

A woman sued a man for damages for the death of her husband resulting from an automobile collision. At trial, the man calls the husband's doctor to testify that the day before his death, the husband, in great pain, said, "It was my own fault; there's nobody to blame but me."

Under which hearsay exception should the doctor's testimony be admitted?

- A. The dying declaration exception.
- B. The excited utterance exception.
- C. The statement against interest exception.
- D. The then-existing state of mind exception.

Explanation:

Common hearsay exceptions

Declarant unavailable	Former testimony
	Dying declaration
	Statement against interest
	Statement of personal or family history
	Statement offered against party that wrongfully caused declarant's unavailability
Declarant's availability irrelevant	Present sense impression
	Excited utterance
	Mental state or physical condition
	Medical diagnosis or treatment
	Recorded recollection
	Business or public records
	Learned treatises, periodicals, or pamphlets
	Judgment of previous conviction
	Residual (catch-all) exception

The **statement against interest** exception to the rule against hearsay only applies when the **declarant is unavailable as a witness**. Additionally, the hearsay statement must be one that a reasonable person in the declarant's position would have made only if that person believed the statement to be true because it:

was contrary to the declarant's **proprietary** (ie, ownership) or **pecuniary** (ie, monetary) **interest**

tended to **invalidate the declarant's claim** against someone else *or* exposed the declarant to **civil or criminal liability**.

Here, the husband is unavailable as a witness because he is deceased. And his hearsay statement is one that a reasonable person in his position would have made only if that person believed it to be true because—at a minimum—it exposed the husband to civil liability for the accident. Therefore, the statement is admissible under the statement against interest exception.

(Choice A) The **dying declaration** exception applies to statements that (1) were made while an unavailable declarant believed his/her death was imminent and (2) concerned the circumstances of that impending death. This exception does not apply here because, though the husband was in great pain, there is no indication that he believed his death was imminent.

(Choice B) The **excited utterance** exception applies to statements that (1) relate to a startling event or condition and (2) were made while the declarant was still under the stress of excitement caused by that event or condition—not seen here.

(Choice D) The **then-existing state of mind** exception applies to statements about the declarant's motive, intent, or plan—eg, a plot to sue over a car accident. But this exception does not apply to mere statements of memory or belief—eg, the husband's reflection on the car accident—unless they relate to the declarant's will (not seen here).

Educational objective:

The statement against interest exception applies to hearsay statements that (1) are contrary to the *unavailable* declarant's proprietary or pecuniary interest, (2) tend to invalidate the declarant's claim against someone else, or (3) expose the declarant to civil or criminal liability.

References

Fed. R. Evid. 804 (hearsay exceptions for unavailable declarants).

Copyright © 1997 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.