

A man sued a mechanic for injuries suffered in a car accident allegedly caused by brakes that had been negligently repaired by the mechanic. At a settlement conference, the man exhibited the brake shoe that caused the accident and pointed out the alleged defect to the mechanic's expert, who had carefully examined the brake shoe. No settlement was reached.

The man inadvertently lost the brake shoe before trial. Therefore, the man seeks to testify on the condition of the shoe at trial.

Is the man's testimony admissible?

- A. No, because the brake shoe was produced and examined as a part of settlement negotiations.
- B. No, because the disappearance of the brake shoe was the man's fault.
- C. Yes, because the man had personal knowledge of the shoe's condition.
- D. Yes, because the mechanic's expert had been able to examine the shoe carefully.

## Explanation:

### Witness testimony

	Fact testimony	Opinion testimony
Lay witness	Personal knowledge of factual matter	Prohibited unless common-sense impression that:  is rationally based on witness's perception helps clarify witness's testimony or fact issue <i>and</i> is not based on scientific/technical/specialized knowledge
Expert witness		Admissible from qualified* expert who:  testifies based on sufficient facts or data acquired by reliable principles & methods has reasonable degree of certainty in opinion <i>and</i> helps trier of fact understand evidence or fact issue

\*Has knowledge, skill, experience, training, or education in substantive area.

A witness may testify at trial to any matter:

that is **relevant**—ie, tends to make a material fact more or less probable *and*

about which that witness has **personal knowledge**—ie, knowledge based on firsthand observation or experience.

Here, the man sought to testify about the condition of the brake shoe that allegedly caused the accident (relevance). He had observed the condition of the brake shoe firsthand since he had exhibited it and pointed out the alleged defect to the mechanic's expert (personal knowledge). Therefore, the man's testimony is admissible.

**(Choice A)** Conduct and statements made during settlement negotiations are not admissible to (1) impeach a party or (2) prove or disprove the amount or validity of the disputed claim. Here, the brake shoe was produced and examined during settlement negotiations. But since the man likely acquired knowledge of the alleged defect on the brake shoe *outside* of the settlement conference, his testimony is admissible.

**(Choice B)** Under the **best evidence rule**, secondary evidence (eg, oral testimony) on the contents of a writing, recording, or photograph is only permitted if the original is unavailable due in no part to the proponent's bad faith. But this rule does not apply to physical evidence, and it would not exclude testimony on the *inadvertently* lost brake shoe.

**(Choice D)** The man can testify about the brake shoe—regardless of whether the mechanic's expert was able to examine it—because the man has personal knowledge of the shoe's condition.

**Educational objective:**

Witnesses can testify to any relevant matter about which they have personal knowledge—ie, knowledge based on a firsthand observation or experience.

**References**

Fed. R. Evid. 602 (lay witness personal-knowledge requirement).

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