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1a. Should the Court have admitted Petra's testimony about her complaints of the leak to Dave?

Logical Relevance

In order to be admissible evidence must be logically relevant. Evidence is logically relevant if it has a tendency to make a fact of consequence more or less probable.

Here, the fact that P complained to D of the leak would show that D knew of the leak, which make it probable that he was on notice of the leak. As knowledge of the leak would show negligence on D's part in maintaining the tank, the evidence is logically relevant.

Legal Relevance

Evidence must be legally relevant to be admissible. Evidence is legally relevant where it's probative value is not substantially outweighed by the risk of undue prejudice to the party the evidence is introduced against.

Here, the probative value of the P telling D about the leak is high because it put's D on notice of the leak while it does not offer any undue prejudice to D. As such, the evidence was legally relevant.

Hearsay

Hearsay is an out of court statement offered for the truth of the matter asserted.

Here, P is offering the statement of her telling D that the tank is leaking, however, as P made the statement herself, she has firsthand knowledge of the testimony as she is the one who made the statement. As such, the statement is not hearsay.

As such, the court properly admitted the statement.

1B. Whether the court properly admitted the testimony that D instructed W to caulk the leak?

Logical Relevance

See Rule Above

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Here, the statement would show that D knew the leak needed to be remedied and potentially could cause failure in the tank again. This fact makes D's knowledge and willful negligence more likely than not, therefore the evidence is logically relevant.

Legal Relevance

See Rule Above

Here as the probative value, that D knew of the leak and it's effects, is not outweighed by any undue burden. As such, the evidence is legally relevant.

Policy Consideration: Subsequent Remedial Measure

Due to public policy, courts will bar evidence of subsequent remedial measure taken by a party. An exception exists if the evidence is offered to show ownership of the property or item that was subsequently repaired.

Here, P is not offering the statement that D asked W to caulk the tank for leaks to show ownership but rather to show that the D knew the leak caused the failure in the tank and needed to be repaired. On a public policy basis, courts bar evidence of subsequent remedial measure to encourage parties to repair faulty items without having the fear of that evidence bringing liability on them. As such, the court improperly admitted this statement.

1ci. Whether the court properly admitted G's statement that the wall is old?

Logical Relevance

See Rule Above

Here, the fact that the wall is at least 30 years old does not mact a fact of consequence more or less likely as age has nothing to do with a wall's structural composition Wall's can be several hundred years old and still be structurely sound. As the age of the wall would not make the fact that the wall was not structurally sound more or less probable, the evidence was not logically relevant.

As such, the court should not have admitted this statement.

1Cii. Whether the court properly admitted G's statement that the wall had structural cracks that could cause it to fail and that it would cost \$100,000 to replace?

Legal Relevance

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See Rule Above

Here this fact would show that the wall was not structurally sound which would make a defense to damages on D's part more or less likely, and as such the statement is logically relevant.

Legal Relevance

See Rule Above

Here, the probative value of the wall's structural fault's is very high and does not tend to have any undue burden on P. Even though it's admission in general would be detrimental, this does not qualify for undue burden. As such, the evidence is legally relevant.

Hearsay

See Rule Above

Here G made this statement out of court, at the location of the wall, and it is being offered for the truth of the matter asserted- that the wall had structural cracks and would cost \$100,000 to fix. As such, the statement is hearsay.

Party Admission

As G is not a party to this case, nor an agent of P, so her statement would not qualify as a party admission or any other non-hearsay statement, or hearsay exceptions or exemptions.

As such the court should not have admitted the statement as it is hearsay.

2. Did the Court Properly deny Dave's motion to dismiss based on lack of Subject Matter Jurisdiction?

A defendant may assert lack of Subject Matter jurisdiction on appeal. A federal court has jurisdiction over matters that 1) involve a federal question or 2) the parties are diverse and the amount in controversy is over \$75,000. Where the jurisdiction is based on diversity, the parties must be completely diverse in citizenship, the amount in controversy must be \$75,000 or more and be plead in good faith. Diversity of citizenship is based on which state a party is domiciled. A domicile is the place where a party intends to establish permanent residence.

Jurisdiction

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Here, there was no federal claim asserted so for jurisdiction to exist, it must be based on diversity jurisdiction.

Diversity

Here, As D is domiciled in Ca and P is domiciled in Nevada. As both are domiciled in different states, they are completely diverse from each other.

Amount in Controversy pled in good faith

A diversity action requires that the amount in controversy be \$75,000 and pled in good faith. P had sued D for \$100,000 and the jury returned a verdict for \$20,000. To be pled in good faith, the requirement is that damages or the cost of enforcement must amount to \$75,000. It is not required that the verdict meet that requirement. Here, P asserts that the damage to the wall was \$100,000 which exceeds the \$75,000 requirement and there is not a showing that P plead as such in bad faith. It would not matter that the jury did not award damages equal to or more than \$75,000, for diversity jurisdiction it is the amount that is pled in good faith that matters. As such, the court properly denied D's motion.

Question #4 Final Word Count = 1083

**END OF EXAM**