

3) Please type the answer to Question 3 below. (Essay)

Hospital Intake Form

Relevancy

All evidence must be relevant to be admissible. There is both legal and logical relevancy.

Legal Relevance

Evidence is legally relevant if it tends to either prove or disprove a material fact. Here, the intake form is relevant because it tends to prove that P was injured in a car accident. Specifically that P suffered a head injury. Thus, it is legally relevant.

Logical Relevance

Logical relevance is proven when the probative value of evidence outweighs the prejudicial value. Here, there does not seem to be any prejudicial value in admitting the hospital intake form. If the form contains any sort of description of fault then that portion would need to be redacted. However, if the intake form simply says that P's head struck the windshield and he was in a great deal of pain from that, then its probative value outweighs the prejudicial value.

Thus, the evidence is relevant.

Presentation

The Evidence is being presented during P's case-in-chief. Documents can be presented into evidence during this time. Thus, the presentation is valid.

Authentication

In order for a document to be presented into evidence it must be properly authenticated. This can be done by having the person that wrote the document

testify that they created it. N the nurse is testifying that she treated P when he was in the hospital. N recorded the information on the hospital intake form. Thus, it is properly authenticated. Further, N is subject to cross-examination because she is testifying.

Competency

N made the statements in the intake form and has first hand knowledge of P's hospital treatment because she treated him while he was in the hospital. Thus, N is competent.

Hearsay

Hearsay (H) is an out of court statement offered to prove the truth of the matter asserted in the statement. H is not admissible. Here, the intake form is a statement because it conveys information. Further, the intake form was made out of court and is offered to prove that P suffered an injury when he hit the windshield and was in a great deal of pain. Thus, the intake form is inadmissible because it is H.

H can be admissible if it falls under an exemption or an exception to the H rule.

Hearsay within Hearsay

This exception to the H rule exists when there are multiple layers of H in a statement. Each layer must fall under either an exemption or exception to the H rule in order to be admissible. Here, the two layers are 1) the statement P made to N and 2) N's recording of the statement on the form.

Statement P made to N

Party Admission

This is an exemption to the H rule. If a party is the one making the statement it will not be barred by the H rule.

Here, P made the statement to N. P has first hand knowledge of the incident because he was there. Thus, this layer of H falls under the exemption to the H rule and is admissible on its own.

Excited Utterance

An excited utterance is one that the declarant made while under the excitement of the event, unavailability immaterial. Here, P was not under excitement when he went to the doctors. The event probably happened days before this. Thus, the statement will not come in under this exception.

Statements made to medical professionals regarding physical state

This H exception provides that if the declarant made the statement while seeking medical care, then it can come in, unavailability immaterial. However, sections of the statement that relate to fault or any other non-relevant matter will be redacted from the statement. Here, P told N that he was in pain from hitting the windshield during the car crash. He told N this when seeking medical care to describe his physical state. Thus, the statement is admissible under this H exception.

N's recording of the statement on the intake form

Business Record

If the statement is made in the course of a regularly conducted business activity, then it can come in under this exception. Here, N wrote down what P said on the intake form. The intake form was completed pursuant to standard hospital procedure. Thus, this layer can come in under this exception.

Privilege

Some statements cannot be made because of privilege. Those who hold privileged information cannot be compelled to testify. Lawyers/clients,

husband/wife, and doctor/patients have privilege. The communications in these relationships are meant to be confidential. The policy of this is that we want people to be able to be honest with these people without fear of legal problems. A privileged communication can be disclosed through consent. Further, the doctor/patient privilege is not required by the FRE, but each state tends to have their own.

Here, P is calling N in his case in chief to testify to his physical state after the accident through the intake form. The fact that P is calling N demonstrates that P consented to N disclosing the confidential information.

Thus, the statement can be disclosed because P consented to the disclosure.

P's testimony about E's statements at the accident scene

Before going into detail about the statement and its admissibility it is important to determine the liability of D. The accident occurred between P and E. E is an employee of D. In order for liability to arise E must be an agent of D.

respondent superior

The theory is that if an employee acting in their official capacity is involved in a tort, then the principal (their boss) is liable. If the employee is acting reasonable and within the scope of their employment then the employer will be liable. The employer will not be liable for intentional torts unless they are tied to the job.

Here, E was driving her vehicle delivering pizzas for her employer Donna's Pizza. As a delivery driver, this is within the scope of her employment. If E were doing a personal errand while the accident occurred D may be able to argue that this would fall outside the scope of her employment. Yet, absent facts to the contrary, it is assumed that E was driving around making pizza deliveries when he

accident occurred. Thus, D is liable for the damage caused by E.

Relevance

See rule above.

Legal: Here E told P that she "was in a hurry to make a pizza delivery and that is why I ran the red light." This is legally relevant because it proves that E was acting within the scope of her employment and that she may have been negligent.

Logical: Here, the statement is somewhat prejudicial because she stated that she ran the red light to P. However, the probative value is higher than the prejudicial value because it proves both liability and negligence.

Thus, the statement is relevant.

Presentation

This is through D's case in chief. thus it is proper.

Competency

P is a party and thus has first hand knowledge.

Hearsay

See rule above. This is an out of court statement and will not be admissible unless an exception or exemption applies.

Excited Utterance

see rule above. E did not sound too excited when she made the statement to P. However, an accident causes excitement and it is possible that E was still under that excitement when she made this statement to P. Thus it may be admissible under this exception.

Present sense impression

when a declarant describes what they are witnessing or what just happened that statement can come in under the present sense impression exception. Here, P is testifying that E told him this statement. E told him this statement as it happened. Thus, it is a present sense impression and may come in under this exception.

Party admission

see rule above. E is an agent of D. further she has first hand knowledge because she was involved in the accident. As an agent of D, E's statements are statements of D. Thus, this statement comes in under this exemption.

Impeachment

A witness can be impeached through prior inconsistent statements. impeachment demonstrates the witness's unreliability. Here, E is testifying that the light was red while D claims that it was green. This statement can be used to impeach D's statement.

P's testimony about D's statements at the hospital

D visited P in the hospital and told him that she would take care of all of the medical expenses.

Relevance: this is legally relevant because it tends to prove that D offered to pay. it is not logically relevant however because its prejudicial value outweighs its probative value. A jury would assume that D admitted to fault by offering to pay. Thus, the statement is not admissible because it is not relevant.

Form; Leading questions are okay on cross, but not during case in chief. this is cross, so it is a proper question to ask.

Impeachment of D.

prior inconsistent statement. D said that she didnt offer to pay but P is testifying that she did offer to pay. This can be used to impeach D. THus, it may be able to come in for impeachment purposes but not for it's substantive value.

Offers to pay medical expenses

These are not admissible if they are offeres of settlement. The court wants to encourage people to settle. for that reason, any statement made as a settlement is not admissible to prove fault or anything else. Here, D offered to pay P's medical expenses. This likely happend becace D was afraid that p was going to sue. Thus it was made in settlement. The statement is not admissible.

Question #3 Final Word Count = 1597

END OF EXAM