



1 of 1 DOCUMENT

DEERING'S CALIFORNIA CODE ANNOTATED  
Copyright © 2011 by Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS SECTION IS CURRENT THROUGH THE 2011 SUPPLEMENT \*\*\*  
(ALL 2010 LEGISLATION)  
SPECIAL NOTICE: CHAPTERS ENACTED BETWEEN OCTOBER 20, 2009, AND  
NOVEMBER 2, 2010, ARE SUBJECT TO REPEAL BY PROPOSITION 22.

EVIDENCE CODE  
Division 6. Witnesses  
Chapter 6. Credibility of Witnesses  
Article 2. Attacking or Supporting Credibility

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

*Cal Evid Code § 787 (2010)*

**§ 787. Specific instances of conduct**

Subject to Section 788, evidence of specific instances of his conduct relevant only as tending to prove a trait of his character is inadmissible to attack or support the credibility of a witness.

**HISTORY:**

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

**NOTES:**

**Historical Derivation:**

- (a) Former CCP § 2051, as enacted Stats 1872, amended Stats 1949 ch 333 § 1.
- (b) Former CCP § 2065, as enacted Stats 1872, amended Stats 1949 ch 333 § 2.

**Law Revision Commission Comments:**

**1965**

Under Section 787, as under existing law, evidence of specific instances of a witness' conduct is inadmissible to prove a trait of his character for the purpose of attacking or supporting his credibility. See *Sharon v. Sharon* (1889) 79 Cal. 633, 22 Pac. 26, 1889 Cal. LEXIS 789; *Code Civ. Proc.* § 2051 (superseded by Section 787 and several other sections in Chapter 6). Section 787 is subject, however, to Section 788, which permits certain kinds of criminal convictions to be used for the purpose of attacking a witness' credibility.

#### **Cross References:**

"Conduct": *Ev C* § 125.

"Evidence": *Ev C* § 140.

Conviction of crime, when admissible to attack credibility: *Ev C* § 788.

#### **Collateral References:**

*Cotchett, California Courtroom Evidence*, § 16.50 (Matthew Bender).

1 Witkin Cal. Evidence (4th ed) Circumstantial Evidence §§ 57, 85.

1 Witkin Cal. Evidence (4th ed) Introduction § 9.

2 Witkin Cal. Evidence (4th ed) Witnesses § 491.

3 Witkin Cal. Evidence (4th ed) Presentation at Trial §§ 285-287, 348, 360.

*California Trial Guide, Unit 50, "Extrinsic Policies Affecting or Excluding Evidence"*, § 50.01[2] (Matthew Bender).

Cal Jur 3d (Rev) Criminal Law § 3247.

Jefferson's California Evidence Benchbook, 3rd Edition (CEB, 2003) §§ 28.6, 28.34, 28.35, 28.41, 28.96, 28.98.

Matthew Bender (R) Practice Guide: Cal. Trial and Post Trial Civil Procedure §§ 4.17[4], 11.59, 11.64, 11.66.

#### **Law Review Articles:**

Admissibility of evidence of previous crime. *35 Cal LR* 131.

Admissibility of evidence of forfeiture of traffic bail in subsequent civil suit. *41 Cal LR* 337.

Opening Pandora's box: Admissibility of evidence of specific misconduct in California. 19 Cal Trial Law Forum No. 3 p 107.

A question of character: use and misuse of character evidence. 16 CEB Civ Lit Rep 234.

Specific acts and related matters as affecting credibility. *1 Hast LJ* 89.

Impeaching witness by showing specific wrongful acts. *11 Hast LJ* 74.

