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Character evidence simplified: CORPSE, COD and COW

By Jackson Lucky

While I was a trial judge, I often observed attorneys struggle with character evidence. Some attorneys presented evidence of their clients' honorable military service, charitable activities or community involvement – all character evidence – without objection. This puzzled me. Did opposing counsel forget the rules? Were they hesitant to object before juries? Or did they lack a structured approach for identifying character evidence?

With this article, I hope to provide a clear, practical framework – CORPSE, COD and COW – to identify character evidence and understand its admissibility.

But first, a joke: A corpse walks into a bar with a cod and a cow. The corpse asks for the regular. The cod asks for water. The cow just moos. The bartender points at the corpse and says, “You get out. The beasts can stay.”

This bizarre (and not-so-funny) joke models how the Federal Rules of Evidence (FRE) and California Evidence Code (CEC) treat character evidence. I hope that the story helps the framework stick.

CORPSE: Identifying character evidence

The CORPSE framework offers attorneys a precise tool to recognize character evidence: **C**onduct, **O**pinion or **R**eputation offered to prove **P**ropensity (or **S**omething **E**lse).

Under FRE 405 and CEC § 1100, character evidence can take three forms: conduct, opinion or reputation (the COR in CORPSE). But the difference between inadmissible



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character evidence and otherwise admissible evidence depends on its purpose. If the proponent seeks to prove (P)ropensity, then FRE 404(a) (1), FRE 404(b) (1) and CEC § 1101 (a) bar it. On the other hand, if the proponent offers the evidence for (S)omething (E)lse, the character evidence rule doesn't apply.

Propensity means that the proponent is trying to prove that someone acted consistently with past behaviors. Rules, case law and commentary often use phrases such as “act in accor-

dance” or “conduct in conformity,” but it's all propensity.

The way to escape the propensity trap is to show that the evidence is offered for (S)omething (E)lse. FRE 404(b) (2) and CEC § 1101 (b) list examples of permissible “Something Else” purposes, including motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident. These lists are non-exhaustive, meaning that other purposes may also be valid.

Consider a defendant previously

convicted of burglary. This past conduct can't be used to suggest propensity (“he stole before; he stole now”). Yet the character evidence rule doesn't prevent the prosecution from using the same evidence to prove that the defendant knew how to disable the same sophisticated alarm system in both crimes.

Now that we've learned how a CORPSE can help identify character evidence, let's explore the animal kingdom to identify exceptions to the rule.

COD: Claim Or Defense – Character as the heart of the Matter

Sometimes, character isn't merely evidence; it's central to the claim or defense itself (COD). The common formulation of this rule is "character at issue," but I find that phrase too squishy. The term "at issue" can mean many things. In COD cases, character isn't collateral; it's integral.

The classic COD example is defamation claims. CACI 1700 lists reputation damage as an element of the claim. Whether a plaintiff's reputation suffered harm becomes the essential question.

Some legal issues straddle the line between Something Else and Claim Or Defense. For instance, wrongful death cases often examine the decedent's character as a spouse or parent to evaluate damages. *See Fernandez v. Jimenez*, 40 Cal.App. 5th 482, 489, 253 Cal. Rptr. 3d 236, 242 (2019).

The goal here is not to force the proffered evidence into the Something Else box or the Claim Or Defense box. Instead, the goal is to determine whether the proponent can articulate what the evidence is and whether it's offered for an admissible purpose. The mnemonic serves as a mental checklist, not a rigid rule.

Now that we've caught our fish let's move to the barnyard.

COW: Credibility Of Witnesses – Character on the Witness Stand

Witness credibility, or COW, emerges regularly at trial. Under FRE 607 and CEC § 785, any party can attack any witness's credibility at any time. However, while FRE 608(b) allows conduct, opinion and reputation evidence, CEC § 787 disallows conduct evidence, leaving only opinion and reputation.

Both the FRE and CEC allow the admission of certain criminal convictions to impeach a witness. The rules here are nuanced. FRE 609 allows both felony and misdemeanor convictions for impeachment, but the court must apply three different balancing tests depending on the nature of the current case and the nature of the prior conviction.

CEC 788 allows only felony convictions for impeachment, but case law has created both limitations and exceptions to the rule. *See People v. Castro*, 38 Cal.3d 301 (1985) (only "moral turpitude" felony convictions admissible for impeachment); *People v. Wheeler*, 4 Cal.5th 281 (2018) (in criminal cases only, "moral turpitude" misdemeanor conviction admissible for impeachment).

What about bolstering witnesses? FRE 608(b) (2) and CEC § 790 disallow it. You can defend a witness's honor only after your opponent attacks it.

Navigating Exceptions

In *criminal* cases, the "mercy rule" allows the defense to proffer character evidence and the prosecution to rebut. Under CEC § 1102 and FRE 404(a) (1), defendants may offer opinion or reputation evidence about their good character, which opens the door to prosecutorial rebuttal. While CEC § 1102(b) allows both general good character and a specific trait, FRE 404(a) (1) limits the defendant to a specific "pertinent" trait.

Similarly, CEC § 1103 and FRE 404 (a) (2) (B) allow criminal defendants to introduce evidence about the alleged victim's character (which may include conduct, opinion or reputation), again permitting prosecution rebuttal.

Space constraints prevent a detailed discussion of all exceptions here, but attorneys should carefully review FRE 412 to 415 and CEC §§ 1106, 1108 and 1109. These rules permit certain kinds of propensity and other acts evidence in criminal and civil cases involving sexual misconduct and domestic violence. These exceptions vary in application: Some apply exclusively in criminal cases, others only in civil cases and some in both. Practitioners must be cautious to determine precisely when and how each rule applies.

Conclusion: Practical Insights

Attorneys must adeptly recognize and navigate character evidence using CORPSE, COD and COW:

Quickly determine if the evidence relates to propensity or something else (CORPSE).

Assess whether character directly forms part of the claim or defense (COD).

Evaluate if character evidence concerns witness credibility (COW).

Armed with this structured approach, practitioners can confidently handle character evidence—knowing exactly when to object, admit or strategically stay silent.

Disclaimer: The content is intended for general informational purposes only and should not be construed as legal advice. If you require legal or professional advice, please contact an attorney.

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