Question MEE 3 – February 2026 – Selected Answer 1

1. How would the court rule on the objection that the evidence is irrelevant?

The court would overrule the objection that the evidence is irrelevant.

Relevance has two prongs, first is that the proposed evidence makes a fact more or less likely - logical relevance, and second that that fact is of consequence to an essential fact in the litigation - materiality.

The proposed evidence is the Defendant's prior accusation of theft of grapes. While it may be improper to do so under other rules, an accusation of another that the Defendant is a thief makes a few facts more or less likely, even if only by a slight amount - it lowers the defendant's credibility, it increases the liklihood that he may be a thief and has a propensity for theft. Again, the use of logical relevance in this way is impermissible under other rules, but it is strictly logically relevant. These facts are of consequence to an essential fact in the litigation. James's credibility is at issue since he will likely testify, or at least advance the theory through his attorneys, that it was an honest mistake. This goes to the essential fact of - did he do the crime? and did he intend to do it? Further, his propensity for theft is certainly relevant to whether he was a thief on this date. I reiterate, the policy of the rules is to not permit such argument, but strictly speaking, it does create that inference and the fact is of consequence to a essential fact in the trial - did he commit theft? Therefore, strictly speaking, the evidence is relevant and the court would overrule defendant's objection to it on that ground alone.

2. How would the court rule on the objection that the evidence is improper character evidence?

The court would sustain the objection that the evidence is improper character evidence.

Generally, character evidence is impermissible under Rule 404 to show that the person acted in accordance with such character. The policy is that this propensity evidence is impermissible. The courts do not want verdicts decided on the premise of "once a thief, always a thief". The question at issue in the case is whether he was a thief on this occasion, and Rule 404 limits evidence that would come in only to demonstrate character conformity as a way to circumstantially establish whether James was a thief on this occasion.

There are exceptions to the rule that the prosecution may argue, first, the prosecution may offer evidence about a defendant's character once the defendant has put it at issue. This is only permissible after the defendant has put his character at issue. Simply defending the lawsuit is insufficient to establish that. Usually, the defendant would testify about his character or call witnesses to testify as to his reputation or character. After doing so, the prosecution could introduce the contrary character evidence, but this would not occur in its case in chief, so the judge should still sustain the objection.

Further, such evidence may come in if character is directly at issue, but character is not an element to the offense. It is strictly whether the Defendant at that time committed an act with a specific mental state, not whether Defendant had a certain character.

For these reasons, the evidence is strictly improper character evidence being offered to attempt to show propensity and conformity, for that reason, the objection should be sustained.

3. How would the court rule on the objection that the evidence is improper evidence of other acts?

The court has discretion to sustain or overrule the objection that the evidence is improper evidence of other acts.

Prior wrongs, conduct, or bad acts are generally impermissible to show conformity; however under rule 404(b), they can be introduced for limited purposes. One of these purposes is to show lack of accident. James will likely advance the theory that the comic book theft was a simple mistake, an accident by his son. If that was James's theory, which could be established during the opening statement or through impeachment of the state's witnesses, the prosecution could offer the evidence to rebut the charge that it was an accident.

The issue with this reason is that the facts are so attenuated between the two events that the previous incident does nothing to demonstrate a lack of accident. In the instant case, the accident is that his son slipped the comics into his briefcase. The previous instance does nothing to rebut the argument that the accident in the present case was intentional. If for example the previous instance was similar, where his son hid grapes in his suitcase, then sure, there is an argument that it was not an accident. However, the evidence as it is does not do much to rebut the theory that what happened in this case wasn't an accident.

The judge has discretion to decide either way on this issue. I think it is more likely that the objection will be sustained, since the previous incident occurred before his son was even born, and the primary argument that it "rebuts the accident" is really just that James is a thief as a character trait.

Finally, the defense attorney should have objected on 403 grounds as well, and the evidence does not come in as a prior crime because, among other things, there was no conviction or sentence.

Question MEE 3 – February 2026 – Selected Answer 2

1. Whether the court will sustain defense counsel's relevance objection.
Relevant evidence is admissible unless the rules of evidence of some other statute dictate otherwise. Evidence is relevant if it has any tendency to make any fact in consequence more or less likely to be true than without the evidence. A fact is a fact in consequence if it "moves the needle," or goes to proving or disproving any element of the charge or defense.

