

At a defendant's trial for robbery, the defendant called a witness who testified that he and the defendant were camping in a state park on the night in question. On cross-examination, the prosecutor asked the witness if it is true that the witness forged his former manager's signature to gain access to a company expense account. The witness denied forging the signature. The prosecutor now seeks to question the witness about the 30-day suspension that he received after company officials determined that he had forged the manager's signature.

Is the prosecutor's proposed question proper?

- A. No, because a party may not reference the consequences of a bad act denied by a witness.
- B. No, because the question exceeds the proper scope of cross-examination.
- C. Yes, to impeach the witness on a collateral issue.
- D. Yes, to rebut the witness's denial of the forgery.

## Explanation:

Under Federal Rule of Evidence 608, a party may attack a witness's **character for truthfulness** through:

reputation or opinion testimony *or*

**specific instances of conduct** (SICs) involving convictions for felonies or crimes of dishonesty OR **prior bad acts** that relate to the witness's character for truthfulness.

Reputation and opinion testimony, and SICs involving convictions, can be introduced *extrinsically*\*—ie, from a source other than the witness's own testimony. However, SICs involving bad acts (eg, forging a signature) may only be **introduced intrinsically**—ie, by questioning the witness him/herself about the bad act.

As a result, if the **witness denies** the bad act, the examining party **must accept the witness's answer**. The examining party **cannot rebut** the witness's denial by referencing the consequences of the bad act (eg, the witness's 30-day suspension) **(Choice D)**. Doing so would, in effect, violate the prohibition against extrinsic evidence by introducing a third party's (eg, company officials') opinion about the bad act.

\*SICs involving convictions may also be introduced intrinsically.

**(Choice B)** The scope of cross-examination is limited to the subject matter of direct examination and matters affecting the witness's credibility (eg, character for truthfulness). The prosecutor's question about the forgery attempted to attack the witness's character for truthfulness. And the question about the suspension seeks to show that the witness falsely denied the forgery. Therefore, both questions are *within* the scope of cross-examination.

**(Choice C)** Under the collateral-evidence rule, extrinsic evidence is not admissible to impeach a witness on a collateral issue—ie, a matter that has no bearing on the outcome of the case. Therefore, the reference to the suspension (extrinsic evidence) is *not* admissible to impeach the witness about the forgery—a matter that is collateral to the defendant's robbery trial.

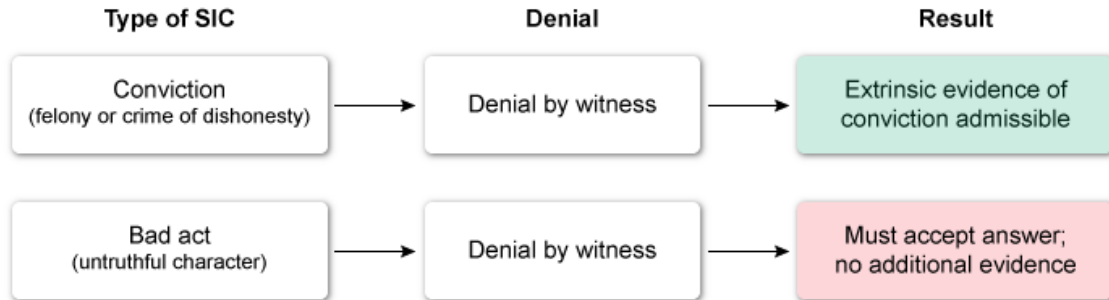
## Educational objective:

If a witness denies a bad act offered to attack the witness's character for truthfulness, the examining party must accept the answer. The examining party cannot reference the consequences of the bad act or otherwise rebut the denial with extrinsic evidence.

## References

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

**Witness's denial of specific instance of conduct**  
(when offered to attack character for truthfulness)



**SIC** = specific instance of conduct