

IMPEACHMENT VS CHARACTER EVIDENCE

Often MBE questions require you to discern between impeachment and character evidence – use this document as a quick reference guide

IMPEACHMENT		CHARACTER EVIDENCE	
<ul style="list-style-type: none"> - Offered to: impeach witness - Admissible in which cases? All cases - Impeachment of who? Any witness - Who needs to initiate? Anyone can impeach a witness – including the witness’ own party. However, a party cannot bolster or accredit their witness’ testimony until the witness has been impeached. 		<ul style="list-style-type: none"> - Offered as: substantive evidence - Admissible in which cases? Criminal cases (most common) and civil cases where character directly in issue (rare) e.g. defamation, negligent hiring - Character evidence relating to who? Defendant/victim (if criminal case) or party to the case (if civil case) - Who needs to initiate character evidence in a criminal case? Defendant generally needs to initiative or “open the door” for both his own character and victim’s bad character. The prosecution can only rebut, except if offering for MIMIC purposes 	
Impeachment method	Form of evidence	Aim of character evidence	Form of evidence
Bias or interest	<ul style="list-style-type: none"> - Extrinsic evidence (calling other witnesses or introducing documents that prove the facts). Requires 1. Proper foundation to be laid and 2. That the statement is relevant 	Proving defendant’s good character (defendant “opening door”)	<ul style="list-style-type: none"> - Opinion and reputation testimony of defendant’s witness
Prior inconsistent statements – under oath or not	<ul style="list-style-type: none"> - Cross-examination (eliciting facts from the witness that discredit their own testimony) - Extrinsic evidence (calling other witnesses or introducing documents that prove the facts). Requires 1. Proper foundation to be laid and 2. That the statement is relevant <p>Note: if the prior inconsistent statement was made under oath, it is also admissible nonhearsay (therefore it may also be considered as substantive proof)</p>	Proving defendant’s bad character (prosecutor rebuttal)	<ul style="list-style-type: none"> - Cross-examination of defendant’s character witness, by asking if the witness knows of specific instances of misconduct - Opinion and reputation testimony of prosecutor’s witnesses as to defendant’s bad character <p>Restriction: extrinsic evidence of specific instances of misconduct are inadmissible except if (1) independently relevant - MIMIC or (2) if it relates to a prior act of sexual assault or child molestation in a case relating to sexual assault/child molestation</p>
Specific instances of misconduct	<ul style="list-style-type: none"> - Cross-examination <p>Restrictions: 1. Misconduct must be probative of truthfulness and 2. Counsel must inquire in good faith (extrinsic evidence is inadmissible)</p>	Proving victim’s bad character (defendant “opening door”)	<ul style="list-style-type: none"> - Opinion or reputation testimony of defendant’s witnesses <p>Restriction: victim’s bad character must be relevant to show defendant’s innocence e.g. self-defense</p>
Conviction of a crime, either for: 1. Dishonesty or false statement within last 10 years; or 2. A felony not involving dishonesty within last 10 years (court has discretion to exclude)	<ul style="list-style-type: none"> - Admission on direct examination - Admission on cross-examination - Record of judgement to show proof of conviction (no foundation must be laid) <p>Restrictions: evidence is inadmissible 1. if it relates to a juvenile offense and 2. Where the conviction was constitutionally defective</p>	Proving victim’s bad character – additional evidence allowed in a rape case (defendant “opening door”)	<ul style="list-style-type: none"> - Specific instances of sexual behavior by the victim, offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence - Specific instances of sexual behavior between the victim and the accused to prove consent <p>Restriction: evidence of victim’s sexual behavior or disposition are generally inadmissible</p>
Opinion or reputation evidence of untruthfulness	<ul style="list-style-type: none"> - Opinion or reputation evidence 	Proving victim’s good character (prosecutor rebuttal)	<ul style="list-style-type: none"> - Opinion or reputation testimony of prosecutor’s witness for victim’s good character for the same trait - Opinion or reputation testimony of prosecutor’s witness for defendant’s bad character for the same trait
Facts that contradict a witness’ testimony	<ul style="list-style-type: none"> - Extrinsic evidence <p>Permitted where: 1. The testimony relates to a material issue, 2. The testimony is significant on the issue of credibility or 3. The witness offers testimony about a subject which the opposing party is precluded from offering evidence</p>	Proving victim’s good character for peacefulness to rebut defendant’s self-defense claim (note defendant doesn’t need to “open door”)	<ul style="list-style-type: none"> - Opinion or reputation testimony of prosecutor’s witness for victim’s good character for peacefulness
Sensory deficiencies – defects of capacity or lack of knowledge	<ul style="list-style-type: none"> - Cross-examination of witness - Extrinsic evidence 		

