

Question MEE 6 – February 2023 – Selected Answer 1

The rules of evidence establish that only relevant evidence is admissible and defines relevance as evidence that has any tendency to prove or disprove a fact of consequence. Thus, any relevant evidence is admissible unless another rule of evidence excludes it.

1. How should the court rule on the motion to exclude the admissions of the Defendant made in connection with the guilty plea he later withdrew?

This evidence is relevant because it shows that the Defendant is willing to commit voyeurism. However, as a matter of public policy, the rules of evidence do not allow admission of evidence that is part of plea agreements in order to promote participation in plea negotiations. Anything discussed within plea negotiations is not admissible in any other related or unrelated claims, with a narrow exception not relevant here. A guilty plea would have allowed the admission of evidence, but a withdrawn guilty plea falls under the negotiations exception and is thus not admissible.

Thus, the court should grant the motion to exclude the admissions of the Defendant made in connection with the guilty plea he later withdrew based on the public policy rule of plea negotiations.

2. How should the court rule on the motion to exclude the deposition testimony of the man who stated that Defendant watched him under similar circumstances to those alleged by Plaintiff?

The deposition testimony of the man, a former tenant of the same apartment as Plaintiff, that Defendant watched him under similar circumstances to those alleged by Plaintiff is relevant because it would help to prove that Defendant has already done what Plaintiff is currently accusing him of. However, this evidence may be inadmissible as hearsay and as character evidence.

Hearsay is an out of court statement brought for the truth of the matter asserted, that is the intent to prove that what was said where the facts as they happened. Here the state was out of court because it was made at a deposition for a previous trial, thus it was not made at the stand in the current trial. Additionally, it is being brought for the truth of the matter asserted because the Plaintiff wants to prove that what the man testified, that is that Defendant watched him under similar circumstances to those alleged by Plaintiff is what actually happened. Thus, the statement is inadmissible as hearsay.

However, hearsay may be admitted if it falls under certain exceptions, such as prior testimony of an unavailable declarant. If the person who made the statement, that is the declarant, is not available to testify, because of death, illness, unwillingness, a person may use their hearsay statements made while giving testimony under oath. Here, we are told that the man is unavailable because he lives and works in a jurisdiction hundreds of miles away and has refused to attend the trial and testify despite extensive efforts by Plaintiff. We are also told that the evidence is regarding deposition testimony, which is under oath, and that Defendant and his attorney had the opportunity to cross examine the man. Thus, the evidence would fall on the prior testimony exception to hearsay and would be admissible.

But the evidence present here is evidence of Defendant's character, specifically of a prior bad act. The rules of evidence do not allow character to be used to show propensity, that is it may not show that because Defendant acted one way in the past, he acted the same way in this case. Character is shown through opinion, reputation, or specific acts of conduct. Here, the evidence is that Defendant watched him under similar circumstances to those alleged by Plaintiff, which would go to show propensity. If the Plaintiff seeks to bring the deposition testimony as propensity evidence, it is inadmissible. However, if the Plaintiff seeks to bring it in for another reason, such as modus operandi (M.O.), or to show that the identity of the eye she saw looking through the small hole was the Defendant's eye, then the evidence may be admitted.

However, even if the evidence is admissible, it may be excluded if the prejudicial effect it would have on the jury substantially outweighs its probative value. Here, the evidence would be highly prejudicial, because the jury would likely believe that if the Defendant has done it before, then it likely did it again. On the other hand, the testimony is very probative to show that the Defendant has an M.O. and that Defendant's eye was the eye that the Plaintiff saw. Because evidence is highly probative and highly prejudicial, the prejudicial effect does not outweigh its probative value and the evidence should admitted to show Defenant's M.O.

Thus, the court should deny the motion to exclude the admissions of the Defendant made in connection with the guilty plea he later withdrew, but **only if**, the Plaintiff seeks to admit the evidence for a non-propensity purpose, such as to show the Defendant's MO or identity as the eye peeking at the Plaintiff.

3. How should the court rule on the motion to exclude evidence that Plaintiff plagiarized her senior thesis in college and lied about it on her graduate school application?

As mentioned above, character evidence is normally inadmissible. However, an exception has been made for the character for truthfulness of witnesses because it is considered highly probative as to the witnesses' credibility.

Plaintiff's having plagiarized her college thesis and lying about the plagiarism are relevant to show that the Plaintiff does not have a good character for truthfulness because it tends to show that the Plaintiff will lie if it is convenient for her. Since the Plaintiff plans to testify, this evidence may be admissible as character for truthfulness of witnesses. However, the Defendant is limited only to questioning the Plaintiff as to these specific acts of conduct, they are not allowed to bring extrinsic evidence to prove she committed these acts.

