

A plaintiff sued a defendant for damages for back injuries received in a car wreck. The defendant disputed the damages and sought to prove that the plaintiff's disability, if any, resulted from a childhood horseback riding accident. The plaintiff admitted the childhood accident but contended it had no lasting effect.

The plaintiff calls an orthopedist who had never examined the plaintiff and poses to the orthopedist a hypothetical question as to the cause of the disability that omits any reference to the horseback riding accident. The question was not provided to opposing counsel before trial.

What is the best ground for objecting to this question?

- A. Hypothetical questions are no longer permitted.
- B. Sufficient notice of the hypothetical question was not given to opposing counsel before trial.
- C. The hypothetical question omitted a clearly significant fact.
- D. The orthopedist lacked firsthand knowledge concerning the plaintiff's condition.

Explanation:

Common uses of hypothetical questions

Party may pose hypothetical question to expert to:

allow expert to give opinion on facts not known to expert

challenge bases for expert's opinion

test expert's skill/credibility *or*

illustrate party's theory of case

An **expert witness** is one who possesses specialized knowledge, skill, experience, education, or training in a subject that pertains to an issue in the litigation. A party may pose a **hypothetical question**—ie, one that asks the expert to assume certain facts to render an opinion—when examining an expert witness **(Choice A)**. This allows the expert to offer an opinion about facts of which the witness lacks firsthand knowledge **(Choice D)**.

However, hypothetical questions **cannot omit undisputed material facts** because an expert opinion lacks probative value when it was formed without all necessary facts. Therefore, the best ground for objecting to the plaintiff's hypothetical question is that it omitted a clearly significant undisputed fact—the plaintiff's horseback riding accident.

(Choice B) There is no requirement that a party (1) notify opposing counsel of its intention to ask an expert witness a hypothetical question or (2) provide that question to opposing counsel before trial.

Educational objective:

When examining an expert witness, a party may ask a hypothetical question so long as it includes any undisputed material facts.

References

Fed. R. Evid. 703 (bases of expert opinion testimony).

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