Summary of Chapter 26

Character as an Element in Legal Proceedings

This document explores when and how character evidence can be used to prove character as an element of a crime, civil claim, or defense. Unlike most legal situations where character evidence is limited, when character itself is an element of the case, the rules allow more extensive evidence including specific acts, reputation, and opinion testimony. This distinction is crucial for legal practitioners to understand, as it creates an important pathway for evidence that would otherwise be inadmissible.

Character evidence generally faces significant restrictions in court because of its potential to prejudice jurors and distract from the facts directly at issue. However, when character is directly relevant to determining liability or guilt—such as in cases of defamation or negligent hiring—the legal system recognizes the necessity of examining character more thoroughly.



by Roger Batchelor

Admissibility and Methods of Proving Character

When character is an element of a legal matter, Federal Rule of Evidence 405 permits three methods of proof: reputation testimony, opinion testimony, and evidence of specific instances of conduct. This is a significant exception to the usual restrictions on character evidence. Understanding these methods enables attorneys to develop more comprehensive strategies for cases where character plays a central role.

Evidence of specific conduct is typically more persuasive than general reputation or opinion testimony. In a child custody case, for example, testimony about a stepfather's violent acts toward women would be more impactful than general character assessments. Similarly, in negligent entrustment cases, specific instances of reckless driving carry more weight than general opinions about someone's driving habits.

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Common Cases Where Character Is an Element

- Defamation lawsuits where truth of character claims is disputed
- Child custody cases determining parental fitness
- Entrapment defenses requiring proof of predisposition
- Negligent entrustment claims
- Negligent hiring or retention litigation
- Cases involving "good moral character" requirements
- Habitual offender sentencing proceedings
- Truth-in-lending cases questioning character for truthfulness

Evidence Allowed Under Rule 405

- Reputation testimony from those familiar with the person
- Opinion testimony from witnesses with sufficient knowledge
- Specific instances of conduct (unlike other character evidence situations)
- Documentary evidence supporting character traits
- Expert testimony analyzing behavioral patterns
- Character evidence from multiple communities (work, home, etc.)

Limitations Still Apply

- Rule 403 may exclude evidence if prejudice outweighs probative value
- Hearsay rules and other evidence rules still apply
- Cross-examiner must have good faith belief in specific incidents
- Temporal relevance—very old character evidence may be excluded
- Cultural context may affect interpretation of character evidence
- Potential for jury confusion must be considered

Strategic Considerations

Attorneys must carefully evaluate whether character truly constitutes an element of the claim or defense. Erroneously asserting character as an element can lead to unexpected admission of damaging evidence. Conversely, failing to recognize when character is an element might result in missing opportunities to present crucial evidence.

The distinction between character as an element versus character as circumstantial evidence is subtle but significant. When character is an element, the trait itself is directly at issue—such as whether someone possessed the requisite "good character" for a professional license. In contrast, using character to suggest someone acted in accordance with that character (e.g., "he's dishonest, so he probably lied in this instance") represents circumstantial use that faces stricter limitations.

1

Identify Relevance

Determine if character is actually an element of the claim or defense

2

Select Evidence Type

Choose between reputation, opinion, or specific acts based on persuasive value

3

Anticipate Challenges

Prepare for Rule 403 objections and cross-examination

4

Present Effectively

Frame evidence to emphasize its relevance to the specific element at issue

Historical Context and Evolution

The treatment of character evidence has evolved significantly throughout legal history. Early common law allowed more liberal use of character evidence, but modern rules have increasingly restricted its application except when character is directly at issue. This evolution reflects growing concerns about unfair prejudice and recognition of the limited predictive value of character assessments.

The Supreme Court has repeatedly emphasized that American jurisprudence tries defendants for acts, not character. However, the Court has also recognized exceptions where character itself becomes legally relevant. Understanding this tension helps practitioners navigate the complex landscape of character evidence admissibility.

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