Thus the court should deny the Plaintiff's motion to exclude evidence that Plaintiff plagiarized her senior thesis in college and lied about it on her graduate school application

Question MEE 6 – February 2023 – Selected Answer 2

1- The issue is whether court should exclude the admission that the Defendant made in connection with the guilty plea he later withdrew. Under the federal rules of evidence, a statement made by an opposing party is usually non-hearsay and hence admissible. The rationale is that the opposing party is in court and usually has an interest in defending its stance should it need to and or cross-examine. Given that the statements were made by the defendant would be admissible as being non-hearsay, the issue here is whether or not the withdrawal of his guilty plea makes them inadmissible. A guilty plea is admissible for the purposes of evidence, however, when a guilty plea is withdrawn, this is not admissible for public policy reasons. Since the charges against the defendant are still pending in relation to the criminal voyeurism, and he has withdrawn his guilty plea, the initial guilty plea or even its withdrawal would be inadmissible. However, the statements that he had made at the trial in relation to the charges, might be able to be used against him for impeachment purposes. Since the case rests on the finding of intent, we cannot use his former guilty plea or the withdrawal of guilty plea as evidence, but the statements that were made could be used as impeachment under prior inconsistent statements. A prior inconsistent statement can be used to impeach the credibility of a witness and extrinsic evidence is also allowed to prove the prior inconsistent statement. In this case, his statements during that trial might be admissible for impeachment, and further since the prior inconsistent statements regarding the fact that he knew about the hole and had repeatedly used it to spy on the Plaintiff while she was dressing, were made under

oath, they would be able to be brought in for their substantive truth as admissible non-hearsay. It could however be found that since the statements were in relation to the guilty plea, they would be inadmissible and thus only be able to be used for impeachment purposes and not for their substantive value since they would establish intent and the current case requires a finding of intent. Hence, the admission in relation to a withdrawn guilty plea can be properly excluded.

2- The issue is whether we can exclude the testimony of the former tenant when the former tenant is currently unavailable. The issue is whether this statement constitutes hearsay and is therefore inadmissible. A hearsay statement is a statement that is made by an out-of-court declarant that is being offered for its truth in the matter asserted. Such statements are not admissible as evidence, unless they fit under one of the hearsay exceptions. In this case, the out of court declarant is the former tenant and the statement being offered is that the defendant had formerly mentioned in a deposition that he confronted the Defendant "about utility closet and his perversion". Since the statement is indeed being offered for the truth of the matter asserted, in that it seeks to prove that the Defendant had the necessary intent as well as knowledge of the hole in the utility room, it is hearsay. However, there is an exception to the hearsay rule under Former Testimony. The former testimony needed to have been under oath, and given that this statement was made in a deposition, which requires taking an oath, this requirement is fulfilled. The former testimony exception to the hearsay rule also requires the declarant to be currently unavailable. Unavailability can be satisfied if the declarant refuses to appear, or is physically unavailable or dead, as well as several other methods. In this case, since the former tenant is refusing to show up to trial, this requirement of the former testimony is also satisfied.

Additionally, in the former testimony exception, since the Defendant was able to cross-examine him it does not violate his Constitutional rights. This is because if the defendant was unable to cross-examine the one that is accusing him, it would not violate the Confrontation Clause that gives a defendant a right to question and challenge his accuser. Hence, this motion to exclude this testimony should be dismissed as the former testimony exception to hearsay rule.

3- At issue here is whether the Plaintiff's plagiarizing on her college school thesis and lying about it on her graduate school application should be excluded as improper impeachment evidence. When a plaintiff chooses to testify at trial, their credibility and truthfulness are automatically in question. A variety of different methods of impeachment can be used to prove that a person testifying is not credible. In this case, the evidence is in relation to a prior bad act that puts into question the honesty of the plaintiff. A prior bad act *can* be used to question a person in court, if it is relevant to

their truthfulness. However, extrinsic evidence is not allowed for prior bad acts, that did not lead to a conviction. In this case, since the evidence being brought is extrinsic, it should be excluded, however, the defendant or his attorney can ask about those instances of prior bad acts in court, for impeachment, but if she denies those statements, they may not bring in extrinsic evidence. Hence, the motion to exclude this evidence should be granted.

