

A plaintiff sued a nonprofit organization after falling down a small set of stairs while visiting its headquarters. The plaintiff alleges that the nonprofit was negligent in failing to adequately mark the stairs. The nonprofit argues that the stairs were adequately marked and that the plaintiff's failure to watch her step caused the fall. At trial, the nonprofit called a witness who testified that he saw the plaintiff looking down at her cellphone just before falling. On cross-examination, the plaintiff's attorney asked the witness whether he had ever made monetary donations to the nonprofit. The witness denied making any donations. The plaintiff's attorney now seeks to introduce donation records from the nonprofit that the witness had made 10 donations to the nonprofit over the past 5 years.

Are the donation records admissible?

- A. No, because the donation records are extrinsic evidence of the witness's conduct.
- B. No, because the donation records are hearsay not within an exception.
- C. Yes, as impeachment evidence of the witness's bias.
- D. Yes, as impeachment evidence of the witness's character for truthfulness.

Explanation:

A party may **attack the credibility** of a **witness's testimony** by introducing evidence that the witness is **biased** and therefore had a motive to lie while testifying. This can be done by introducing a **specific instance of conduct** (SIC) that illustrates the witness's bias through:

intrinsic evidence – by questioning the witness about the conduct *or*

extrinsic evidence – from any source other than the witness's own testimony.

Here, the plaintiff cross-examined the witness about his monetary donations to show his bias in favor of the nonprofit (intrinsic evidence). The witness denied the donations, so the plaintiff now seeks to introduce donation records from the nonprofit (extrinsic evidence). Since extrinsic evidence can *also* be used to show a witness's bias, the donation records are admissible.

(Choice A) Extrinsic evidence of a SIC is admissible to impeach a witness *unless* the SIC is a bad act that is probative of the witness's character for truthfulness (not seen here). In that case, only intrinsic evidence of the bad act is admissible and, if the witness denies the bad act, the examining party is stuck with that answer and cannot rebut it.

(Choice B) Hearsay refers to out-of-court statements (eg, donation records) offered for the truth of the matter asserted therein (eg, that donations were made). Such statements are inadmissible unless they are **excluded or excepted** from the rule against hearsay. And here, the nonprofit's donation records would likely fall within the exception for **business records**.

(Choice D) Although the donation records are being used to impeach the witness's testimony, they are not being used to attack the witness's character for truthfulness. That is because donations to the nonprofit do not suggest that the witness has a general propensity for dishonesty.

Educational objective:

The credibility of a witness's testimony can be attacked with evidence (eg, a specific instance of conduct) that shows the witness's bias introduced (1) intrinsically through the witness's own testimony or (2) extrinsically through any other source.

Impeachment evidence