California rape evidence reform. *26 Hast LJ 1551.*

The impact of Proposition 8 on prior misconduct impeachment evidence in California criminal cases. *24 Loyola U of LA LR 621.*

The use of juvenile adjudications for impeachment and sentencing. *22 Santa Clara LR 419.*

Character impeachment evidence: Psycho-Bayesian [!?] analysis and a proposed overhaul. *38 UCLA LR 637.*

Rush to Judgment: Criminal Propensity Clothed as Credibility Evidence in the Post-Proposition 8 ERA of California Law. *15 Whittier LR 241.*

California Evidence Code - Federal Rules of Evidence V. Witnesses: Conforming the California Evidence Code to the Federal Rules of Evidence. *39 U.S.F.L. Rev. 455.*

### **Annotations:**

Impeachment of witness by evidence or inquiry as to arrest, accusation, or prosecution. *20 ALR2d 1421.*

Impeachment of witness with respect to intoxication. *8 ALR3d 749.*

Use of unrelated traffic offense conviction to impeach general credibility of witness in state civil case. *88 ALR3d 74.*

Admissibility of evidence as to other offense as affected by defendant's acquittal of that offense. *25 ALR4th 934.*

Right to impeach witness in criminal case by inquiry or evidence as to witness' criminal activity for which witness was arrested or charged, but not convicted--modern state cases. *28 ALR4th 505.*

### **Hierarchy Notes:**

Evid Code Note

Div. 6, Ch. 6, Art. 2 Note

NOTES OF DECISIONS 1. In General 2. Misconduct 3. Prior Conviction 4. Use of Alcohol or Drugs

### **1. In General**

In a first degree robbery trial in which an accomplice was permitted to plead guilty to second degree robbery in exchange for testifying for the prosecution, the court, in the exercise of its discretion under Ev C § 352, properly excluded evidence from other witnesses on the issue of the ownership of a certain car the accomplice had referred to in his testimony, where the record indicated that defense counsel, on cross-examining him, had deliberately elicited a claim of ownership from him for the sole purpose of impeaching him through testimony of the other witnesses (which, except for impeachment, would have been inadmissible under *Ev C § 787*) to the effect that the accomplice had stolen it, where, furthermore, the accomplice had apparently not been charged or convicted of the theft of the car and thus had a motive, not affecting the rest of his testimony, to lie about how he had acquired it, and where evidence on this issue, time-consuming and totally collateral to the robbery issues, would thus have been of slight probative value compared

with its potential for prejudicing or confusing the jury. *People v. Lavergne* (1971) 4 Cal 3d 735, 94 Cal Rptr 405, 484 P2d 77, 1971 Cal LEXIS 356.

A defense attorney in a murder trial who questioned a witness, who was an inmate in the city jail, in a manner designed to bring before the jury evidence that was inadmissible under *Ev C* § 787, which expressly precludes attacking a witness' credibility by showing prior arrests for misdemeanors or felonies or prior misdemeanor convictions, acted in violation of established rules of procedure and of evidence, such conduct was highly improper and, following a prior warning of the court, constituted a contempt of the court. *Hawk v. Superior Court* (1974, Cal App 1st Dist) 42 Cal App 3d 108, 116 Cal Rptr 713, 1974 Cal App LEXIS 1210, cert den (1975) 421 US 1012, 95 S Ct 2417, 44 L Ed 2d 680, 1975 US LEXIS 1914.

A specific instance of a witness' conduct is admissible in evidence when it is relevant to prove bias or improper motive. Such evidence is inadmissible to attack a witness' credibility when its only relevance is to establish a character trait (*Ev C* § 787). *People v. Knox* (1979, Cal App 1st Dist) 95 Cal App 3d 420, 157 Cal Rptr 238, 1979 Cal App LEXIS 1975.

A new trial was ordered in a medical malpractice case as the trial court erred in permitting the doctor's counsel to discuss the patient's residency status, indeed defense counsel portrayed the patient as an illegal alien; instead, the trial court should have granted the patient's motion in limine to exclude reference to his residency status and any related bad acts, as the evidence was irrelevant to the issue of liability. *Hernandez v. Paicius* (2003, Cal App 4th Dist) 109 Cal App 4th 452, 134 Cal Rptr 2d 756, 2003 Cal App LEXIS 815, review denied (2003) 2003 Cal. LEXIS 6405.

