

PROBLEM 18A

This is a continuation of *Turner v. Big Red*, problem 4B.

One of Fred Turner's key witnesses is a Bloomington tax attorney named Mick Haller who was on the steps of the Justice Building and saw the whole thing. The trial is set for two days, and Haller is scheduled to testify on the morning of the second day because he will be in Washington DC at an IRS hearing on Day 1. At 8:00 am on Day 2, Haller texts Turner's lawyer, Margaret MacPherson, and says his flight has been cancelled and they can't get him on another one until after 5:00 pm. When court opens on Day 2, MacPherson shows the text to Judge Fulbright and requests that she be allowed to use Haller's deposition as evidence. Opposing counsel objects that it is hearsay.

Think through the arguments for and against the admissibility of the deposition.

PROBLEM 18B.

Plaintiff's next witness was scheduled to be Regina Campo, the driver of the BT Access van that dropped Turner off. Regina has been confined to bed by her OB/GYN for pregnancy related complications. Attorney MacPherson hands the judge a letter on letterhead paper from Dr. Frank Levin, dated the day before the trial, that says:

I am a licensed physician with a practice in obstetrics and gynecology. Regina Campo is a patient of mine in her seventh month of pregnancy. Based on her medical history and current condition, I have instructed her to remain in bed as much as possible and refrain from any activities outside her home. It is my opinion that forcing her to come to court and testify would endanger her health and health of the child.

Attorney MacPherson requests permission to use Campo's deposition in lieu of her testifying in person.

Think through the arguments for and against the admissibility of the deposition.

PROBLEM 18C.

Plaintiff's third witness is Louis Roulet, who was waiting to cross the street when the accident happened. Roulet gave a deposition shortly after the accident in which he said he was 85% sure that the light had turned green for east-west traffic and that the pedestrian walk sign facing east -- the direction Turner was coming from -- showed the white outline of a man walking. At trial, when plaintiff asks Roulet to describe the traffic signals just before the accident, he says he cannot remember. Plaintiff offers into evidence the part of the deposition in which Roulet describes the lights.

Think through the arguments for and against the admissibility of the deposition.

PROBLEM 18D.

Same problem, except that the deposition was video recorded. Think through whether this changes any of the arguments for and against the admissibility of the deposition.

PROBLEM 18E.

Same problem, except that on the day of the deposition, the defense lawyer got tied up in court and could not attend. The manager of Big Red and the driver, Jane Arden, went and watched, but did not participate. When the plaintiff's lawyer was finished, she asked both the manager and Arden if they had any questions, and they said no. Think through whether this changes any of the arguments for and against the admissibility of the deposition.

PROBLEM 18F.

Assume Jane Arden has been charged criminally with reckless driving resulting in serious physical injury, a level 6 felony. Roulet has disappeared. A deputy sheriff assigned to find him and serve a subpoena has been unable to locate him. The prosecutor borrows the video deposition from Turner's civil attorney, and offers it into evidence.

Think through the arguments for and against the admissibility of the deposition in the criminal trial.

PROBLEM 18G.

Continuation of problem 16B, the intimidation case.

A week after Reza Aslan received the threatening email, he was shot once in the abdomen while getting out of his car in his driveway. His wife Jessica ran outside, and Reza told her, "That must have been Donald who sent me the threatening email last week. I never thought he'd really shoot me. Better call 9-1-1." Reza lost consciousness and never regained it, dying two days later in the hospital. At Donald's murder trial, may Jessica testify to Reza's statement?

Think through the arguments for and against the admissibility of this testimony.

PROBLEM 18H

A This problem is one of my favorites, but it is not original. A version of it appears in Friedland, Bergman and Taslitz's textbook, *Evidence Law & Practice* (5th ed. 2012).

Thomas Andrews, Jr. designed the RMS Titanic and sailed on its maiden (and final) voyage. He was not among those rescued and is presumed to have drowned along with 1500 others. At the ceremony before the ship sailed, Mr. Andrews was among the speakers at the ribbon-cutting ceremony, where he stated that he had designed the ship to be so safe that it did not need the usual number of lifeboats. After the ship struck an iceberg and was sinking, a first-class passenger named Cal Hockley saw Andrews in the lounge and asked if he was going to the lifeboats. Andrews said, "No. I was the one who designed this ship and thought it didn't need lifeboats."

A number of survivors have sued White Star Shipping Co., owner of the Titanic, for negligence. The first witness is Cal Hockley, who heard both statements by Andrews.

Think through the arguments for and against the admissibility of Hockley's testimony.