

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.

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