

A defendant, a nurse at a nursing home, is charged with murdering a resident at the home by adding an allegedly lethal substance to the resident's food. At trial, to prove that the substance added to the resident's food could result in death, the prosecutor, without first calling any witnesses, offers to read into evidence several pages from a standard medical treatise that supports the prosecution's claim that the substance the defendant added to the food is lethal.

Is the evidence offered admissible?

- A. No, because the treatise excerpts were not offered during the examination of a qualified expert.
- B. No, because the treatise itself must be introduced as an exhibit.
- C. Yes, although hearsay, under the learned treatise exception to the hearsay rule.
- D. Yes, because the lethal nature of the substance is relevant to the defendant's state of mind and intent.

Explanation:

Learned treatise hearsay exception

(FRE 803(18))

Statement in publication admissible if:

statement called to attention of, or relied upon by, expert during examination *and* publication established as reliable authority by any party's expert or judicial notice

FRE = Federal Rule of Evidence.

Hearsay is an out-of-court statement (eg, the treatise excerpts) offered to prove the truth of the matter asserted therein (eg, the substance added to the victim's food is lethal) and is **generally inadmissible**. But under the **learned treatise exception** to the hearsay rule, a party may **read statements in a publication** into evidence if:

the statement is called to the **attention of**, or relied upon by, an **expert** witness **during examination** *and*

the publication is established as a **reliable authority** by any party's expert or judicial notice.

Here, the excerpts were taken from a standard medical treatise, which could probably be established as a reliable authority. But since they were not offered during the *examination* of a qualified expert, the learned treatise exception does not apply. Therefore, the excerpts are inadmissible hearsay and the prosecutor cannot read them into evidence (**Choice C**).

(Choice B) A statement that is admitted under the learned treatise exception may be *read* into evidence, but neither the statement nor the publication itself may be *introduced* as an exhibit.

(Choice D) Although the lethal nature of the substance is relevant to the defendant's state of mind and intent, the statements in the treatise are still inadmissible hearsay absent an **exception** (none of which apply here).

Educational objective:

Under the learned treatise exception to the rule against hearsay, a statement in a publication may be read into evidence if (1) the statement is called to the attention of, or relied upon by, an expert witness during examination and (2) the publication is established as a reliable authority by any party's expert or judicial notice.

References

Fed. R. Evid. 803 (exceptions to the rule against hearsay).

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