MPT 1
February 2023

In re Hill **(February 2023, MPT-1)** In this performance test, the client, Jasmine Hill, purchased a motor boat from Reliant Boating, a local boat dealer, with the understanding that although the boat was used, it was in perfect working condition. After purchasing the boat, Hill discovered that the boat's motor had a cracked engine block and needed to be replaced because the damage was not repairable. She has now replaced the motor and would like to know what legal remedies she has against Reliant. The examinee's task is to draft an objective memorandum analyzing and evaluating whether Hill has one or more viable claims under the Franklin Deceptive Trade Practices Act (DTPA) and what specific relief she would be entitled to if she were to succeed in a DTPA action. The File contains the instructional memorandum from the supervising attorney, a client interview transcript, email correspondence between Hill and Reliant's owner, the boat's bill of sale, and a repair invoice. The Library consists of excerpts from the Franklin Business Code and two Franklin appellate cases.

1. One or more claims against Reliant under the Franklin Deceptive Trade Practices Act (DTPA).

The first matter is to determine what, if any, claims Ms. Hill has against Reliant under the DTPA. The DTPA prohibits "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce." FBC §204. To succeed in a claim under the DTPA, a plaintiff must prove four elements. Elements of a DTPA claim are (1) the plaintiff is a consumer; (2) the defendant engaged in one or more of the false, misleading, or deceptive acts enumerated in §204; (3) the act(s) constituted a producing cause of the plaintiff's damage; and (4) the plaintiff relied on the defendant's conduct to his or her detriment. *Diaz v. Ellis*, FBC §205(a). Section 204 contains a list of prohibited acts, including specific acts alleged in Ms. Hill's complaint. (i.e., §§ 204(d) and (g)). A "producing cause" is a substantial factor that brings about the injury, without which the injury would not have occurred. *Gordon v. Valley Auto Repair.* The plaintiff consumer has the burden of proof as to each element. *Id.* If a violation is committed "knowingly," the plaintiff is entitled to three times his or her actual damages, as well as damages for mental anguish. *Gordon v. Valley Auto Repair.* Each of the four elements is analyzed next.

a. Ms. Hill is a consumer.

The first element is to determine whether Ms. Hill is a consumer. This element is satisfied because Ms. Hill is an individual who sought the boat. FBC §203(d).

b. Reliant engaged in one or more of the false, misleading, or deceptive acts enumerated in §204.

The second element requires the plaintiff to prove that the defendant engaged in one or more of the false, misleading, or deceptive acts enumerated in §204. Specifically here, Ms. Hill asserts that Reliant violated two subsections under 204--namely §§ 204(d) and (g).

First, Ms Hill claims that Reliant represented goods that have characteristics that they do not have, and that the goods are of a particular standard for which they are not. § 204(d). In the email exchange between Mr. Stevens and Ms. Hill, Stevens claims that the "Envoy is a real gem" and that it is in "excellent condition and runs just like new." Email. Moreover, the Bill of Sale affirms that the seller has no knowledge of any defects in and to the Boat. Thus, the crux of these elements is to determine whether it is reasonable for Ms. Hill to assert that Reliant knew about the damage to the engine which led to its failure, and whether Reliant's claims are binding.

With respect to whether Reliant knew of the damages to the engine, this is an element left to the trier of fact. Nevertheless, there is reason to believe that Reliant would be found to have knowledge of the crack in the engine block. Ms. Hill paid a mechanic to inspect the failed motor. The mechanic found epoxy fill in the crack, which was covered with fresh paint. And that a short run, like was done by Reliant in the showroom, would

not reveal the damage. With Reliant being a merchant in the sale of boats, it is not unreasonable for a jury to find that Reliant knew of the faulty repair to the boat. And, possibly, that the shoddy repair was specifically and "knowingly" fabricated to last long enough for a sale. This is a question left for the trier of fact.

Next, is the matter of whether the claims by Reliant are binding. Under FBC § 204(g), failing to disclose information concerning goods that was known at the time of the transaction if such failure was intended to induce the consumer to enter into a transaction into which the consumer would not have entered had the information been disclosed. Here, Stevens represented the boat as being a "real gem" and in "excellent condition." The salient question is whether these claims are either binding or "mere puffing." *Gordon*.

Three factors determine whether a representation is "mere puffing." *Id.* (1) The specificity of the alleged misrepresentation; (2) comparative knowledge of the consumer and the seller; and (3) whether the representation relates to a past or current condition as opposed to a future event of condition. *Id.* Here, it may be found that Reliant's statements about the condition of the boat may be too general. For example, in *Salas v Carworld*, a dealership's description of a vehicle as "luxurious" and "rugged" was mere opinion or puffery. These statements are akin to those made here by Stevens claiming the boat to be "a real gem." On the other hand, if it is found that Reliant knew of the faulty repair in the engine and Stevens claimed the boat to be in "excellent condition," this statement would likely be considered a specific description, relating to the current condition of the boat. *See Abrams v CBC* (there was ample evidence to show that the defendant knew of the misrepresentations). Moreover, the comparative knowledge of Reliant compared to Ms. Hill further supports her assertion that Steven's claims are not just puffery--she justifiably relied on them.

c. The act constituted a producing cause of the plaintiff's damage.

The third element requires the plaintiff to prove that Reliant's acts are the "producing cause" of Ms. Hill's damage. Proving this element is a matter of extending the findings in the section above. If the trier of fact determines that Reliant knew of the faulty repair in the motor, and later represented the boat as a "real gem" "in excellent condition," then is reasonable to show that these acts were the producing cause" of Ms. Hill's damage.

d. The plaintiff relied on the defendant's conduct to his or her detriment.

The last element requires Ms. Hill to prove that she relied on Reliant's claims to her detriment. Here, this is a simple matter of Ms. Hill testifying that she, as the consumer, relied on Reliant, the merchant, to accurately describe the condition of the boat. Indeed, Ms. Hill did, and the result was harm caused by having to replace the boat motor. This leads to the next section--damages.

Concluding this section, Ms. Hill has a colorable case to assert that Reliant violated FBC §204. The outstanding question is whether the trier of fact will find that Reliant knew of the faulty motor. And if Reliant "knowingly" misrepresented the condition of the boat.

