

A plaintiff sued a defendant for breach of contract, alleging that the defendant violated the terms of an employment contract between the parties. At trial, without offering the contract or accounting for its absence, the plaintiff seeks to admit an oral statement that the defendant made to an acquaintance in which the defendant recited the terms of the contract.

The defendant has objected to the oral statement on the ground that it violates the best evidence rule.

Should the court admit the defendant's oral statement?

- A. No, because a statement by a party-opponent cannot serve as a basis to prove the content of a writing.
- B. No, because the plaintiff did not account for the contract's absence.
- C. Yes, because the best evidence rule is not implicated.
- D. Yes, because the contract's terms can be proved by the defendant's statement.

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) generally requires that an **original or reliable duplicate** of a **recording, writing, or photograph** (referred to as "document") be produced **to prove its content**. The rule is implicated when the content of a document is at issue—such as when the document has a legal effect (eg, contracts, wills) (**Choice C**). One exception to this rule allows a party to use other evidence to prove the document's content upon proving that all originals are lost, destroyed, or otherwise unattainable (not seen here).

Another **exception** allows a party to **prove a document's content** through the **testimony, deposition, or written statement** of a **party-opponent** without accounting for the original document's absence (**Choice A**). However, a party-opponent's **oral statement** that was **made outside** the context of **testimony or deposition** does *not* fall within this exception. As a result, the proponent must first account for the document's absence before the proponent may use the statement to prove the document's content.

Here, the plaintiff sought to admit the defendant's oral statement that recited the terms of the contract, but that statement was made outside the context of testimony or deposition. Therefore, it does not fall under the exception allowing use of a party-opponent's statement to prove the content of a document **(Choice D)**. And since the plaintiff did not account for the contract's absence, the court should not admit the defendant's oral statement.

Educational objective:

An exception to the best evidence rule allows a party to prove a document's content through the testimony, deposition, or written statement of a party-opponent without accounting for the original document's absence. But an oral statement that occurred outside the context of testimony or deposition does not fall under this exception.

References

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

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