

A defendant was charged with the crime of defrauding the federal agency where he worked as an accountant. At trial, the court allowed the defendant to call his supervisor at the large corporation where he had previously worked, who testified about the defendant's good reputation in the community for honesty. Over objection, the defendant then sought to elicit testimony from his former supervisor that on several occasions the corporation had, without incident, entrusted him with large sums of money.

Should the testimony be admitted?

- A. No, because good character cannot be proved by specific instances of conduct unless character is an essential element of the charge or defense.
- B. No, because the testimony is extrinsic evidence on a collateral matter.
- C. Yes, because it is evidence of a pertinent character trait offered by an accused.
- D. Yes, because it is relevant to whether the defendant was likely to have taken money as charged in this case.

Explanation:

A **criminal defendant** may offer evidence of his/her good character when that character trait is:

an **essential element** of the charged crime or asserted defense—ie, the trait must be proven for the defendant to be convicted of a crime or prevail in a defense *or*

otherwise **pertinent** to the charged crime—ie, the trait is relevant to, but not an element of, a crime or defense.

Reputation and opinion testimony can ***always be used*** to prove a criminal defendant's good character. But **specific instances of conduct** (SICs) can ***only be used*** when **character is an essential element** of the crime or defense. That is because SICs pose a great risk of prejudicing or confusing the jury.

Here, the defendant was charged with fraud—ie, a knowing misrepresentation made to induce another to act. Since character is not an essential element of this offense, testimony from the defendant's former supervisor about specific instances when the defendant was entrusted with large sums of money should *not* be admitted. But since honesty is pertinent to fraud, testimony about the defendant's honest reputation was properly admitted.

(Choice B) Under the collateral-evidence rule, **extrinsic evidence** is not admissible to impeach a witness on a matter that is collateral (ie, irrelevant) to the case. But this rule does not apply here since the supervisor's testimony that the defendant had been entrusted with substantial monies is relevant to the case and would not be used to impeach the supervisor's credibility.

(Choices C & D) The testimony is (1) evidence of the defendant's pertinent character for honesty and (2) relevant to whether he likely took money. But since character is not an essential element of fraud, this trait cannot be proved by a SIC.

Educational objective:

A criminal defendant may offer reputation or opinion testimony on his/her good character when that character is (1) an essential element of a crime or defense or (2) otherwise pertinent to the case. But specific instances of conduct may only be used when character is an essential element of a crime or defense.

References

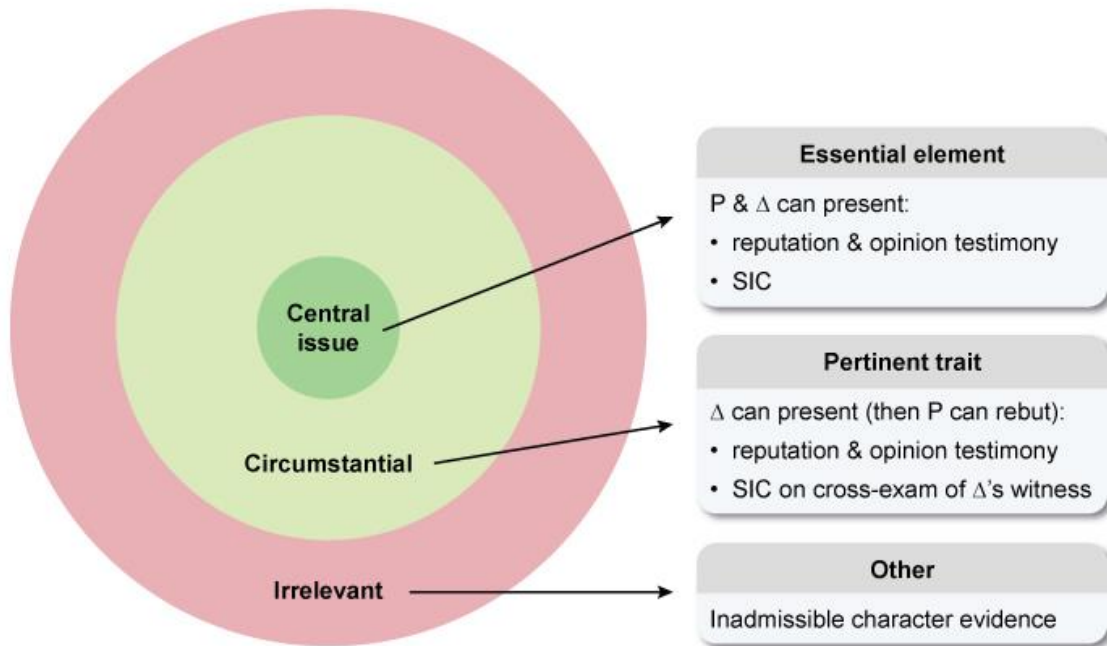
Fed. R. Evid. 404 (character evidence).

Fed. R. Evid. 405 (methods of proving character).

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Evidence of criminal defendant's character



P = prosecution; **Δ** = defendant; **SIC** = specific instance of conduct