

The plaintiff sued the defendant, a doctor, for psychiatric malpractice and called another doctor as an expert witness. During the expert witness's direct testimony, he identified a text as a reliable authority in the field. He seeks to read to the jury passages from this book on which he had relied in forming his opinion on the proper standard of care.

Are the passages admissible?

- A. No, because a witness's credibility cannot be supported unless attacked.
- B. No, because the passage should be received as an exhibit and not read to the jury by the witness.
- C. Yes, as a basis for his opinion and as substantive evidence of the proper standard of care.
- D. Yes, as a basis for his opinion but not as substantive evidence of the proper standard of care.

Explanation:

An out-of-court statement (eg, a passage from a book) is barred by the **rule against hearsay** when offered to prove the truth of the matter asserted therein. However, **statements in a learned treatise**, periodical, or pamphlet are **excepted** from this rule and are admissible for their truth when:

the publication is established as a reasonably **reliable authority** by a party's expert or judicial notice *and*

the statements are called to the attention of or **relied on by** an **expert witness** during examination.

Expert testimony that a treatise is a reliable authority (as seen here) lays a foundation for admitting the statements therein. The statements can then be used as a basis for the expert's opinion *and* as substantive evidence to help prove a material fact (here, the proper standard of psychiatric care) **(Choice D)**. However, the expert may only **read** the statements **into evidence**—the treatise itself cannot be received as an exhibit **(Choice B)**.

(Choice A) It is true that a witness's credibility cannot be supported unless attacked. But here, the expert seeks to read the passages to establish the proper standard of psychiatric care—not to support his credibility.

Educational objective:

Statements in a learned treatise, periodical, or pamphlet are excepted from the rule against hearsay when (1) the publication is established as a reasonably reliable authority by a party's expert or judicial notice and (2) the statements are called to the attention of or relied on by an expert witness during examination.

References

Fed. R. Evid. 803(18) (hearsay exception for statements in learned treatises).

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Statements in learned treatises hearsay exception
(FRE 803(18))

Step 1
(expert examination)



Step 2
(establish reliability)



Step 3
(read into evidence)