2. What relief Ms. Hill is entitled to under DTPA.

This final section examines what damages Ms. Hill might be entitled to. As stated above, the award of damages hinges upon a finding that Reliant violated §204.

a. Economic damages

Under FBC §205, a consumer who prevails may obtain (1) the amount of economic damages found by the trier of fact; or (2) if the trier of fact finds that the conduct of the defendant was committed knowingly: (i) exemplary damages of three times the amount of economic damages; and (ii) damages for mental anguish. FBC §205. Further, each consumer who prevails shall be awarded court costs and reasonable and necessary attorney's fees. *Id.*

Here, Ms. Hill paid a mechanic $3,000 to replace the motor. If the court finds that Reliant "knowingly" misrepresented the boat, then she may be entitled to treble damages of $9,000. Further, if Ms. Hill prevails, she will be entitled to attorney's fees. Lastly, is the question of damages for mental anguish. An award of damages for mental anguish "implies a relatively high degree of pain and distress beyond mere worry or anxiety." *Abrams.*

Here, the level of mental anguish suffered by Ms. Hill is a fact-intensive determination based on several factors, many of which are not included in the statements available now. As is known now, the motor failed while out on the water. As indicated in her statements thus far, there does not appear to be any "high degree of pain or distress." Rather, she was "infuriated" and "disappointed." Whether it might later be found, however, that being left driftless on the water with a lame boat had caused her acute "pain or distress," is to be determined with further investigation.

In conclusion, if successful, Ms. Hill would be entitled to either $3,00 or $9,000, attorney's fees, and possibly more if there was sufficient "pain or distress."

MPT 2
February 2023

B&B Inc. v. Happy Frocks Inc. **(February 2023, MPT-2)** The examinee's law firm has represented Happy Frocks Inc., a maker of children's clothing, in a lawsuit brought by B&B Inc. for trademark infringement. At a post-trial hearing, the court orally informed the parties of its conclusion that Happy Frocks was liable for trademark infringement and required the submission of briefs on the remedies plaintiff B&B was seeking. Those remedies include a permanent injunction, actual damages, and that portion of Happy Frocks's profits attributable to the trademark infringement. The examinee is tasked with preparing a persuasive brief arguing that no award of profits is justified in this case. The File contains the instructional memorandum, the firm's guidelines for persuasive briefs, excerpts from the trial transcript, and the transcript of the post-trial hearing in which the court orally announced its conclusion that Happy Frocks was liable for trademark infringement and asked for briefing on B&B's requested remedies. The Library contains excerpts from the United States Supreme Court decision in *Romag Fasteners, Inc. v. Fossil Group, Inc.,* holding that willfulness is not a prerequisite to an award of profits, and a Franklin federal district court decision in *Spindrift Automotive Accessories, Inc. v. Holt Enterprises, Ltd.,* setting forth the factors to be analyzed in determining if an award of profits is justified as a remedy for trademark infringement.

I. Caption

[omitted]

II. Statement of Facts

[omitted]

III. Legal Argument

In cases of trademark infringement, an award of profits is should be made only when such an award would deter a wrongdoer from infringing again, would prevent a defendant's unjust enrichment, or would compensate a trademark owner for harms caused by infringement. *Sprindrift*. Because Happy Frocks (HF) did not directly infringe B&B's trademark, did not benefit from its supplier's infringement, and no award of profits is necessary to compensate B&B, none of these rationales support damages in the form of an award of profits to B&B in this case, and the court should reject B&B's request.

A. Legal Standard

After the Supreme Court's decision in *Romag Fasteners*, a defendant found liable for trademark infringement cannot avoid an award of profits solely because their actions were not willful. In the District of Franklin, courts instead have discretion to assess the relative importance of various factors based on a particular factual situation, and determine whether, on the whole, the equities favor an accounting for profits as a form of damages for trademark infringement. *Spindrift.* Based on the facts of the infringement in this case, the court should find that the balance of the factors is against an award of profits.

1. Because Happy Frocks was at most negligent with respect to Quality Clothes's infringement of B&B's trademark, HF's mental state weighs heavily against an award of profits.

Although a finding of willfulness is no longer a prerequisite for an award of damages, it remains a "highly important consideration." *Romag* (Alito, J., concurring). This court has stated that "particularly culpable" defendants are more likely to be subject to an award of profits. *Spindrift.* Culpability is evidenced by recklessness, callous disregard for trademark rights, willful blindness, or a specific intent to deceive. Negligence or an innocent nature to the infringement shows that infringement was not sufficiently culpable to merit an award of profits.

Key to this case is the fact that HF did not directly infringe B&B's mark. Rather, it was Quality Control (QC), one of HF's suppliers -- who was contractually obligated to use B&B's buttons -- that infringed on the mark. And when HF discovered QC's infringement, it contacted the company, told them to stop infringing immediately, and

terminated their relationship. HF also stopped selling its inventory of clothing manufactured by QC. HF's conduct was not reckless or willfully blind.

At most, HF negligently failed to recognize QC's infringement through HF's quality control process until B&B notified HF of the issue initially. While HF's quality control process needed to be done quickly to meet the demand for QC products, HF does not cut corners in its quality control steps. Its failure to identify the infringement was - simply put - because HF missed it. In this Court, "mere negligence" counsels against an award of profits, and that is all the facts show. Moreover, unlike in *Spindrift*, where the defendant continued to sell infringing products even after being notified by the trademark holder, HF took reasonable steps to halt the infringing conduct at the earliest opportunity.

HF's negligence was an innocent mental state with respect to the infringement, and this factor weighs against an award of profits.

2. There is no evidence that HF profited from the infringement because it did not save on any costs and did not raise prices and, accordingly, the lack of connection between HF's profits and the infringement also weighs against an award of profits.

The second factor for award of profits instructs the court to consider a series of questions: (1) whether the trademark owner was harmed by lost or diverted sales due to the infringement beyond those sales lost by the infringement itself, which would be accounted for by actual damages; (2) whether the infringer's profits flow directly from, or were caused by, the infringement; (3) whether consumers were confused by infringement in thinking that the trademark owner authorized the acts; and what is the level of certainty that infringer benefited from the infringement. *Spindrift.* Answering these questions shows that HF should not be ordered to pay B&B a portion of its profits.

First, the evidence shows that B&B's overall sales *increased* during the period of infringement, and there is no evidence that other clothing manufacturers stopped buying buttons from B&B during the relevant period. B&B was not harmed by the infringement other than its lost revenue from sales of buttons to QC -- but that type of loss is insufficient.

Second, none of HF's profits flowed directly from the infringement. Simply put, the logo on a button has little to no effect on the sale of HF's clothing. The vast majority of consumers do not purchase HF's clothes because of the B&B logo on the buttons: only 3% of surveyed said they noticed the B&B logo and that it increased the desirability of HF's clothes; and only 6% said that brand name printed on a button was a reason for purchasing one item of clothing instead of another. Less than 1% said a button was a reason for purchasing.

Third, even B&B itself failed to provide evidence that consumers recognize and know the difference between their buttons and another button; all B&B can do is "hope" this is true.

