

1. Standing

Organization standing

- 1) Each member would have standing
- 2) Purpose of ~~active~~ ^{interest asserted} germane to members
- 3) Indiv ~~not~~ ^{not} required (all member gets same relief)

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

win' → Dept would argue: It is a state actor; it enforces a 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 that affect ISC

Where Congress hasn't enacted legislation, states may regulate local tx affecting ISC if non-discrim on COS + not unduly burden ISC + (safe roads)
✓ 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't temp
Exceptions: Market participant x Cong. auth x burden: inconsistent reg interest:

∴ Ct rules for Dept

Atto 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 ^{mutual} include S+T trucks

Occupied the field? Cong can preclude any state/local reg in the area regulated, even if not conflicting, unless traditionally in power of st.
→ No facts showing Cong intended to occupy. In fact, NHTSA is the entity promulgating rule Cong.

∴ Ct rules for Dept

or prevents fed regs/objectives

2004 Feb 5

Civ Pro Q1 (1/2012) 0. Appeal: May appeal from final judgment

1. SMix Fed ct hears on... May bring up SMix @ any stage (cannot be waived)
Fdx/Dfx

May arise from Fdx, Dfx, Sfx.

Fdx: Const treaties fed laws. Limited fx. → Ht by truck; seek injuries
→ state A tort law, not fed

Dfx: complete div of citizenship + AIC > 75k pld 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?

(Pam, Patrick, HQ)
nerve center or
muscle (manuf. serv)

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

All may be combined for multiple claims. GF pleading?

→ Pam's: 70k + 10k > 75k

→ Patrick's: 6k < 75k

Sfx: ∴ Assuming muscle test used, Dfx
GF: look judgment not unreas. discrepancy

∴ Pat must seek another src of SMix

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

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

yes Sfx: SMix

2. Pfx - 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 fx over non-residents to extent permissible under const

Stat: No member of longarm statute. Const basis?

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

But freight biz - activities in (A)? ← min contacts = purposeful availment + reas foreseeability of being held

of benefits & protection of forum states laws

Trad FPJ = relatedness of claim to contacts + fairness

relatedness from sp fx? If claim is related to Δ 's contacts gen fx?

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 state in providing redress x

↓
no connection w/ C

Workers in (B)
HQ in Can.

∴ Ct rule no Pfx over C

PR Torts 7009/7-1
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 PI} harm caused by
Δ can be strictly liable for abnormally dangerous activities. Such harm must be a type associated with 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 → not type (nature of gas didn't cause harm)
Unforeseeable to → someone delivers time-sensitive organs → 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. π wanted to put Δ out of business.
Mal pros where π intentionally files to use jud process to incur damages, w/o cause

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

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

✓ Offer: Comm'n blatant present intent to be bound by offeror's acceptance, signaling that exercise of power will conclude the deal. Offer must have knowledge of comm'n w/ definite terms: Qdy.

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

Termination: Offer not terminated. Offer s/1, reply s/5 accepting by lapse, revocation, rejection

→ Means used by sign-propagated form - confirmation

→ No ①, ② → ③ Added alt clause, mat term → not pt of K
next conv was 6/80, not an objection

✓ Consider bargained-for exchange, beyond reasonable time.
of legal detriment and benefit. Since I ~~was to~~ ^{agreed} pay 50 cents, and
C agreed to deliver 30k pens.

∴ valid K w/o arb clause ← I would argue no K : C argues K

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

→ 45 & ~~is~~ negotiating. Not indic whether true, but he "intended" to switch. Probably did ~~not~~ have another offer. C was not overbid but gradually switched. CFT doesn't require that pds don't have to.

Invalid mod $\leftarrow$ C always no mod; J always mod $\checkmark$

→ no evidence of abuse

sale of goods > 500 ✓ → requires writing signed by pt (sig'd) or SWAP

sp. over goods - to be spiritrated but there are req. pens
written confirmation by march - (sent to J) had

admission, - X

part part = up to 0 per billion

no objection with 10
reason to leave I
had it. (present
value, past price)

32k under another coat

Initial Repud / Breach: unequiv indic no perf $\rightarrow$ AR $\rightarrow$ sue w/ full dli

sure/f/disch.

Impress / etiam impress (ure)

Impress / 1944 (1944) (100)

✓ First : Dramatic/total reduction of value of part. Principal prop.
 Nonocc of contingency, basic asset of K ✓
 Unit/all frustrated

C argues 50% is not subst

100% ad of 2nd batch bird'd

Damages? Nonbreacher:

Expectation

Duty to mitigate damages

Remaining 136 @
45 d

✓ Applicable law: Services → CL

✓ Formation of K valid? O, A, C

Disco agrees: Remove waste w/in 48 hrs of notice

Lab agrees: \$40k/yr × 5 yrs

} Bargained-for exchange

Defenses? SOF 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 SOF where partial payment + conduct that
(assumed) → signals a K has been formed
(acts explainable only by K's exist.)Terms, in relevant part

• Drivers • L agrees (see above)

PER

↳ Course of perf:Express terms are overridden by
any course of perf (conduct blw pts
w/in the K) → gone beyond blw ptsCond vs promise

