

Character and Prior Conduct

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What is Character?

Character comprises
the actual qualities
and characteristics
of an individual

Is extrinsic
evidence
admissible?

What kinds of
evidence are
admissible?


Who can put
character in
issue?

Are civil and
criminal rules
the same?

★
Theory

Determines

Admissibility




Six Basic Theories

1. When character is directly in issue
2. Character as circumstantial evidence of conduct as a witness
3. Character as circumstantial evidence of conduct in the case
4. Habit
5. Prior conduct for a non-character purpose
6. The other party opened the door

1-Character Directly In Issue

In what kinds of cases?

Hint:



Fitness

Is Fitness at Issue?

- In a neglect proceeding, child is alleged to be neglected on ground that child lives in an environment injurious to her welfare. Among other things, DSS offers evidence that parent does cocaine in the home while child is present.

Why Is the Evidence Admissible?

1. Parent's fitness is directly in issue
2. Drug use is relevant evidence of alleged ground of neglect
3. Who cares—the evidence comes in either way

Once you know the theory . . .

- Whose character may be proved?
 - Person whose character is directly in issue
- What aspects of character may be proved?
 - Those aspects relevant to matters in issue
- What kinds of evidence may be used?
 - Opinion, reputation, specific acts

Once you know the theory . . .

- Is extrinsic evidence permissible?
 - Yes
- Who can introduce evidence of character?
 - Either party
- Do the same basic principles apply to civil and criminal cases?
 - Yes

2-Character as Evidence of Conduct as Witness

Character as circumstantial evidence of conduct as witness.

Hint: Impeachment

Admissible as Character to Show Conduct on Witness Stand?

In a prosecution for assault on a female, Joan testifies that her new boyfriend, Bill, hit her. Bill takes the stand to tell his side of what happened. The state wants to cross-examine Bill about the following:

- His conviction in 2002 for possession of cocaine

Admissible as Character to Show Conduct on Witness Stand?

In a prosecution for assault on a female, Joan testifies that her new boyfriend, Bill, hit her. Bill takes the stand to tell his side of what happened. The state wants to cross-examine Bill about the following:

- An assault he committed on his brother in 2006, which never went to court

Admissible as Character to Show Conduct as Witness?

In the same case, Bill calls to the stand two witnesses, Sergeant Wilson of the town police force and EMS technician Riley.

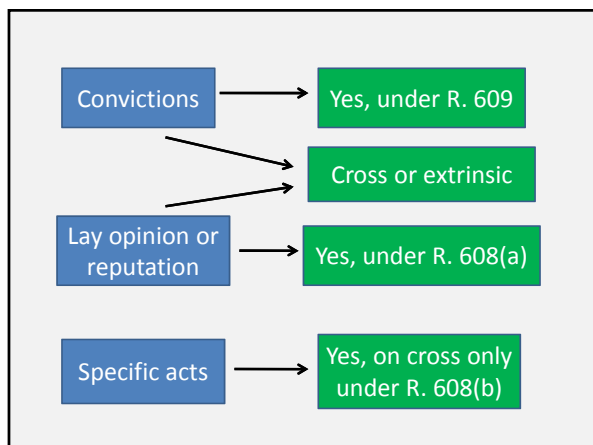
- The defendant wants to elicit their opinion that Joan is not a truthful person.

Once you know the theory . . .

- Whose character may be proved?
 - Any person who testifies
 - Including own witness, subject to some limits
 - Including out-of-court declarant (R. 806)
- What aspects of character may be proved?
 - Character for truthfulness

Once you know the theory . . .

- Civil and criminal rules essentially the same
- Who can introduce evidence re truthfulness?
 - A party may offer character for untruthfulness . . .
 - Then opposing party may offer evidence of character for truthfulness
- What kinds of evidence may be used? And may extrinsic evidence be used?



Final Thoughts on Impeachment

- There are other impeachment techniques that are broader than the use of character to show untruthfulness, such as:
 - Contradiction
 - Prior inconsistencies
 - Bias
 - Capacity to observe or recollect



3-Character as Evidence of Conduct

Character as circumstantial evidence
of conduct at issue in case

Admissible as Character to Show Conduct in Case?

- The prosecution of Bill is becoming a marathon of character evidence. Bill calls his long-time neighbor Jim, who wants to testify that:
 - In Jim's opinion, Bill is a peaceful person
 - In Jim's opinion, Joan is a violent person

Admissible as Character to Show Bill's and Joan's Conduct in Case?

- The prosecution of Bill is becoming a marathon of character evidence. Bill calls his long-time neighbor Jim, who wants to testify that:
 - On three previous occasions, Jim saw Joan punch another neighbor

Once you know the theory . . .

- Whose character may be proved?
 - Defendant and victim in criminal case only
- What aspects of character may be proved?
 - Pertinent trait of character of defendant or victim
- What kinds of evidence may be used, and may extrinsic evidence be used?

