CHARACTER EVIDENCE 1 (Substantive Evidence)

Character evidence is generally NOT admissible to show that the person *acted in conformity with their character or had a propensity to act that way*; this is the "Propensity Rule." So, the P has to prove this particular crime or tort, **EXCEPT:**

CIVIL

1) If character is an issue in the case, then all types of character evidence is admissible to show that the person has that particular character trait and/or acted in conformity with their character. Examples:
a) Defamation - P alleges that D called him a thief, so D can offer evidence to show that P is a thief.
b) Child Custody - one parent can offer evidence to show that the other parent is a violent person.
c) Negligent entrustment - the P can show that the entrustee was, say, a reckless driver, and that the D should have known about it.

CRIMINAL - To prove Propensity:

1) *Mercy Rule* witness: [Benefits the Defendant]
A **crimina**l defendant can offer opinion or reputation witnesses to testify about his **pertinent POSITIVE character trait** (e.g. "non-violence" in an assault case; "truthfulness" in a fraud case) That is, the D is allowed to *prove his good character* and to suggest to the Jury that he acted in conformity with his good character for this pertinent character trait.
However, the defendant makes his character an issue, that is, he "**opens the door**,"and can be rebutted by a reputation / opinion witness testifying to the D's bad character for the same character trait, e.g. "violence" in an assault case

2) Character of the Victim [Benefits the Defendant]
Opinion/reputation evidence of pertinent character trait of victim offered by the Defendant (*e.g. violence - to support a self-defense claim*). Prosecution can rebut by offering evidence of the victim's pertinent "good" character trait.
However, the defendant hence makes character an issue, that is, he "**opens the door**,"and can be rebutted by a reputation / opinion witness testifying to the D's bad character for the same character trait [*testimony that D is violent.*]
This rule is NOT applicable for **rape** - D cannot offer evidence to show that victim was promiscuous. However, D can offer evidence of previous sexual relations of victim for other purposes: i) D can offer evidence of *his own* previous sexual relations with victim to support his defense of consent., ii) D can also offer evidence of recent sexual relations with another person (s) to show that the other person(s) caused the victim's injuries (Kobe Bryant case), or was the source of the semen or other physical evidence.

3) Evidence of Prior Acts of Sexual Assault or Child Molestation [Benefits the **Prosecution**]
Admissible if D is accused of Sexual Assault or Child Molestation. [MD Distinction - Prior acts must be on the current victim.]

4) Prosecution Rebuttal of an Entrapment Defense. P can show that D had a propensity to commit the crime by all types of evidence. By using an Entrapment defense, the D has "opened the door" by putting his character at issue.

CRIMINAL and CIVIL

1) " **MIMIC type**" evidence: Not to prove propensity [Benefits the **Prosecution** in a criminal case.]
Evidence of OTHER CRIMES, WRONGS OR BAD ACTS to show something specific about the defendant / accused *other than propensity / disposition* to commit the act at issue. It is admissible to show things such as Motive, Identity, Intent, Preparation, Plan, Notice, Absence of Mistake etc. *This is subject to "probative/prejudicial" balancing because it is inherently prejudicial evidence; the probative value must be strong to overcome the prejudice; the "tighter the fit" the more probative it is.* Examples:
  a) "Patriotic Robber" with red/white /blue gun. Previous robberies with that gun admissible as unique Identification.
  b) Bank Robbery. D stole guns and a fast car the previous day. Admissible as Preparation.
  c) Arson. D fraudulently obtained several insurance policies on the building prior to the fire. Admissible as Motive.

2) **Habit or Routine Practice Evidence**: Admissible to show that the person acted in conformity with the habit ["good" or "bad"], e.g. "He *always* goes through this red light every morning." It must be an action that has become "second nature" or "automatic."

CHARACTER EVIDENCE 2 (Impeachment)

Only allowed to prove propensity for False Statement or Truthfulness. See Impeachment Rule A. 7 on Page 2:
i) Impeachment Witness "Opinion or reputation for **lying**"; ii) Rehabilitation Witness: "Opinion or reputation for **truthfulness**."

1. Dexter is being tried for the homicide of a girl whose strangled body was found beside a remote logging road with her hands taped together. After Dexter has offered evidence of alibi, the state calls Wilma to testify that Dexter had taped her hands and tried to strangle her in the same location two days before the homicide but that she escaped.

The evidence is

(A)   admissible as tending to show that Dexter is the killer.
(B)   admissible as tending to show Dexter's violent nature.
(C)   inadmissible, because it is improper character evidence.
(D)   inadmissible, because it is unfairly prejudicial.

2. Pack sued Donlon for slander, alleging that Donlon had publicly accused Pack of being a thief. In his answer, Donlon admitted making the accusation, but alleged that it was a true statement.
At trial, Donlon offers evidence that Pack stole a ring worth $10,000 from a jewelry store.

Evidence concerning this theft should be

(A)   admitted, because specific instances of conduct may be proved when character is directly in issue.
(B)   admitted, because Pack's action constituted a felony.
(C)   excluded, because character must be shown by reputation or opinion.
(D)   excluded, because its relevance is substantially outweighed by the danger of unfair prejudice.

3. Decker, charged with armed robbery of a store, denied that he was the person who had robbed the store. In presenting the state's case, the prosecutor seeks to introduce evidence that Decker had robbed two other stores in the past year.

This evidence is

(A)   admissible to prove a pertinent trait of Decker's character and Decker's action in conformity therewith.
(B)   admissible to prove Decker's intent and identity.
(C)   inadmissible, because character must be proved by reputation or opinion and may not be proved by specific acts.
(D)   inadmissible, because its probative value is substantially outweighed by the danger of unfair prejudice.

4. Dann, who was charged with the crime of assaulting Smith, admitted striking Smith but claimed to have acted in self-defense when he was attacked by Smith, who was drunk and belligerent after a football game.
Dann's friend Frank was called to testify that Smith had a reputation among the people with whom he lived and worked for law-breaking and frequently engaging in brawls.
The trial judge should rule the testimony

(A)   admissible to support Dann's theory of self-defense, touching on whether Dann or Smith was the aggressor.
(B)   admissible if Frank testifies further as to specific acts of misconduct on Smith's part of which Frank has personal knowledge.
(C)   inadmissible on the question of Dann's guilt because Dann, not Smith, is on trial.
(D)   inadmissible, because Frank failed to lay a proper foundation

5. Duncan was charged with aggravated assault. At trial Duncan did not testify; however, he sought to offer opinion evidence of his good character for truth and veracity.

This testimony should be

(A)   admitted, because a criminal defendant is entitled to offer evidence of his good character.
(B)   admitted, because a party's credibility is necessarily in issue.
(C)   excluded, because character is not admissible to prove conduct in conformity therewith.
(D)   excluded, because it is evidence of a trait not pertinent to the case

6. Park brought an action against Dan for injuries received in an automobile accident, alleging negligence in that Dan was speeding and inattentive. Park calls White to testify that Dan had a reputation in the community of being a reckless driver and was known as "daredevil Dan." White's testimony is

(A)   admissible as habit evidence.
(B)   admissible, because it tends to prove that Dan was negligent at the time of this collision.
(C)   inadmissible, because Dan has not offered testimony of his own good character.
(D)   inadmissible to show negligence.