

A defendant is on trial for burglary. During cross-examination of the defendant, the prosecutor wants to inquire about the defendant's earlier conviction for falsifying a credit application.

Which of the following facts concerning the conviction would be the best reason for the trial court's refusing to allow such examination?

- A. The conviction is on appeal.
- B. The conviction was for a misdemeanor rather than a felony.
- C. The defendant was put on probation rather than imprisoned.
- D. The defendant was released from prison 12 years ago.

Explanation:

A witness can be **impeached** with a **prior criminal conviction** for a felony OR any crime of dishonesty—including a misdemeanor **(Choice B)**. This is true even if the conviction is on appeal or the witness was placed on probation **(Choices A & C)**. However, if **more than 10 years** have passed since the witness's **conviction or release from incarceration** (whichever is later), evidence of the conviction is only admissible if:

the adverse party has been given **reasonable written notice** of the party's intent to use the conviction so that the adverse party has a fair opportunity to contest its use *and*

the trial judge determines that the conviction's **probative value**, supported by specific facts and circumstances, ***substantially outweighs*** its **prejudicial effect**.

This balancing test is difficult to satisfy because, in effect, it creates a presumption that convictions over 10 years old cannot be used for impeachment. As a result, these old convictions are admitted very rarely and only in exceptional circumstances. This means that the best reason to refuse an inquiry into a prior conviction is that the defendant was released from prison 12 years ago.

Educational objective:

A party may impeach a witness with evidence of the witness's prior convictions. But if more than 10 years have passed from the later of the witness's conviction or release from incarceration, the conviction is only admissible if (1) its probative value substantially outweighs its prejudicial effect and (2) reasonable written notice is given.

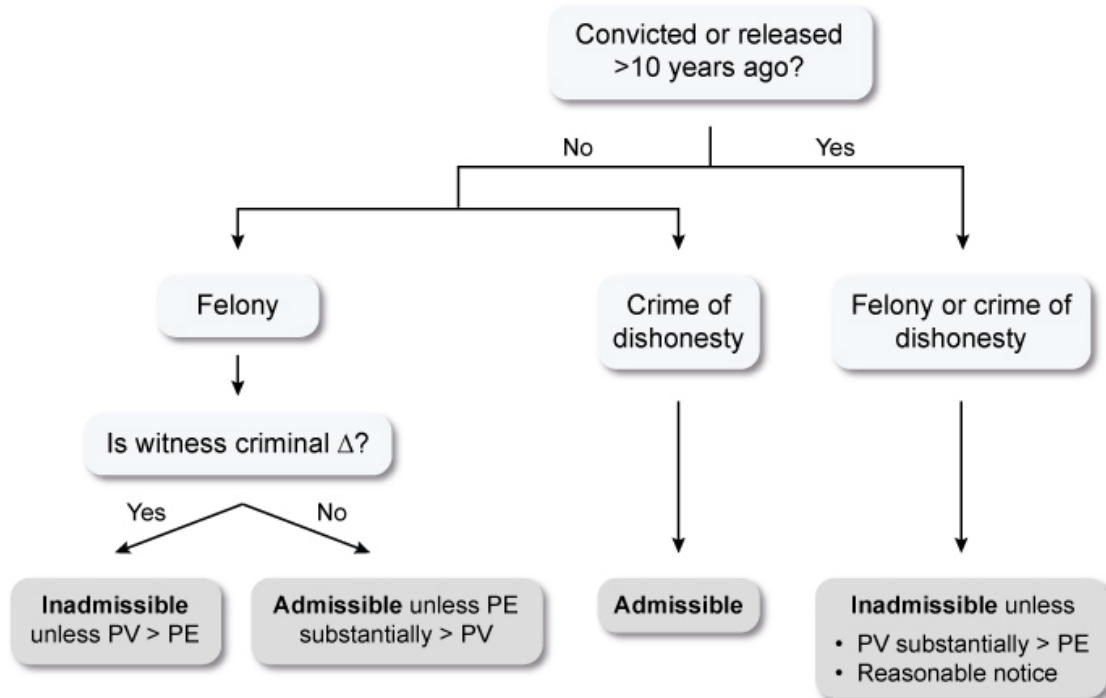
References

Fed. R. Evid. 609 (impeachment with criminal conviction).

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Impeaching with criminal conviction



Δ = defendant; **PV** = probative value; **PE** = prejudicial effect