

A defendant was charged with using a forged prescription from a local doctor to obtain a powerful painkiller from a drugstore on May 1. At trial, the pharmacist identified the defendant as the customer, but the defendant testified that he had not been in the store. In rebuttal, the prosecutor calls two other pharmacists to testify that on May 1 a man they identified as the defendant had presented prescriptions for the same painkiller from the same local doctor at each of their drugstores.

Is the testimony of the two other pharmacists admissible?

- A. No, because it proves specific acts rather than reputation or opinion.
- B. No, because other crimes may not be used to show propensity.
- C. Yes, to identify the man who presented the prescription at the first pharmacist's drugstore.
- D. Yes, to prove a pertinent trait of the defendant's character and his action in conformity therewith.

## Explanation:

Evidence that a **criminal defendant** committed similar **crimes or bad acts** is **inadmissible** for **propensity purposes**—ie, to prove the defendant's character trait and his/her conformance with that trait on the occasion at issue. This protects criminal defendants from being convicted on the basis of bad character (as opposed to actual guilt).

But such evidence may be **admissible** for **relevant, noncharacter purposes** (ie, MIMIC). This includes proving the perpetrator's **identity**—eg, by showing a sufficient similarity (in nature, location, and/or time) between the defendant's prior bad acts and the charged crime to link the defendant to that crime. Therefore, evidence that the defendant presented identical prescriptions at two other drugstores on the same day is admissible to identify him as the man who presented the prescription at the first pharmacist's drugstore **(Choice B)**.

**(Choice A)** Under Federal Rule of Evidence 405, specific acts cannot be used to prove *character* unless it is an essential element of a claim, charge, or defense. But specific acts can always be used for relevant, *noncharacter* purposes—eg, to prove identity (as seen here).

**(Choice D)** The prosecution may prove a pertinent trait of the defendant's character if the defendant has opened the door to such evidence. This occurs when the defendant offers [reputation or opinion](#) testimony on a good character trait that is pertinent (ie, relevant) to the charged crime. Here, there is no indication that the defendant has offered such testimony, so the pharmacists' testimony cannot be admitted for this purpose.

## Educational objective:

Evidence that a criminal defendant committed similar crimes or bad acts is inadmissible to prove his/her propensity to commit the charged crime. But it may be admissible for relevant, noncharacter purposes (ie, MIMIC).

## References

Fed. R. Evid. 404(b) (admissibility of crimes, wrongs, or other acts).

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## Criminal defendant's previous crimes or bad acts (MIMIC)

Prosecution seeks to offer evidence  
of  $\Delta$ 's previous crime or bad act?

Yes ↓

Evidence intended to show  $\Delta$ 's  
propensity to commit charged crime?

Yes → **Inadmissible**

No ↓

Evidence relevant for a  
noncharacter purpose—eg:

- **M**otive/opportunity
- **I**ntent
- **M**istake/accident (absence of)
- **I**ntity
- **C**ommon scheme/plan

No → **Inadmissible**

Yes ↓

**Admissible**

$\Delta$  = defendant

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