

The defendant, a young doctor, was charged with falsely claiming deductions on her federal income tax return. At trial, a witness testified for the defendant that she has a reputation in the community for complete honesty. After a sidebar conference at which the prosecutor gave the judge a record showing that the defendant's medical school had disciplined her for altering her transcript, the prosecutor proposed to ask the witness on cross-examination: "Have you ever heard that the defendant falsified her medical school transcript?"

Is the prosecutor's question proper?

- A. No, because it calls for hearsay not within any exception.
- B. No, because its minimal relevance on the issue of income tax fraud is substantially outweighed by the danger of unfair prejudice.
- C. Yes, because an affirmative answer will be probative of the defendant's character trait for dishonesty and, therefore, her guilt.
- D. Yes, because an affirmative answer will impeach the witness's credibility.

### **Explanation:**

The **prosecution cannot introduce** evidence regarding the defendant's character **unless**:  
the defendant's character is an essential element of the charged crime or an asserted defense *or*

the **defendant introduces** testimony on his/her own **pertinent character trait** (as seen here).

But if the defendant introduces such testimony (placing his/her character in issue), the door opens for the **prosecution** to **rebut** it by either:

**calling its own witness** to present **reputation or opinion testimony** about the defendant's pertinent trait *or*

**cross-examining** the **defendant's character witness** about a **specific instance of conduct** attributable to the defendant—thereby impeaching that witness's credibility.

Here, the prosecutor seeks to cross-examine the defendant's character witness about the defendant's specific instance of conduct—falsifying a medical school transcript. Since an affirmative answer will impeach the witness's credibility regarding the defendant's honest reputation, the question is proper.

**(Choice A)** The prosecutor's question does concern an out-of-court statement. But it does not call for hearsay since the response will be used to impeach the witness's assessment of the defendant's character—not to prove the truth of the matter asserted therein (ie, that the defendant actually falsified a transcript).

**(Choice B)** Evidence is inadmissible when its probative value (ie, degree of relevance) is *substantially* outweighed by its prejudicial effect. Evidence is relevant if it (1) tends to make a material fact more or less probable or (2) addresses a witness's credibility (as seen here). And since a character witness's credibility is *highly* relevant, the probative value of the falsified transcript would not be substantially outweighed by the danger of unfair prejudice.

**(Choice C)** An affirmative answer to the prosecutor's question cannot be used to prove the defendant's character trait for dishonesty and, therefore, her guilt of tax fraud. But it can be used to *impeach* the defendant's character witness by showing lack of knowledge of the defendant's character.

### **Educational objective:**

When a defendant introduces evidence on his/her pertinent character trait, the prosecution can rebut that evidence by (1) calling its own witness to provide reputation or opinion testimony or (2) cross-examining the defendant's character witness about a specific instance of conduct.

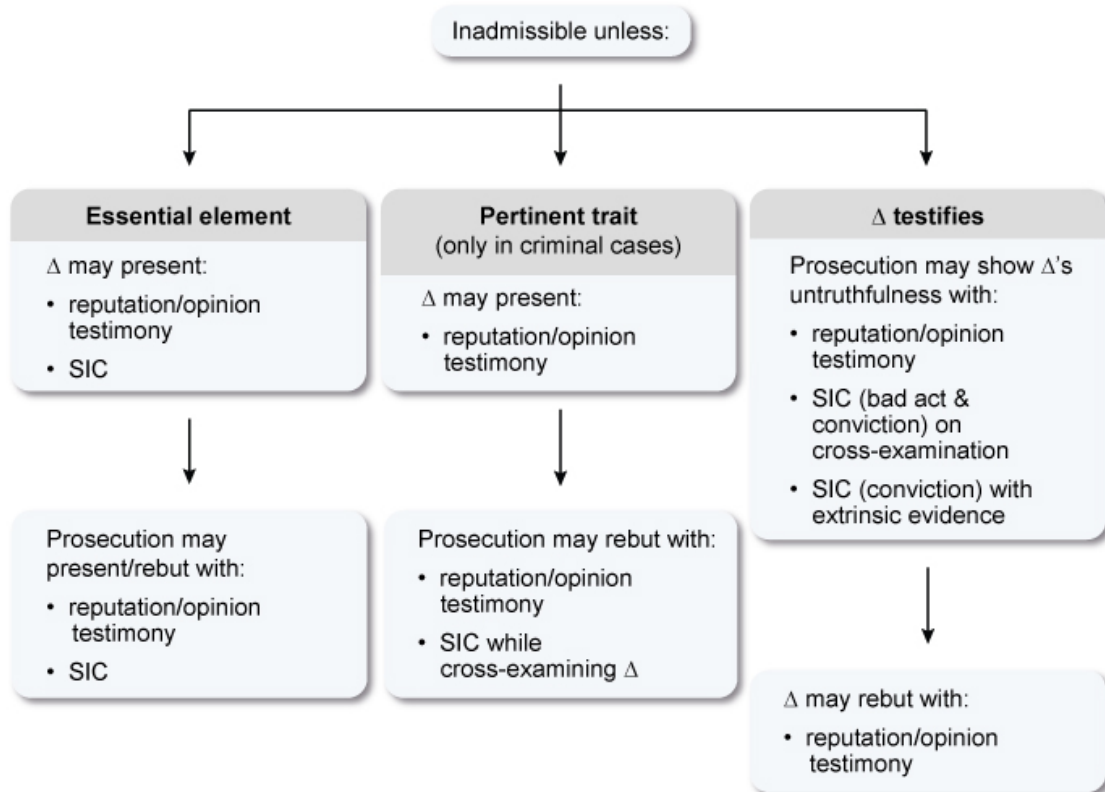
## References

Fed. R. Evid. 404 (character evidence).

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### Evidence on criminal defendant's character



Δ = defendant; SIC = specific instance of conduct

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