

A woman sued a landlord for injuries received when she fell down a stairway in the landlord's apartment building. The woman, a guest in the building, alleged that she caught the heel of her shoe in a tear in the stair carpet. The woman calls a tenant at the apartment building to testify that the tenant's roommate had said to the tenant a week before the woman's fall: "When I paid the rent this morning, I told the landlord he had better fix that torn carpet."

Is the roommate's statement, as reported by the tenant, admissible?

- A. No, because it is hearsay not within any exception.
- B. Yes, to prove that the carpet was defective.
- C. Yes, to prove that the landlord had notice of the defect.
- D. Yes, to prove both that the carpet was defective and that the landlord had notice of the defect.

Explanation:

The **rule against hearsay** bars the admission of an **out-of-court statement** offered to **prove the truth** of the matter asserted therein. When such a statement is **contained within another** (ie, double hearsay), *neither* statement is admissible unless *both* are **excluded or excepted** from the hearsay rule.

Here, the roommate's statement to the landlord that he "had better fix that torn carpet" is *inadmissible* hearsay if it is offered for the truth of the matter asserted—ie, that the carpet was defective. That is because the statement does not fall within a hearsay exclusion or exception **(Choice B)**. However, the statement is *not* hearsay if it is offered for a different purpose—eg, to show that the landlord had notice of the defect.

Even if the roommate's statement to the *landlord* is not hearsay, it is only admissible if the roommate's statement to the *tenant* is also admissible. That statement is *inadmissible* hearsay because it is being used solely to prove the truth of the matter asserted—ie, that the roommate had told the landlord about the defect—and is not excluded or excepted from hearsay. Therefore, *both* statements as reported by the tenant are inadmissible **(Choices C & D)**.

Educational objective:

When a hearsay statement is contained within another, *neither* statement is admissible unless *both* are excluded or excepted from the rule against hearsay.

References

Fed. R. Evid. 801 (definition of hearsay).

Fed. R. Evid. 805 (hearsay within hearsay).

Copyright © 1997 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Double hearsay

Inadmissible unless both statements excluded or excepted from hearsay

Statement to tenant
(inadmissible for its truth)

Statement to landlord
(admissible to show notice)

"When I paid the rent this morning, I told the landlord he had better fix that torn carpet."