

At a civil trial for slander, the plaintiff showed that the defendant had called the plaintiff a thief. In defense, the defendant called a witness to testify, "I have been the plaintiff's neighbor for many years, and people in our community generally have said that he is a thief."

Is the testimony concerning the plaintiff's reputation in the community admissible?

- A. No, because character is an essential element of the defense, and proof must be made by specific instances of conduct.
- B. Yes, to prove that the plaintiff is a thief and to reduce or refute the damages claimed.
- C. Yes, to prove that the plaintiff is a thief but not on the issue of damages.
- D. Yes, to reduce or refute the damages claimed but not to prove that the plaintiff is a thief.

## Explanation:

### Methods of proving character

(FRE 405)

<b>Reputation testimony</b>	Testimony about person's reputation among associates or in community by witness familiar with person's reputation
<b>Opinion testimony</b>	Personal opinion of person's character offered by witness who knows person

**Specific instances of conduct** Prior acts that illustrate person's character

**FRE** = Federal Rule of Evidence

**Character evidence** is generally inadmissible to prove that a person acted in conformity with that character on the occasion at issue. But such evidence is **admissible** when a person's character is **directly in issue**—ie, when character is an **essential element** of a **charge, claim, or defense**. Character can then be proved by reputation or opinion testimony OR by specific instances of conduct (**Choice A**).

In slander cases—where the defendant allegedly made a false statement that injured the plaintiff's reputation—the plaintiff's character is directly in issue for two reasons:

Truth is an absolute [defense to slander](#), and the plaintiff's actual character will determine whether the defendant's statement was true.

The plaintiff will claim that he/she has been damaged by the defendant's statement (ie, that his/her reputation has been tarnished), and damages are limited if the plaintiff already had a bad reputation.

Therefore, testimony that the plaintiff has a reputation for being a thief is admissible in this slander case to prove that the plaintiff is a thief (for the defendant's truth defense) and to reduce or refute the damages claimed (because the plaintiff already had a bad reputation) (**Choices C & D**).

### Educational objective:

When a person's character is directly in issue—ie, it is an essential element of a charge, claim, or defense—character evidence can be admitted through (1) reputation or opinion testimony *or* (2) specific instances of conduct.

### References

Fed. R. Evid. 405 (methods of proving character).

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