

A defendant who is an accountant has been charged with fraud for allegedly helping a client file false income tax returns by shifting substantial medical expenses from one year to another. The defendant has pleaded not guilty, claiming that he made an honest mistake as to the date the expenses were paid. At trial, the prosecutor offers evidence of the defendant's involvement in an earlier scheme to help a different client falsify tax returns in the same way.

Is the evidence of the defendant's involvement in the earlier scheme admissible?

- A. No, because it is impermissible character evidence.
- B. No, because it is not relevant to the issues in this case.
- C. Yes, to show absence of mistake.
- D. Yes, to show the defendant's propensity to commit the crime.

Explanation:

Evidence that a criminal defendant previously committed a **similar crime or bad act** is **inadmissible** if it is being offered to show the **defendant's propensity** (ie, inclination) to commit the charged crime **(Choice D)**. But that evidence may be **admissible** for **relevant, noncharacter purposes** (ie, **MIMIC**). This includes proving the defendant's **absence of mistake**. Therefore, evidence that the defendant falsified tax returns in the past is admissible to show that he did not make a mistake in the present case.

(Choice A) Evidence of previous crimes or bad acts is *not* character evidence—ie, evidence offered to show a person's conformity with his/her personality traits or propensities—when offered to show absence of mistake.

(Choice B) Evidence is relevant if it has a tendency to prove or disprove a material fact (ie, a fact of consequence in the case). Here, the defendant's involvement in the earlier scheme *is* relevant to show that his acts in the present case were not accidental.

Educational objective:

Evidence that a criminal defendant previously committed a similar crime or bad act is inadmissible to show the defendant's propensity to commit the charged crime. But such evidence may be admissible for relevant, noncharacter purposes (ie, MIMIC).

References

Fed. R. Evid. 404 (admissibility of crimes, wrongs, or other acts).

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Criminal defendant's previous crimes or bad acts (MIMIC)

Prosecution seeks to offer evidence
of Δ 's previous crime or bad act?

Yes ↓

Evidence intended to show Δ 's
propensity to commit charged crime?

Yes → **Inadmissible**

No ↓

Evidence relevant for a
noncharacter purpose—eg:

- **M**otive/opportunity
- **I**ntent
- **M**istake/accident (absence of)
- **I**ntity
- **C**ommon scheme/plan

No → **Inadmissible**

Yes ↓

Admissible

Δ = defendant

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