

A defendant is on trial for conspiracy to distribute drugs. The prosecutor wishes to introduce into evidence a ledger found at the defendant's home during the execution of a search warrant. The ledger includes detailed information regarding the defendant's purchases and sales of drugs over a two-year period. The prosecutor is considering two alternative ways to lay the foundation for admission of the ledger as a business record. The first alternative is to call the police officer who executed the search warrant to testify that she found the ledger in the defendant's home. The second alternative is to call a codefendant, who has pled guilty, to testify that he was the defendant's drug supplier for over two years and that he was present when the defendant used the ledger to record their transactions as well as transactions with other buyers and sellers as they occurred.

Which of the following is correct regarding the ledger's admissibility under the business records exception to the hearsay rule?

- A. The ledger may be admitted through either the officer or the codefendant.
- B. The ledger may be admitted through the codefendant but not through the officer.
- C. The ledger may not be admitted through either the officer or the codefendant, because business records may be introduced only through testimony by a records custodian.
- D. The ledger may not be admitted through either the officer or the codefendant, because the business records exception to the hearsay rule does not apply to illegal activity.

Incorrect

Correct answer B

Collecting Statistics

01 min, 15 secsTime Spent

2023Version

Explanation:

Hearsay is an out-of-court statement (eg, the ledger) offered to prove the truth of the matter asserted therein (eg, the defendant's drug sales and purchases). Such statements are inadmissible unless **excluded** or **excepted** from the rule against hearsay. One **exception** applies to **records of regularly conducted business activity**—ie, business records that are:

made **at or near the time** of the recorded event (or act, condition, opinion, or diagnosis)
made by or based on information from someone with **personal knowledge** of that event
and

made and kept as a **regular practice** in the course of regularly conducted business activities.

A party can lay these foundational elements by having *any* witness with personal knowledge of the above elements—eg, the codefendant but not the officer—testify to them **(Choice A)**. Testimony by a records custodian is *not* required **(Choice C)**. Therefore, the ledger may be admitted through the codefendant but not through the officer.

(Choice D) The business records exception to the hearsay rule applies to both legal and illegal activity. Therefore, business records maintained on behalf of a criminal enterprise (as seen here) are admissible when all foundational elements are satisfied.

Educational objective:

Business records are excepted from hearsay if they were (1) made at or near the time of the recorded event, (2) made by or based on information from someone with personal knowledge, and (3) made and kept as a regular practice in the course of regular activities of the business.

References

Fed. R. Evid. 803(6) (providing the hearsay exception for records of a regularly conducted activity).

Copyright © 2021 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Business records hearsay exception (FRE 803(6))

