communicate: L must inform C of case updates, incl. settlement offers, plea bargains. C must make key decisions

→ P approached M... M immediately refused. Since M didn't inform, M breached her duty to comm.

∴ subject to discipline under ABA + CA since...

Document

Repping

✓ Conflict of interest - joint clients

→ ABA: L may represent multiple clients w/ concurrent Col, unless she has reasonable belief of competence + diligence needed to rep + ^{each} clients' IWC. ✓

Conc Col: Exists where rep of one C is directly adv to another C's int or signif risk that rep of one C materially limits interests of another C.

→ Pete told May... Since if F testified v. W, it would be dis v. F's int and her risk of...
F + W are both rep'd by M.

Conc Col exists.

CA: L may rep Cs whose interests pose potential/actual Col if L receives "written consent."

→ No indication of IWC/written consent. IBU "retained" but joint clients are F + W. M imm'd refused plea bargain + continued rep even though potential Col remained b/w F + W. M should have obtained consent
∴ viol + subj disc under ABA/CA since...

Competence: L must have knowledge, skill, thoroughness, prep necessary to rep her C.

CA: May not intentionally, recklessly, repeatedly fail to rep w/ comp

→ M rep'd IBU for several years. No indic that she has done crim cases. Union rep likely didn't have much crim exp, but union activities may involve violence when negotiations. ∴ Unclear whether L had KSTP.

∴ Under CA rules, unlikely to be viol since not int/rec/repeat

If L is found to have lacked KSTP, L could have remedied it.

Obtaining comp: 1) Associate w/ L reas believed to be comp; or 2) obtain sufficient learning and skill w/o undue delay or expense

→ Pete approached "shortly after" entering... before performances → ② unavailable

→ Could assoc if L lacked comp @ beginning

∴ ABA - may be viol if KSTP was lacking

Ineffective Assistance of Counsel (AG)

Fees from 3P

May take comp from non-C only if 1) 3P doesn't interfere w/ prot judgment or w/ AC relationship, 2) C's info is kept confidential, 3) C's informed consent

1. TV ads

Ads generally allowed under ABA/CA, but they must not be misleading or false (in a material way, ABA). False + misleading: what might confuse client as to what ad is ~~promising~~ implying

→ discount certifying cases. "most firms" - misleading? 25% OK if not F/M

Guarantees

ABA: Prohibited

CA: if w/o disclaimers

} 25% guarantee

Unlabeled ad

CA: Prohibited. TV says it's an ad? Unclear.

Fees

ABA: Must not be "unreas." CA: May not be "illegal or unconscionable"

Fee agreements - must be in written agreement

CA: Agreement must be in writing only if reas. foreseeable > 1k for non-cont

→ 25% of pers injury case > 1k → fees agreed in writing or else viol

Advances: L cannot provide fin assist to C in connection w/ lit except for

ABA: advance lit expenses in cont case but no pers loans paying for indigent C

CA: advance lit expenses in cont case, paying pers loans w/ repay in writing

→ prospective judgments are pers loans? If 50% exceeds lit expenses, (subj to discipline) by then CA permits it

2. Solicitation Letters / Flowers

Sol. generally prohibited if done in person or over the mail or RT elec. CA rules do not mention RT elec. OK if specific legal problem + mail

Ad?

Flowers → List of indiv from police dept. in auto accidents + mail letters

Flowers delivered - mail? ← Solicitation prohibited

Ad? ✓

ABA + CA prohibits unlabeled ads. If the flower is an ad, it's labeled and not a viol. "Advertising Materials" needed?

ABA: false + misleading

Nonlawyers

CA: delivered in a time of physical stress, or delivered at accident scene, hospital, healthcare center presumed false + misleading unless L can prove otherwise!

✓ UPA: L may not engage in or assist UPA. Non-L may do things that call for pro judgment of a lawyer

CA: may hire disbarred, suspended, resigned or inactive member to do non-atty work (clerical, billing, research, drafting...)

OK { - fact inv ✓ - discuss proposed sett ✓
- w/lt inter ✓ - sett conf w/ C ✓
- negotiation ✓ - execute docs ✓ } not allowed

Duty to comm'n: L must abide by objectives of C and pursue means to achieve them + must relay info on settlement offers

→ Here, want paralegals/investigators to do those. To extent of work planned to be done by them, violation.

Corps a B (72)

(1) C and/or A liable to B for payments? Pre-incorp K!

