

Question MEE 5 – February 2025 – Selected Answer 1

_Question 5

Question 1-Video Recording

The bank's original video will be admissible for its relevance so long as it's authenticated by the bank's investigator.

Relevance allows evidence to be admissible if it makes a fact of consequence more or less probable. Authentication is the process of admitting evidence to its true contents. Videos and pictures may be authenticated by claiming its truth as the video accurately depicts the place in which it was recording.

Here, the video evidence is admissible for relevance because it shows how the defendant in question on the day of the fraud. Bank's investigator has been employed with the bank for 10 years and works in the office next to the bank's lobby. Bank Investigator could accurately and confirm the contents of the video of being the lobby because he has walked in the same lobby for 10 years and can attest to a court that the lobby in the video is the same lobby the defendant was in on the day of the fraud.

Therefore, the bank's original video recording will be admissible because of the bank investigator's authentication.

Question 2-Investigator's Testimony

The investigator's testimony as to the customer's oral complaint will

Relevance allows evidence to be admissible if it makes a fact of consequence more or less probable.

Here, the testimony is relevant because it describes the customer's reactions to the events of the fraud and would help prove the fraud. However, the evidence would need to run through hearsay.

Hearsay is an out of court statement meant to prove the truth of the matter asserted. Generally, hearsay is inadmissible. However, depending on the availability of the declarant, the statement may come in under exceptions. A present sense impression would be admissible regardless of the status of the declarant if the statement was made mere moments after the event occurred. An excited utterance is admissible when the declarant made a statement under the stress and excitement of the happening of an event.

Here, the statement is hearsay because the statement to the investigator was made outside the court. Additionally, the statement proves that the defendant did the crime which is what the plaintiff is trying to prove. Therefore it's generally inadmissible.

After applying the present sense impression exception, it could be admissible because it was moments after the fraud alert occurred and was made still under the stress of the transferring of the money. Although the customer is unavailable, the investigator would be able to testify as to this exception. Additionally, it could come in under an excited utterance because the statement was made as the wiring of the \$1,000 check was occurring, the declarant made the statement. The customer immediately and promptly called the bank and was transferred to the investigator when she made the statements. This is still under the same event because although time is progressing, it still alerts the customer of the missing \$1,000.

Therefore, the investigator may testify to the oral complaint because through the present sense impression exception or the excited utterance exception.

Question 3-Investigator's Written Report

The written report will be admissible to the extent of what the investigator is unable to recall under the present sense impression exception.

Hearsay is an out of court statement meant to prove the truth of the matter asserted. Generally, hearsay is inadmissible. However, depending on the availability of the declarant, the statement may come in under exceptions. Under the present sense impression allows for the admissibility of a statement when the witness on the stand is unable to recall the contents of a previous written testimony or investigation.

Here, if the investigator is unable to recall the contents of his writing and investigation, he would be allowed to reference them to himself and after sufficiently refreshing his memory, would be allowed to testify to what he remembers. The party's may not read from what the investigator referenced as it was merely to refresh his previous statements.

However, if the investigator is not adequately refreshed, the party's may read the statements of the written report and investigation into the record through the hearsay exception of prior recollection recorded. Through this exception, the party's may read the parts of a written statement into the record for the jury to have and opposing counsel may review the contents of the statement before being read into the record. Here, if the investigator fails to be refreshed the first time he is testifying, the party may read from the statement.

Therefore, the statements may be referenced and said after refreshing under the present sense impression or the parties may read the statements into the record through the prior recollection recorded exception.

Question MEE 5 – February 2025 – Selected Answer 2

I. ORIGINAL VIDEO OF THE RECORDING

The issue is whether the video recording of the bank lobby on April 18th is admissible at David's trial.

a. Relevance

Evidence is relevant if it has a tendency of making a fact in consequence more or less probable. Even if evidence is relevant, it may be barred because its probative value is substantially outweighed by a threat of unfair prejudice, undue delay, needlessly presenting cumulative evidence, wasting time, confusing the issues, or misleading the jury.

Here, the video which shows David stopping at the bank lobby and interacting with the teller on April 18th may certainly make a fact in consequence more or less probable. David argues that he was not present at the bank on that day. The video will directly dispute David's claim that he was not at the bank.

