

A plaintiff sued for injuries arising from a car accident, claiming a back injury. At trial, she wishes to testify that before the accident she had never had any problems with her back.

Is the plaintiff's proposed testimony admissible?

- A. No, because the plaintiff has not been qualified as an expert.
- B. No, because the plaintiff's pain could have been caused by factors arising after the accident, such as an injury at work.
- C. Yes, because it is probative evidence of the plaintiff's injury.
- D. Yes, because the testimony of parties is not subject to the lay opinion rule.

Explanation:

Evidence is **relevant**, and admissible unless otherwise provided by law or other rules, if: it has any tendency to make a fact more or less probable than it would be without that evidence (ie, **probative**) *and*

the fact is of consequence to the outcome of the case (ie, **material**).

Here, the plaintiff's proposed testimony is probative because it tends to make the fact that she was injured from the car accident more probable. It is also material because it will impact her ability to recover for those injuries. And since no other rules raised in this question apply, the plaintiff's proposed testimony is admissible.

(Choice A) A witness need not be **qualified as an expert** to testify to a matter of personal knowledge—ie, knowledge based on firsthand observation or experience (as seen here).

(Choice B) The plaintiff can testify that she never had any problems with her back *before* the accident even if other factors *after* the accident may have contributed to her back pain. However, if admitted, the jury may consider these other factors in assessing the weight of the plaintiff's testimony.

(Choice D) Under the lay opinion rule, *all* nonexpert opinion testimony must be (1) rationally based on the witness's firsthand perception, (2) helpful to understanding the witness's testimony or determining a fact in issue, and (3) not based on scientific, technical, or other specialized knowledge. This includes a party's testimony.

Educational objective:

Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without that evidence (ie, probative) and the fact is of consequence to the outcome of the case (ie, material).

References

Fed. R. Evid. 401 (test for relevance).

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Legal bases for excluding relevant evidence (FRE 402)

U.S. Constitution
(eg, obtained illegally)



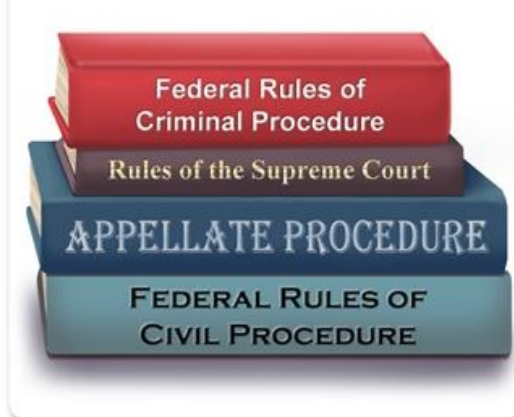
Federal statute
(eg, prohibited disclosure)



Federal Rules of Evidence
(eg, hearsay)



Other rules promulgated by
U.S. Supreme Court



FRE = Federal Rules of Evidence