Evidence – Class 6

Rule 608. A Witness's Character for Truthfulness or Untruthfulness.

- (a) Reputation or Opinion Evidence.
  - A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character.
  - But evidence of truthful character is only admissible after the witness's character for truthfulness has been attacked.

Credibility vs. Character

- Credibility
  - Has to do with whether or not the witness's testimony is believable
- Character
  - Has to do with the witness's propensity for truthfulness or untruthfulness

General Character Evidence Rules

- Public policy, as reflected in the rules of evidence, generally prohibits "character evidence" to prove conduct in conformity with that character trait.
- The reasons for this are:
  - The idea that each case should be judged on its individual merits, not based on what happened in the past.
  - To prevent a jury from "punishing" a person for past conduct during a trial unrelated to that past conduct.
  - To prevent the jury from being prejudiced against a party.
- Therefore, the character evidence rule generally prohibits:
  - Testimony about a character trait; AND
  - Testimony about "prior acts" that show a character trait.

Evidence of General Character Traits

- Rule 404(a) provides:
  - Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion
- The rule does provide three exceptions:
  - Certain character evidence to assist a criminal defendant in a criminal trial. See Rule 404(a)(1).
  - Certain character traits of an alleged victim in a criminal case. See Rule 404(a)(2).
  - Certain character evidence of a witness. See Rule 404(a)(3).
- Another exception in general applies where the character trait is a key element of the case.
  - e.g., in the case of insanity defense

Character, Reputation, and Actions

- Character traits
  - Are internal
  - Can't be seen directly
  - Traits predispose a person to act in particular ways
- Reputation
  - Is external
  - What someone thinks about an individual
  - Is not always a reliable guide to character
- Actions
  - Lie between character and reputation
  - We can infer a person's character from his action
  - We use actions to construct a person's reputation

Four Categories of Character Evidence

- Proof of a witness's propensity to lie or tell the truth (See Rules 608 and 609)
- Proof of conduct by propensity (See Rule 404(a))
- Proof of character or reputation as elements (See Rule 405)
- Proof of other acts for non-propensity purposes (See Rule 404(b))

Evidence to Prove Character as an Element

- Sometimes, character is an element in a defamation lawsuit.
- Character plays an important role in child custody claims.

Rule 405. Methods of Proving Character

- (a) By Reputation or Opinion
  - When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion.
  - On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.
- (b) By Specific Instances of Conduct
  - When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

QUIZ TIME!

Applying the Rules

- Captain Hook took out an ad in *Entertainment Weekly,* claiming that Peter Pan was a liar and a thief because he misappropriated all of the personal property belonging to the Lost Boys.
- Peter sued Hook for defamation and denied that he was a liar and a thief.
- At trial, Wendy and Tinker Bell testified that Peter was always honest and truthful and that he was generous to the Lost Boys.
- Smee testified that he observed Peter rummaging through the Lost Boys' book-bags.

Applying the Rules – Analysis

- Captain Hook's ad attacked Peter Pan's character. Therefore, character became an essential element of the dispute.
- Both parties asserted that they were correct.
- The jury needs to decide whether Hook's assertions are true. If they are, then Hook's ad is not defamatory. If they are not true, Hook may be liable to Peter for defamation damages.