

A man's estate brought a wrongful death action against a trucking company that owned a semi-trailer involved in a deadly collision with the man's car. An eyewitness testifies at the jury trial that the driver of the semi-trailer was looking at his cell phone moments before the collision. On cross-examination, the trucking company offers a written statement that the witness submitted to a local newspaper in which the witness describes the accident but makes no mention of the driver looking at his cell phone.

The man's estate objects to the admission of the written statement on hearsay grounds. In the alternative, the estate requests that the court issue a limiting instruction directing the jury to consider the statement only for impeachment purposes and admit the witness's written follow-up statement to the newspaper that mentions the cell phone.

How should the court respond?

- A. Overrule the hearsay objection, deny the request for a limiting instruction, and deny the admission of the witness's follow-up statement.
- B. Overrule the hearsay objection, give the limiting instruction, and deny the admission of the witness's follow-up statement.
- C. Overrule the hearsay objection, give the limiting instruction, and allow the admission of the witness's follow-up statement.
- D. Sustain the hearsay objection.

Explanation:

Under the rule against hearsay, an **out-of-court statement** (first statement to newspaper) is generally inadmissible to prove the truth of the matter asserted therein (description of the accident). However, such statements may be **admissible** for **nonhearsay purposes**, such as **impeaching a witness**. One way a witness can be impeached is by presenting evidence of his/her **prior inconsistent statement**, as the estate did here. Therefore, the court should overrule the estate's hearsay objection (**Choice D**).

However, when evidence is **admissible** for **one purpose but not another**—eg, for impeachment but not for its truth—the adverse party may request that the court **limit the evidence** to its proper scope and **instruct the jury** accordingly. If that request is timely,* the court *must* then give the limiting instruction (**Choice A**).

Additionally, under the **rule of completeness**, an adverse party may introduce any **other part** of the admitted statement OR any **other written or recorded statement** that should, in fairness, be considered with the admitted statement. This rule seeks to remedy the misleading effects that an out-of-context or incomplete statement may have on a fact finder. Therefore, the witness's follow-up statement to the newspaper should be admitted because it completes the witness's earlier statement about the accident (**Choice B**).

*Although there is no strict rule on the timing of a request for a limiting instruction, a request made immediately after the introduction of the contested evidence is always deemed timely.

Educational objective:

When evidence is admissible for one purpose but not another, that evidence can be limited to its proper scope and the jury can be instructed accordingly upon a timely request. Any other part of the admitted statement OR any other statement that should be considered alongside the admitted statement may also be introduced.

References

Fed. R. Evid. 105 (limiting instructions).

Fed. R. Evid. 106 (rule of completeness).

Use of limiting instruction and rule of completeness