Here, the prosecution must prove the following elements:
(1) James,
(2) unlawfully took and carried away or appropriated comic books
(3) from the comic book store, who owned the comic books,
(4) with the intent to permanently deprive the comic book store of the comic books.
James has not raised any affirmative defenses. Accordingly, any fact that goes towards proving or disproving any one of those four elements is relevant and should not be excluded on relevance grounds.

The evidence the state seeks to admit is evidence that, 15 years ago, James was arrested for eating a handful of grapes at the store without purchasing the grapes. The fact in consequence this evidence would go to show is that James is capable of taking things from a store without paying for them, even if he was not ultimately charged with a crime. That could go to proving the intent element, that because he is capable of doing so, he could have had that intent on the day of the alleged theft. Indeed, even though propensity evidence is inadmissible under other rules, the fact that James has been accused of theft before does tend to make the fact that he committed theft here more likely true than not true, even if only slightly. The fact that it has a slight, arguably negligible tendency to make that fact more true than not true does not make this evidence irrelevant because the standard under Rule 401 is *any* tendency, regardless of how slight.

The defense could argue here that because the person who put the comic books in James's briefcase was James's son, without James's knowledge, the fact that JAMES has been previous accused of theft does not have any tendency to make any fact in consequence more or less likely because the fight is ultimately about whether James knew his son had put the books in his briefcase, and whether James has been accused before does not move the needle on that issue. However, the relevance standard is geared towards admissibility rather than exclusion, and the argument that James's prior accusation doesn't move the needle likely goes more towards weight, not admissibility, in a relevance context.

Accordingly, the court will likely find that this evidence is relevant and will overrule defense counsel's 401 objection.

2. Whether the court will sustain defense counsel's character evidence objection.

In a criminal case, evidence of a defendant's pertinent character trait is inadmissible to prove propensity--that because the defendant acted one way in the past, he acted that way at the time of the crime. However, the state may introduce character evidence if the defendant's character is an essential element of the charge or defense, or, if the defendant places his character at issue by offering reputation or opinion testimony on a pertinent character trait, the state may offer evidence to rebut it through reputation or opinion testimony.

Here, the evidence the state seeks to introduce is that James was once accused of theft of grapes. James has not raised any defenses, and based on the State A statute under which the state is prosecuting him, James's character is not an essential element of the charge or defense. Additionally, the state is attempt in to admit this evidence during its own case-in-chief, which indicates that James has not testified, nor put on any evidence that would place his character at issue, so there is nothing for the state to rebut with this evidence. The only reason the state could reasonably want to use this evidence, therefore, is to show that because he had been accused of theft in the past, James has a propensity for theft and must have committed the theft at issue. That is exactly the kind of purpose that Rule 404 stands to prohibit.

Additionally, while Rule 609 does permit the state to offer evidence of a prior conviction for the purpose of impeaching a witness's character for truthfulness, that rule requires (1) a witness to impeach, and (2) a conviction. Here, James was arrested, but never charged with a crime regarding the grapes, much less convicted, and it happened so long ago that any slight probative value of introducing such evidence against a criminal defendant would have does not outweigh the prejudice the evidence would cause him by opening the door for a jury to consider it as propensity evidence and thus not decide the case on the facts at hand.

The court therefore will likely rule that this evidence is inadmissible character evidence and sustain defense counsel's 404 objection.

3. Whether the court will sustain defense counsel's objection that the evidence is improper evidence of bad acts.

Generally, a defendant's character cannot be proved by specific instances of conduct, such as an alleged grape theft form 15 years ago, even if the state is permitted to introduce character evidence to prove an element of the charge or rebut the defendant's reputation or opinion testimony. Because the state here cannot introduce the evidence at all for character evidence purposes (see above), this evidence is certainly inadmissible as a specific instance of conduct.

While not admissible to prove propensity, the state may introduce specific instances of conduct in a criminal trial to prove something other than propensity under Rule 404(b), such as motive, intent, mistake or accident (or lack thereof), identity, that the current crime happened as part of a common scheme or plan, or any other non-propensity purpose, like notice. The other acts need not be convictions to be admissible under 404(b).

