

**QUESTION 6 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II
OR IN SOFTEST ANSWER SCREEN 6**

Carl is scheduled for trial in a Michigan court for burglary. He is accused of entering the home of his former fiancée, Francine, on a Monday afternoon while Francine was at work. Francine, upon returning home, found \$20,000 missing from her bedroom safe along with the \$15,000 engagement ring Carl had given her prior to their recent break-up. She also found a pink Gerber daisy, which immediately led her to suspect Carl, who had delivered to her a pink Gerber daisy every Monday afternoon.

The prosecutor, in a pre-trial motion, seeks to introduce the following evidence:

(1) Carl's previous fiancée, Evelyn, plans to testify to her break-up with Carl a year prior to Francine's, and how Carl had confessed to Evelyn that he burglarized her home on a Monday while she was at work, stole money from her safe, stole her \$15,000 engagement ring, and left behind his weekly gift to her - a pink Gerber daisy - so she would know he had been there. Evelyn did not press charges because Carl confessed and returned the cash, but not the ring, which he had already fenced.

(2) The flower vendor from whom Carl regularly purchased the pink Gerber daisies plans to testify that Carl had purchased a single pink Gerber daisy from him every Monday for the past three years; although the vendor had been ill on the Monday of Francine's burglary and someone else had filled in for him.

Carl denied buying a Gerber daisy that Monday, denies he knew of or confessed to Evelyn's burglary, and claims to have an alibi for the time of Francine's burglary. The prosecutor argues that Evelyn's testimony is admissible to prove Carl's identity through Carl's scheme, plan or system in doing bad acts.

Carl's attorney raises the following objections: (1) Evelyn's testimony is inadmissible character evidence under MRE 404(b)(1) and is prejudicial; (2) the flower vendor was not at work on the day in question.

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1. What is the step-by-step analysis the trial court should apply in ruling on the admissibility of Evelyn's testimony? Address the reasons favoring and against the admission of the evidence and how the court should rule.

2. How should the prosecutor respond to the objection to the flower vendor's testimony? Will it be admitted?

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