The video's probative value is not substantially outweighed by any threat of unfair prejudice, undue delay, needlessly presenting cumulative evidence, wasting time, confusing the issues, or misleading the jury.

Therefore, the evidence is relevant and may be admitted.

b. Authentication

Video and photographic evidence is admissible in court if the evidence has been properly authenticated. Evidence may be authenticated by a witness with personal knowledge of the content being depicted by the video or photograph.

Here, the video shows a recording of the lobby, counters, and tellers. It also shows David stopping at the counter in the lobby and interacting with the teller. The teller, who was present that day, is unable to testify. Instead, the investigator will be testifying. The investigator is a 10-year employee of the Bank and works in an office next to the Bank's lobby. There are no facts that would support a conclusion that the investigator has enough personal knowledge of the events of the bank on that day to authenticate that what the video is purporting is true.

However, where evidence of a recording comes from a security camera, the recording may be authenticated by proof that the camera was active and working on the day and time of the incident. Here, by having original video evidence from the security camera on April 18th, the recording may be authenticated.

Therefore, the original video recording of the bank lobby on April 18th is admissible.

II. CUSTOMER'S ORAL COMPLAINT

The issue is whether the customer's complaint is admissible in court although the statement was made out of court.

a. Relevance

Evidence is relevant if it has a tendency of making a fact in consequence more or less probable. Even if evidence is relevant, it may be barred because its probative value is substantially outweighed by a threat of unfair prejudice, undue delay, needlessly presenting cumulative evidence, wasting time, confusing the issues, or misleading the jury.

Here, the customer's statement that they did not write the check that was charged goes directly towards showing that the check was obtained by false or fraudulent representations. The probative value of this evidence is not substantially outweighed by any threat of unfair prejudice, undue delay, needlessly presenting cumulative evidence, wasting time, confusing the issues, or misleading the jury.

Therefore, the statement is relevant and may be admitted in court.

b. Hearsay

A statement made out of court that is offered for the truth of the matter asserted is inadmissible hearsay unless it qualifies as an exception to hearsay. A hearsay statement may be admitted over objection if the statement is an excited utterance. An excited utterance is a statement made concerning a specific event while the declarant is under the stress of the event being described. A hearsay statement may also be admitted over objection if it is a present sense impression. A statement is a present sense impression when it is made at or near the time of the incident.

i. Excited Utterance

Here, the customer called the bank to complain about the transfer of money from her account. The facts say that the customer was noticeably frustrated and angry when speaking with the bank. The customer was under the stress of the unauthorized

transfer of funds from her account when she called the bank to make a statement concerning the unauthorized transfer of funds from her account.

Therefore, the customer's statement qualifies as an excited utterance and may be admitted over a hearsay objection.

ii. Present Sense Impression

The customer received the notification of the transfer on her banking app and the facts say that the customer promptly called the bank to make a complaint. The customer's prompt call to the bank indicates that the customer's statement was made at or near the time of the unauthorized transfer. Since the customer's statement was made within a short time of the unauthorized transfer, their statement qualifies as a present sense impression.

Thus, the customer's statement may also be admitted as a present sense impression over a hearsay objection.

III. INVESTIGATOR'S WRITTEN REPORT IF HE HAS TROUBLE REMEMBERING

The issue is whether the investigator's report may be entered into evidence if he has trouble remembering the contents of the report at trial.

Where a witness has difficulty remembering the contents of a document reviewed prior to trial, the witness may review the document on the stand, but the contents may not be read into evidence. If after reviewing the document on the stand the witness still has trouble remembering, the document may be read into evidence as a past recollection recorded. In order for this to apply the contents of the document must have been prepared by the testifying witness.

Here, the investigator's report contained all the details of the investigation that he completed it as he completed the investigation. The attorney must first give the witness the opportunity to refresh his memory before reading the contents of the document into evidence. If after refreshing, the investigator still does not remember the contents of his investigation, the contents of the document may be read into evidence.

Therefore, if the investigator has trouble remembering, the contents of the report may be read into evidence if after having his memory refreshed on the stand the investigator still has trouble remembering.