

A woman sued her ex-boyfriend for libel. After the woman testified that the ex-boyfriend wrote to the woman's employer that the woman is a thief, the ex-boyfriend offers evidence that the woman once stole money from a former employer.

Is the evidence of prior theft admissible?

- A. No, because character may not be shown by specific instances of conduct.
- B. No, because such evidence is more unfairly prejudicial than probative.
- C. Yes, as substantive evidence to prove that the woman is a thief.
- D. Yes, but only to impeach the woman's credibility.

Explanation:

Examples of character as essential element

	Definition	Character at issue
Defamation	Injuring plaintiff's reputation with spoken (slander) or written (libel) false statement	Plaintiff
Negligent entrustment	Injuring plaintiff by negligently entrusting dangerous article to reckless or incompetent person	Person entrusted
Child custody	Modifying child custody, visitation, or other parental rights	Parent or guardian
Entrapment	Criminal defense alleging government inducement & defendant's lack of predisposition to commit crime	Defendant
Negligent hiring	Injuring plaintiff by negligently hiring person of dangerous or untrustworthy character	Hiree

Character evidence is generally **inadmissible** when it is used to imply (and thereby prove) that a **person acted in conformity** with his/her character during the litigated event. But such evidence is **admissible** in rare instances when character is an **essential element** of a civil claim, criminal charge, or asserted defense. Character evidence can then be used as **substantive evidence** and introduced by *any* party through:

reputation or opinion testimony on that essential character trait *or* specific instances of conduct (eg, a prior theft) demonstrating that essential character trait **(Choice A)**.

Here, the woman sued her ex-boyfriend for libel. Her character is an essential element of this claim since she must prove that she is *not* a thief to show that the ex-boyfriend's writing was false. As a result, the ex-boyfriend can introduce the woman's prior theft as substantive evidence to prove that she *is* a thief and, therefore, that his writing was truthful.

(Choice B) Evidence of the prior theft is prejudicial (ie, harmful) to the woman. But this character evidence has high probative value since it addresses an essential element of this libel case—whether the ex-boyfriend's writing was false. And since this evidence is more probative than prejudicial, it should be admitted.

(Choice D) Since the woman testified, evidence of the prior theft can be used to impeach her credibility as a witness by showing that she has an untruthful character and should not be believed. But this character evidence can *also* be used as substantive evidence to prove an essential element of this case.

Educational objective:

Character evidence is admissible if a person's character is an essential element of a civil claim, criminal charge, or asserted defense.

References

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

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