Moreover, HF did not benefit from any cost savings. Rather, HF itself was defrauded by QC since it continued to pay QC $50 per clothing item despite QC using cheaper buttons. These facts are starkly different from the markup seen by this court in *Spindrift* that led to an award of profits. HF may have been selling more QC products leading up to the discovery of infringement, but it now faces losing the value of its entire inventory. A loss that HF is unlikely to recover from its overseas supplier.

Based on the record, there is no evidence that HF's profits flowed from QC's infringement, nor is there any evidence that consumers were confused by the infringement, and it is far from certain that HF benefited from the infringement.

3. There is no need for an award of profits for B&B to be made whole because other remedies will be adequate.

Next, the court looks to whether the trademark owner would be made whole by other available remedies, such as actual damages and injunctive relief, and if so, an award of profits is less likely necessary.

Here, as in *Spindrift*, there is no evidence in the record to support an argument that consumers would lose confidence in B&B's products because of QC's infringement and no evidence that B&B has lost business. As discussed above, consumers do not rely on button logos to make clothing choices, and B&B has not lost sales beyond those to QC.

Under these circumstances an award of damages and an injunction are sufficient to make B&B whole, making this factor weigh against an award of profits.

4. Because B&B waited nine months to initiate an action against HF and waited until the most economically painful moment to do so, B&B should not be allowed to recover profits.

The court must next consider whether a defendant has a claim of equitable defenses such as laches, failure to timely act on part of plaintiff, acquiescence by plaintiff in infringement, or unclean hands. Equitable defenses are not available if a plaintiff took action to stop infringing conduct as soon as they learn of it, including filing a lawsuit and obtaining a preliminary injunction. *See Spindrift.*

While B&B sent a cease and desist letter within two weeks of discovering the infringement, B&B waited an entire nine months before taking further action. During these nine months of inaction by B&B, Happy Frocks was diligently investigating the allegations, severing business ties with QC, and taking other steps to stop the sale of the infringing products. Notably, by waiting these nine months, B&B was also able to

time its lawsuit with the key Black Friday sales period for retailers, causing economic pain to HF that would not have occurred if B&B had taken more timely action.

Unlike the plaintiff in *Spindrift*, B&B did not immediately file a lawsuit, and this factor should either weigh neutrally or against an award of profits.

5. An award of profits is not supported by the public interest because the infringing buttons pose no danger to the public and an award of profits would not deter future infringement.

Finally, the court considers whether there is a public interest such as preserving public safety or deterring other infringements that would be furthered by an award of profits.

In this case, the buttons at issue are "just cheap plastic" - they are no more likely to be swallowed or pose another danger to children wearing the clothes than an authentic button. This is a far cry from a situation such as infringing medicine that would cause harm to a consumer. *Spindrift.* Since the buttons do not pose a danger, HF was not under any obligation to issue a recall either, as it has done in the past for defective and dangerous items.

Moreover, an award of profits against HF would do nothing to deter the true infringer, QC. QC is an overseas supplier not a party to this action, and HF is unlikely to be able to recover.

IV. Conclusion

Taken together, the factors do not support an award of profits, and the court should deny B&B's claim. Even if the court finds that some factors support it, on balance the significant factors -- mental state and connection between profits and infringement, *See Spindrift* -- do not. Moreover, an award would have no deterrent effect on QC's conduct, as the directly infringing party. Denying an award of profits would not leave HF unjustly enriched, as they stopped the sales and lost their inventory, and is unnecessary to compensate B&B, as they have shown no losses which damages and injunction cannot adequately address. Under the *Spindrift* factors and the policy rationale for an award of profits, the Court should deny B&B's damages claim for an award of profits.

MEE Question 1

One year ago, Joan executed a will in which she left her entire estate to her only daughter. At that time, Joan's daughter, Joan's granddaughter (the only child of Joan's daughter), Joan's only son, and Joan's three grandsons (children of her son) were living. Joan's son and her three grandsons had extensive criminal records for theft and burglary.

Joan was not close to her children and grandchildren. She rarely saw any of them, even on holidays, although she regularly sent them birthday cards and inexpensive presents.

Three years ago, Joan's doctor had prescribed her a drug that was known to produce hallucinations in some patients. Joan had difficulties with the drug and began to experience frequent hallucinations leading to her delusion that the male line of her family was "cursed" by Martians. Nonetheless, she continued taking the drug because it was the only medication available to control her medical condition.

When she went to her lawyer to draft her will, she told her lawyer that she wanted to leave all her property to her daughter and nothing to her male line. She explained, "Leaving the males in my family anything valuable would be a complete waste on burglars and thieves."

For the last five years, Joan had regularly had lunch with several friends. All of them were much wealthier than Joan. At these lunches, she often told her friends that she was a "multimillionaire" and owned both a "luxurious" home and a "very expensive" car. They had no reason to doubt Joan's claims because she had never invited them to her home and she took cabs to their lunches. In fact, Joan was never a millionaire, and she never owned either a luxurious home or an expensive automobile. She lived in a modest apartment, and her primary source of income was her Social Security benefits. She monitored her bank account regularly and reconciled her bank statement every month.

One month ago, Joan died, survived by her daughter, her granddaughter, her son, and her three grandsons. At her death, Joan owned no significant assets other than her bank account containing $100,000.

1. Under the insane-delusion rule, is Joan's will invalid? Explain.

2. Do these facts establish that Joan's will is invalid because she lacked the general mental capacity to execute a will? Explain.

3. Which, if any, of Joan's surviving relatives has standing to contest Joan's will? Explain.

The first issue is whether Joan's will is invalid under the insane-delusion rule.

Under the insane delusion rule, a party contesting the will must show that at the time the will was executed, the testator was subject to an insane delusion, the testator unreasonably believed the insane delusion, and that the insane delusion influenced the will.

Here, it is likely that Joan was subject to an insane delusion as a result of frequent hallucinations due to her medicine. Her beliefs in both facts that the male line of her family being cursed and that the curse was caused by Martians was completely unreasonable. However, when Joan executed her will, she indicated that she did not want the males in her family to inherit anything because it "would be a complete waste on burglars and thieves." The statement to her attorney shows that at the time she executed her will, her insane delusion did not influence her decision, but rather her male heirs' criminal backgrounds did. Because the will was not influenced by the insane delusion, Joan's will would not be invalidated under the insane delusion rule.

The second issue is whether the facts indicate that Joan's will is invalid because she lacked the general mental capacity to execute a will.

The requirements to establish general mental capacity to execute a will are that the testator understands the extent of their estate, understands the natural bounty of their estate, understands the nature of the document being created, and reasonably understands the distribution of their estate.

