

A plaintiff sued a church, claiming that the church improperly removed a headstone from a small cemetery on the church's property. In the deed to the church, an easement was reserved for the use of burial plots by the grantor and his heirs and assigns. At trial, the plaintiff seeks to introduce evidence of the inscription on the removed headstone that read, "Here lies [family name of the grantor]."

Is the inscription on the headstone admissible?

- A. No, because it is hearsay not within any exception.
- B. No, because the inscription is a prior statement by an unavailable declarant.
- C. Yes, as a statement of fact about family history contained in a family record.
- D. Yes, provided that the plaintiff can authenticate the headstone by a preponderance of the evidence.

Explanation:

Examples of family records excepted from hearsay

(FRE 803(13))

Family bible

Genealogy

Family chart

Engraving on ring or urn

Inscription on portrait

Engraving/inscription on burial marker

FRE = Federal Rule of Evidence.

The **rule against hearsay** bars the admission of out-of-court statements (oral, written, or nonverbal) offered to prove the truth of the matter asserted therein *unless* a **hearsay exclusion or exception** applies. One **exception** applies to **statements of fact** about **personal or family history** contained in a **family record**—regardless of the declarant's availability (**Choice B**).

Here, the plaintiff seeks to introduce the inscription (out-of-court statement) to prove that the person named in the inscription (the grantor's heir) is the person buried there. But since the inscription is a factual statement about family history (relative's death) contained in a family record (headstone), it is excepted from hearsay. Therefore, the inscription is admissible (**Choice A**).

(Choice D) Tangible evidence (eg, headstone inscription) must be authenticated before it can be admitted at trial. This requires proof that the item is what the proponent claims it to be. This is an easier standard to meet than a preponderance of the evidence, which requires that a party show that the greater weight of the evidence (more than 50%) supports his/her argument.

Educational objective:

Statements of fact about personal or family history contained in a family record are excepted from the rule against hearsay, regardless of the declarant's availability.

References

Fed. R. Evid. 803(13) (hearsay exception for statements regarding personal or family history in family records).