In this case, James's son placed five comic books into James's briefcase while James and his sons browsed the comic book store, and while James paid for the three comic books in his hand before they left, he did not pay for the five in the briefcase. 15 years ago, James was browsing the grocery store when he took a handful of grapes and ate them in the store without paying for them. There, he claimed he was merely tasting the grapes, which ultimately informed his decision not to buy them.

There is no likely 404(b) purpose the state could argue to get the grape evidence in. Because it happened so long ago, and the circumstances were so different (namely, no children at the grocery store), the grape evidence does not go to show James's potential motive in allegedly taking the extra comic books, it cannot go to prove James's identity because his identity is not at issue--he is clearly on the security cameras, it cannot disprove any argument James might make about mistake or accident with the comic books because nothing about the grape evidence shows that he had been mistaken or accidental about that or the comic book charge, it cannot put him on notice of what his son may or may not do in a circumstance like this because his son was not with him when he ate the grapes, and to be counted as a common scheme or plan, the grape evidence had to have been distinct and clearly connected to the comic book incident, in the same way that a serial killer on trial may leave a specific "calling card" at a crime scene--that kind of evidence simply is not present here, and nothing about the grape evidence goes to prove anything the state needs to prove in this case other than impressing upon the jury that because James has been accused of stealing before, he had to have done it this time too.

Accordingly, the court will likely find that this evidence is inadmissible evidence of other bad acts and sustain defense counsel's 404(b) objection.

Question MEE 3 – February 2026 – Selected Answer 3

1. The court should not grant Defense's motion based on relevance.
The issue will be whether the evidence makes some fact in the case more probable.

Relevance is a base standard for a piece of evidence coming into a trial. The standard of relevance is whether the piece of evidence makes any fact at issue in the case more or less probable. If it does, then the evidence is relevant. If it does not, it is not relevant and is inadmissible. This is an extremely low bar, as even if it makes a fact at issue only a little more probable, it will be deemed relevant.

Here, the evidence of the prior accusation is relevant because it does make it more probable that he committed the current theft, even if by a very small percentage. while the previous incident was 15 years ago and is regarding a very minute crime, it still makes it more probable that he committed a theft in the instant case, as it might show a criminal disposition. Thus, defense counsel's objection on this basis should be overruled.

2. The court should grant defense counsel's objection on the basis the it is improper character evidence.
The issue will be what the evidence tends to prove and whether it may properly be used for that purpose.

In criminal cases, the prosecutors, absent defendant opening the door to the same line of testimony, may not prove a character trait about the defendant in order to prove conformity therewith. They may not also prove prior bad acts in order to prove conformity with those bad acts. Evidence of prior acts may be used, however to prove some other fact relevant to the case, such as opportunity, motive, intent, etc (facts which do not aim to prove conformity with a certain character disposition.)

Here, the evidence of the past accusal may only relevantly be used as character evidence, being used to prove conformity and as such it cannot properly be used for this purpose. The introduction of such evidence would plainly aim to show the jury or judge that the defendant had a criminal disposition to steal and as such he was more likely to steal in accordance with that trait. This is precisely the purpose of character evidence which is barred by character evidence rules and as such it should not be admitted for this purpose.

3. the court should also grant the defense counsel's objection on the basis that it is improper evidence of other acts.

the issue will be whether this piece of evidence can properly prove any other proper in the case.

Evidence of prior acts by the defendant in a criminal case may be used to prove some other fact relevant to the case, such as opportunity, motive, intent, etc (facts which do not aim to prove conformity with a certain character disposition.) rather than conformity with a general character trait.

Here, this piece of evidence has no relevant purpose by which it may prove some properly provable fact in the case. The evidence of the past accusation does not tend to make it more likely that the defendant had motive, intent, opportunity, a unique mode of conduct, etc to conduct the charged crime here. At best, the prosecutor could argue a past accusation regarding theft of grapes indicates the defendant is in a low socioeconomic status and thus had more motive to steal in the future. This line of logic would be a far stretch and thus the judge would likely and should likely not buy it. As such, this piece of evidence should not be admitted as evidence of other acts.