

Basic Evidence

Multiple Choice

I. Barry (“Big Burly”) Brandon has been charged with assaulting a federal officer. The officer testified (at trial) that when he arrived Brandon’s home to arrest him on another charge, Brandon pointed a gun at the officer and threatened to “*light him up*”. After the state rested its case the defense put on its *case-in-chief*. During his defense Brandon testified that he, in fact, pointed the gun at himself, planning to commit suicide. In support of this defense, Brandon called a psychiatrist who testified that Brandon has a “*self-destructive personality*”, making it far more likely that Brandon would try to hurt himself than someone else. The Prosecutor objected to this testimony.

A judge who has to determine whether to sustain or overrule this objection must consider:

- (a) Whether such a defense will be helpful to a jury;
- (b) Whether a “*self-destructive personality*” is pertinent to the charged offense;
- (c) Whether the testifying defendant’s testimony represents the applicable community;
- (d) Whether the temporal requirement for such testimony has been satisfied;

Of these four (4) considerations those which are most applicable under current United States Court precedents and the Federal Rules of Evidence are:

- 1. (a) & (b) only;
 - 2. (a), (b) & (d) only;
 - 3. (a), (b) & (c) only; or,
 - 4. None of the alternatives as presented in 1-3 above.
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(II on next page)

II. Same facts as in **Gaines v. Thomas** (page 723 of the Casebook). However, the **parties** in *this second trial* are different from those in the **second trial** of **Gaines v. Thomas**. In *this second trial* the *plaintiff* is a **bystander** (who witnessed the collision between the parties that resulted in the **first trial**). Plaintiff-bystander sues the **defendant** from the **first trial** – Peerless Mattress Company.

The defendant objects.

A judge who has to determine whether to sustain or overrule this objection must consider:

- (a) Whether the defendant represented a sufficient “community of interest” shared by the defendant in both trials;
- (b) Whether fairness allows the transcript to be admitted against the defendant;
- (c) Whether the demeanor of the transcribed witness has adequately captured;
- (d) Whether the voucher rule still has currency in such situations.

Of these four (4) considerations those which are most applicable under current Federal Court precedent and the Federal Rules of Evidence are:

- 1. (a) & (b) only;
- 2. (a), (b) & (d) only;
- 3. (a), (c) & (d) only; or,
- 4. None of the alternatives as presented in 1-3 above.