Here, Joan showed signs to her friends that she may not have understood the full extent of her estate when she often told her friends that she was a multimillionaire and owned a luxurious home and an expensive car. However, it could also be reasoned that Joan was merely exaggerating her wealth to her friends because they were all much wealthier than Joan. Other facts suggest that Joan was aware of the extent of her estate because she monitored her bank account regularly and reconciled her bank statement every month. Because she monitored her account closely and was likely exaggerating to her friends about her status as a millionaire, Joan likely understood the extent of her estate.

The natural bounty of one's estate are those who would naturally be a beneficiary in one's will. Joan left her entire estate to her daughter, and explicitly excluded her son and her grandsons. Joan did not mention her granddaughter directly, but it can be inferred that she intended for her to benefit through her daughter. Because Joan correctly identified her daughter as the beneficiary and excluded her son and grandsons, it shows that Joan understood the natural objects of her bounty.

When Joan created her will, she went to a lawyer for assistance in drafting the document. During drafting, she explicitly stated that she wanted to leave her estate to her daughter and nothing to her male heirs. Because she sought the assistance of a lawyer to draft the will and specifically designated who would get what property, Joan

likely established both that she understood the nature of the document she was creating with the lawyer and that she understood the distribution of her estate.

The third issue is whether any of Joan's surviving relatives has standing to contest Joan's will.

A relative has standing to contest a will when they can show they would have been a beneficiary absent the will. If a person dies without a will, an individual's estate is governed by the intestacy laws of the state. Under intestacy, a person's estate is generally distributed to their heirs. Absent a surviving spouse, a person's estate is distributed equally among their issue.

Here, Joan's son would have standing to contest Joan's will. Joan was survived by her son, daughter, granddaughter, and grandsons. Because of the will, Joan's son and grandsons will not receive anything from Joan's estate. Absent the will, Joan's son would receive half of her estate through intestacy, and he would therefore have standing to sue. Although Joan's grandchildren are also left out of the will, they would inherit through their parents and would not have standing.

MEE Question 2

Homeowner ordered a pizza to be delivered to his house for lunch. When the pizza delivery driver (Driver) arrived, Homeowner invited him to step inside while Homeowner retrieved his wallet.

A minute later, two police officers arrived at Homeowner's house to execute a valid warrant to search the house for counterfeit $100 bills. Although the warrant did not explicitly authorize a "no-knock" entry, the officers kicked open Homeowner's front door and entered the house without knocking and without announcing their identity and purpose.

One officer detained Homeowner and Driver in the hall near the front door while the second officer began to search the house. The first officer saw a lump in the back pocket of Driver's pants, which she thought could be a handgun. Concerned that Driver might harm her if he had access to a handgun, the officer decided to pat him down. While patting him down, the officer discovered that the lump was not a weapon but a soft object. She could not determine what the object was by patting the outside of Driver's pants, so she reached into his pants pocket and retrieved a plastic bag containing marijuana. Possession of marijuana is a crime in the state. The officer seized the bag of marijuana.

Meanwhile, the second officer, who was searching the house, noticed a desktop computer sitting on Homeowner's kitchen counter. The officer saw a serial number visible on the top of the computer, and she discovered, through a quick search using a law-enforcement app on her cell phone, that the serial number appeared on a list of serial numbers of recently stolen computer equipment. She seized the computer.

In Homeowner's bedroom, on a nightstand next to the bed, the second officer found a two-inch-tall, unlabeled, transparent medicine bottle that contained several pills with no markings on them. She seized the bottle and the pills. Later testing by the police crime lab showed that the pills were illegal narcotics. The second officer completed her search of the house without finding any counterfeit money.

The officers arrested Homeowner and Driver, and the state prosecuted them based upon the items seized in the search. Homeowner and Driver challenged the admission of evidence based only on rights protected by the United States Constitution. Neither Homeowner nor Driver has raised any constitutional objections to their brief detention during the search.

1. Should the officers' entry into the house result in the exclusion of evidence? Explain.

2. Assuming that the officers' entry into the house does not result in the exclusion of evidence, should the following conduct result in the exclusion of evidence?

   (a) the officer's seizure of the marijuana from Driver

   (b) the officer's seizure of the computer from Homeowner

   (c) the officer's seizure of the narcotics from Homeowner

   Explain.

1. Entry into the house

The issue is whether evidence should be excluded based on the officers' failure to knock and announce.

The Fourth Amendment requires that, when executing a valid warrant at an individual's home, officers must first knock and announce their presence, including their identity as law enforcement, before entering the residence, and give a reasonable amount of time for the residents to come to the door. Usually, evidence obtained in violation of a defendant's Fourth Amendment rights is excluded from trial. However, failure to knock and announce does not result in exclusion of evidence under the Fourth Amendment.

Here, the officers did not comply with the knock and announce requirement, as they kicked open the front door and entered the house without announcing their identity or presence. This violation, however, will not result in the exclusion of evidence otherwise properly obtained under the valid warrant to search the home.

2(a) Seizure of marijuana from Driver

The issue is whether the marijuana seized from Driver should be excluded.

Evidence obtained in violation of the Fourth Amendment should be excluded from trial. Under the Fourth Amendment, law enforcement is permitted to conduct a stop and frisk to check for the presence of weapons. A pat down conducted as part of this type of a "Terry" stop and frisk does not require probable cause to search, but only reasonable suspicion that weapons or evidence of a crime may be present.
Reasonable suspicion can arise from an officer's personal observations and experience. However, a pat down conducted based on reasonable suspicion must be limited to a check for weapons or for objects that could reasonably be believed to contain evidence of a crime. An officer may not search a person or open any containers found on their person unless they are obvious as weapons or as vessels for evidence of a crime.

Here, the first officer saw a lump in the back pocket of Driver's pants that she thought could be a handgun. This observation is sufficient to justify a pat down based on reasonable suspicion of the presence of weapons. However, when the officer patted down Driver, she discovered the lump was a soft object, not a weapon. The first officer's pat down should have ceased after she verified that Driver did not have any weapons, since Driver was not the target of any suspicions of criminal activity and the first officer had no reason to suspect that he had evidence of a crime on his person. The officer therefore violated Driver's Fourth Amendment rights against unreasonable search by reaching into his pocket and retrieving a plastic bag containing marijuana.
Because the first officer did not have probable cause to search Driver, the seized marijuana should be excluded.

2(b) Seizure of computer from Homeowner

The issue is whether seizure of the computer was an illegal warrantless search.

The search of a home usually requires a valid warrant that describes the place to be searched and the items sought in the search. The plain view doctrine provides an exception to the warrant requirement, however, when an item is out in the open and in the "plain view" of an officer and the criminal nature of an object is readily apparent without further searching.

