

- (B) admissible as based on first-hand knowledge
- (C) inadmissible, because it violates the best evidence rule
- (D) inadmissible, because a summary of writings cannot be made unless the originals are available for examination

Question 19 is based on the following fact situation.

Melvin sued Gooldie's Mkt. for injuries allegedly sustained from a collision with the store's automatic doors. Melvin contended that the doors (which were programmed to swing inward) swung outward and injured him as he attempted to enter the store one afternoon. Aileen, Melvin's sister, who was an eyewitness to the accident was not called to testify at trial. Moreover, Melvin's attorney failed to depose Aileen who redomiciled out of state shortly after the accident.

19. With respect to Melvin's failure to offer Aileen's testimony at trial, on request by Gooldie's attorney the court should
- (A) instruct the jury that it raises the presumption that Aileen's testimony would have been unfavorable to Melvin
 - (B) instruct the jury that it constitutes an adoptive admission that Aileen's testimony would have been unfavorable to Melvin.
 - (C) permit Gooldie's attorney to argue that it raises a presumption that Aileen's testimony would have been unfavorable to Melvin.
 - (D) neither instruct the jury on the matter nor permit Gooldie's attorney to argue the matter

Question 20 is based on the following fact situation.

In a suit between Laura and Allen, arising out of a motorcycle accident, Megan, a bystander, was called to the stand to testify that Allen had driven through a red traffic light immediately before the collision. On cross-examination by Allen, Megan admitted to have made a prior statement to Robert, a friend, that she was not sure if the traffic signal was yellow or red when Allen drove through the intersection.

20. The trial judge should
- (A) permit the jury to consider the prior statement as substantive evidence