

At trial in an action for personal injuries suffered in a traffic accident, the plaintiff first calls the defendant as an adverse party. The plaintiff then calls a witness who was a passenger in the plaintiff's car but who also happens to be the defendant's former employer. On direct examination, the witness testifies to how the accident occurred and also expresses his opinion that the defendant is not a truthful person.

Which one of the following areas of questioning is most likely to be held beyond the proper scope of cross-examination?

- A. In letters to prospective employers, the witness has described the defendant as very honest and dependable.
- B. The defendant recently filed an action against the witness for breach of contract.
- C. The plaintiff's injuries were not as serious as the plaintiff is claiming.
- D. The witness has been falsifying his income tax returns.

Explanation:

Methods of impeaching witness

Method	Description	Means
Character for truthfulness	Reputation or opinion testimony	Extrinsic evidence
	SIC involving bad act	Intrinsic evidence
	SIC involving criminal conviction of felony or crime of dishonesty	Intrinsic or extrinsic evidence
Self-interest / bias	Motive to lie or partiality to party	
Prior inconsistent statement	Witness's prior statement inconsistent with present testimony	
Specific contradiction	Evidence directly contradicting witness's testimony on material issue	
Sensory abilities	Evidence showing witness's senses were impaired by physical / mental condition or environmental factors	

SIC = Specific instance of conduct.

Under Federal Rule of Evidence (FRE) 611, the **scope of cross-examination** is **limited to** (1) the subject matter of **direct examination** and (2) matters affecting the **witness's credibility**. A witness's credibility may be attacked using various methods. For example, a party may introduce evidence of:

a prior inconsistent statement made by the witness **(Choice A)**
a motive for the witness to lie (eg, bias against a party) **(Choice B)** *or*
specific instances of conduct that are probative of the witness's character for truthfulness **(Choice D)**.

And though FRE 611 gives the court discretion to permit inquiry into additional matters, the court is under no obligation to do so.

During the plaintiff's direct examination, the witness testified as to what he observed on the day of the accident and opined that the defendant is not a truthful person. As a result, the defendant can cross-examine the witness on those matters and the witness's credibility. But since a question regarding the extent of the plaintiff's injuries falls into

neither category, it is most likely to be precluded as beyond the proper scope of cross-examination.

Educational objective:

The scope of cross-examination is limited to (1) the subject matter of direct examination and (2) matters affecting the witness's credibility.

References

Fed. R. Evid. 611 (scope of cross-examination).

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