Here, the officers had a valid warrant to search Homeowner's house, but the warrant was limited to a search for counterfeit $100 bills. When conducting that search, the second officer saw a computer sitting on the kitchen counter in plain view. The serial number was also visible on top of the computer without the officer needing to move the computer. Although the officer needed to run the serial number through an app on her phone to discover that it was recently stolen, this is likely still a valid application of the plain view doctrine. Unlike the situation in a Supreme Court case in which an officer needed to move stereo equipment to see that it had a serial number that was reported stolen, the officer did not need to move anything to see the serial number on Homeowner's computer.

Under the plain view doctrine, the computer seized from Homeowner will not be excluded, even though it was seized without a warrant.

2(c) Seizure of narcotics from Homeowner

The issue is whether the narcotics seized should be excluded.

When officers execute a valid warrant for the search of a home, the search should be limited to places and items reasonably expected to contain the evidence identified and sought in the warrant, unless some other exception applies, such as the plain view doctrine discussed above.

Here, the officers were authorized to search for counterfeit $100 bills. When the second officer found a two-inch-tall, unlabeled, transparent medicine bottle containing unmarked pills, the officer had no reason to seize the bottle because it would have been obvious that it did not contain the object of the search or any evidence related to counterfeiting money. The bottle was transparent and the officer could see that it contained pills. Although the pills were unmarked, there was nothing that made the pills or the bottle readily identifiable as evidence of a crime.

Therefore, because the pill bottle and pills were not within the scope of the valid warrant and the officers did not have independent probable cause to seize them, the narcotics should be excluded.

MEE Question 3

Big City, in State A, and Small Town, in State B, are located 10 miles apart.

A woman and a man were driving in State B when their cars collided with each other. The collision seriously injured the man. Shortly after the collision, the man sued the woman in the federal district court for the District of State B, properly invoking the court's diversity jurisdiction. The woman is a citizen of State A; the man is a citizen of State B. The man's complaint sought damages of $250,000 and alleged that the woman's negligent driving had caused the accident and his injuries.

The woman immediately contacted her automobile insurance company to notify it about the lawsuit and to ask the company to provide an attorney to represent her in the action and to indemnify her against any liability, as required by the terms of the insurance policy. The insurance company, however, refused to provide an attorney. The insurance company also told the woman that because she had not paid her premiums for several months before the accident, her policy had lapsed and therefore did not cover the accident. The woman insisted that she was current on her payments and that the policy should still be in effect.

The woman then went to the clerk's office for the federal district court for the District of State B, which is located in Small Town. She timely filed an answer to the man's complaint. She simultaneously timely filed a complaint against the insurance company, naming it as a "third-party defendant" in the action pending against her in that court and alleging that the insurance company was obligated under the insurance policy to defend her in the man's suit and to indemnify her if she was found liable to the man. She also obtained from the clerk of court a summons to the insurance company requiring the company to file an answer to the woman's complaint or be subject to a default judgment. She then returned to State A, where she hired a process server. Ten days later, the process server personally delivered the summons and complaint to the president of the insurance company at its headquarters in Big City, State A.

The insurance company does no business in State B and has no facilities in State B.

The insurance company moved to dismiss the complaint against it. The district court granted the motion, ruling that (a) the insurance company "cannot be joined to the suit as a third-party defendant because its presence is unnecessary to resolve the dispute" between the man and the woman and (b) "the court lacks personal jurisdiction over the insurance company because the company lacks sufficient contacts with State B."

1. Do the Federal Rules of Civil Procedure permit the woman to bring the company into the action as a third-party defendant? Explain.

2. Assuming that the Federal Rules of Civil Procedure permit the woman to bring the company into the action, does the court have personal jurisdiction over the company, despite the company's lack of contacts with State B? Explain.

3. Under the Federal Rules of Civil Procedure, what actions, if any, could be taken by the district court to allow the woman to immediately appeal the court's dismissal of her complaint against the insurance company? Should the court take those actions? Explain.

1. **Insurance Company as Third-Party Defendant**

The issue is whether the woman may bring her insurance company into the action as a third-party defendant.

Under the Federal Rules of Civil Procedure, a defendant may file a claim against a third party, naming it as a third-party defendant, based on the third party's alleged obligation to indemnify (which means to reimburse) the defendant (called a third-party plaintiff) for any liability it has against the original plaintiff. In a case in federal court based on diversity jurisdiction, a claim against a third-party defendant must independently satisfy the requirements for federal jurisdiction, either by raising a federal question or satisfying the diversity jurisdiction requirements of an amount in controversy exceeding $75,000 and complete diversity between the third-party plaintiff and the third-party defendant. Contrary to the district court's basis for granting the company's motion to dismiss, whether the company is "necessary" to resolve the dispute is irrelevant to whether a third-party can be brought into an action; that standard is for Rule 19 joinder based on the absence of a party necessary to afford complete relief. Third-party practice is based on the notion of indemnification.

Here, the woman's third-party claim against her insurance company is based on a state law contract claim she is arguing that the company must defend and indemnify her based on her insurance policy, which is a contract. This is a proper third-party claim because it is for indemnification. However, because the basis for indemnification is a state law claim, the third-party claim must satisfy the diversity jurisdiction requirements for the woman to properly bring the company into the action. The claim satisfies the amount in controversy requirement, since the woman is seeking indemnification for a claim of $250,000 against her, which surpasses the $75,000 threshold. But there is not complete diversity between the parties because both the woman, as third-party plaintiff, and the company, as third-party defendant, are citizens of State A.

As such, although the claim against the company is a proper third-party claim for indemnification under the Rules, the court does not have jurisdiction over the claim unless there is supplemental jurisdiction.

2. **Personal Jurisdiction**

The issue is whether the State B district court has personal jurisdiction over the company despite the company's lack of contacts with State B.

A court has personal jurisdiction over a party when the party has sufficient minimum contacts with the state such that exercising jurisdiction over the party comports with traditional notions of fair play and substantial justice. A party must purposefully avail itself of the protections of the state such that it could reasonably anticipate being haled into court in that state.

Here, the insurance company does no business in State B and has no facilities in State B. However, the insurance company's headquarters are in Big City, State A, which is only 10 miles from Small Town, State B, suggesting that the border between States A and B is very close to the insurance company's headquarters. Based on the proximity of States A and B, the insurance company should expect that its customers will drive in State B and therefore need insurance coverage for events in State B, such as the collision between the man and woman. Based on traditional notices of fair play and substantial justice, the insurance company should reasonably expect that it may be haled into court in State B based on its policyholders' needs for attorneys and indemnification in that state.

Further, the FRCP contain what's called a "bulge provision" that allows for service and personal jurisdiction over certain joined parties even when they are outside the forum state's personal jurisdiction. The bulge provision applies when a party is impleaded or joined as a third party. It provides for service of process within 100 miles of a courthouse, resulting in personal jurisdiction to be obtained by personal service even outside the forum's borders.