## 2. Misconduct

In custody proceedings, where the character of a witness is in issue, specific acts of misconduct are admissible and the criminal background of a stepparent or close associates of a parent are proper factors to be considered by the trial court. *Hicks v. Hicks* (1967, Cal App 1st Dist) 249 Cal App 2d 964, 58 Cal Rptr 63, 1967 Cal App LEXIS 2306.

A witness may not be impeached by evidence of particular wrongful acts or by proof of prior misdemeanor convictions; and in a trial for assault with a deadly weapon, evidence that defendant had suffered seven prior misdemeanor convictions and had committed other acts relating to acts of violence was inadmissible for the purpose of impeaching him. *People v. Matlock* (1970, Cal App 1st Dist) 11 Cal App 3d 453, 89 Cal Rptr 862, 1970 Cal App LEXIS 1746.

*Ev C* § 787, relating to the use of evidence of specific instances to attack or support a witness' credibility, does not prevent showing that a witness lied, in court, about a specific instance of conduct, by establishing what that conduct really was, even though the result of the combination of the false statement in court and the extrinsic proof of the circumstances tends to prove the trait of character of propensity to prevaricate. *People v. Moses* (1972, Cal App 2d Dist) 24 Cal App 3d 384, 100 Cal Rptr 907, 1972 Cal App LEXIS 1146.

In view of *Ev C* § 787, providing that except for felony convictions, evidence of specific acts of misconduct on the part of the accused relevant only as tending to prove a trait of his character is inadmissible to attack or support a witness' credibility, defendant in a narcotics case could not properly be impeached as a witness through prosecution questions suggesting that he had engaged in specific prior illegal drug transactions not shown to have resulted in felony convictions. *People v. Wagner* (1975) 13 Cal 3d 612, 119 Cal Rptr 457, 532 P2d 105, 1975 Cal LEXIS 194.

In a prosecution for murder while armed with a deadly weapon (*Pen C* §§ 187, 12022), and assault with a deadly weapon, (*Pen C* § 245), the prejudicial error of admission of evidence that the codefendants had been previously arrested together would not have been cured by the defense's acceptance of the prosecution's proffered instruction limiting evidence of the arrests only to the issue of credibility, where credibility was a determinative issue in the case and such an instruction would have directly contravened *Ev C* § 787 (specific instances of misconduct inadmissible to

attack credibility). *People v. Anderson* (1978) 20 Cal 3d 647, 143 Cal Rptr 883, 574 P2d 1235, 1978 Cal LEXIS 193.

In a prosecution for murder (*Pen C § 187*), and related offenses, defendant was properly precluded from testifying regarding his knowledge of a prosecution witness' violent behavior, for purposes of attacking his credibility. Under *Ev C § 787*, instances of specific conduct tending to prove a trait of character are inadmissible to attack or support the credibility of a witness. *People v. Knox* (1979, Cal App 1st Dist) 95 Cal App 3d 420, 157 Cal Rptr 238, 1979 Cal App LEXIS 1975.

In a prosecution for forcible rape, it was reversible error for the trial court to strike the testimony of a defense witness that the victim had threatened to make a false accusation of rape against him and to instruct the jury to disregard such testimony, where the court had previously determined that the testimony was relevant and that its probative value was such that the court should not exercise its discretion under *Ev C § 352*, to exclude it. The evidence was admissible under *Ev C § 1103*, a special statute, apposite by its terms only to a criminal action, which authorizes evidence of a trait of character (in the form of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted, and the trial court erred in excluding it under *Ev C § 787*, a general statute purporting to apply to civil and criminal actions alike, which provides that a witness' conduct relevant only as tending to prove a trait of his character is inadmissible to attack or support his credibility. *People v. Wall* (1979, Cal App 1st Dist) 95 Cal App 3d 978, 157 Cal Rptr 587, 1979 Cal App LEXIS 2028.

