A famous author had a life insurance policy. Her son was the beneficiary. The author disappeared from her residence two years ago and has not been seen since. On the day that she disappeared, a plane headed to another country vanished. The plane's passenger list included a name similar to the author's.

The son is now suing the life insurance company for the proceeds of his mother's policy. At trial, the son offers to testify that his mother told him that she planned to write her next novel under a pen name identical to the name on the missing plane's passenger list.

Is the son's testimony admissible?

A. No, because it is hearsay not within any exception.

B. No, because the author has not been missing more than seven years.

C. Yes, as a party admission, because the author and her son are in privity with each other.

D. Yes, as circumstantial evidence that the author was on the plane.

Explanation:

Evidence is only admissible if it is **relevant**—ie, tends to make a **material fact more or less probable**. Here, the son can only collect the proceeds of his mother's life insurance policy if she is proved dead. The son seeks to testify that his mother told him she planned to write her next novel under a pen name identical to a name on the missing plane's passenger list. This testimony provides circumstantial evidence that his mother was on the plane—making the material fact that she died more probable. Therefore, the testimony is relevant.

However, relevant evidence can still be **excluded** by other laws or evidentiary rules. One basis for exclusion raised in this question is the **hearsay rule**, which generally bars the admission of out-of-court statements offered to prove the truth of the matter asserted therein. But the mother's out-of-court statement concerning her pen name is *not* hearsay since it is being used to prove that she was on the plane—not that she was going to use the name for her next novel (the matter asserted) **(Choice A)**. Therefore, the son's testimony is admissible.

(Choice B) In many jurisdictions, a person must be missing more than seven years to be *presumed* dead. But this would not preclude a party from introducing relevant evidence that the person is *actually* dead.

(Choice C) Party admissions—ie, statements made by or attributable to an opposing party and offered against that party—are excluded from the hearsay rule. Here, the mother's statement is not hearsay and would not fall under this exclusion if it were. That is because she is not a party to the son's lawsuit and there is no legal basis (privity or otherwise) for attributing her statement to him.

Educational objective:

Evidence is only admissible if it is relevant—ie, has some tendency to make a material fact more or less probable. But relevant evidence can still be excluded by other laws or evidentiary rules—eg, the hearsay rule barring the admission of out-of-court statements offered for the truth of the matter asserted therein.

References

Fed. R. Evid. 401 (test for relevant evidence).

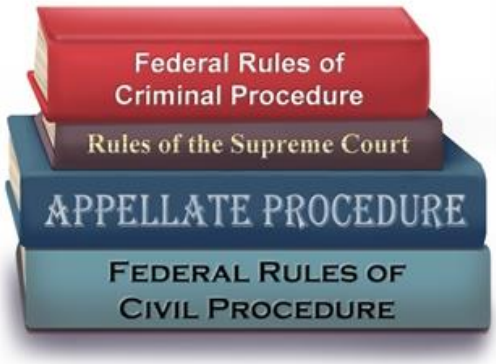
Legal bases for excluding relevant evidence
(FRE 402)

U.S. Constitution
(eg, obtained illegally)

Federal statute
(eg, prohibited disclosure)

Federal Rules of Evidence
(eg, hearsay)

Other rules promulgated by
U.S. Supreme Court



FRE = Federal Rules of Evidence