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In California, Prop 8 allows all relevant evidence to come in during a criminal trial.

1. Assume all proper objections have been made. Should the following items be admitted into evidence:

1.a. Ben's testimony

Logical

Evidence that is logical is evidence that has tendency to make a material fact more or less probable than it would be without it.

Here, Ben's testimony about what Victor told them would help prove that Dan did in fact kill Victor.

Thus, the testimony is logically relevant.

Legal

Legally relevant evidence is evidence in which its probative value is not outweighed by undue prejudice, will not confuse the issues or the jury.

Here, Ben's testimony's probative value is not outweighed by prejudicial effect because this goes right to the matter at hand and while prejudicial in the sense that it will make the jury find him guilty, if not admitted, then no other evidence would be admissible.

Thus, the testimony is legally relevant.

Personal Knowledge

A person testifying must have personal knowledge as to the matters they are testifying about.

Here, Ben has personal knowledge because Dan told Ben directly the statement.

Thus, Ben has personal knowledge.

Hearsay

Hearsay is an out of court statement that is offered for the truth of the matter asserted, is inadmissible unless an exception applies or offered for a non-hearsay purpose.

Here, Ben's testimony is about a statement that was made out of court and it is being offered for the truth that Dan in fact killed Victor.

Thus, this is hearsay and inadmissible unless an exception applies.

Non-Hearsay Purpose - State of Mind

A statement to about the person's then state of mind can be introduced as non-hearsay.

Here, the statement that Dan made to Ben could arguably be admissible to present what his state of mind was at the time. On the other hand, its arguably no state of mind if he was just speaking of what he did.

Thus, this would not be admissible under state of mind.

Hearsay - Party Opponent Statement

A statement that is made by a party opponent is admissible because they are able to take the witness stand and defend against the statement.

Here, Ben's testimony is being offered by the prosecution against Dan, and because it is a statement Dan made and he is a party to the case and able to take the witness stand and defend against Ben's statement, it would be admissible.

Thus, this Ben's testimony would be admissible under party opponent statement.

1.b. Anita's testimony regarding Dan's statement that he was with Frank the night of the murder

Logical, please see rule above.

Here, Anita's testimony is legally relevant to prove that Dan may have attempted to lie about his whereabouts on the night of Victor's murder.

Thus, testimony is legally relevant.

Legal, please see rule above.

Here, Anita's testimony is not unduly prejudicial to Dan because this goes to the heart of the matter and if not admissible, no evidence could be introduced to prove Dan is guilty.

Thus, testimony is legally relevant.

Personal Knowledge, please see rule above.

Here, Anita is testifying from personal knowledge because Dan is the one that told her this information.

Thus, Anita can testify about this.

Hearsay, please see rule above.

Here, the statement that Dan made was an out of court statement being offered to prove the truth of the matter that he was not his father Frank.

Thus, this is hearsay and inadmissible unless an exception applies.

Attorney-Client Privilege

The attorney-client privilege is an evidentiary privilege that the client is a holder of and the attorney cannot divulge any information that was communicated to him/her in the course of representation. This privilege survives death under FRE. In California this privilege ends when the client's estate is distributed.

Here, at the time that Dan made this statement he was Anita's client and it was made in the course of representation.

Thus, Anita is not able to testify about this conversation and Dan is able to assert this privilege.

This testimony is not admissible

1.c. Anita's testimony that she had received the bloody pants from Ben and turned them over to the prosecutor

Logical please see rule above.

Anita's testimony that she received the bloody pants from Ben is logically relevant to prove that Dan in fact committed the murder if he had bloody pants that he was trying to hide.

Thus, testimony is legally relevant.

Legal please see rule above.

Anita's testimony that she received the bloody pants from Ben is not prejudicial to Dan because the probative value in the bloody pants outweighs that risk of prejudice.

Thus, testimony that she received the bloody pants from Ben is legally relevant.

Authentication

A physical item must be properly authenticated by someone that has personal knowledge that that is the item being introduced.

Here, the pants were authenticated by Ben, thus the pants should have been authenticated by Ben, not Anita. However, here the discussion is about Anita's testimony that she received pants from Ben, not the pants themselves.

Thus, testimony that Anita received bloody pants from Ben that were allegedly Dan's is admissible.

1.d. Anita's testimony that Ben told her that Dan said he had killed Victor

Logical see rule above.

Here, the statement that Ben told Anita is logically relevant to prove that Dan killed Victor.

Thus, testimony is logically relevant.

Legal, see rule above.

Here, the statement is not unduly prejudicial to Dan because he is being tried for Vic's murder, and it goes to the heart of the matter.

Thus, evidence is legally relevant.

Multiple Levels of Hearsay -Dan told Ben - Party Opponent

When there is multiple levels of hearsay each level must be covered by a non-hearsay purpose or exception.

Here, what Dan told Ben at the time was hearsay because it was an out of court statement made to prove the truth of the matter than Dan killed Victor. Dan's statement is covered by the party opponent hearsay exception.

Thus, this level is covered by party opponent exception.

Multiple Levels of Hearsay - Ben told Anita

What Ben told Anita is however, not covered under an hearsay exception.

Thus, Anita's testimony cannot come in.

2. What ethical violations if any did Attorney Anita commit by:

a. turning over the bloody pants to the prosecutor

Turning over evidence

An attorney is able to turn over evidence to the prosecutor.

Here, Anita turning over the bloody pants to the prosecutor was not in violation of any of her attorney duties.

Thus, no violation for turning over the bloody pants.

b. turning over the email exchange regarding Dan's alibi to the prosecutor

Attorney Client Privilege

The attorney-client privilege is an evidentiary privilege that the client is a holder of and the attorney cannot divulge any information that was communicated to him/her in the course of representation. This privilege survives death under FRE. In California this privilege ends when the client's estate is distributed

Here, the communications between Dan and Anita are privileged and should not have been given to the prosecutor unless Dan consented.

Thus, Anita violated her attorney-client privilege.

Duty of Confidentiality

Under the MR, an attorney must maintain all client's confidences and even though under California there is no per se duty of confidentiality rule, the State Bar Act and the attorney oath require that attorneys maintain inviolate client confidences, unless there is a risk of serious bodily injury, consent or financial harm (MR) or serious bodily injury (CA).

Here, Anita violated her duty to Dan when she turned over the email exchange because it was in the scope of representation and Dan did not consent. Further, there was no risk of serious bodily injury or financial harm.

Thus, Anita violated her duty of confidentiality under MR and California rules.

c. withdrawing from representing Dan?

Withdrawal

Under the MR, an attorney must withdraw from representation if his services were being used in furtherance of a crime and may withdraw if the client is repugnant. Under California rules, the

attorney must withdraw if his client is filing a frivolous claims and may withdraw if the client is difficult or not paying for his services. In California, the fact that the withdrawal will not cause material harm is not sufficient reason for withdrawal.

Here, Dan had already committed the crime, however, the fact that he was lying to Anita and arguably using her services in furtherance of covering up that crime by not being honest with her, allowed Anita to withdraw from representation. Further, Anita followed proper procedure before withdrawing by petitioning with the court to withdraw and the court granted permission to withdraw.

Thus, Anita did not violate her duty by withdrawing from representation.

Question #1 Final Word Count = 1457

END OF EXAM