(cond precedent)

(cond is an occurrence of event that triggers, limits or extinguishes an abs duty to perf
or vice versa)Constructive or promissory cond: Performance is conditioned on other pt's promised perfExpress cond: Happening of event beyond pts' controlPromises arise from words of pt whose perf is required→ Construct cond b/c Lab's notice triggers ^{duty to} removal w/ 48 h→ Promise b/c D agreed to remove upon notice w/in 48 h| Failure of cond → relieves promisor from perf oblig to perf
promise → breach, gives rise to liabilityTime of essence? If K specifies TOE or critical nature of deadline, agreed.If no clauses, presumed NOT TOE. Any breach → agg pt can
revoke, but agg still must perf.✓ PER bars intro of evd of oral agmt ^{exclusive} contempor/prior to formation of completely
integrated K (final, complete, expression of terms) Except: ambig terms✓ Waiver of cond by conductMod? No consid → lose on this issue

L not entitled

RENT § 90k recoverable due to minor breach
causation, foreseeable, certain, unavoidable

↳ Not ambig. Says 4A

Implied cond of GFR, FD

- wait until 4:30 PM
- 90% full2. Ethical issues✓ Att'y's duty not to threaten ^{the pt} w/ civil liability, [CA] to genuinely 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

Competence

Cash (safe keep)

Fees

Duty of loyalty: COI b/c F's possible defense of coercion by IBU
 Conc COI
 Representing joint

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

✓ Conflict of interest - Representing joint clients

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

Conc COI: 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 adv v. F's int and has risk of...
 F + W are both rep'd by M.

Conc COI exists.

CA: L may rep Cs whose interests pose potential/critical COI 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 COI 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 reasonably believed to be comp; or 2) obtain sufficient learning and skill w/o undue delay or expense

→ Pete approached "shortly after entering..." before performance

→ Could assoc if L lacked comp @ beginning

∴ ABA - may be viol if KSTP was lacking

Ineffective Assistance of Counsel (A6)

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

Guarantees

ABA: Prohibited

CA: if w/o disclaimers

} 25% guarantee

Unlabeled ad

CA: prohibited. TV says it's an ad? Uncheck.

Fees

ABA: Must not be "unreasonable" CA: May not be "illegal or unconscionable"

Fee agreements - must be in written agreement

CA: Agreement must be in writing only if fees 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: advancing lit expenses in cont case but no pers loans paying for indigent C

CA: advancing lit expenses in cont case, paying pers loans w/ repay in write

→ prospective judgments are pers loans? If 50% exceeds lit expenses, subject to discipline
↳ then CA permits it

2. Solicitation Letters / Flowers

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

Flowers → List of indiv from police dept. in auto accidents + mail letters Ad?
→ Flowers delivered - mail? ← Solicitation prohibited

Ad? ✓

ABA + CA prohibits unlabeled ads. If the flower is an ad, it is 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-law may do things that call for pro judgment of a lawyer

CA: may hire disbarred, suspended, ~~resigners~~ members to do non-atty work (clerical, billing, research, drafting...)

OK { - fact inv ✓
- wit inter ✓
- negotiation } - discuss proposed settlement ✓
- execute docs ✓ } not allowed

Duty to counsel: 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 submit 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? Gift, colorable attempt to incorp to comply w/ incorp stat

promoter liability

adopted K by implied ratification

A: promoter liable on K
until novation
↓
none here

(d) conduct as if valid corp (unaware of invalid incorp)

inadvertence, filed to d later → de facto

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, incomplete

Injustice where nec to prevent fraud, avoid poss obl.

(2) A liab to C for issuing stock to herself + Carlo?

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

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

C: Got nothing & (future services not consid)

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

\$1M loan adequate consid? Seems so

bargained for? exchange

Gift? No

(4) Carlo liability to C

No advice given - refused - no consid.

Given a gift for possible services - no enforceable promise

1. Unpaid rent recoverable by LL?

Type of tenancy: TBI - fixed term, terminates automatically @ end of term.

→ 5yr lease w/ LL → TBI

may not terminate/vacate before

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

Eviction? Actual + constructive eviction would excuse duty

Actual: Phys dispos: Const: Not suitable for human habitation + move out w/in reas time

→ None

→ None, back pay for 3 mo (not reas time)

Surrender? If T surrenders premises + LL accepts

Warranty of habitability: Residential only → biz

Independence of cov: Free if LL breached duty, T must pay. LL can recov

2. S/h agreement valid?

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

rel managing the corp

Subscribers make written offers to buy stock from corp not yet formed, then for 6 mos.

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

⊗ ✓ Promoter Liability: Promoter transacts on behalf of corp not yet formed. Promoter remains liable on K, until novation. Promoters: as fiduciaries of corp Engages in activities prior to corp formation, such as entering into K.

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

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 confirm 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 RFI. L owes duty of loyalty to C. May give rise to Conf w/ joint rep.

