

A plaintiff sued a defendant for civil battery. At trial, the defendant testified that he was nowhere near the plaintiff when the plaintiff sustained the injuries at issue. The defendant now seeks to call a witness to testify to the defendant's reputation for both peacefulness and truthfulness. The plaintiff has objected to the testimony.

How should the court proceed?

- A. Admit the testimony in its entirety, because evidence concerning a defendant's character is always admissible.
- B. Admit the testimony regarding the defendant's reputation for peacefulness, but exclude the testimony regarding his reputation for truthfulness.
- C. Exclude the testimony regarding the defendant's reputation for peacefulness, but admit the testimony regarding his reputation for truthfulness.
- D. Exclude the testimony in its entirety, because this is a civil suit and the defendant's character for truthfulness was not attacked.

**Explanation:**

Under Federal Rule of Evidence 404, evidence of a person's character is generally **inadmissible** to prove that the person acted in accordance with that character on the occasion being litigated. One **exception** to this rule allows **criminal defendants** to introduce testimony regarding their **good character** if it is pertinent **to the charged crime**—eg, peacefulness is pertinent to violent crimes such as battery. But this exception **does not apply to civil cases**. As a result, testimony regarding the defendant's reputation for peacefulness should be excluded in this *civil* battery suit **(Choices A & C)**.

The defendant has also offered testimony regarding his reputation for truthfulness. Under Federal Rule of Evidence 608, evidence may be offered to **support** a witness's **character for truthfulness**—but only **after that character has been attacked**. Here, the defendant became a witness when he testified in this case. But the court should *exclude* testimony regarding his truthful reputation because there is no indication that his character for truthfulness has been attacked **(Choices A & B)**.

**Educational objective:**

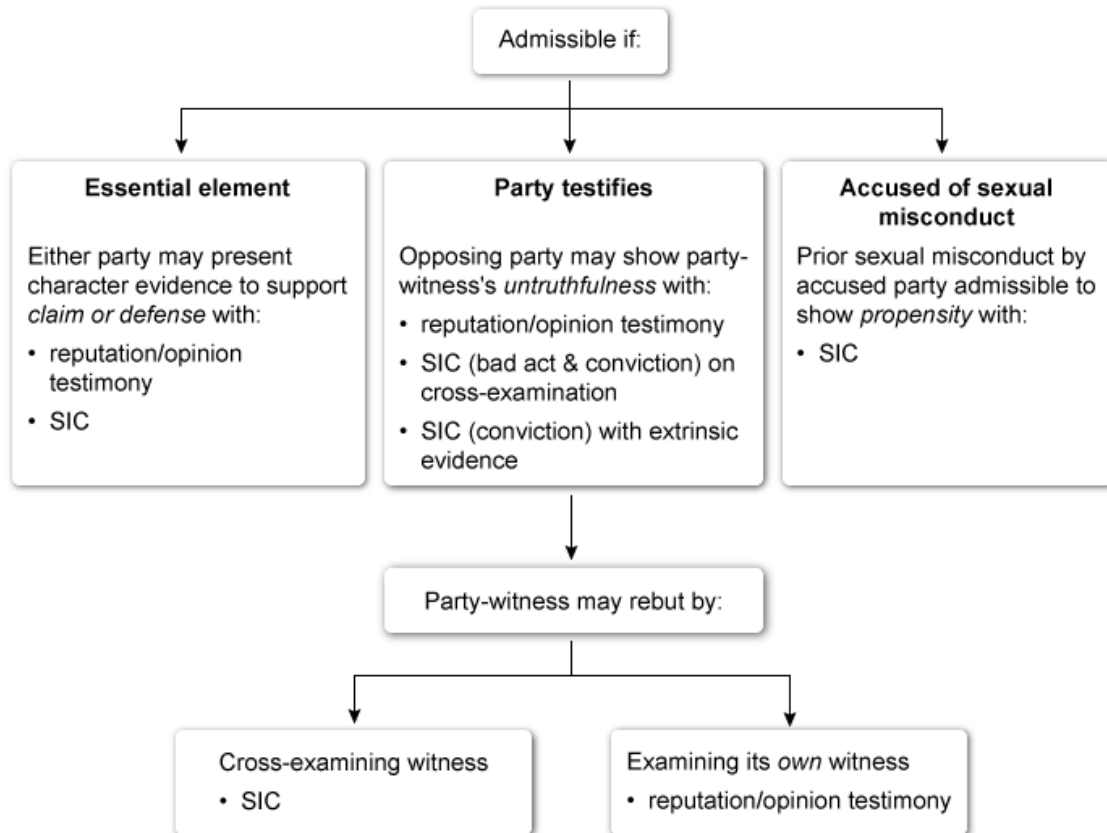
The character-evidence exception allowing criminal defendants to introduce testimony regarding a pertinent character trait does not apply in civil cases. And any party may offer evidence to support a witness's character for truthfulness only after it has been attacked.

**References**

Fed. R. Evid. 404 (admissibility of character evidence).

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

## Evidence of party's character in civil cases



**SIC** = specific instance of conduct.

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