

A man is on trial for the brutal murder of his wife. The man's first witness testified that, in her opinion, the man is a peaceful and nonviolent person. The prosecution did not cross-examine the witness, and the witness was then excused from further attendance.

Which one of the following is INADMISSIBLE during the prosecution's rebuttal?

- A. Testimony by a neighbor that the witness has a long-standing reputation in the community as an untruthful person.
- B. Testimony by a police officer that the defendant has a long-standing reputation in the community as having a violent temper.
- C. Testimony by the defendant's former cellmate that he overheard the witness offer to provide favorable testimony if the defendant would pay her \$5,000.
- D. Testimony by the witness's former employer that the witness submitted a series of false expense vouchers two years ago.

Explanation:

Federal Rule of Evidence 608 provides the framework to attack or support a witness's **character for truthfulness** through:

reputation or opinion testimony about the witness's character for truthfulness **(Choice A)** or

specific instances of conduct (SIC)—ie, convictions for felonies or crimes of dishonesty OR prior bad acts that relate to the witness's character for truthfulness.

A SIC that involves a conviction for a **felony or crime of dishonesty** can be introduced **intrinsically** (ie, through the witness's testimony) or **extrinsically** (ie, from other sources). In contrast, a SIC involving a **bad act** may only be **introduced intrinsically**.

Here, the prosecution seeks to attack the witness's character for truthfulness by having the witness's former employer testify that the witness submitted a series of false expense vouchers two years ago. But since this SIC involves a prior bad act, it may only be introduced intrinsically—not extrinsically through the former employer's testimony.

(Choice B) A defendant may offer evidence of his/her pertinent character trait at a criminal trial—eg, defendant's character for peacefulness is pertinent in a murder trial. If the defendant does so, the prosecutor can then offer evidence to rebut that trait—eg, defendant's reputation for violence. Therefore, the police officer's testimony is admissible.

(Choice C) Extrinsic evidence of a SIC involving a bad act cannot be used to attack a witness's character for truthfulness. But it *can* be used to impeach a witness on another basis (eg, to show bias). Therefore, extrinsic evidence in the form of the cellmate's testimony that the witness offered to testify favorably for \$5,000 is admissible to show bias.*

*The Federal Rules of Evidence do not require that a party lay a foundation by asking the witness about an alleged bias before introducing extrinsic evidence of that bias. However, many states' rules of evidence do (eg, Alaska, Texas).

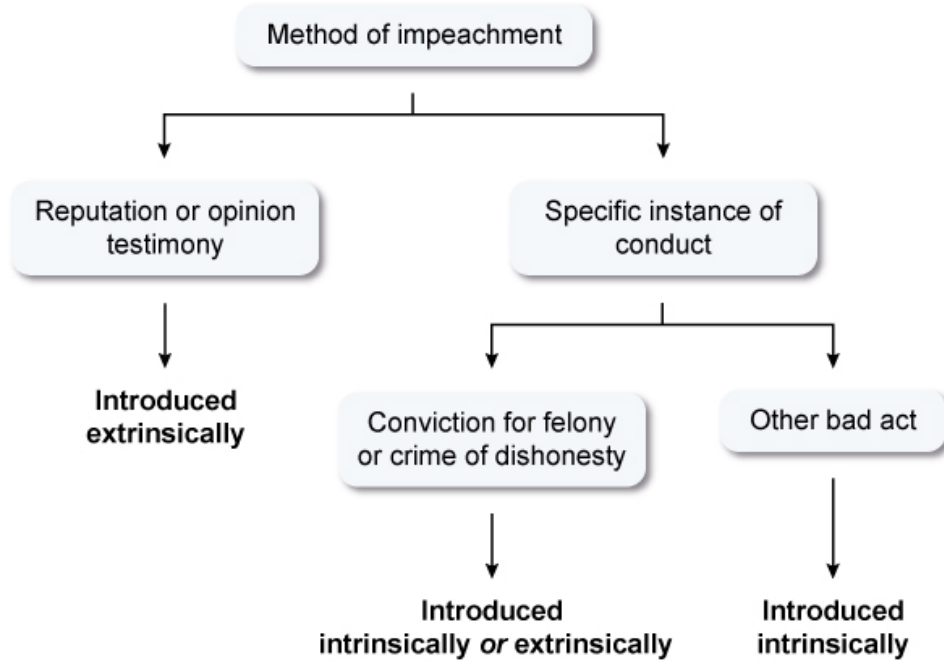
Educational objective:

A witness's character for truthfulness can be attacked with a specific instance of conduct (SIC) involving a criminal conviction for a felony or crime of dishonesty—regardless of whether the SIC is introduced intrinsically or extrinsically. But a SIC involving a bad act can only be introduced intrinsically.

References

Fed. R. Evid. 608(b) (attacking a witness's character for truthfulness with a specific instance of conduct).

Impeaching witness's character for truthfulness
(FRE 608 & 609)



FRE = Federal Rules of Evidence