

**Evidence Questions and Answers - Fall 2012**  
**Elon University School of Law - Professor Friedland**

Problem 3-1

1. Yes, the women's reactions are relevant in that they are probative of the fact at issue (which one is the mother of the child). The extreme sadness and emotion shown by the one woman could be probative of the fact that she is more likely the mother of the child than the mother who did not show emotion at the thought of the death of the child.
2. The Advisory Committee's Note makes it clear that the standard of probability is merely more probable than it would be without the evidence; thus, it indicates that "any more stringent requirement is unworkable and unrealistic." This helps to show that the fact of these ladies' reactions is relevant.
3. Their reactions would be still relevant, even if it is believed that their reactions do not indicate as much of a probability as the reactions of the women.
4. Disclose this information to the court, probably directly to the judge first in private if possible.

Problem 3-2

1. Yes, the letters are probative of a relationship forming which could have led Freddy to seek Jason's death by his desire for a relationship with Freddy's wife.

Problem 3-4

1. Yes, this would be relevant because it could be probative to the issue of Eddie's plans to rob the bank. This evidence makes it more likely for the prosecution to show that Eddie went to the bank and even tried to develop a relationship with the teller in order to plan his trip to the bank to rob the next day.
2. Yes, this would be relevant because it indicates that Eddie had the knowledge for how to rob a bank and a possible tendency to do so at this bank.
3. Yes but this one is more questionable because it was unproven. However the fact of the allegation could point to Eddie's character.
4. Not relevant unless it is relevant that Eddie may have been drunk
5. Yes, this is relevant because it points to the fact that Eddie needed money at the time.
6. Yes, this is relevant because if he did not even have an account there and was desperate for money, it is more likely that he could have committed the robbery.
7. Yes, this is relevant because it points to the fact that Eddie owned weapons and was maybe already accustomed to using them.

Problem 3-13

1. Yes this is relevant because if Billy consumed this wine, it could have led to his intoxication.
2. Yes this would be relevant because if Billy was seen with an empty bottle of wine, then this could show that he indeed had finished the bottle and that he likes wine; this would be conditionally relevant, dependent on the fact that he had drunk the wine. The analysis changes here because it will depend on what inference you draw.
3. Yes this would be relevant because it makes it more likely that Billy was drinking wine that day and that he likes wine. This is probably the strongest argument here.
4. Yes it would be relevant because it would make it more likely that Billy had drunk the wine and then beer.

Problem 3-19

1. The basis for this objection would be that this evidence is irrelevant.
2. It is only relevant if it can be proven that the piece of steel blade was actually a piece of the rotary hedge cutter. It is relevant because this blade came from the hedge cutter, but this could be a problem if it is not proven. The blade may not be from the hedge cutter though! Further testimony would need to be provided, and an expert would be needed. This is about connecting up - you would get an expert to connect it up. You just have to show evidence sufficient enough just to get to the jury.
3. It could make the scene sound very calm and work to try to persuade that the explosion did occur on its own accord.

Problem 4-5

This could be unfairly prejudicial and inadmissible by heavily swaying the emotions of the trier of fact.

Problem 4-6

No, this is unfairly prejudicial - see *People v. Collins*

Problem 4-8

No, the court did not abuse its discretion by allowing the videos in this case.

Problem 5-13

The mayor's testimony regarding Rambo's prior shootings of three people in the leg would likely be admissible in this case. First of all, this testimony is relevant because if Rambo has previously shot people in the leg, it is more likely that he has the knowledge of how to shoot someone in the leg. This evidence is not unfairly prejudicial or inadmissible as character evidence of a specific act that would be inadmissible under FRE Rule 404(b), because it is an actual element of negligent hiring that is having to be proven in this case, showing that Perry knew or should have known of Rambo's behavior and consequently should not have hired him as a security guard or entrusted him with weapons. On the other hand, the mayor's knowledge of Rambo's prior fire setting and 24 bar fights is not a pertinent element here, and is thus irrelevant.

Problem 5-16

1) Yes, Cheryl's testimony is admissible for establishing the elements of self-defense according to FRE 404(a)(2)(B)(i), indicating that the officer had a reputation for aggressive and violent tendencies and thus was maybe the initial aggressor in the altercation.

2) Evidence that Austin had committed four prior assaults on police officers would not be admissible according to FRE 404(b) unless it was offered to prove motive, opportunity, intent, preparation, plan, absence of mistake, or lack of accident...

Problem 5-23

Yes, these prior acts should be allowed according to FRE 404(b) to show that Agnes had the plan and intent to harm this particular FBI agent. Thus, the prior arrests by this very same agent are relevant and permissible.

Problem 5-28



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1) Yes, admissible because relevant to this case for proving identity, but the time difference may be questionable

2) Yes, because if not proven, it may not be as likely to be relevant in this case. Yes, it would be relevant if there had been a conviction because this would make the evidence more relevant.

3) No, it must be offered for the right purpose.

#### Problem 10-17-25

This hearsay question focuses on whether there are any exceptions. This is a clear case of hearsay.

#### Problem 10-17-26

This hearsay question focuses on the TOMA, FRE 801(c)(2). This is not hearsay b/c it is not offered to show that Jordan's statement relates to the issue of whether Jordan owns the lamp. The declarant's statement has to be intended to communicate.

#### Problem 10-17-27

This hearsay question focuses on the statement. A non-verbal assertion has to be primarily intended to communicate. This could be argued both ways, as common courtesy or as an intent to communicate.

#### Problem 10-17-28

This hearsay question focuses on whether this was a non-verbal statement. He did not have a primary intent to communicate; it was to influence.

#### Problem 10-17-29

This hearsay question focuses on non-verbal statements. There is no primary intent to communicate; this was an implied assertion that equals an inference.

#### Problem 10-17-22

This is hearsay and it does not fall within the non-hearsay exception 801(d) because the police officer was not the declarant. If the blind man will also be a witness and be subject to cross-examination then this could come in. But declarant is not the witness.

#### Problem 10-23

- 1) No, 801(d)(1)(c)

- 2) This is hearsay, and cannot get Marv's statement in through Ethel. If he testifies, then you can ask her about it too.

#### Problem 10-42

This is a spontaneous contemporaneous statement, so it is admissible as a reliable hearsay statement under 803(1). There could be overlap between 803(1) and 803(2) but here there is not excitement.

#### Problem 10-45

1-2. This could be an agency admission, but you would have to have other corroborative evidence; so it might come in under 802 as party-opponent agent. But also this could come in under 803(2), most likely. It is not 803(1) b/c it was not during, and not describing.



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3. This may not come in under 803(1-2), because in cases where declarants are unidentified bystanders, the cases indicate hesitancy in upholding the statement alone as sufficient. (see Advisory Committee Note, pg. 220). The party introducing the statement has to show by a preponderance that the event timing was close enough, that something just happened. The word "relate" in 803(2) is much broader than 803(1).



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