Multistate Bar Exam Outlines

Multistate Bar Exam

Evidence

- 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.
- Character evidence may be used to impeach or rehabilitate a witness once their credibility has been placed in issue. (i.e. if they testify)
 - Note Can't impeach the defendant unless he testifies.
- 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 reinion OK but not specific instances)
 - b. Cross examining the defendant's witnesses with specific instances of conduct. (opinion and reputation OK too)
 - Note Any misconduct including prior arrests may be inquired about on cross examination, but NO extrinsic evidence may be introduced to move the misconduct.
- 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.
- Rape Victims Character Generally INADMISSIBLE (i.e. manner of does and past sexual behavior with someone other than the defendant)
 - 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 robust.
 - 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 victims sexual behavior is admissible to prove that someone other than the defendant is the source of the semen or other physical evidence.
 - The victims past sexual behavior with the accused is admissible to prove consent.
 - e. If the presecution 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.
 - In a eriminal 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.

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Michael Rajnik

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