

A man sued to assert an interest in the large estate of an elderly woman who had died intestate. The man claimed to be the woman's nephew. At trial, the man produced a genealogy chart which was authenticated as belonging to the woman. The genealogy chart contained members of the woman's family in generations both before and after her and recorded the man's birth to the woman's oldest sister.

Is the information in the genealogy chart admissible?

- A. No, because it is hearsay not within any exception.
- B. No, because the man did not produce the creator of the chart.
- C. Yes, as a recorded recollection.
- D. Yes, as proof that the man is entitled to a portion of the woman's estate.

Explanation:

Examples of family records excepted from hearsay

(FRE 803(13))

Family bible

Genealogy

Family chart

Engraving on ring or urn

Inscription on portrait

Engraving/inscription on burial marker

FRE = Federal Rule of Evidence.

Under the rule against hearsay, out-of-court statements offered to prove the truth of the matter asserted therein are inadmissible unless an **exclusion or exception** applies. One **hearsay exception** applies to **statements of fact** about **personal or family history** contained **in a family record** (eg, genealogy chart). Once the family record is authenticated,* the information in that record is admissible to prove the truth of the matter asserted.

Accordingly, the genealogy chart is admissible to prove that the man is the woman's nephew and is therefore entitled to a portion of her estate **(Choice A)**.

*A party authenticates an item of tangible evidence by introducing evidence sufficient to support a finding that the item is what the party claims it is.

(Choice B) A statement of fact about family history contained in a family record is admissible under this hearsay exception regardless of the declarant's availability. Therefore, the fact that the man did not produce the creator (ie, declarant) of the genealogy chart at trial is not a basis to exclude it.

(Choice C) The hearsay exception for **recorded recollections** allows a record to be read into evidence if it (1) concerns a matter the witness once knew but cannot recall at trial, (2) was made or adopted by the witness when the matter was fresh in his/her mind, and (3) accurately reflects the witness's personal knowledge at the time it was made. Here, the man did not suffer a memory lapse and there is no indication that he adopted the genealogy chart at the time it was made, so this exception does not apply.

Educational objective:

One hearsay exception applies to statements of fact about personal or family history contained in a family record. Once authenticated, the information in that record is admissible to prove the truth of the matter asserted.

References

Fed. R. Evid. 803(13) (hearsay exception for statements regarding personal or family history in family records).

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