

#### PROBLEM 14A

A continuation of Problem 3A, State v. Hickman, the truck arson case.

The state calls Sgt. Scott Sarkisian who testifies that when he arrived at the scene of the burning truck, several witnesses told them they had seen the man who set the fire run off on foot to the southeast, climb a fence, and head in the direction of a housing development that is adjacent to Wal-Mart. Sarkisian says he then telephoned his friend John Hubert, asked him to bring his bloodhound, and that the bloodhound followed the scent from the fence to a nearby house where they found Hickman hiding in a garden shed in the backyard.

1. The defense objects to testimony about what the witnesses told the police as hearsay. The prosecutor responds that it is not being offered for its truth, but to explain what the police did next and why they summoned a bloodhound.
2. The defense objects to the testimony about the conduct of the dog as hearsay because it was nonverbal conduct intended as an assertion that the person found (Hickman) matched the scent of the person who climbed the fence.

Think through the arguments for and against the admissibility of these items of evidence.

#### PROBLEM 14B.

Same case. The prosecutor offers two exhibits into evidence from the Marathon gas station two blocks from the Wal-Mart.

1. A video recording from a surveillance camera that shows a man who looks like the defendant using a credit card at a gas pump, filling a red gas can and leaving.
2. A receipt from a self-service gas pump showing that on the day of the crime at 7:33 p.m., someone used a Visa card to buy two gallons of gas.

The defense argues that both items are hearsay because they are out-of-court assertions that the defendant bought gas just before the arson.

Think through the arguments for and against the admissibility of these items of evidence.

#### PROBLEM 14C.

Same case. The prosecutor offers into evidence a red 2-gallon gas can that has the words "Hickman's Lawn Service" written on the side.

Think through the arguments for and against the admissibility of this item of evidence.

#### PROBLEM 14D

This is a continuation of Problem 4A, the robbery of the IU Credit Union.

The prosecution calls as a witness, Jennifer Lindeman, who testifies:

1. Q: What do you do for a living?  
A: I am a security system monitor for ADT Security Services. I monitor the security systems for about 50 businesses in Bloomington.
2. Q: Does that include the I.U. Credit Union on South Walnut Street?  
A: Yes.
3. Q: Were you on duty around 10:45 a.m. on March 22, 2016?  
A: Yes.
4. Q: What, if anything, did you hear from the Credit Union?  
A: I heard an emergency warning sound and saw the name Credit Union flashing on my console. One of the tellers had activated the emergency button that tells us something is going wrong and to notify the police.

Think through the arguments for and against this evidence meeting the definition of hearsay.

#### PROBLEM 14E

This is a continuation of Problem 11B, the educational malpractice case focusing on an inadequate on-line evidence class taught by Prof. Stanford. In a malpractice case, the central issue is whether conduct by the defendant fell below the generally accepted standards of the profession and caused harm.

Plaintiff calls a third-year law student, Megan Gallagher, who offers the following evidence:

1. She heard several students say they were never going to take a class from Prof. Stanford again.
2. At the end of her first year, when she was talking to her favorite first-year teacher, Prof. Sorenstein, about whether to take the online evidence class second year, Sorenstein said, "I would be cautious about doing that."
3. Three weeks into the fall semester last year, she saw a group of about 20 students picketing in front of the law school with signs saying "Stanford Must Go."

Which of these three items meets the definition of hearsay?

#### PROBLEM 14F

Jack Forrester is a Republican politician who ran for Congress but was defeated in the May primary after suggesting that, if elected, he would work across the aisle with moderate Democrats. He is on trial, accused of murdering his wife, Page. The prosecution contends that he killed her on March 15 (before the primary), because he believed she was going to file for divorce and allege that he was gay.

The prosecution calls Virginia Howell as a witness. She testifies that she was a good friend of the victim, Page Forrester. She continues:

Q: Did you see Page in March?

A: Yes, we had lunch at her request around March 10.

Q: Did she tell you anything about her marriage?

A: Yes. She said her husband didn't love her anymore and had been seeing somebody else, so she was going to file for divorce.

Think through the arguments for and against whether this testimony is hearsay.

#### PROBLEM 14G

Charles Sternwood died. His will, written just weeks before his death, left everything to his daughter Vivian and nothing to his daughter Carmen, who was not mentioned in it. Carmen has challenged the will on the grounds that her father was not of sound mind when he signed it, as evidenced by the fact that he started referring to himself as "General" Sternwood, although he had never served in the military, and seemed to have forgotten that he had two children.

Vivian offers into evidence a document from the Marlowe Detective Agency that says:

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*To: General Sternwood*

*From: Philip Marlowe*

*At your request, I have been following Carmen Sternwood, age 32. On several occasions, I observed her visiting an adult club run by a known drug dealer named Eddie Mars. I was able to confirm visually on two occasions that she bought heroin from Mars and injected it while on the premises of the club. Let me know if you need anything else or want to see the photographs.*

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Think through the arguments for and against whether this testimony is hearsay.

## PROBLEM 14H

In problem 6A, a variation of the case against Big Red, you were asked to think about Jane's character as a bad driver could be admissible if Big Red were sued for negligent entrustment. We decided that it could be, because her trait of being a bad driver was directly in issue. One of the ways we proposed to prove it was by testimony about a reference given by Ashley Miller to an assistant manager at Big Red in which Ashley said Jane was a good person but a bad driver.

Although Ashley's statement to the manager satisfied the character evidence and opinion rules, what about hearsay? Does Ashley's out-of-court assertion that Jane is a bad driver meet the definition of hearsay?