Here, the State B clerk's office is located in Small Town, which is 10 miles from Big City, State A, where the insurance company's headquarters are located. The president of the insurance company was personally served at the company headquarters in Big City. Under the bulge provision, the State B court acquired personal jurisdiction via personal service on the insurance company.

In sum, by applying the bulge provision, the State B court would have personal jurisdiction over the insurance company despite the company's lack of contacts with the forum state. In addition, this exercise of personal jurisdiction comports with due process, because the insurance company should reasonably anticipate being haled into the State B courts.

3. Immediate appeal

The issue is whether the district court could allow immediate appeal of the dismissal of the third-party complaint against the insurance company, and if so, whether the district court should do so in this case.

When a court dismisses some, but not all, claims in an action, immediate appeal is usually not available under the final judgment rule. However, if a court determines that there is no reason for delay in appealing the dismissed claims and that allowing immediate appeal would further the efficient resolution of the case, the court may enter a partial final judgment authorizing a partial appeal.

Here, even though the district court could authorize an immediate partial appeal of the woman's claims against the insurance company, it should not do so. Whether the woman has valid claims against the insurance company for indemnification depends on whether the woman is found liable to the man for the accident. If the woman is found not

liable to the man for his injuries, then her claims against the insurance company for indemnification are moot.

The court should not allow an exception to the final judgment rule in this case because the dismissed claims depend on the viability of the claims yet to be adjudicated. However, if the woman raises the issue based on the insurance company's duty to defend the case, the court could consider doing so on that basis.

MEE Question 4

Shortly after passing the State X bar examination and being admitted to the bar, a lawyer decided to open her own practice as a sole proprietorship in State X, which is her principal residence. The lawyer wanted a couch for her new office's waiting room and went to a furniture store in State X where she found a couch that she liked. She asked if she could buy the couch on credit, saying, "This is for the waiting room of my new law office." The salesperson responded that the store would sell the couch to her on credit if her obligation to pay was secured by the couch. The lawyer agreed and bought the couch on those terms.

As part of the sale, both the lawyer and the salesperson (who had authority to sign on behalf of the store) signed a "Credit Sales Agreement" that stated that the lawyer granted the store a security interest in the couch (described in the agreement by manufacturer and model number) to secure the lawyer's obligation to pay the purchase price.

On her way out of the store, the lawyer saw a table that she thought would be ideal for her home. She asked the salesperson if she could buy the table on credit, saying, "This would look great in my dining room." This time, the salesperson said, "This is a popular model, so we have a special financing deal. You can get the table on credit and have it delivered tomorrow, but we retain title to the table until you finish paying for it. Does that work for you?" The lawyer said that it worked for her and bought the table on the terms outlined by the salesperson. She signed an agreement that described the table by manufacturer and model number and that stated that the store would retain title to the table until she finished paying for it.

The next day, the store delivered the couch to the lawyer's office and delivered the table to the lawyer's home.

The furniture store in State X did not file a financing statement with respect to either the couch transaction or the table transaction.

Six months later, the lawyer passed the bar examination in State Y, where her parents had a home at which she stayed for a few weeks each year. After being admitted to the State Y bar, the lawyer decided that she wanted to be able to represent clients in State Y while she was staying at her parents' home. The lawyer decided to furnish a room in her parents' home as an office and to buy a desk for the office.

She went to a furniture store in State Y and agreed to buy a desk on credit, with her payment obligation secured by a security interest in the desk. She signed an agreement granting the store a security interest in the desk (described in the agreement by manufacturer and model number). The store immediately filed a financing statement in the State Y central filing office for financing statements. The financing statement listed the lawyer as the debtor, named the furniture store as the secured party, and indicated the desk (described by manufacturer and model number) as the collateral.

The store delivered the desk to the lawyer's State Y office the next day. The desk was used by the lawyer only in conjunction with her law practice.

At all relevant times, the lawyer's principal residence was in State X.

1. Does the State X furniture store have an enforceable and perfected security interest in the couch used by the lawyer in her office waiting room in State X? Explain.

2. Does the State X furniture store have an enforceable and perfected security interest in the table used by the lawyer in her dining room in State X? Explain.

3. Does the State Y furniture store have an enforceable and perfected security interest in the desk used by the lawyer in her office in State Y? Explain.

Background on security interests

A security interest is one in which a secured party has certain rights to collateral offered by the debtor in exchange for providing value to the debtor. A security interest is not enforceable unless it "attaches."

A security interest attaches when (1) the secured party transfers value to the debtor. This can be in the form of money, items, a loan, etc.; (2) the debtor has rights in the collateral that is offered in exchange for the value received from the secured party; and (3) there is a security agreement OR possession/control of the collateral by the secured party.

In order to be valid, a security agreement must be (a) a record, but need not be a formal record. An acknowledgement letter on company letterhead may be a record; (b) authenticated, meaning it is signed by the party that the security interest is enforced upon. Company letterhead may constitute authentication; and (c) include a description of the collateral. The description must be specific enough to reasonably determine the secured collateral. For instance "all my assets" is too general.

In order to perfect a security interest, a secured party can file a financing statement with their state's central office. The financing statement must be signed by the parties, describe the collateral (even generally), and be filed correctly. However, some security interests perfect automatically. Purchase Money Security Interests (PMSIs) are those where the obligation to pay is secured by the item of collateral. In other words, when things are purchased on credit. A PMSI in consumer goods perfects automatically, but PMSIs in other tangible things like inventory, do not.

1. The first issue is whether the furniture store has an enforceable and perfected security interest in the couch used by the lawyer in her office waiting room in State X.

A PMSI in inventory or equipment does not automatically perfect.

In this case, the couch is a PMSI because the couch was sold on credit with the obligation to pay secured by the couch itself. Further, the security interest attached at the time of sale because the store gave value (the couch), the lawyer had rights to the collateral (the money used to pay the obligation), and there was a security agreement between the parties. The Credit Sales Agreement was signed by both parties, and is thus an authenticated record, and specifically describes the couch by its serial number.

However, this interest has not perfected, because it is not a consumer good. The couch is being used to furnish the lawyer's business and provide customers with a place to sit. Really, the couch is equipment used by the lawyer to carry out her business practices. As equipment, the security interest did not automatically perfect. Because no financing statement was filed, and no other form of perfection occurred, this interest has attached but not perfected.

2. The second issue is whether the furniture store has an enforceable and perfected security interest in the table used by the lawyer in her dining room in State X.

A PMSI in consumer goods automatically perfects upon attachment. Further, a financing deal or lease where the secured party retains title to the property until final payment is made is still a secured transaction even if it is not worded as such. A court looks to the nature of the transaction and economic reality, as opposed to the specific words used in the agreement.

