

# OKLAHOMA HIGH SCHOOL MOCK TRIAL PROGRAM

## EVIDENCE EXAMPLES

### I. Hearsay and Relevance/ Prior Bad Acts and Character

#### A. Hearsay

1. Joe is a witness testifying for the State of Oklahoma in a murder trial. As the State's first witness, Joe testifies that Sheila told him that she saw the defendant kill the victim of the case. Sheila is not testifying at trial. The statement is being offered to show that the defendant killed the victim. Hearsay?

**Answer** Yes, this is inadmissible hearsay that does not fall under any recognized exception to the hearsay rule. It is a statement offered into evidence made by an out of court declarant (Sheila) that is being offered to prove the matter of what it asserts (that the defendant killed the victim).

2. Joe is was inside a grocery store shopping when it was robbed. The assailants escape from the scene just as the police arrive. Joe runs up to the police and exclaims in a highly excited state, "It was Linda Jones who robbed the store!!!" This statement is offered by the police officer to show that Linda Jones robbed the store. The declarant, Joe, died of a stroke ten days later. Hearsay?

**Answer** Yes, this is hearsay because it is an out-of-court statement offered to prove the matter that it asserts, that Linda Jones robbed the grocery store. However, it is admissible under the excited utterance exception to the hearsay rule.

3. Joe is walking along a sidewalk with Martha in New York City. Jim White walks up behind them and says, "Look!! can you believe how fast that guy on the skateboard is moving?" The guy on the skateboard, the defendant Carl Culpable, runs right into Martha and Martha falls backward, cracks her head on the pavement and dies. Jim White is unavailable to testify at trial. The statement is offered by the State during the testimony of Joe in a prosecution for the negligent homicide of Martha. It is offered to show the guy of the skateboard was going really fast. Hearsay?

**Answer** Yes, this is hearsay because it is an out-of-court statement offered to prove the matter it asserts--that the guy on the skate board was going too fast. However, it is admissible under the present sense impression exception to the hearsay rule.

4. Joe is arrested for possession of cocaine, which the prosecution asserts was contained in the “salt” shaker on Joe’s kitchen table. The prosecutor offers as evidence a lab report stating, “The “salt” in the shaker is 90% cocaine.” Is the report Hearsay?

**Answer** Yes, the report is inadmissible hearsay, because it is an out-of-court statement being offered to prove that the “salt” is cocaine—Remember a statement need not be spoken to be hearsay; a document offered to prove the truth of an assertion in its contents can also be hearsay. The “statement” here is the lab report’s sentence, “the ‘salt’ in the salt shaker is 90% cocaine.” Since the report is being offered to show that the ‘salt’ was cocaine, it is hearsay.

5. Carla enters Jill’s living room and says, “I am marrying Jack.” Jack has been Jill’s boyfriend for five years. Jill takes a paper weight and smashes it on Carla’s head, killing her. At Jill’s trial for murder, Carla’s statement is offered by Jill’s attorney to show that the killing was provoked. Hearsay?

**Answer** No, this is not hearsay. It is an out of court statement, but it is not being offered to prove the truth of what it asserts, that Carla was marrying Jack, but that Jill was provoked by Carla—In other words, it is being offered to show its effect on the listener.

6. The little pig runs away and the fox eats him. At the fox’s murder trial, the Mad Hatter, a witness, testifies; “When they were searching for the “little pig”, Alice told me that the fox said he’d eaten the little pig.” The statement is offered by the prosecution to prove that fox ate the little pig. Is this admissible or is it hearsay?

**Answer** It is “multiple hearsay.” It is an out-of-court declaration which quotes another out-of-court declaration. The main out-of-court declarant is Alice whose statement is offered to show that fox ate the little pig. Even though the statement of fox to Alice may fit into an exception, admission of a party opponent, it doesn’t matter. For it to have been admissible, both out-of-court statements must have fit into an exception.

7. The defendant, a policeman, is accused of attempting to kill his wife by shooting her with a Nevermiss 1000 revolver from a distance of 1/8<sup>th</sup> of a mile. The defendant testifies that the shot was an accident, and that the Nevermiss is not accurate at more than 1/16<sup>th</sup> of a mile. The prosecution calls the defendant’s former classmate from the police academy, who testifies, “In weaponry class, which I and the defendant attended, the instructor told us that the Nevermiss was accurate up to 1/4<sup>th</sup> of a mile.” Is this hearsay?

**Answer** This is not hearsay because it is being offered to show that the defendant actually believed that the revolver would be accurate, not to show that the revolver actually was accurate at the 1/8<sup>th</sup> of a mile range.

8. Joe is on trial for larceny for stealing a stereo. Joe defends himself on the grounds that he did not realize that the stereo was not his stereo. Alice, his neighbor, testifies: “He told me the day afterwards, ‘I took the wrong stereo, I can’t believe it. I thought it was my stereo.’” The statement is offered to show Joe’s intent at the time he took the stereo. Is this statement Hearsay?

**Answer** This is inadmissible hearsay. It is offered to prove the matter that it asserts, which is that Joe at the moment of taking the stereo had an intent to take his own property.

9. Same scenario as above except that Alice testifies , “just before Joe took the stereo, Joe told me, “I’m taking this stereo because it’s mine” Is this Hearsay? Is this admissible?

