

ESSAY WRITING WORKSHOP – EVIDENCE


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ESSAY WRITING TECHNIQUES

- ▶ Read the interrogatory
- ▶ Think about the necessary elements for the claim(s) addressed in the question so you know what to look for when reading the fact pattern.
 - ▶ For examples, what elements are necessary for a valid search and seizure and the key issues with the guarantees under the Fourth Amendment.
- ▶ Read the fact pattern marking important facts or issues.
- ▶ Briefly outline/map the question.
- ▶ Write the full rule statement, including exceptions.
- ▶ Write an issue/conclusion statement that tells the grader that you know the law and that you came to the right conclusion for the right reasons.
- ▶ Move on and write the analysis - match the facts to the law - use the relevant facts and be specific.
- ▶ Restate the conclusion.

ESSAY WRITING TECHNIQUES, CONT'D

WHAT NOT TO DO

- ▶ If you spot a legal issue that is unrelated to the questions asked, ignore it.
 - ▶ Do not use words and terms you do not understand. Sound like a lawyer by using terminology correctly and otherwise using clear, concise, basic English.
 - ▶ Avoid discussions of policy or your own personal opinions.
 - ▶ AND
 - ▶ Do not waste time discussing what the outcome would be if the facts were different. Discuss the facts as they are given.
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TIMING STRATEGIES FOR MEE ESSAYS

- ▶ 10-12 minutes
 - ▶ Read the interrogatory then read and outline/map the question.
 - ▶ Over the course of the semester, this should become a “tight 10” for reading and outlining reserving the remainder of the 30 minutes to draft.
 - ▶ Rules must be memorized.
 - ▶ The Rules do not change, only the facts change.
 - ▶ The Rule includes any applicable exceptions.

TIMING STRATEGIES FOR MEE ESSAYS, CONT'D

- ▶ 18-20 minutes
 - ▶ Draft and Review
 - ▶ Always leave a minute or two to go back over the answer. Just because you typed it, does not mean it cannot be edited or amended.
 - ▶ If you are running out of time, make sure you write:
 - ▶ The Rule
 - ▶ The Analysis
 - ▶ The Conclusion/Issue
 - ▶ In that order.

NOW YOU DO IT!

- ▶ 10-12 minutes to read starting with the interrogatory and working your way backwards through the facts.
 - ▶ THEN 10 minutes to jot down the Rule(s) [which I gave you], Issue(s), and Conclusion(s).
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WHAT ARE THE QUESTIONS?

- ▶ 1. Should the judge have permitted Prosecutor to question Witness about Witness's written statement and admitted the copy of the statement to impeach Witness's credibility? Explain. 25%
- ▶ 2. Should the judge have admitted Witness's written statement to prove that Defendant was in City Park and attacked Victim? Explain. 45%
- ▶ 3. Should the judge have admitted Buddy's testimony to prove Defendant's character for honesty and gentleness? Explain. 30%

DETERMINE THE RULE - #1

Rule: (a) A witness's credibility may be attacked by any party, including the party calling her. For the purpose of impeaching the credibility of a witness, a party may show that the witness has, on another occasion, made statements that are inconsistent with some material part of her present testimony. Under the Federal Rules, an inconsistent statement may be proved by either examination of the witness or by extrinsic evidence

(b) To prove a prior inconsistent statement by extrinsic evidence, the witness generally must be given an opportunity at some point to explain or deny the allegedly inconsistent statement, and the statement must be relevant to some issue in the case.

APPLY THE FACTS TO THE LAW

Analysis: (a) Here, Prosecutor should have been allowed to question Witness about her written statement. Witness denied on the stand that she saw Defendant rob Victim and testified that she had never seen Defendant in her life. This is certainly inconsistent with her written statement, in which Witness indicated that she saw Defendant attack Victim and run away with Victim's bag, and that she knew Defendant from the neighborhood. Furthermore, these points are material to Witness's testimony because they go to the very heart of whether she witnessed Defendant committing the crime in issue. Thus, Prosecutor should have been allowed to question Witness about her written statement.