Question MEE 6 – February 2023 – Selected Answer 3

1. Exclusion of Admissions of Defendant made in connection with guilty plea he later withdrew.

The Federal Rules of Evidence govern evidentiary decisions of admissibility. The judge here is the trier of law and decides what is admissible and what is not. There are many exclusions to admissible evidence. One of these exclusions is statements made in attempt made to bargain, both civilly and criminally. These rules promote the public policy of not discouraging parties from attempting to settle. Criminally, admissions made in pursuit of a plea agreement, an entry of nolo contendere (or no contest), or admissions made in pursuit of a plea deal that is later revoked are not admissible in a court of law against a defendant.

Here, the statements that the Defendant made in court when pleading guilty to a criminal voyeurism charge would not be admissible even though the charge is based on the same set of facts alleged in the Plaintiff's complaint. The law clearly protects statements made when pleading guilty, pleading no contest, or in pursuit of a guilty plea that is later withdrawn. The defendant made statements when pleading guilty then retracted his guilty plea, thus those statements are inadmissible evidence. There is no exception to this rule so the fact that the civil complaint comes from the same alleged facts from the Defendant's guilty plea has no bearing. **The admissions of the defendant made in connection with a guilty plea should be excluded by the court.**

2. The deposition testimony of the man who stated that Defendant watched him under similar circumstance to those alleged by the Plaintiff.

Under the Federal Rules of Evidence hearsay is an out of court statement offered for its truth. Typically hearsay is not allowed unless it falls into an exclusion or exception. Typically, a declarant, the one who makes the statement, must be in court to testify as to what was said as to satisfy the confrontation clause of the Constitution. However, there are some exception where the declarant not need be available to testify for the

current trial as long as the hearsay statement falls into an exclusion or exception and the declarant was subject to cross examination and perjury by the defendant under a similar set of circumstances with the same motive for cross examining at the present trial. A declarant is unavailable when they cannot testify by lack of capacity, infirmity, they cannot be found, or they simply refuse against court orders, among other reasons for unavailability. Normally, character evidence is not admissible in order to prove that a defendant acted in conformity with their character and committed the conduct which is subject of the trial. However, character evidence can be offered for other purposes which are admissible. These include to show Mistake (or lack thereof), Identity, and Motive.

Here, the deposition testimony of the man will be admissible because it fits into the Former Testimony hearsay exclusion. The man is unavailable to testify by his own refusal which satisfies the first element of the Former testimony exclusion. As long as testimony is given regarding substantially similar circumstances, under subject of perjury and the defendant has opportunity to cross-examine about substantially similar situations, it will be deemed to be not hearsay as it has certain guarantees of authenticity.

Further, the defendant may allege this man's testimony to a specific act is improper character evidence. However, this testimony is not being used to prove conformity with a trait, it is being used to show the intent the defendant had to spy on tenants. Furthermore, even if this testimony was considered to be character evidence, the character evidence would be admissible because the defendant's character is put directly into issue by the invasion of privacy claim which requires a showing of intent. This all considered, the man's deposition testimony should not be excluded by the court.

3. Evidence that Plaintiff plagiarized her senior thesis in college and lied about it on her graduate school application.

Whenever a witness is called to the stand their truthfulness can be brought into question. A witnesses truthfulness can be impeached by either party. However, extrinsic evidence of untruthfulness can not typically be used to impeach as it creates a new set of circumstances for the jury to decide besides the trial at hand. Evidence of untruthfulness can be used to attack a witness's credibility, but typically cannot be used as substantive evidence and extrinsic evidence (i.e. another witness's testimony) cannot be used to prove the witness is lying once the witness has been cross-examined about the untruthful act. Specific acts of untruthfulness are admissible on cross-examination but on direct testimony only reputation and opinion evidence is allowed.

Here, plaintiff plans to testify and thus will be called as a witness. Because plaintiff is being called as a witness her truthfulness and credibility can be called into question. The defendant has every right to question plaintiff about her plagiarizing her senior thesis and lying about it on her graduate school application because it tends to make the plaintiff appear less credible. Further, the untruthful action is not so remote as to make it irrelevant. All evidence is subject to relevancy standards, and evidence of untruthfulness is always relevant though it may be unfairly prejudicial. In this case, the use of this evidence is not unfairly prejudicial because it happened recently as the plaintiff is still a graduate student and because it has a tendency to show the plaintiff's propensity for untruthfulness. **While the defendant cannot produce extrinsic evidence of the plaintiff's untruthfulness, the defendant can surely question the plaintiff on cross examination and thus the evidence should be included and motion to exclude denied.**