**Answer** This is hearsay, but it is admissible under the “then existing state of mind” exception to the hearsay rule and would be admissible to show Joe’s lack of intent to deprive another of his property.

10. Tweedledum and Tweedledee are sitting on their front porch one day when they see Christopher Robin zoom buy in his beat up BMW and run through the stop sign at the end of the street and hit the side of Allyson Legworth’s new Porsche. Tweedledum observes calmly, and comments, “there goes Christopher, watching the girls instead of the road again.” At a subsequent trial, Tweedledum’s comment is offered into evidence to prove that Christopher was not paying attention to the road. Is this an admissible statement? Is it hearsay?

**Answer** It is hearsay, an out-of-court statement offered to prove its truth, which is that Christopher was not watching the road. It is admissible under the present sense impression exception.

## **B. Relevance/ Prior Bad Acts and Character**

1. John is injured when he is hit by Dan Defendant’s car. In a prosecution for negligent homicide, the prosecution offers testimony by Wanda Witness that she saw Dan Defendant driving at a speed of about 55 miles per hour. Is Wanda’s testimony relevant?

**Answer** Yes, it is relevant because Wanda’s testimony makes it more likely than not that Dan Defendant was traveling at 55 miles per hour.

2. Same scenario as above except testimony is offered by Wanda Witness that she saw Dan Defendant going twenty miles over the speed limit two months prior to the accident?

**Answer** No, it is not relevant because the alleged speeding took place on a different day and had nothing to do with the accident. This testimony will not make the fact that Dan Defendant was going 55 miles per hour the day of the accident more or less probable.

3. In a prosecution for larceny, the prosecution asks the defendant’s character witness on cross-examination, “Isn’t it true that you do not have custody of your children?” Is the testimony that this question illicit relevant?

**Answer** No, this question would not illicit any testimony that would make an issue in the larceny case more or less likely. Whether or not a defense witness has custody of their children is completely irrelevant to this criminal prosecution

4. In a prosecution for Driving Under the Influence, the prosecutor attempts to offer evidence that the defendant had been convicted of Driving Under the Influence. Is this evidence relevant?

**Answer** Although this evidence is probative, it is too prejudicial. There is too much danger that the defendant might be convicted not for the actual crime at issue but because he has committed this crime in the past. The danger of unfair prejudice outweighs the probative value of this prior conviction, and the evidence is not relevant. This violates the rule against admission of prior bad acts.

5. Gary Goodegg is charged with selling alcohol to minors. At trial, the prosecutor seeks to open his case by introducing testimony from Gary's neighbors that he is the neighborhood drunk who makes moonshine in his basement. Is this testimony relevant? Is it admissible?

**Answer** This evidence is not relevant. The fact that Gary may be the neighborhood drunk does not make any issue in the case more or less probable. Also, this is inadmissible character evidence, because there is every indication that this evidence being introduced solely to suggest that Gary is a no account drunk and is more likely to be guilty of selling alcohol to minors than if he wasn't the local drunk.

6. Bonnie Bluebonnet is charged with car theft. The prosecutor offers evidence that, two weeks before the theft, Bonnie had escaped from a jail 80 miles away. Is this relevant?

**Answer** The evidence of the jail escape is relevant to show motive for stealing the car and that she was more likely than not to have stolen the car than if she had motive to do so. Although prior bad acts are generally irrelevant and inadmissible, if they are offered to show knowledge, motive, intent, preparation, identity, opportunity and plan or absence of misstate or accident.

7. The defendant, a short Asian man with long dark hair, is charged with robbing a bank. The prosecution offers a surveillance tape of the robbery, which shows that the robber is short with long dark hair but which does not show enough detail to demonstrate that the robber is or is not the defendant. Is the tape relevant?

**Answer** The tape is relevant and admissible, because it tends to show that the robber was a short man with long dark hair and this fact makes it more likely than not that the robber is the defendant than would be the case if the tape was not in evidence.

8. In a criminal prosecution for assault and battery, the prosecution seeks to admit the testimony of a witness, who did not see the assault and battery, that one week later he saw the victim holding his jaw and crying from the apparent agony of his injury. Is this relevant?

**Answer** No, this is not relevant. It is not evidence that would make any issue regarding the guilt of the defendant, whether or not the defendant committed an assault and battery more or less likely. The testimony is also too inflammatory as likely to unfairly arouse an emotional response from the trier of fact.

9. Dirk Digger is charged with murdering Viola Victim. The prosecution's first piece of evidence is that Dirk was the sole beneficiary of an insurance policy on Viola's life. Is this evidence relevant?

**Answer** Yes, it is relevant evidence because it is of probative value. It could be concluded that someone who stands to gain financially from another person's death is at least somewhat more likely to murder that person than someone with nothing to gain.

10. The defendant is charged with fraud because he swindled an elderly widow out of her retirement money. The prosecutor wants to show that the defendant owed money to other people and always failed to pay these people back even when he had money to do so. Is this evidence relevant to show that the defendant committed the crime at issue?

**Answer** This is improper evidence of other bad acts that is obviously being offered to show that the defendant is a bad character who has the propensity to do bad things. This is highly prejudicial evidence and is not relevant to show that it was more or less likely that the defendant committed fraud. If the defendant took the stand, however, at the court's discretion, this information might be used in the cross-examination of the defendant because it is a prior bad act that is "probative of the truthfulness or untruthfulness" of the defendant.

12-30-97