

A plaintiff sued a defendant for damages stemming from a slip-and-fall accident on the defendant's property. At trial, the plaintiff's key witness testified that the defendant failed to maintain his property, making it unsafe for visitors. The defendant then called his own witness to testify that the plaintiff's witness has a poor reputation in the community for honesty and had once cheated in a community raffle to win a new car. The plaintiff has objected to the defendant's witness's testimony.

How should the court proceed?

- A. Admit the testimony in its entirety.
- B. Admit the testimony regarding the plaintiff's witness's reputation for honesty, but exclude the testimony about the community raffle.
- C. Exclude the testimony about the plaintiff's witness's reputation for honesty, but admit the testimony about the community raffle.
- D. Exclude the testimony in its entirety.

Explanation:

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

reputation or opinion testimony about the witness's character for truthfulness *or*

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

Reputation or opinion testimony is introduced **extrinsically**—ie, from a source other than the witness's own testimony (eg, a different witness). Therefore, the court should allow the defendant to call his own witness to testify that the plaintiff's witness has a poor reputation in the community for honesty (**Choices C & D**).

In contrast, a **SIC** that involves a conviction for a **felony or crime of dishonesty** can be introduced **extrinsically or intrinsically**—ie, through the attacked witness's own testimony. But a SIC involving a **bad act**—eg, cheating in a community raffle—may **only** be introduced **intrinsically**. Therefore, the court should *not* allow the defendant to call his own witness to testify about the plaintiff's witness's bad act (**Choice A**).

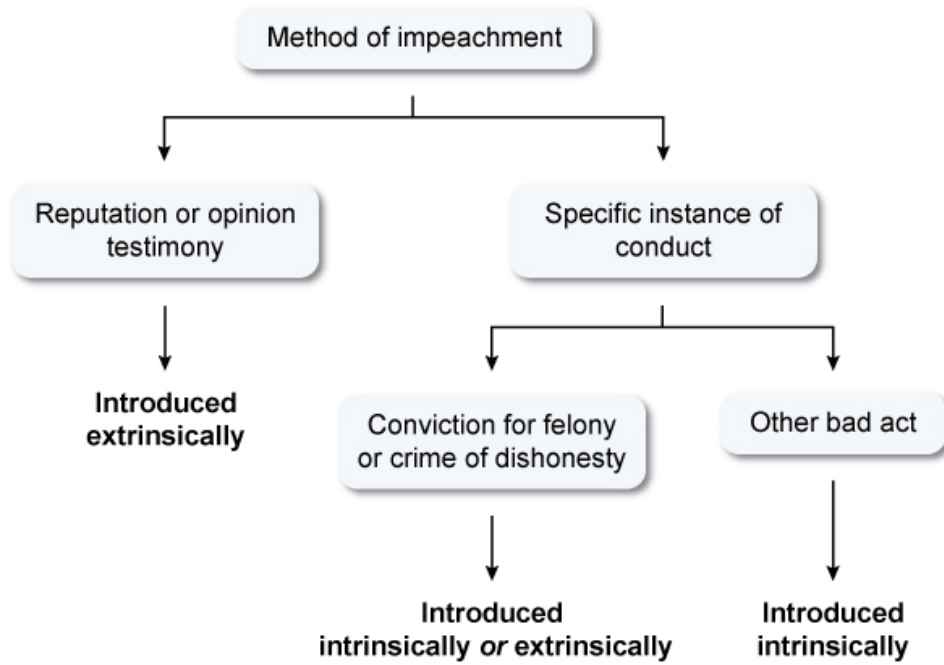
Educational objective:

A party may attack a witness's character for truthfulness through (1) reputation or opinion testimony or (2) specific instances of conduct (SICs). A SIC that involves a conviction for a felony or crime of dishonesty can be introduced extrinsically or intrinsically. But a SIC involving a bad act may only be introduced intrinsically.

References

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

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



FRE = Federal Rules of Evidence