De jure corp? Validly formed corp if Aol filed w/ sos

De facto corp? GTF, colorable attempt @ incorp to comply w/ incorp stat

promoter liability (4) conduct as if valid corp (unaware of invalid incorp)

adopted K by implied ratification inadvertence, filed too late → de facto

PCV? Creditors can reach beyond corp prot and hold indiv liable for corp oblig if: unity of interest + injustice. Unity if separate personalities of corp and indiv no longer exists, that it could be said corp is "alter ego" of person. Further shown by other failure to comply w/ formalities: undercap, Cumulative

A: Promoter liable on K until novation
↓
none here

Injustice where nec to prevent fraud, avoid pers obl.

(2) A liab to C for resuing stock to herself + Carla?

No-par shares: no min price. For consideration, par shares may be given only if board believes its at least worth that.
in GTF any valid consid may be received

For issuance to A: Grot assignment of all rts in invention ✓

C: Grot nothing & (future services not consid)

(3) B liability to C for stock issuance? Pub none

\$1M loan adequate consid? Seems so

bargained for? exchange

Gift? No

(4) Carla liability to C

No advice given - refused - no consid.

Given a gift for possible services - no enforceable promise

2007 Feb 2, Corps, PR, ~~24~~

1. Unpaid rent recoverable by LL?

Type of tenancy: TB-1 - fixed term, terminates automatically at end of term.
→ 5yr lease w/ LL → TAY T may not terminate/vacate before

Duty to pay rent: T has absolute duty to pay, absent defense.

Eviction? Actual + constructive eviction would excuse duty

Actual: Phys dispos. Const: Not suitable for human habitation + move out w/in reasonable time
→ None, back pay for 3 mo (not reasonable)

Surrender? If T surrenders premises + LL accepts

Warranty of habitability: Residential only → biz

Independence of cov: Even if LL breached duty, T must pay. LL can recover

2. S/h agreement valid?

S/h agreement: S/h may agree on provisions if all s/h sign.

re managing the corp
Subscribers make written offers to buy stock from corp not yet formed, inv for 6 mos.

T on board of dir - now only R, F?

⊗ Promoter Liability: Promoter transacts on behalf of corp not yet formed. Promoters remain liable on K, until novation.

Promoters: Engages in activities as fiduciaries of corp prior to corp formation, such as entering into K.

Novation: Agreement where P released from liab, substituting in corp

~~Appt of D+O~~ Appt of D+O: Elected by BOS

Removal

: May be removed w/ or w/o cause

3. Art's ethical viol → Perma officers stripped s/h of ability to remove/select officers → current provisions

Org as client: When L represents an org and its constituents, L's client is org itself. L must conform his rep to the concept that C is org.

✓ Duty of loyalty: L owes duty of loyalty to his C, to act as is reas nec for best int. → C is RKI. L owes duty of loyalty to C. May give rise to col w/ joint rep.

Concurrent col: When rep of one C 1) dir adv / 2) sig risk of mat int

Joint rep: ^{ABA} Cannot rep multiple C if conc col, unless reas believes comp and duty rep all + IWC from ea. CA May rep all despite put/actual col if C's written disclosure.

→ Rep of R, F is sig risk of limiting int of lrv and other s/h b/c R, F wants to be perma directors + officers, even though 5 others are supposed to be on board. → Conc col

→ No IWC from anyone A reps → (subj to disc under ABA + CA)

✓ Confidentiality: L has duty to not reveal confid info matters relating to rep to others. Reppng RKI, R, F, I, other inv. High risk of conf into exposure. All in same room + "extensive" disc!
Continuing to rep all will A subj to disc if so

✓ Competence: L must have KSTP reas nec for rep a C

CA: No int/reckless failure to rep comply

→ Thoroughness, may not have "Without further discussion" → ABA subj.

→ No ind of repeated failure but may be reckless → CA subj to disc

Evaluating competence 1) Assoc w/ L reas believed to have comp

2) Acquire not learning and skill before perf w/o undue delay

→ Neither here → ABA/CA subj.

Communicate: lrv not reas informed of sig dev in rep

Cannot be waived by C under any circ.

AC priv destroyed if pts not present to further objectives of all

✓ State action

14th applies only if there is ^{action by} state/local local, U.S. Const protects against violations of const rts by the state or fed govt or its agents.

→ Board of Educ of City is a govt entity ~~state~~ since run by a city.
∴ Pam protected against unconst reg by City Board.

✓ Mootness

Court will not hear a case unless a real, live controversy @ all stages of review

✓ An action is moot if a dispute resolved, i.e., no redressability.

