

Multistate Bar Exam Outlines

2. In a **homicide case** the prosecution can be the **first** to offer evidence that the victim had a peaceful character to rebut a claim of self defense.
3. Character evidence may be used to **impeach or rehabilitate** a witness once their **credibility has been placed in issue**. (I.e. if they testify)
 - a. Note – Can't impeach the defendant unless he testifies.
- ii. **Mercy Rule** – The DEFENDANT may put his character at issue by producing witness to testify about his or her **good character** in the form of **reputation and opinion** evidence.
 1. The PROSECUTION may rebut by:
 - a. Calling **additional witnesses** who can testify in the form of **reputation or opinion** evidence to the defendant's bad character.
 - i. On direct reputation and opinion OK, but not specific instances)
 - b. **Cross examining** the defendant's witnesses with **specific instances of conduct**. (opinion and reputation OK, too)
 - i. Note – Any misconduct including **prior arrests** may be **inquired** about on cross examination, but **NO extrinsic** evidence may be introduced to prove the misconduct.
- iii. **First Aggressor Rule** – Except in **RAPE** cases, the DEFENDANT may introduce **reputation and opinion** evidence of a bad character trait of the victim.
 1. The PROSECUTION may rebut by:
 - a. Calling **additional witnesses** who can testify in the form of **reputation or opinion** evidence to the:
 - i. Defendant's same bad character OR
 - ii. The victim's same good character.
 - b. **Cross examine** the defendant's witnesses with **specific instances of conduct**.
 2. **Broad** – May be **ANY** character trait.
- iv. **Rape Victim Character Generally INADMISSIBLE** (I.e. manner of dress and past sexual behavior with someone other than the defendant)
 1. Exceptions in Civil Cases – In a **CIVIL** case:
 - a. If the **Plaintiff initiates** an inquiry into the victim's prior sexual conduct, the defendant may **cross examine and rebut**.
 - i. This evidence is admissible as long as its probative value is not substantially outweighed by a danger of unfair prejudice.
 2. Exceptions in Criminal Cases – In a **CRIMINAL** case:
 - a. The victim's **sexual behavior** is admissible to prove that someone other than the defendant is the source of the semen or other physical evidence
 - b. The victim's **past sexual behavior with the accused** is admissible to prove consent.
 - c. If the **prosecution initiates** an inquiry into the victim's prior sexual conduct, the defendant may **cross examine and rebut**.
- d. **Other Crimes, Wrongs or Acts** – (IMOPKIA) – Evidence of other crimes, wrongs, or acts are not admissible to prove character UNLESS offered to show: Identity, Motive, Opportunity, Plan (common plan or scheme), Knowledge, Intent, Absence of Mistake.
 - i. In a **criminal case** the prosecution must, upon request, provide reasonable notice prior to trial of the general nature of the evidence of this type they intend to introduce.

Evidence Cheats On The Multistate Bar Exam

G Psacharopoulos



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