

A plaintiff, the first wife of a celebrity who recently died, sued an insurance company alleging that the celebrity's life insurance proceeds were improperly disbursed to the celebrity's second wife. In support of her claim, the plaintiff has produced a copy of the life insurance policy stating that all of the life insurance proceeds would be disbursed to the celebrity's first wife unless the celebrity remarried and remained married for at least 30 days. The celebrity's second wife alleges that they were married in secret well before the celebrity's death. The plaintiff now seeks to introduce evidence of the register of weddings at the church where the celebrity married the second wife to prove that they were married for less than 30 days before his death.

Is the church's wedding register admissible?

- A. No, because the wedding register is hearsay not within any exception.
- B. No, because there is no evidence that the church official who created the register is unavailable as a witness.
- C. Yes, because the date in the wedding register is relevant to determine the duration of the marriage.
- D. Yes, provided that the wedding register is part of the regularly kept records of the church.

Explanation:

Religious records exception

(FRE 803(11))

Out-of-court statements are admissible for their truth if they:

concern personal or family history (eg, birth, legitimacy, death, ancestry, marriage, divorce)
and

are in regularly kept records of religious organization (eg, recorded in connection with religious ceremony)

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 hearsay **exception** applies to **statements** that:

concern **personal or family history** *and*

are in a **regularly kept record** of a **religious organization**.

That is because such records generally contain additional guarantees of trustworthiness found in the solemn nature of religious ceremonies and the lack of personal interest of the church official making the record.

Here, the plaintiff seeks to introduce the church's wedding register (out-of-court statement) to prove that the celebrity and his second wife were married on the date listed therein. But since the wedding register concerns personal and family history, it is excepted from hearsay—and therefore admissible—if the register is part of the regularly kept records of the church (**Choice A**).

(Choice B) The religious records hearsay exception does not require that the proponent establish the declarant's unavailability as a witness.

(Choice C) The date in the church's wedding register is relevant to determine the duration of the marriage—a material issue in this case. But relevant evidence can still be excluded on other grounds, such as the rule against hearsay. Therefore, the wedding register is only admissible if it falls within a hearsay exclusion or exception.

Educational objective:

Statements in regularly kept records of a religious organization that concern personal or family history are excepted from the rule against hearsay.

References

Fed. R. Evid. 803(11) (hearsay exception for regularly kept religious records regarding personal or family history).

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