Lay opinion or
reputation



Extrinsic or cross
under R. 405(a)

Specific acts



On cross only
under R. 405(a)

Once you know the theory . . .

- Who can introduce evidence?
 - D may offer evidence of pertinent trait of his or her character . . .
 - Then State may rebut with evidence of D's character
 - D may offer evidence of pertinent trait of victim's character
 - Then State may rebut with evidence of V's character
- Are the rules the same in criminal and civil?
 - No!

4-Habit as Circumstantial Evidence of Conduct

- A regular or uniform response to a particular type of situation
- A consistent, frequently repeated, specific behavioral pattern

Character vs. Habit



General character:
Jane is law-abiding



Specific character:
Jane is a careful driver

Habit: Jane always
buckles her seatbelt



4-Habit as Circumstantial Evidence of Conduct

- Joan wants to testify that Bill always drinks on Friday night after work and that when he drinks he becomes aggressive. She offers this evidence to support the allegation that Bill drank on this occasion and hit her.

Once you know the theory . . .

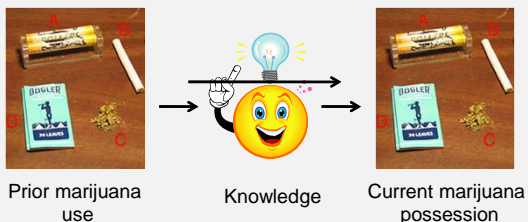
- Whose habit may be proved?
 - Any person
- What uses may habit be put to?
 - Habits pertinent to issues in case
- What kinds of evidence may be used?
 - Specific acts or opinion
- May extrinsic evidence be used?
 - Yes

Once you know the theory . . .

- Who can introduce evidence?
 - Either party
- Are the rules the same in criminal and civil cases?
 - Yes

5-Prior Conduct NOT for Character

Prior conduct as evidence on issue in case other than character



Admissible for Non-Character Purpose?

- Joan wants to testify that
 - Bill hit her on two previous occasions
 - Bill was convicted of assaulting his father in 2006

Once you know the theory . . .

- Whose prior conduct may be proved?
 - Any person
- What prior conduct may be proved?
 - Rule 404(b) is a rule of inclusion, which means the prior conduct must
 - Be for a relevant purpose, listed or not in R. 404(b)
 - Not be for the purpose of showing character
 - Not be too dissimilar or remote in time
 - Be more probative than prejudicial under R. 403

What is a relevant, non-character purpose?

- Motive and Intent
 - Evidence of juvenile's drug problem to show pecuniary motive for current b & e's.
 - Evidence of prior attacks on deceased to show hostile feeling and intent toward deceased.
- Opportunity
 - Prior threat with shotgun to show defendant had shotgun used in crime

More non-character purposes

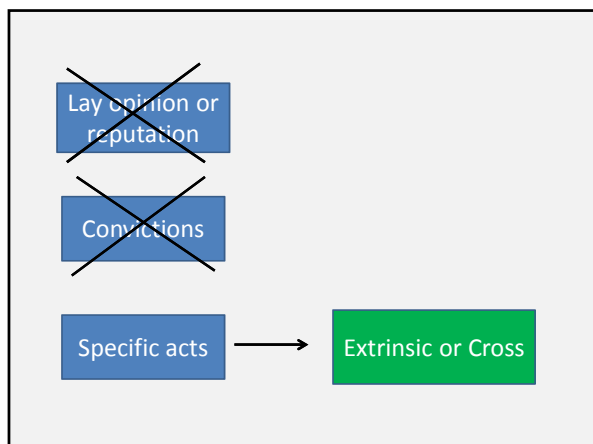
- Plan or design
 - H breaks into W's home and steals key and later uses key to break into house
 - Prior assaults on same person???
- Identity
 - Same modus operandi
 - Damage to adjacent property at same hour to show connection to damage to property at issue

Even more non-character purposes

- Knowledge
 - Prior possession of drugs in house to rebut claim that defendant didn't know of drugs being in house
- Rebuttal of defense
 - Prior assaults on victim (not unrelated third party) to show assault at issue was not accidental or not in self-defense

Once you know the theory . . .

- What kinds of evidence may be used, and may extrinsic evidence be used?



Once you know the theory . . .

- Who can introduce evidence?
 - Either party
- Are the rules the same in criminal and civil cases?
 - Yes

Summing Up

- Character is admissible to show a person acted in conformity therewith **ONLY**
 - When character is directly in issue
 - To show that a witness is untruthful and, in rebuttal, is truthful
 - When the accused in a criminal case offers a pertinent trait of his or her character and, in rebuttal, the State offers the contrary
 - To show habit

More Summing Up

- But, evidence of prior acts is admissible if for a relevant, noncharacter purpose (that is, not to show a person's propensity to commit the act at issue in the case)
