

At the trial of a contract dispute, the plaintiff has offered to testify to what she heard the defendant say in a private conversation between the two of them, which the plaintiff secretly recorded on an audiotape that she did not offer in evidence.

Is the plaintiff's testimony admissible?

- A. No, because of the plaintiff's deception, even if the recording was not illegal.
- B. No, because the statement must be proved by introduction of the audiotape itself.
- C. Yes, because the original document rule does not apply to audiotapes.
- D. Yes, because the plaintiff has personal knowledge of the statement of a party-opponent.

**Explanation:**

A witness may testify to any **relevant matter** about which he/she has **personal knowledge** so long as that testimony is not excluded by a specific rule, law, or constitutional provision. For example, hearsay—ie, an out-of-court statement offered to prove the truth of the matter asserted therein—is generally inadmissible even if it is relevant. But some out-of-court statements are considered **nonhearsay** and are admissible for their truth. This includes **statements made by and offered against a party-opponent**.

Here, the plaintiff sought to testify about what the defendant said in their private conversation. This conversation presumably pertained to the disputed contract, thereby making the defendant's out-of-court statement relevant. And since (1) the plaintiff has personal knowledge about that statement and (2) the statement was made by and is offered against the defendant (nonhearsay), the plaintiff's testimony about the statement is admissible.

**(Choice A)** A statement by an opposing party is admissible even if it was obtained deceptively—eg, by secretly recording a conversation.

**(Choices B & C)** The original document (ie, **best evidence**) rule requires that a party produce an original or reliable duplicate to prove the contents of a writing, photograph, or *recording*. But here, no such original or duplicate is needed since the plaintiff is seeking to testify to her personal knowledge of the defendant's statement—not to what she heard on the audiotape.

**Educational objective:**

A witness may testify to any relevant matter about which he/she has personal knowledge so long as that testimony is not excluded by a specific rule, law, or constitutional provision (eg, the hearsay rule). And statements made by and offered against an opposing party are considered nonhearsay and, if relevant, are admissible for their truth.

**References**

Fed. R. Evid. 801 (nonhearsay statements).

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**Exclusion of relevant evidence  
(FRE 402)**

