

A woman has sued a man for defamation, alleging that he sent a letter to her employer making false and injurious statements about her. At trial, she proposes to testify about the statements in the letter but does not produce the letter itself or show that it is unavailable.

Should the court allow the woman's testimony about the statements in the letter?

- A. No, because the statements were made out of court and are hearsay not within any exception. (2%)
- B. No, because the best evidence rule requires an original or duplicate of the letter to prove the letter's contents. (84%)
- C. Yes, because the statements are not being offered for their truth and thus are not hearsay. (6%)
- D. Yes, because the statements are those of a party-opponent and therefore are admissible under a hearsay exception. (6%)

Incorrect

Correct answer B

84% Answered correctly

01 min, 19 secs Time Spent

2023 Version

### Explanation:

The **best evidence rule** applies when a witness relies on a document's contents while testifying or when the contents of a document are at issue—as seen with the false and injurious statements in a letter in this [defamation](#) suit. 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**, which the woman failed to do here.

However, one **exception** to the best evidence rule allows a party to use other evidence (eg, testimony) to prove the contents of a document if (1) all **originals are lost or destroyed** and (2) the loss or destruction of the originals was **not a product** of the **party's bad faith**. But since the woman has not shown that the letter is unavailable (ie, lost or destroyed), this exception does not apply. Therefore, the court should *not* allow her to testify about the statements in the letter.

**(Choices A & C)** The rule against hearsay bars the admission of out-of-court statements offered to prove the truth of the matter asserted therein unless an [exclusion or exception](#) applies. But this rule does not apply to statements offered for a purpose other than their truth—eg, the allegedly false and defamatory statements here. Nevertheless, the woman's testimony is inadmissible under the best evidence rule.

**(Choice D)** Statements made by and offered against a party-opponent are [excluded](#) from hearsay. Here, the man's statements *were* offered against him at trial, but there is no need to invoke this exclusion because the statements were not offered for their truth. However, the woman's testimony is inadmissible because it violates the best evidence rule.

### Educational objective:

The best evidence rule requires that an original or reliable duplicate of a document be produced to prove its contents. One exception to this rule allows a party to prove those contents through testimony if (1) all originals are lost or destroyed and (2) the loss or destruction was not a product of the party's bad faith.

### References

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

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## Overview of the 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 contents if:

- originals lost or destroyed (not by proponent's bad faith)
- original not attainable by judicial process
- opponent had original, knew it was required & failed to produce it *or*
- content not closely related to controlling issue

#### Admission by party

Contents of document can be proved by opposing party's testimony, deposition, *or* written statement

#### Public record

Contents of public record can be proved by:

- certified copy
- copy of record + comparison testimony *or*
- other evidence if above proof is not reasonably obtainable

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

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