

A plaintiff, a former city employee, sued the city for his alleged wrongful discharge from a civil service position. The plaintiff alleged that his supervisor had discharged him in retaliation after she learned that he had told the police he thought the supervisor might be embezzling. At trial, the plaintiff has called the supervisor as an adverse witness, and the supervisor has testified that the plaintiff was fired for incompetence.

The plaintiff's attorney then asks the supervisor, "Isn't it true that before the discharge you were told that [the plaintiff] had reported to the police that you were pilfering money from the office coffee fund?"

For what purpose(s) is the plaintiff's question permissible?

- A. Only to establish the supervisor's improper motive in discharging the plaintiff.
- B. Only to impeach the supervisor's veracity as a witness because of her dishonesty.
- C. Only to impeach the supervisor's veracity as a witness because of her personal bias against her accuser, the plaintiff.
- D. Both to impeach by showing bias and to establish improper motive in discharging the plaintiff.

Explanation:

Under Federal Rule of Evidence 607, a witness can be **impeached by any party**—including the party that called the witness. One method of impeachment is establishing that the witness is **biased against a party** and therefore had a **motive to lie** while testifying. For example, evidence that the supervisor learned that the plaintiff had reported her to the police before the firing shows that the supervisor may have reason to lie about why the plaintiff was fired. Therefore, the plaintiff's question is permissible for impeachment purposes **(Choice A)**.

But a question that impeaches a witness may *also* be used to **elicit substantive evidence** if the question goes toward a material fact or issue—ie, a fact or issue that is of consequence in determining the outcome of the case. Here, the plaintiff sued for wrongful discharge, so the reason he was fired is a material fact. Since the plaintiff's question tends to establish an improper motive for discharging him, it is also permissible for this substantive purpose **(Choice C)**.

(Choice B) A party *may* impeach a witness by inquiring into specific instances of conduct that bear on the witness's character for truthfulness. But here, the plaintiff's question addressed the supervisor's *response* to learning that the plaintiff reported her to the police—not whether the supervisor *actually* pilfered the office coffee fund. Therefore, the question does not go to the supervisor's character for truthfulness.

Educational objective:

A witness may be impeached by showing that the witness is biased against a party and therefore had a motive to lie while testifying. A question that impeaches a witness may also be used to elicit substantive evidence if the question concerns a material fact or issue.

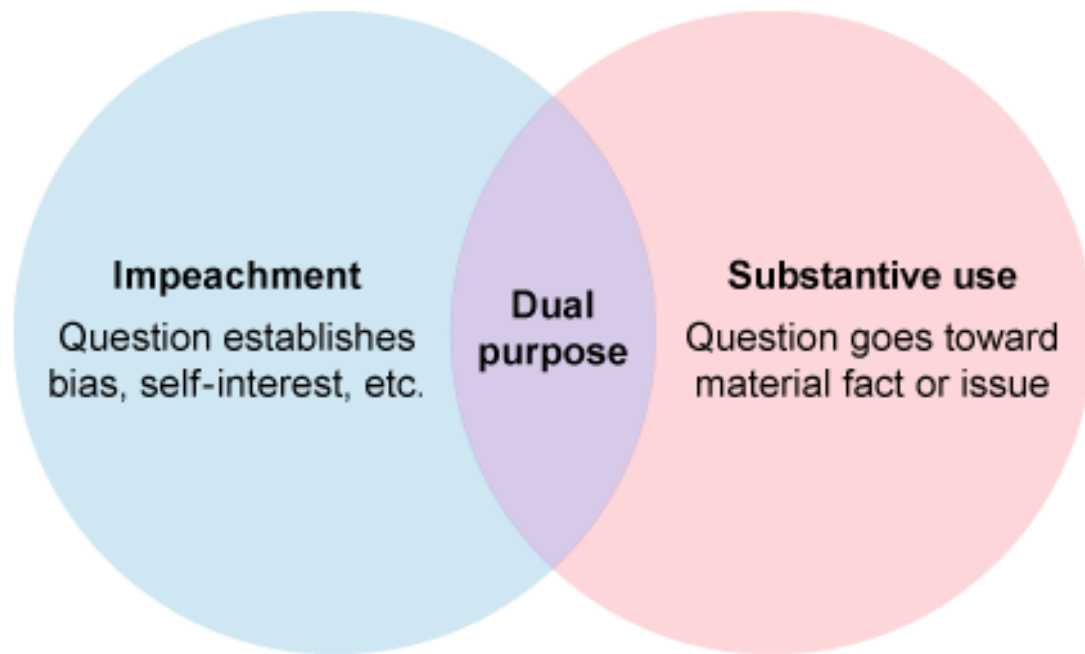
References

Fed. R. Evid. 607 (who may impeach a witness).

Copyright © 2019 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Impeachment v. Substantive use



©UWorld