

Under the rule allowing exclusion of relevant evidence because its probative value is substantially outweighed by other considerations, which of the following is NOT to be considered?

- A. The evidence is likely to arouse unfair prejudice on the part of the jury.
- B. The jury may be confused about the appropriate application of the evidence to the issues of the case.
- C. The opponent is surprised by the evidence and not fairly prepared to meet it.
- D. The trial will be extended and made cumbersome by hearing evidence of relatively trivial consequence.

Explanation:

Under Federal Rule of Evidence (FRE) 403, a court may **exclude relevant evidence** if its **probative value** is **substantially outweighed** by a **danger** of one or more of the following:

unfair prejudice – evidence tends to encourage the jury to decide the case on improper grounds **(Choice A)**

confusing the issues – evidence leads the jury to focus on a nonmaterial matter **(Choice B)**

misleading the jury – evidence creates misconceptions in the jurors' minds

undue delay or wasting time – presenting the evidence will cause unnecessary delay or waste time **(Choice D)**

needless cumulation – similar evidence on the same issue has already been admitted

Therefore, in applying FRE 403, the court cannot consider whether a party is surprised by the evidence and not fairly prepared to meet it.

Educational objective:

A court may exclude relevant evidence when its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needless cumulation of evidence.

References

Fed. R. Evid. 403 (exclusion of relevant evidence).

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**Excluding relevant evidence
(FRE 403)**

