

What's Your Theory of Admissibility: Character Evidence, Prior Conduct, and Habit*

Theory	Character directly in issue	Character as circumstantial evidence of conduct as witness	Character as circumstantial evidence of conduct in case	Prior conduct to show non-character purpose	Habit as circumstantial evidence of conduct
What person may be the subject of the evidence?	Person whose character is directly in issue	Person who gives testimony, including own witness and out-of-court declarant	Defendant or victim in criminal case	Any person	Any person
What aspects of character or conduct may be proved?	Aspects relevant to character trait at issue	Character for truthfulness	Pertinent character trait of defendant or victim	If for relevant purpose, not for character, not too dissimilar or remote in time, and passes balancing test	Aspects relevant to issues in case
What kinds of evidence may be used?	Reputation, opinion, and specific acts	Convictions, reputation, lay opinion, and as permitted on cross specific acts	Reputation, lay opinion, and on cross specific acts	Specific acts, but generally not convictions	Opinion and specific acts
Is extrinsic evidence permissible in addition to cross-examination?	Yes	Yes, for convictions, reputation, lay opinion; no, for specific acts	Yes, for reputation and lay opinion; no, for specific acts	Yes	Yes
Who can introduce evidence?	Any party	Party may offer character for untruthfulness; opposing party then may offer character for truthfulness	Defendant may offer character of defendant or victim, state then may rebut as to <u>that</u> person	Any party	Any party
Are the rules the same in civil and criminal cases?	Yes	Yes	No, the above applies to criminal cases only	Yes	Yes
Applicable Rules	405(a), (b)	607, 608, 609, 806	404(a), 405(a)	403, 404(b)	406

**Character* comprises the actual qualities and characteristics of an individual. *Habit* is a regular or uniform response to a specific situation.