✓ But it is not moot if it is ~~evading review~~ but "capable of repetition yet

→ Board asserts moot b/c P no longer pregnant. A ^{evading review} ~~pregnant~~ plaintiff is a classic case "cap... yet..." P may become preg again and assert the same claim and alleged injury. This case is ^{capable of repetition} "cap..." since P may become pregnant again ^{before (if) subjecting her to AEP again}. It is evading review since P is no longer preg when Board moved to dismiss.

2. First Claim Board mx should be denied

Standing

Equal Protection protects persons in similar situations receiving disparate treatment. Suspect classifications receive heightened scrutiny. Sex/gender is one such class.

✓ Gender discrimin: If a state reg intends to discrim based on gender, govt prove it must be substantially related to an impt state interest. (IS)

^{exceedingly persuasive justification} If a law is facially neutral, IS N/A unless a discrim motive is found.

→ Only female students can become pregnant. Discrim effect + has discrim motive since male students cannot preg. → IS applies

IS See rule above. The state interest here is to offer a... This is a state interest ~~that~~ that well serves its interest in maintaining health, safety and well being of its city's residents. It's impt interest

However, not a well-executed program. Term too long... Could do concurrent prog after school. Weekend... Not a substantially related program

∴ fails IS

Male educ?

Could use less restrictive means.

✓ Age discrimin: Rational relation to legit interest ✓

Mental status: RB. Not similarly situated as married stud.

✓ Due Process protects arbitrary govt action on a person's "fund rts." Includes: education, privacy [contra, abortion, marriage, procreation, ^{child rearing}]. Subject to SS.

✓ RT to Educ: Private educ. Presumably a public school. (Ech High) ×

✓ RT to priv: P has rt to privacy including [I]. P asserts she shouldn't be penalized for being pregnant. Reproductive rts.

SS Under SS, compelling interest + necessary to achieve. Govt prove.

Interest: Health, safety, well being, education on sexual health

Necessary? No, same as above.

∴ fails under SS for rt to priv

in crim cases

0. Prop 8: In CA, all relevant evid is admissible, though objectionable under CEC, unless exception
 - Court, hearsay, Δ opens door, privilege, secondary evid, unfair prej., rape-shield statute
 - Preserves jrd disc to exclude under 352

1. W's testimony

✓ Relevant? Evid is logically rel if it tends to make more/less probable consequence in dispute.
 Legality rule (352) if PV not $\ll$ UP, waste of time, mislead jury.

✓ Competence: Pers knowledge + swear/affirm + understand duty to tell truth (CA)

not key issues
 MTP: In civil/crim, spouse W may has privilege to testify against party spouse.
 Only while married. Testifying spouse holds priv. $\rightarrow$ not testifying v. ✓
 SECP: In civil/crim CA case, conf comm'n b/w spouses who were married @ time are privilege. Either spouse may invoke. Survives divorce. (husband is V!)

Confrontation

✓ Auth = voice? Personal familiarity acquired by any means. $\rightarrow$ Disguise but been fighting, likely familiar
 2. V's 2007 felony conv. Hearsay - Pt adm, excited, pros, amt v. int, state of mind, V $\rightarrow$ W, D $\rightarrow$ V. Prop 8 bars if Δ opens door properly.

✓ Relevant? Logically? Legality? Unfair prejudice may $\gg$ PV

Auth? Character evid: may not be introduced to prove conduct in conformity therewith. In other words...
 Just b/c V had felony conviction, doesn't mean he acted like a felon/lie there.
 Certified: Pertains to relevant character? Char evid may not be admitted if it doesn't relate to char @ issue.

self-auth Δ "opening the door": In crim, Δ may introduce evidence of V's pertinent character to show Δ 's innocence. (V was initial aggressor) Public record etc

Specific incident of conduct not admissible by EE

N/A + 352 belonely PV/UP

✓ Impeachment: Casting adv reflection of W's truthfulness to discredit him.
 Convictions admissible if PV $>$ UP if it involves "moral turpitude" - readiness to do evil.
 $\rightarrow$ Not an Impeachment b/c V hasn't testified.

perjury
 lying, violence, sex crime, P recklessness

3. D's 2006 misdemeanor

✓ Rel? Logical? Legal? UP $\gg$ PV? Auth? Certified
 ✓ Char evid: Δ opened door; I may rebut w/ Δ 's pertinent char - assault part since charged w/ crime of violence.
 EE aka - only x-exam testimony.

