

In an automobile negligence action by the plaintiff against the defendant, a witness testified for the plaintiff. The defendant later called his own witness, who testified that the plaintiff's witness's reputation for truthfulness was bad.

On cross-examination of the defendant's witness, the plaintiff's counsel asks, "Isn't it a fact that when you bought your new car last year, you made a false affidavit to escape paying the sales tax?"

Is this question proper?

- A. No, because character cannot be proved by specific instances of conduct.
- B. No, because one cannot impeach an impeaching witness.
- C. Yes, because it bears on the credibility of the defendant's witness.
- D. Yes, because it will indicate the defendant's witness's standard of judgment as to reputation for truthfulness.

Explanation:

A **witness's character for truthfulness** (ie, credibility) may be **impeached** through any of the following methods:

Reputation testimony – testimony by someone sufficiently familiar with the witness's reputation among associates or in the community

Opinion testimony – testimony sharing an opinion on the witness's character that is based on personal knowledge and familiarity with the witness

Specific instances of conduct (SICs) that are probative of the witness's character for truthfulness

SICs can always be introduced **intrinsically** (ie, by questioning the witness being impeached about the SIC). But they can only be introduced **extrinsically** (ie, from other sources) if the SIC relates to a **criminal conviction** for a felony or crime of dishonesty.

Here, the plaintiff's counsel seeks to impeach the defendant's witness by cross-examining the witness about falsifying an affidavit to escape paying sales tax. This SIC bears on the witness's credibility, and it is being introduced through the witness's own testimony (ie, intrinsically). Therefore, the question is proper.

(Choice A) Character *can* be proved by SICs when character is an **essential element** of a charge, claim, or defense OR on cross-examination when the SIC is probative of the witness's character for truthfulness.

(Choice B) *Any* witness can be impeached, including those who are impeaching another witness.

(Choice D) Reputation or opinion testimony can be challenged by questioning the witness's standard of judgment—eg, "You claim she has an untruthful reputation, but did you know she was voted Citizen of the Year?" But here, the question goes to the defense witness's own conduct—not the reputation of the plaintiff's witness.

Educational objective:

A witness may be impeached by a specific instance of conduct that is probative of the witness's character for truthfulness. But this conduct must be introduced with intrinsic evidence unless it is a conviction for a felony or crime of dishonesty.

References

Fed. R. Evid. 608 (witness's character for truthfulness).

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

