

Problem 10A

Melissa Hickman v. Matthew Hickman
Monroe Circuit Court

This is a civil case based upon the same facts as Problem 3A. Melissa has sued Matthew for conversion for setting fire to the truck, which she claims had a value of \$24,000 at the time it was destroyed, under Indiana Code 34-24-3-1 that authorizes a jury to award treble damages in civil cases for property lost as the result of a criminal act.

At trial, Matt takes the stand and denies responsibility for setting the truck on fire. He claims that he was three miles away, working out at the Northwest YMCA from 9:00 until 11:00 a.m. on the day the truck burned. He introduced a print-out from the gym showing that his membership card had been scanned at the front desk at 9:02 a.m, when he entered.

Plaintiff's attorney asks the following questions on cross examination. Consider whether any can be objected to, and whether it would make a difference if this were a criminal case against Matthew Hickman.

1. Q: Isn't it true that you actually left the YMCA at 10:30, not 11:00?
A: No it isn't. I left right around 11:00.
2. Q: You don't have to scan your card when you leave, do you?
A: No
3. Q: So, that means there is no record of when you left, is there?
4. Q: You just got a new job with Graham Security, which you may lose if you're found liable, correct?
5. Q: Directing your attention to Jefferson County Superior Court in Louisville, December 12, 2011, didn't you plead guilty to felony possession of Oxycontin with intent to distribute?
6. Q: When you applied for the job at Graham Security, you lied about that conviction didn't you, figuring they wouldn't check for a Kentucky criminal record?
7. Q: And here in Bloomington earlier this year, you were convicted on Invasion of Privacy for violating the protective order against Melissa, correct?
8. Q: You are a drug user yourself, correct, and I mean specifically Oxycontin and methamphetamine?
9. Q: As a result of your drug use, don't you have occasional blackouts and memory losses?

10. Q: In your deposition taken July 22, 2016, you said you were pretty sure you were working out at Planet Fitness, not the YMCA, isn't that right?
11. Plaintiff: Your honor, we offer into evidence page 56, lines 7-11, of the defendant's deposition, where he says he was working out that morning at Planet Fitness.

The full statement in the deposition is:

7 Q: Where were you at 10:45 on July 12, 2015?

8 A: I was working out. I had started a new job with Graham Security that was mostly
9 evenings, so I work out most mornings.

10 Q: Where were you working out?

11 A: I think it was at Planet Fitness on Third Street. I work out there a lot and also
12 sometimes at the new YMCA -- I think it's on Vernal Pike. I'm not entirely sure, but it
13 was probably Planet Fitness.

14 Q: When did you arrive and leave?

15 A: My workouts take 2 hours, so probably arrived around 9:00 and left around 11:00.

PROBLEM 10B

We switch now to the criminal case version of Problem 3A, *State v. Hickman*, on trial for arson of a truck.

The defense calls Howard Allen as an alibi witness. On direct, Allen testifies that he is an acquaintance of Matthew's and on the day of the crime, saw Matthew at the Northwest YMCA playing basketball, and the two of them left a little after 11:15 to get something to eat.

On cross-examination, the prosecutor asks:

- 1 Q: You and Matthew are friends and play poker together, correct?
- 2 Q: You both belong to the Sycamore Gun Club, correct?
- 3 Q: You and Matthew are both members of a campus organization called Students for Trump, correct?
- 4 Q: You both belong to the Outlaws Motorcycle Gang, correct?
- 5 Q: Were you and Matthew active members of the Outlaws last year when the Indiana State Police seized the club's headquarters and arrested its leaders?.
- 6 Q: Isn't it true that you and Matt ran a drug dealing business where he would steal Oxycontin from the CVS store where his wife worked, and you would sell it?
- 7 Q: In fact, you were charged with a number of crimes for selling stolen Oxycontin and had to pay a lot of money to a lawyer to get off, right?
- 8 Q: The main witness against you was Melissa Hickman, correct?
- 9 Q: Let's look at your criminal record for a minute. In November, 2001, you were convicted of attempted murder in Lawrence County, correct?
- 10 Q: Isn't it true that in 1997 you were convicted in juvenile court of selling narcotics?
11. Then in 2009, were you again arrested for felony drug possession?
- 12 And did you plead guilty to misdemeanor maintaining a nuisance?
- 13 Q: Oh, one more. In March, 2012, in Monroe Circuit Court, were you convicted of theft, right?
- 14 Q: And you were given a 6-month sentence?

Think about the arguments for and against the admissibility of this evidence, which ones you would object to, and how you would phrase your objections.