

A defendant has been charged in federal court with tax evasion. The prosecution alleges that the defendant took money from his closely held corporation and gifted it to his ex-girlfriend in order to avoid paying taxes on the money. At trial, the defendant testified that he merely transferred the money to his ex-girlfriend to hold in trust for the corporation. The defendant further testified that, after their relationship ended and she claimed ownership of the money, he successfully sued the ex-girlfriend for return of the money. The defendant now seeks to introduce an authenticated copy of the state court civil judgment obtained against the ex-girlfriend three years ago to show that the money was not a gift to the ex-girlfriend and belonged to the corporation. The prosecution objected to admission of the state court judgment.

Should the court admit the state court judgment?

- A. No, because the copy of the state court judgment violates the "best evidence" rule.
- B. No, because the judgment is hearsay not within an exception.
- C. Yes, because the judgment was issued in a civil, not criminal, case.
- D. Yes, under the hearsay exception for statements affecting an interest in property.

## Explanation:

### Hearsay exceptions for records & statements affecting property interest

(FRE 803(14)–(15))

**Records** Record of document that purports to affect property interest is admissible if:

record admitted to prove content of original recorded document, along with signing & delivery by each purported signee

record kept in public office *and*

statute authorizes recording such documents in that office

**Statements** Statement in document that purports to affect property interest is admissible if:

matter stated was relevant to document's purpose *and*

later dealings with property do not contradict truth of statement or purport of document

**FRE** = Federal Rule of Evidence.

The **rule against hearsay** bars the admission of **out-of-court statements** (here, the state court judgment) offered to prove the **truth of the matter asserted** therein (that the money belonged to the corporation) (**Choice B**). However, certain statements are **excluded or excepted** from this rule. For example, statements in **documents** that purport to **affect a property interest** are **excepted** from hearsay if:

the matter stated was **relevant** to the **document's purpose** *and*

**later dealings** with the property **do not contradict** the **truth of the statement** or the **purport of the document**.

Here, the state court judgment purported to affect the corporation's interest in property (money) and contained statements that were relevant to the judgment's purpose (establishing ownership of the money). Additionally, there is no indication that the money was later dealt with in a manner that was inconsistent with the judgment. Therefore, the court should admit the judgment under this hearsay exception.

**(Choice A)** The "**best evidence**" rule generally requires that an original—or a reliable duplicate—be produced to prove the contents of a writing, recording, or photograph. Therefore, the admission of an authenticated copy of the state court judgment would not violate this rule.

**(Choice C)** The admissibility of a judgment under the hearsay exception for statements in documents that purport to affect a property interest does not hinge on whether the

judgment was entered in a civil or criminal case. Therefore, the fact that the state court judgment was issued in a civil case is not a basis for admitting it.

**Educational objective:**

Statements in documents that purport to affect a property interest are excepted from hearsay if (1) the matter stated was relevant to the document's purpose and (2) later dealings with the property do not contradict the truth of the statement or the purport of the document.

**References**

Fed. R. Evid. 803(15) (hearsay exception for statements in documents affecting a property interest).

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