The dining table, though described under a "special financing deal" was still part of secured transaction. Even though the store retained title until payment was complete, in reality the lawyer bought the table on credit and the table served as collateral for the obligation to pay. This interest attached the same way the couch did: there was value transferred in the form of the table, the lawyer had rights to the money used to pay for the table, and there was a security agreement outlining the terms.

However, unlike the couch, this interest perfected automatically as it was a PMSI in consumer goods. The table served as collateral for the obligation to pay, and the table was to be used at the lawyer's home for personal use (as opposed to business use). Because this was a consumer good, the attachment by the process outlined above automatically resulted in perfection of the interest.

3. The third issue is whether the furniture store has an enforceable and perfected security interest in the desk used by the lawyer in her office in State Y.

If a debtor resides in a state other than the one where the security agreement is entered, a financing agreement will only result in perfection if it is filed in the state of residence of the debtor (not the state of residence of the collateral). In other words, a third party who wishes to understand a person's security interests should only need to search the records of the debtor's home state to ascertain all interests.

In this case, as described above, the desk is a PMSI which has attached because the desk serves as collateral on the obligation to pay for the desk. The transfer of value, rights in collateral, and signed security agreement resulted in attachment. Like the couch, this desk is also NOT a PMSI in consumer goods because it is used for business purposes by the lawyer as opposed to personal consumer use (it does not matter that the desk exists at her parents' home; what matters is it is not used for ordinary non-commercial use).
Because the desk is not a PMSI in consumer goods, and rather equipment for the lawyer's practice, it did not perfect automatically. Even though the store attempted to perfect the interest by filing a financing statement, they did so incorrectly because they filed the statement in State Y. The debtor lawyer resides in State X, and the financing statement would only result in perfection if filed in State X.

The interest in the desk attached through the initial purchase, but did not perfect

because it was a PMSI in equipment and the financing statement was not filed in the debtor's home state.

MEE Question 5

In 1901, Smith owned a three-acre undeveloped parcel of land in State A. He validly subdivided the parcel into two lots. Both undeveloped lots remained in the Smith family until 2005, when John purchased the lot that comprised the western two acres and Beth purchased the lot that comprised the eastern one acre. Both John and Beth promptly recorded their valid deeds.

In 2009, one of Smith's descendants purported to convey to Wendy by quitclaim deed the entire three-acre parcel that had originally belonged to Smith. The quitclaim deed accurately described the three-acre parcel.

On January 1, 2010, Wendy began to occupy one acre of the three-acre parcel purportedly conveyed to her in 2009, specifically, one acre of John's two-acre lot.

In 2016, John died, survived by Mary, his 12-year-old daughter and sole heir.

On March 1, 2022, Wendy brought a quiet-title action against Mary and Beth, alleging ownership of all three acres by adverse possession.

For the purpose of the action, and to avoid confusion, the trial court labeled each acre of the original three-acre parcel as follows:

> the "Western Acre" (which is the western half of the land described in John's deed);
> the "Central Acre" (which is the other half of the land described in John's deed and which Wendy occupied); and
> the "Eastern Acre" (which is the land described in Beth's deed).

The facts at trial established that (1) the quitclaim deed from Smith's descendant gave Wendy colorable title to the three-acre parcel described in that deed; (2) from 2010 until the end of 2021, Wendy possessed the Central Acre in a manner that was actual, open and notorious, continuous, exclusive, and hostile and under claim of right; (3) Wendy ceased her actual possession of the Central Acre on January 1, 2022; and (4) neither the Western Acre nor the Eastern Acre had ever been possessed by any of its owners or by Wendy.

The state's adverse-possession law provides:

> An action to recover title to or possession of real property shall be brought within 10 years after the cause of action accrues. However, if at the time the cause of action accrues, the person entitled to bring that action is under 18 years of age, such person, after the expiration of 10 years from the time the cause of action accrues, may bring the action to recover title or possession within five years after reaching the age of 18.

1. In 2020, did Wendy acquire title by adverse possession to the Central Acre? Explain.

2. Assuming that Wendy acquired title by adverse possession to the Central Acre in 2020,

   (a) did she also acquire title to the Western Acre in that year? Explain.

   (b) did she also acquire title to the Eastern Acre in that year? Explain.

I. The issue is whether Wendy acquired title by adverse possession to the Central Acre in 2020.

In order to adversely possess property, an individual must possess the property in a manner that is continuous, actual, open and notorious, hostile, and exclusive for a specific amount of time. The relevant statute in this jurisdiction states that the amount of time for adverse possession is 10 years. An action to recover title accrues when the adverse possessor begins their possession of the land.

Here, the court has found that Wendy occupied the Central Acre in a manner that was, actual, open and notorious, continuous, exclusive, and hostile. This finding is sufficient to hold that Wendy acquired the property so long as she occupied the property for the statutory time period. In this, Wendy occupied the Central Acre on Jan. 1, 2010 which means she will have completed her adverse possession of the central acre on Jan. 1, 2020. Although the state statute allows a grace period for persons who are entitled to bring a recovery action and under the age of 18 when the action accrues, allowing them a five-year period after they turn 18 in which to bring a recovery action, that language is immaterial in these circumstances. In this, the action to recover title to the Central Acre accrued on Jan. 1, 2010 when Wendy began to occupy the Central Acre. At that time, John was still alive (he died in 2016) and had the right to bring the action to recover title. Accordingly, the safe harbor does not apply here because the action to recover title accrued before Mary had a right to bring the action and, as such, will not interfere with Wendy's adverse possession.

Ultimately, Wendy did acquire title to the Central Acre by adverse possession.

II. The issue is, assuming Wendy Acquired title by adverse possession to the Central Acre, whether she also acquired title to the Western Acre and the Eastern Acre.

Western Acre

Generally, an individual is only entitled to take property by adverse possession that the individual actually occupied. However, when an individual enters property under the color of title, and that title turns out to be invalid, that individual can typically take, through adverse possession, the entirety of the property.

Here, Wendy entered the Central Acre under the color of title as determined by the court in accordance with Smith's descendant's quitclaim deed to Wendy. Although Wendy only occupied the Central Acre of the land, her occupation under color of title entitles her to take the Western Acre by adverse possession.

Eastern Acre

Here, although Wendy's occupation of the Central Acre was sufficiently continuous, open and notorious, actual, hostile, for her to take possession of the Central Acre under adverse possession, that adverse possession does not extend to the Eastern Acre.

Although Wendy's possession of the Central Acre allowed her to take the Western Acre by imputing her adverse possession against John to the Western Acre through the color of title, the same is not true for the Eastern Acre because Wendy never actually possessed the Eastern Acre (the Eastern Acre was never possessed by any of its owners or by Wendy), and Wendy's possession of the Central Acre was not hostile to Beth - meaning Wendy does not have an adverse possession claim against Beth like she did against John and, as such, Wendy cannot assert a claim for possession of the Eastern Acre, even under color of title.

