

At the defendant's trial for burglary, a witness supported the defendant's alibi that they were fishing together at the time of the crime. On cross-examination, the witness was asked whether his statement on a credit card application that he had worked for his present employer for the last five years was false. The witness denied that the statement was false.

The prosecutor then calls the manager of the company for which the witness works to testify that although the witness had been first employed five years earlier and is now employed by the company, there had been a three-year period during which he had not been so employed.

Is the manager's testimony admissible or inadmissible?

- A. Admissible, as a matter of right, because the witness "opened the door" by his denial on cross-examination.
- B. Admissible, in the judge's discretion, because the witness's credibility is a fact of major consequence to the case.
- C. Inadmissible, because the misstatement by the witness could have been caused by misunderstanding of the application form.
- D. Inadmissible, because whether the witness lied in his application is a matter that cannot be proved by extrinsic evidence.

Explanation:

Any party can **impeach** (ie, discredit) a **witness's character for truthfulness** by presenting either:

reputation or opinion testimony about the witness's untruthful character *or* **specific instances of conduct** (SICs) that are indicative of the witness's untruthful character.

If the SIC involves a **criminal conviction** for a felony or crime of dishonesty, it can be **introduced** intrinsically (ie, through that witness's own testimony) or **extrinsically** (ie, from any other source). **Otherwise**, the SIC can **only** be introduced **intrinsically**. And if the **witness denies** the SIC (and it does not involve a qualifying conviction), that denial **cannot be rebutted** by **extrinsic evidence**.

Here, the prosecutor attacked the alibi witness's character for truthfulness on cross-examination by asking him about a SIC involving a false statement on a credit card application. Although the witness denied that the statement was false, the prosecutor cannot use extrinsic evidence (eg, the manager's testimony) to rebut that denial since the SIC does not involve a qualifying criminal conviction (**Choice A**). Therefore, the manager's testimony is *inadmissible*.

(Choice B) Extrinsic evidence can always be used to prove a fact of major consequence—ie, one that is material to the case. But a witness's credibility is merely a collateral (ie, immaterial) matter, so it can *only* be attacked with extrinsic evidence of a SIC involving a qualifying criminal conviction (not seen here).

(Choice C) The reason for the witness's misstatement does not factor into whether the manager's impeachment testimony is admissible.

Educational objective:

Intrinsic evidence of a specific instance of conduct (SIC) can always be used to impeach a witness's character for truthfulness. But extrinsic evidence can only be used if the SIC involves conviction for a felony or crime of dishonesty.

References

Fed. R. Evid. 607 (who may impeach witness).

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

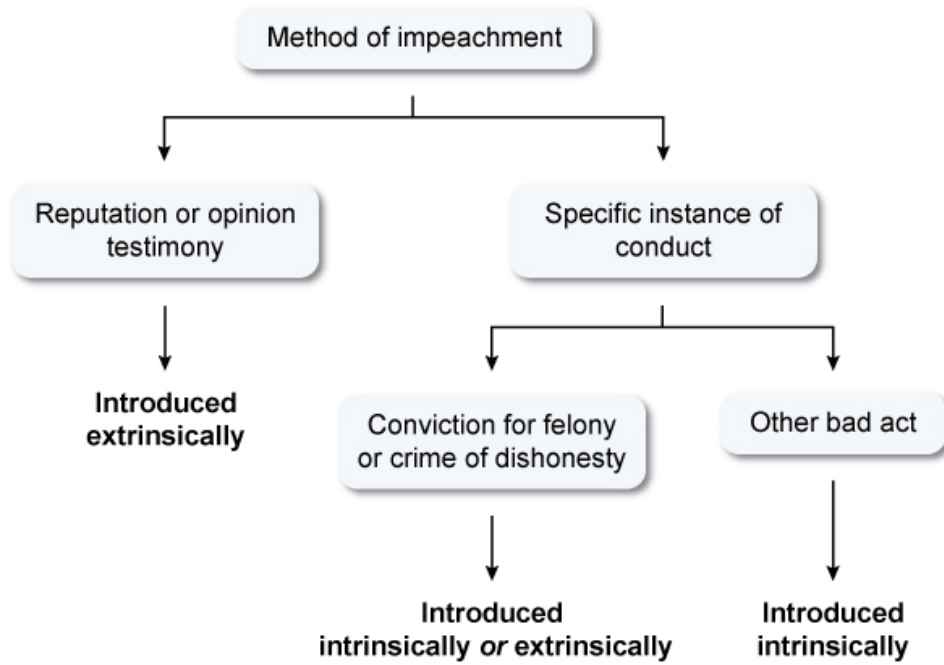
Fed. R. Evid. 404 (character evidence; crimes or other acts).

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

Copyright © 2002 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

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



FRE = Federal Rules of Evidence