In a prosecution for rape (*Pen C § 261*), it was error to exclude evidence that the victim had falsely accused others of rape, where defendant alleged that the victim had consented to sex in exchange for cocaine and that when defendant refused to give her the drugs, she accused him of rape in retaliation. *Ev C § 787*, under which the trial court excluded the proffered evidence, was abrogated by the "Truth-in-Evidence" provision of Proposition 8 (*Cal Const Art I § 28*). *People v. Adams* (1988, Cal App 1st Dist) 198 Cal App 3d 10, 243 Cal Rptr 580, 1988 Cal App LEXIS 64.

*Cal Const Art I § 28*), the "Right to Truth in Evidence" provision of Prop. 8, effected a pro tanto repeal of *Ev C §§ 790, 786, and 787*, to the extent they excluded evidence of a witness's conduct offered to attack or support the credibility of the witness, except as exclusion is ordered pursuant to *Ev C § 352*. Thus, in a criminal prosecution the admission of evidence of a prosecution witness's past reliability as a police informant, and the prosecutor's reference to it in closing argument, involved neither error nor misconduct. *People v. Harris* (1989) 47 Cal 3d 1047, 255 Cal Rptr 352, 767 P2d 619, 1989 Cal LEXIS 12.

Just as a prior false accusation of rape is relevant on the issue of a rape victim's credibility, a prior false accusation of sexual molestation is equally relevant on the issue of the molest victim's credibility. The instance of conduct being placed before the jury as bearing on credibility is the making of the false statement, not the sexual conduct which is the content of the statement. Even though the content of the statement has to do with sexual conduct, the sexual conduct is not the fact from which the jury is asked to draw an inference about the witness's credibility. The evidence is admissible under *Ev C §§ 780* (matter having tendency to prove or disprove truthfulness of testimony), 1103 (evidence of crime victim's character), and 787 (which excluded specific instances of conduct to attack credibility, but which was abrogated by the "Truth-in-Evidence" (relevant evidence shall not be excluded) provisions of Proposition 8 (*Cal Const Art I § 28*)). *People v. Franklin* (1994, Cal App 6th Dist) 25 Cal App 4th 328, 30 Cal Rptr 2d 376, 1994 Cal App LEXIS 509, review denied (1994, Cal) 1994 Cal LEXIS 4594.

Counsel was rendered ineffective by the failure to object to evidence that defense witnesses had been arrested for misdemeanor batteries because the evidence was more prejudicial than probative and thus inadmissible. The court noted that *Cal Const Art I, § 28(d)* invalidated the rule precluding impeachment with specific acts of prior criminal conduct other than a felony conviction, under Tex. R. Evid. 787, 788. *People v. Lopez* (2005, Cal App 6th Dist) 129 Cal App 4th 1508, 29 Cal Rptr 3d 586, 2005 Cal App LEXIS 914.

### **3. Prior Conviction**

A defendant, as a witness, may be impeached by proof of a prior conviction even where the defendant has admitted the prior conviction before trial. *People v. Knighton* (1967, Cal App 4th Dist) 250 Cal App 2d 221, 58 Cal Rptr 700, 1967 Cal App LEXIS 2097.

A witness' conviction of a felony (*Ev C* § 788) is the only exception to *Ev C* § 787, providing that evidence of specific instances of his conduct, relevant only as tending to prove a trait of his character, is inadmissible to attack his credibility. *Grudt v. Los Angeles* (1970) 2 Cal 3d 575, 86 Cal Rptr 465, 468 P2d 825, 1970 Cal LEXIS 294.

*Ev C* § 788, is the only exception to the rule, as expressed in *Ev C* § 787, that evidence of specific instances of a witness' conduct relevant only as tending to prove a trait of his character is inadmissible to attack or support the credibility of a witness. *People v. Beagle* (1972) 6 Cal 3d 441, 99 Cal Rptr 313, 492 P2d 1, 1972 Cal LEXIS 141, superseded by statute as stated in *People v. Rogers* (1985, Cal App 2d Dist) 173 Cal App 3d 205, 218 Cal Rptr 494, 1985 Cal App LEXIS 2618.