✓ Imp? Crim misdemeanor OK if "moral turp" - assault is violence ✓
 $\rightarrow$ Not testifying
 Secondary Evid

N/A

4. D's testimony - 1st fight

✓ Rel? Logical? Legal: 4 yrs before
 ✓ Competence - pers know X Hearsay: "heard" about it - effect: reason to fear ✓
 ✓ Char - reputation: Evid admissible where character is issue. $\rightarrow$ D put V's violence @ issue
 $\therefore$ admit under Prop 8 $\rightarrow$ break arms shows V's violent tendencies

5. 2nd fight

✓ 3 yrs before but still being spoken about
 ✓ Comp - pers know X
 ✓ Char - RP: Same? Hearsay

Crim case - fed1. P's testimony

Relevance: Logically relevant to prove/disprove a material fact?

Legally relevant if $PV > UP$ + no pub policy exclusions (e.g. subseq rem)

Judge has discretion to exclude legally relevant evid if $PV < UP$

Competence: W must have pers knowledge of the matter testified and have sworn/affirmed to testify truthfully.

BER: To prove a material fact contents of writing, recording, photo, original must be produced if available

✓ Hearsay: OOC + OET, unless exception (or acceptable dup)

x Public records exception: Records made pursuant to a legal duty ^{to record} admissible if entered near time of event and trustworthy (circ)

✓ Business records excep: Records of op, events, conditions, diagnoses made in regular course of business. "Business" not nec for profit - rather org. Enant must have had duty to make entry.

separate analysis

saw blue Corvette - Not OOC stmt

Log, legal, pers know Pers obsv ✓

∴ yes

2. S's test

Relevance: Logical, Legal

Competence ✓ (pers knowledge)

Character evid: prior sp acts to show motive

Hearsay: OET? Motive ✓

If not - exceptions: stmt v. int - seems avail

✓ Pt admission

(need not be v. int when made)

Vicarious adm - agent of S was D's agent

Effect of S's stmt on D

Made D burn biz to get the \$ b/c S refused to make phony AR

same as phony D

created take AR { ? X

3. J's test

✓ Relevance: Logical ✓

✓ Legal?

Unfair prep, confusion of issues, mislead jury? gasoline

Competence ✓

✓ Hearsay: effect on listener - J is listener, has no relevance

circ evidence on it at mind - belief that gasoline is most effective

Lay testimony

Authentication: Preliminary fact.

motive - D planning to use gasoline to start fire

✓ Admitting evid require proof that it is what is claimed to be based on prep of evid

Voice auth: W must have prior familiarity w/ voice

(personal)

May ID a voice based on hearing @ any time under any circ

(1) D's statement to W

Relevant? ✓ Shows K's negligence, E may be vic liab.

403?

PV > UP

Report?

Wit

Dunn

Competence - pers knowledge oath

Hearsay? ✓ Multiple Double hearsay?

is a rail (see 31)

Dunn
Wit

Dying dec? Declarant is unavailable, makes stmt under belief of impending death, re cause or circ of he believed to be imminent death

Wit
Driver

Excited utterance

Present Sense

Public record?

Description of matters observed under duty? No.

No exceptions apply. Categorical? Circ guarantee of trustworthiness + necessary in interests of justice (probative, material fact) + notice to opponent

Oliver's report: Not offered.

BER? Personal knowledge. Contents not at issue.

(2) Relevant? ✓ 403? Impute knowledge to K

Authentication? "properly authenticated"

Hearsay? ✓ Effect/notice on Kemper

(3) Relevant? ✓ 403? Disprove D's fault

Competent? Personal knowledge

La. W 2 "below the speed limit"

① Rationally based on perception

② helpful to understand testimony or material fact

③ not sci/tech/sp knowledge

(4) Relevant? ✓ 403? ✓ D was at fault and to impeach

Hearsay? Felony conviction 803(22) exception if to prove a fact essential to lead to judgment ✓

Impeachment by character by prior felony conviction less than 10 yrs if PV > UP

asked leading Q

(5) W may be examined by x-exam; court has discretion to reasonably control to effectively ascertain the truth, avoid waste of time, prevent harass.

No waste of time > 1 Q, no facts showing undue extension of x-exam

No harassment

Relevant? Logically ✓ To show bias

Legally? ✓ Pub pol exception to

liability insurance

- can't be used to show culpable conduct

- can be used to show ownership ✓

settlement

- if there is actual dispute, can't admit settlement offer/negot

"agreed to testify on P's behalf" ✓

Impeach w/ bias, motive to lie, interest ✓

here, not an offer to settle not a negotiation

It was the result