

A plaintiff has sued a defendant for personal injuries the plaintiff suffered when she was bitten as she was trying to feed a rat that was part of the defendant's caged-rat experiment at a science fair. At trial, the plaintiff offers evidence that immediately after the incident the defendant said to her, "I'd like to give you this \$100 bill because I feel so bad about this."

Is the defendant's statement admissible?

- A. No, because it is not relevant to the issue of liability.
- B. No, because it was an offer of compromise.
- C. Yes, as a present sense impression.
- D. Yes, as the statement of a party-opponent.

Explanation:

Nonhearsay statement by party-opponent

(FRE 801(d))

Out-of-court statement is nonhearsay if offered against opposing party AND:

made or adopted by opposing party

made by person authorized by opposing party to make statement on subject

made by opposing party's agent/employee on matter within scope of relationship

OR

made by opposing party's coconspirator during & in furtherance of conspiracy

FRE = Federal Rule of Evidence.

An **out-of-court statement** offered for the **truth of the matter** asserted therein is generally inadmissible under the hearsay rule. But when such a statement is **made by** and **offered against a party-opponent**, it is **excluded** from the **hearsay rule** (ie, is nonhearsay). Therefore, the opposing party's statement is admissible as substantive evidence so long as it is relevant and not prohibited by another evidentiary rule—eg, the rule barring offers of compromise (raised here).

An **offer of compromise** (ie, a settlement offer) is **inadmissible** to prove the **validity or amount** of a **disputed claim**. But this rule only applies if there was an *actual dispute* regarding a party's liability or the value of a claim at the time the offer was made. Since there is no indication that the present dispute over the defendant's liability existed when the defendant offered the plaintiff \$100, this rule does not apply (**Choice B**). Therefore, this party-opponent's statement is admissible.

(Choice A) Evidence is relevant if it has *any* tendency to make a material fact more or less probable. The defendant's offer and remorseful statement tend to prove that the defendant is at fault for the plaintiff's injuries. Therefore, the statement *is* relevant.

(Choice C) A **present sense impression** is a hearsay exception for out-of-court statements about an event made during or immediately after the declarant perceived it. But the defendant's statement here needs no such exception because it is a statement of a party-opponent (ie, nonhearsay).

Educational objective:

A statement made by an opposing party is excluded from the rule against hearsay when offered against that party.

References

Fed. R. Evid. 801(d) (nonhearsay statements).

Fed. R. Evid. 408 (compromise offers and negotiations).

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