(b) Here, Witness presumably was given, or should be given, an opportunity to explain or deny the discrepancy between her trial testimony and the written statement. The opportunity to explain or deny the statement need not come before introduction of the statement under the Federal Rules. Furthermore, Witness's written statement is certainly relevant to whether Defendant committed the crime.


WHAT IS THE ISSUE? 1.

► **Issue:** (a) The issue is whether a witness at trial who denies any knowledge of an incident may be impeached with her prior inconsistent statement.

(b) The second issue is whether extrinsic evidence of the prior inconsistent statement may be admitted.

CONCLUSION

Conclusion: The judge should have permitted Prosecutor to impeach Witness's credibility by (i) questioning Witness about her written statement, and (ii) introducing a copy of the statement.



DETERMINE THE RULE - #2

Rule: Hearsay is an out-of-court statement offered into evidence to prove the truth of the matter asserted. Hearsay is not admissible unless it falls within an exception. However, a declarant's statement identifying a person as someone the declarant perceived earlier is not hearsay if the declarant testifies at trial and is subject to cross-examination about the statement. Photo identifications are within the scope of this rule, and the prior identification need not have been made at a formal proceeding or under oath. However, where a prior inconsistent statement was made under penalty of perjury at a prior trial, hearing, or other proceeding, or in a deposition, it is admissible nonhearsay.

APPLY THE FACTS TO THE LAW

Analysis: Here, Witness's written statement was made out of court and is offered for its truth—that Witness saw Defendant in City Park and that she saw Defendant attacking Victim. The part of the statement that reads, "I was walking in City Park on May 5, at 2 p.m., when I saw Defendant . . . I know Defendant from the neighborhood and recognized Defendant as suspect number 1 on the 12-person photograph display shown to me today by Police Officer," is not hearsay because it is a statement of prior identification. Witness identified Defendant in the statement, is testifying at trial, and is subject to cross-examination regarding the statement.

Therefore, that portion of the statement should have been admitted.

On the other hand, the portion of the statement that reads, "I saw Defendant attack Victim and then run away with Victim's bag" is not a statement of identification. As stated in 1., above, Witness's written statement was a prior inconsistent statement. In most cases, prior inconsistent statements are hearsay, admissible only to impeach the witness. Here, though, the statement was not made under penalty of perjury at a prior trial, hearing, or proceeding.

Therefore, that portion of the statement should not have been admitted to prove the charges against Defendant because it is hearsay and does not fall under any exception.

WHAT IS THE ISSUE? #2

Issue: The issue is whether the statement is barred by the hearsay rule.



CONCLUSION

Conclusion: The judge should have admitted part of Witness's written statement to prove that Defendant was in City Park but should not have admitted the other part of Witness's statement to prove that Defendant attacked Victim.

DETERMINE THE RULE - #3


Rule: Character evidence is generally inadmissible to prove that a person acted in conformity with a particular character trait. However, a criminal defendant may introduce evidence of a relevant character trait to show his innocence. A witness may testify to the defendant's good reputation (or that he has heard nothing bad), or may give his personal opinion concerning that trait of the defendant. However, the witness may not testify to specific acts of conduct of the defendant to prove the trait in issue.

APPLY THE FACTS TO THE LAW

Analysis: Here, Defendant is charged with assault and robbery and wants Buddy to testify as to his friends' opinions of Defendant's character for honesty and gentleness. Although Defendant's character for honesty may not be relevant to the assault charge, it is probably relevant to the robbery charge, because robbery is a form of theft. Furthermore, Defendant's character for gentleness would be relevant to both the assault and robbery charges. However, Buddy's testimony is an impermissible method of proving Defendant's character. Buddy is not testifying as to his own personal opinion; nor is he testifying to Defendant's reputation in the community. Instead, he said that some of his friends, who had only met Defendant a few times, think that Defendant is honest and gentle. Buddy's friends do not represent the community at large.

WHAT IS THE ISSUE? #3

Issue: The issue is whether a witness in a criminal case can testify to his friends' personal opinions regarding the defendant's character in a criminal case.

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CONCLUSION

Conclusion: The judge should not have admitted Buddy's testimony to prove Defendant's character for honesty or gentleness.

BECAUSE IT BEARS REPEATING

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