

A prominent investment advisor sued a former client for slander. In his complaint, the investment advisor alleged that the client publicly accused him of being a con artist. The client timely filed an answer whereby she admitted to making the statement but also asserted that the statement was true.

At trial, the client offers evidence that the investment advisor had knowingly managed a fraudulent investment fund commonly referred to as a Ponzi scheme.

Is evidence of the investment advisor's management of the fraudulent investment fund admissible?

- A. No, because character must be shown by reputation or opinion.
- B. No, because its relevance is substantially outweighed by the danger of unfair prejudice.
- C. Yes, because specific instances of conduct may be proved when character is directly in issue.
- D. Yes, because the investment advisor's action constituted a felony.

Explanation:

Examples of character as essential element

	Definition	Character at issue
Defamation	Injuring plaintiff's reputation with spoken (slander) or written (libel) false statement	Plaintiff
Negligent entrustment	Injuring plaintiff by negligently entrusting dangerous article to reckless or incompetent person	Person entrusted
Child custody	Modifying child custody, visitation, or other parental rights	Parent or guardian
Entrapment	Criminal defense alleging government inducement & defendant's lack of predisposition to commit crime	Defendant
Negligent hiring	Injuring plaintiff by negligently hiring person of dangerous or untrustworthy character	Hiree

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

Here, the investment advisor sued a former client for slander after she publicly accused him of being a con artist. The investment advisor's character is directly in issue because truth is an absolute defense to slander, and his actual character will determine whether the client's statement was true. Therefore, evidence that the investment advisor knowingly managed a fraudulent investment fund (a specific instance of conduct) is admissible to prove his actual character as a con artist.

(Choice B) [Relevant evidence](#) may be excluded if its probative value is substantially outweighed by a danger of unfair prejudice. This danger exists when the evidence may cause the jury to decide the case on an improper basis (eg, emotion). But here, any danger of unfair prejudice posed by the evidence does *not* substantially outweigh its probative value because the evidence is *essential* to the client's truth defense.

(Choice D) When character is directly in issue, *any* specific acts that show this character are admissible. So the fact that the investment advisor's action constituted a felony is irrelevant.

Educational objective:

Character evidence is admissible when a person's character is an essential element of a charge, claim, or defense (ie, when character is directly in issue). Character can then be proved by evidence of reputation, opinions, or specific instances of conduct.

References

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

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