Concurrent Conf: When rep of one C is dir adv / at risk of mat liab int

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

→ Rep of R, F is sig risk of limiting int of inv 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 Conf

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

✓ Confidentiality: L has duty to not reveal confid matters relating to rep to others. Repping RFI, R, F, I, other inv. High risk of conf info 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/track rep failure to rep comply

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

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

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

2) Acquire suit reason and skill before put w/o undue delay

→ Neither here → ABA/CA subj

Communicate: Inv not reas informed of sig dev in rep

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

Cannot be waived by C under any circ.

✓ 6. State action

14th applies only if there is state/local action by
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 ~~since~~ since run by a city.
- ∴ Pam protected against unconst reg by City Board.

✓ 7. 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 evading review"
- Board asserts moot. b/c P no longer pregnant. A pregnant plaintiff is a classic case "cap... yet..." P may become preg again and assert the same claims and alleged injury. This case evading review since P may become pregnant again, before (if, subjecting her to TEP again, ap...") since P is no longer preg when Board moved to dismiss.

2. First Claim Board ~~may~~ 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 discriminate based on gender, govt 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 affect + 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 subst related program. Could use less restrictive means.

∴ fails IS

Male educ?

✓ Age discrimin: Rational relation to impt interest

Marital 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] Subject to SS... child rearing

✓ Rt to Educ: Private educ. Presumably a public school. (City High)

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

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

E Q4 (573)

in crim cases

0. Prop 8: In CA, all relevant evd is admissible, though objectionable under CFE, unless excepti:
- Const, hearsay, Δ ^{must still} open door, privilege, secondary evd, unfair prej., rape-shield status
- Presence of disc to exclude under 352

1. W's testimony

✓ Relevant? Evid is logically rel if it tends to make more/less probable ^{a fact of} consequence in ^{dispute}
legality rules (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 b/w spouses who were married @ time are privilege. Future spouse may divulge. Survives divorce. (husband is V!)

Confrontation

$\therefore$ OK under MTP but barred by SECP since all app objections were made

✓ Auth voice? Personal familiarity acquired by any means. $\rightarrow$ Dispute but been fighting, likely familiar
2. V's 2007 felony conv. Hearsay - $\left(\begin{array}{l} \text{it adm.} \\ \text{state of mind} \end{array} \right) \rightarrow \left(\begin{array}{l} \text{expected} \\ \text{V} \end{array} \right) \rightarrow \left(\begin{array}{l} \text{priv} \\ \text{V} \end{array} \right) \rightarrow \left(\begin{array}{l} \text{not v. rel} \\ \text{D} \end{array} \right) \rightarrow \left(\begin{array}{l} \text{prop 8 bars it} \\ \text{if } \Delta \text{ opens door} \\ \text{properly.} \end{array} \right)$

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

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

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

Specific incident of conduct not admissible by EE

$\therefore$ N/A

+ 352 balances PV/UP

✓ Impeachment: Casting adv reflection of W's truthfulness to discredit him.

Convictions admissible if PV $\gg$ UP if it involves "moral turpitude" - readiness to do evil
 $\rightarrow$ Not an impeachment b/c V hasn't testified.

perjury $\downarrow$ evil
lying, violence, sex crime, T, rock cocaine

3. D's 2006 misdemeanor

✓ Rel? Logical? Legal? UP $\gg$ PV? Auth? Certified

✓ Char evd: Δ opened door; I may rebut w/ Δ 's pertinent char - assault just since charged / crime of violence
EE v/u - only x-exam testimony.

✓ Imp? Crim wisdom OK if "moral turp" - assault is violence ✓

$\rightarrow$ Not testifying

$\therefore$ N/A

Secondary Evd

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 down shows V's violent tendencies

5. 2nd fight

✓ 3 yrs before but still being spoken about

✓ Comp - pers know x

✓ Char - rep same?

Hearsay

1. 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 evld if $PV \ll UP$

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

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

✓ Hearsay: OOC + UFT, unless exception (or acceptable dep)

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

(MVD)

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

separate analysis

same blue Corolla - Not OOC stnd

Log, legal, pers know Pers obs ✓

∴ yes

2. S's test

Relevance: Logical, legal

Competence ✓ (pers knowledge)

Character evld: prior sp acts to show motive

Hearsay: OOT? Motive

if not - exceptions: Stmt v. int - seems avail

✓ Pt admission

(need not be v. int when made)

Vicarious adm - agent if 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? X
 fake AR

3. J's test

✓ Relevance: Logical

Legal?

Unfair prep, confusion of issues, misled jury? gasoline

✓ Competence

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

evld evidence on st of mind - belief that gasoline is most effective

Lay testimony

Authentication: Preliminary fact.

motive - D planning to use gasoline to start fire
 pt admits

✓ Admitting evld requires proof that it is what is claimed to be based on prop of evld

Voice auth: W must have prior familiarity w/ voice

May D 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

Hearsay? ✓ Multiple hearsay?

report?

Wit +

Competence

pers knowledge cath

Dunn
Wit

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

Wit
Oiver

Excited utterance Present Sense Public record? Description of matters observed under duty? No.

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

Oiver'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 harassment

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

Relevant? Logically ✓ To show bias

Legally? Pub pol exception to insurance

liability

- 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 bias, motive to lie, interest ✓

here, not an offer to settle not a negotiation
It was the result