



Character Evidence Handout

Methods of Proving Character

Character can be proved using three forms of evidence:

1. _____
2. _____
3. _____

Reputation: Goes to showing what other people in the community think about the person's character;

Ex. The person on the stand says that the other people in the retirement home think that Rosa loves to shoplift.

Opinion: An opinion about the person's character based on personal knowledge;

Ex. The person on the stand testifies that he personally thinks that Rosa is a thief.

Specific Acts: Instances of certain acts that imply something about the person's character;

Ex. The person on the stand says he has seen Rosa shoplift before.

How Character Evidence Is Used

Evidence that proves character can be used in three ways:

1. _____
2. _____
3. _____ (separate lesson)

Propensity: Using a person's character to suggest that they have a predisposition to act in a certain way; suggesting that a person is/isn't guilty of a crime because of their good or bad character traits.

Ex. Using Sam's reputation as a violent individual to tell the jury that he must have been guilty of an alleged assault and battery.

Rule of Thumb: Propensity character evidence is generally _____ at trial, although there are some exceptions.

Propensity Cases: Essential Element



Arises in cases where character is _____. If character evidence is being used to prove an essential element of the case, then character evidence is admissible.

Indicate whether the following types of evidence are allowed:

Reputation? _____
Opinion? _____
Specific Acts? _____

Examples:

- *Defamation*
- *Child custody*
- *Negligent hiring*
- *Entrapment*

Note: *Essential element cases are almost exclusively civil.*

Tip: *If you recognize character evidence, check to see if a character is an essential part of the case by identifying the cause of action.*

Propensity Cases: Not an Essential Element

In civil suits, character evidence _____ be used to show propensity if character is not an essential element.

In criminal cases, character evidence of _____ character traits is sometimes admissible.

Tip: *Remember to distinguish criminal cases from civil cases for all evidence questions!*

Specific acts may not be introduced during _____ examination for pertinent character traits; they can only come in during _____ examination.

“Opening The Door”

In criminal cases, when character evidence is used for propensity purposes, the _____ gets to determine whether character evidence can be used.



If the _____ discusses his own character, then the _____ can also discuss the Defendant's same character trait. If the Defendant discusses the victim's character, the Prosecution can discuss the same character trait in the victim AND the Defendant.

Scenario 1: If the defendant doesn't use character evidence, then _____

Δ → _____

P → _____

Scenario 2: If the defendant calls up character witnesses to talk about his own pertinent character trait, then _____.

Δ → _____

P → _____

Scenario 3: If the defendant only discusses the victim's pertinent character trait, then the prosecution can talk about that trait _____.

Δ → _____

P → _____

Scenario 4: If the defendant discusses both, then _____.

Δ → _____

P → _____

****Special Exceptions: Homicide****

In a homicide case where the _____ claims that the victim was the _____, the prosecution can automatically discuss the _____ character for peacefulness.

****Special Exceptions: Sexual Assault and Child Molestation****

Evidence offered to prove that a victim engaged in _____; or to prove a victim's _____ is not admissible in a civil or criminal proceeding involving alleged sexual misconduct, with some exceptions.

In criminal cases, the court may admit evidence of the victim's past sexual behavior in three instances:



1. The defendant can offer evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of _____.
2. The defendant can offer specific instances of a sexual past between himself and the victim if he's trying to prove _____. The prosecutor can offer evidence of this sexual past for any purpose.
3. The defendant can use evidence if it's exclusion would "_____."

In civil cases, the court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its _____ substantially outweighs the _____ to any victim and of unfair prejudice to any party.

Note: This is the opposite of the normal 403 balancing test.

As a special rule, the court can only admit evidence of a victim's reputation if the victim has placed it in controversy.

In both sexual assault and child molestation cases, whether civil or criminal, evidence that the party committed any other sexual assault or child molestation may be considered by the court on _____, including propensity.

Habit

Evidence of a person's habit or an organization's routine practice _____ be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice.

M.I.M.I.C.

Character evidence that would tend to show that on a particular occasion the person acted in accordance with their character (used for propensity) may be admissible if it is offered for another "MIMIC" purpose.

1. M _____
2. I _____
3. M _____
4. I _____
5. C _____