Ultimately, Wendy's occupation of the Central Acre provided her with title to Western Acre by imputing her adverse possession claim to that property under the theory of color of title, but it does not provide her with title to Eastern Acre because she has no adverse possession claim against Beth.

MEE Question 6

A woman (Plaintiff) has filed a civil action in the federal district court for State A against her former landlord (Defendant) seeking damages under State A law for invasion of privacy, which in State A requires a finding of intent. The federal court has diversity jurisdiction over the suit and personal jurisdiction over Defendant.

Plaintiff's complaint alleges the following facts:

> 1. While Plaintiff was a college student, she rented an apartment in a building owned and managed by Defendant.
>
> 2. One day, as Plaintiff dressed after showering, she saw a gleam of light through a small hole in a wall of her bathroom. Then she saw an eye looking through the small hole from the other side. She put on her bathrobe and ran from her apartment into the hall of her apartment building, where she saw Defendant leaving a utility closet that shared a wall with her bathroom. Plaintiff accused Defendant of peeking at her from inside the closet.
>
> 3. Defendant first told Plaintiff that he had been in the closet "just to put things away" and then said that he would evict her from her apartment if she told anyone "what happened."

Defendant's answer admits the allegations in paragraph 1 but denies the allegations in paragraphs 2 and 3. Defendant's answer alleges that he was inside the closet inspecting a water heater and that, at the time of the incident, he had not known that the hole in the wall existed or looked through it.

The parties have filed pretrial motions to exclude evidence.

Defendant seeks to exclude from evidence statements that he made in court when pleading guilty to a criminal voyeurism charge that was based on the same facts alleged in Plaintiff's complaint. Under questioning by the judge, Defendant admitted that he knew about the hole in the closet and that he had repeatedly used it to spy on Plaintiff while she was dressing. Although Defendant initially pled guilty to the criminal voyeurism charges, he later withdrew his guilty plea. The criminal case against Defendant is still pending.

Defendant also seeks to exclude from evidence deposition testimony of a man who previously rented the same apartment as Plaintiff. The man stated in a deposition taken by Plaintiff that he once confronted Defendant "about the utility closet and his perversion" when he caught Defendant watching him under circumstances nearly identical to those described in Plaintiff's complaint. Defendant and his attorney were present at the man's deposition and had an opportunity to examine him. The man currently lives and works in a jurisdiction hundreds of miles from State A, and he has refused to attend the trial and testify in person despite extensive efforts by Plaintiff to convince him to do so.

Plaintiff plans to testify at the trial. She is now in graduate school. She seeks to exclude any evidence, including testimony, that she plagiarized her college senior thesis and lied about the plagiarism on her recent graduate school application.

How should the court rule on the motion to exclude each of the following?

1. The admissions of Defendant made in connection with the guilty plea he later withdrew. Explain.

2. The deposition testimony of the man who stated that Defendant watched him under similar circumstances to those alleged by Plaintiff. Explain.

3. Evidence that Plaintiff plagiarized her senior thesis in college and lied about it on her graduate school application. Explain.

I. The issue is whether the court should admit the Defendant's admissions made in connection with the guilty plea he later withdrew.

Evidence is typically admissible so long as it is relevant in that it is both probative and material. To satisfy these criteria, evidence must make a fact more or less likely to be true and that fact must be of consequence to the litigation. The offered evidence must also not be excluded other any other rules of evidence. In this, statements relating to guilty pleas are generally inadmissible on public policy grounds outside of limited circumstances.

Here, evidence that the Defendant previously confessed to knowing about the hole in the closet and that he repeatedly used it to spy on Plaintiff while she was dressing would be relevant because it makes it more likely that the Defendant knew about the hole (contrary to his assertions) and the eye the woman saw was the Defendant's. That evidence is also material in determining the Defendant's potential liability for the Plaintiff's invasion of privacy action and his intent in looking through the hole. However, the statements must be excluded on public policy grounds because they were made in connection with a guilty plea that was withdrawn by the Defendant.

Ultimately, the Defendant's admissions, made in connection with the guilty plea he later withdrew, must be excluded on public policy grounds.

II. The issue is whether the court should admit the deposition testimony of the man who stated that Defendant watched him under similar circumstances.

Hearsay is an out of court statement offered to prove the truth of the matter asserted. Hearsay statements are generally inadmissible. However, exceptions exist for this general rule, including statements made by an unavailable witness which were given as prior testimony and which the opposing party had an opportunity to cross examine.

Here, the man's statement is relevant because it tends to make it more likely that the Defendant knew about the hole and used it as a means of spying on tenants and that fact is material in determining the Defendant's potential intent which is a required finding in the jurisdiction for Plaintiff's claim. However, the statement is hearsay because it was made by the man outside of the court and it is being offered for the truth of the matter asserted - that the Defendant used the utility closet for perverse purposes. That said, the statement likely falls within the prior testimony exception to the hearsay rule for unavailable witnesses. In this, the man is considered unavailable because he has refused to attend the trial and testify in person. Additionally, the man's statement was provided as testimony in a deposition taken by the Plaintiff, at which the Defendant and his attorney were present and had an opportunity to cross examine the man. This brings the statement within the hearsay exception for prior testimony of an unavailable witness and the man's statement can be admitted.

Ultimately, the man's statement from his deposition testimony should not be excluded because it falls within the hearsay exception for prior testimony of an unavailable witness.

III. The issue is whether the court should admit evidence that Plaintiff plagiarized her senior thesis in college and lied about it on her graduate school application.

In civil cases, character evidence is generally inadmissible to show that an individual acted in accordance with that character outside of limited circumstances (cases involving defamation, child custody, negligent hiring, and negligent entrustment). However, character evidence is always admissible regarding a witness's character for truthfulness as a means of impeaching the witness.

Here, evidence of the Plaintiff's plagiarism, and subsequent untruthful statements regarding the plagiarism, are relevant because they make it more likely that she is an untrustworthy witness and that fact is material considered she plans to testify at trial. However, the evidence is character evidence and, as such, is generally inadmissible to prove the Plaintiff acted in accordance with that character because this is a civil trial not involving one of the previously enumerated claims. That being said, the general exclusion of character evidence does not apply to a witness's character for truthfulness that can be used to impeach the witness. Because the Plaintiff's plagiarism, and subsequent lying regarding the plagiarism, are relevant and material to the woman's character for truthfulness, she can be cross examined about those issues when she testifies.

Ultimately, evidence of the Plaintiff's plagiarism and lying on her recent graduate school application should not be excluded because they can be used to impeach the Plaintiff as a testifying witness.