

EXAMINERS' ANALYSIS OF QUESTION NO. 2

The court should sustain defense counsel's objection. While character evidence to prove action in conformity with good or bad character is not always inadmissible, the circumstances for admission are limited. Under MRE 404(a)(1), the character of the accused may be admitted. However, the rule demands that the prosecution limit its use of character evidence "to rebut" the defense's usage of character evidence.

The facts at hand reveal that Defendant had not yet broached the subject of his character at the point in the trial when the prosecutor sought to elicit opinion testimony as to Defendant's character. Defendant's counsel had made no opening statement but reserved making that opening statement until later. Moreover, the "character" witness was the People's first witness and proceedings were still on direct examination. As cross examination had not yet commenced, defense counsel could not yet have broached the topic of Defendant's "good character." Therefore, because the rule casts the prosecution in a rebuttive position, and because the facts indicate there was nothing yet to rebut, Defendant's objection should be sustained.

Determining the admissibility of Defendant's prior convictions is governed by MRE 609. This rule allows the use of certain prior convictions, but not all prior convictions. Under MRE 609(a)(1), a prior conviction containing an element of dishonesty or false statement is admissible without regard to the length of punishment. Under MRE 609(a)(2)(A), a prior conviction containing an element of theft is admissible, if the conviction crime was punishable by more than one year's imprisonment. Under MRE 609(c), evidence of a prior conviction is not admissible "if a period of more than ten years has elapsed" since the conviction date or release from confinement, whatever is later.

Applying MRE 609 to the facts at hand yields the conclusion that the conviction for Defendant's false statement to the police involves an element of false statement and is not time-barred by MRE 609(c) because Defendant completed his jail sentence in 2007. Defendant's sexual misconduct conviction, while within the ten-year limit, involves neither an element of false statement nor dishonesty, nor a theft element. Therefore it is not a conviction for usage under 609(a)(1) or (2).

Finally, Defendant's felony larceny conviction, while otherwise qualifying for use under 609(a)(2)(A), is nevertheless condemned to inadmissibility because of its 2000 conviction date; it is simply too old.

Therefore, only one of Defendant's prior convictions is usable under MRE 609 for impeachment purposes.