Questions designed to bring before a jury the fact that a witness who has not been convicted of a felony is residing in jail evade the rule precluding attacking a witness' credibility by showing prior arrests for misdemeanors or felonies (*Ev C* § 787) by indirection and are highly improper. *Hawk v. Superior Court* (1974, Cal App 1st Dist) 42 Cal App 3d 108, 116 Cal Rptr 713, 1974 Cal App LEXIS 1210, cert den (1975) 421 US 1012, 95 S Ct 2417, 44 L Ed 2d 680, 1975 US LEXIS 1914.

On appeal from a conviction of assault with a deadly weapon, defendant could not raise the issue that a prior conviction to which a defense witness admitted was a misdemeanor and therefore not a matter on which he could be impeached, where defendant raised no objection at trial. Moreover, defendant could not rely on a later objection during the trial by defense counsel which was directed to the prosecutor's attempt to discredit the witness' testimony with his prior inconsistent statement, as such objection did not serve to challenge the disclosure of the prior conviction. *People v. Enriquez* (1977) 19 Cal 3d 221, 137 Cal Rptr 171, 561 P2d 261, 1977 Cal LEXIS 127, 3 ALR4th 73, overruled in part *People v. Cromer* (2001) 24 Cal 4th 889, 103 Cal Rptr 2d 23, 15 P3d 243, 2001 Cal LEXIS 26.

Prior conviction evidence is admissible to show bias under *Ev C* § 780(f) without regard to the nature of the underlying crime as it relates to the character traits of honesty and truthfulness under *Ev C* § 786 through *Ev C* § 788. *Piscitelli v. The Salesian Society* (2008, 2d Dist) 2008 Cal App LEXIS 1335.

Corporate conviction was inadmissible to impeach an individual in civil litigation because *Ev C* § 788 did not apply and the evidence was thus inadmissible under *Ev C* § 787 if it had no relevance under *Ev C* § 351, other than to show character; there was no showing of personal involvement in the criminal activity such as might render the corporate conviction admissible under *Ev C* § 1101, subd. (b); and findings of potential prejudice, expenditure of time, and confusion under *Ev C* § 352 were reasonable. *Ghadrdan v. Gorabi* (2010, 2d Dist) 2010 Cal App LEXIS 237.

#### **4. Use of Alcohol or Drugs**

Evidence of a long history of intoxication is not admissible to impeach credibility unless it is clearly shown that the intoxication occurred contemporaneously with the events about which the witness is testifying; accordingly, mere chronic alcoholism is not provable on credibility. *Springer v. Reimers* (1970, Cal App 1st Dist) 4 Cal App 3d 325, 84 Cal Rptr 486, 1970 Cal App LEXIS 1531.

Testimony as to narcotics addiction, or expert testimony as to the effects of the use of such drugs, is not admissible to impeach the credibility of a witness unless followed by testimony tending to show that he was under the influence while testifying, or when the events to which he testified occurred, or that his mental faculties were actually impaired by the habit. *People v. Smith* (1970, Cal App 2d Dist) 4 Cal App 3d 403, 84 Cal Rptr 412, 1970 Cal App LEXIS 1541.

In a prosecution for dangerous drug violations, the trial court correctly admitted opinion testimony that a police informant's reputation for truth and veracity was bad, but it properly rejected an offer of proof that the informant was a

pimp, thief, a narcotics addict, and that he sold the services of his wife; under *Ev C* § 787, specific instances of conduct are inadmissible to attack or support the credibility of a witness. *People v. White* (1971, Cal App 5th Dist) 18 Cal App 3d 44, 95 Cal Rptr 576, 1971 Cal App LEXIS 1359.