

A plaintiff sued a defendant for breach of contract, claiming that the defendant failed to pay the plaintiff for services rendered under the contract between the parties. At trial, without offering the contract or accounting for its absence, the plaintiff seeks to admit a portion of the defendant's deposition testimony in which the defendant recited the terms of the contract.

The defendant has objected to the deposition testimony on the ground that it violates the best evidence rule.

Should the defendant's deposition testimony be admitted?

- A. No, because a statement by a party-opponent cannot be used to prove the contents of a writing.
- B. No, because the original contract must be used to prove the terms of the contract.
- C. Yes, because the best evidence rule does not apply.
- D. Yes, because the defendant's deposition testimony can be used against him to prove the terms of the contract.

Explanation:

Overview of best evidence rule

General rule

Must produce original or reliable duplicate* to prove contents of document relied on by witness or whose contents are at issue

Exceptions

Original unavailable	Other evidence can be used to prove content if: originals lost or destroyed (not by proponent's bad faith) originals not attainable by judicial process opponent had original, knew it was required & failed to produce <i>or</i> content not closely related to controlling issue
Admission by party	Contents can be proven by opposing party's testimony, deposition, or written statement
Public record	Contents of public record can be proven by: certified copy copy of records & comparison testimony <i>or</i> other evidence if above proof is not reasonably obtainable

*Duplicates are admissible unless original's authenticity is questioned or it would be unfair to admit them.

The **best evidence rule** (ie, original document rule) applies when a witness relies on a document's contents while testifying or when the contents of a document are at issue, such as when the document has a legal effect (eg, contracts, wills). This rule generally requires that an **original** or reliable duplicate of a **recording, writing, or photograph** (referred to as "document") be produced to **prove its contents**. However, there are exceptions to the rule that allow a party to prove a document's contents by methods *other than* introducing the original **(Choice B)**.

A common **exception** requires the proponent of the evidence to prove that all originals are lost, destroyed, or otherwise unattainable before allowing other evidence to be used to prove the document's contents (not seen here).

Another exception allows a party to **prove a document's contents** through the **testimony, deposition, or written statement** of a **party-opponent** *without* accounting for the document's absence **(Choice A)**. Since the defendant's deposition testimony concerning the

contract terms falls under this exception, that testimony can be used against him to prove the terms of the contract. Therefore, it should be admitted over the defendant's objection.

(Choice C) The best evidence rule *does* apply because the contents of the contract are at issue in this breach-of-contract case.

Educational objective:

The best evidence rule requires that an original or reliable duplicate of a recording, writing, or photograph be produced to prove its contents. But one exception allows a party to instead prove the contents of a document through the testimony, deposition, or written statement of the party against whom the evidence is offered.

References

Fed. R. Evid. 1002–07 (best evidence rule).

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