Hypo. A defense witness will testify that the plaintiff told him that she ran a red light. Before the testimony, the defense asks the judge to tell the plaintiff not to ask the witness whether he is an insurance investigator for the defendant. The judge should --

1. Prohibit the question
2. Allow the question
3. Require that the question be re-phrased
4. Not rule on the issue until the question is asked.
5. Other
I have used the computer lesson assigned for this class.

1. True
2. False
Hearsay dangers

Hearsay evidence is excluded because the *credibility* of the out-of-court declarant has not been tested by cross-examination in the court trying the case.
Elements of “credibility”

- Sincerity
- Clarity
- Memory
- Perception, Judgment
Hearsay triangle, p. 185

A (act/statement) — B (belief of declarant) — C (conclusion)
Hearsay triangle

Clarity
Sincerity

A

B

C
Hearsay triangle

A

B

Memory Perception

C
Declarant-centered definition:

A statement is hearsay if it depends for value upon the credibility of the out-of-court declarant.
Assertion-centered definition:

“Hearsay” is an out-of-court statement offered in evidence to prove the truth of the matter asserted.

See Rule 801(c).
All out-of-court statements are hearsay.

1. True
2. False
Oral statements can be hearsay, but not written statements.

1. True
2. False
Hearsay evidence is sometimes admissible.

1. True
2. False
Hypo: 40 pounds of marijuana
Buzzy was arrested at the Post Office after picking up a package. The package contained 40 pounds of marijuana. Buzzy claims he didn’t know what was in the package.
At trial, the prosecution offers evidence that a few days before, Buzzy’s girlfriend sent him an email saying . . . .
“Buzzy, I sent you forty pounds of marijuana yesterday.”

The evidence is --

1. admissible
2. not admissible
The statement is not hearsay if it is offered to prove . . .

1. She sent the marijuana
2. The package contained marijuana
3. Buzzy believed the package contained marijuana
4. More than one of the above
Hypo: “My husband is cruel”
A wife says “my husband is cruel.” Her statement is offered in evidence to prove that she doesn’t love him. Hearsay?

1  Yes.
2  No
The wife’s statement about her husband’s cruelty, offered to show she doesn’t love him, is -- 

1. offered for the effect on the hearer 
2. circumstantial evidence of declarant’s state of mind 
3. legally operative language 
4. other
Lending a valuable book
A professor provided a valuable book to a student. The professor died, and his heirs sued for return of the book. The student claims it was a gift. The heirs offer testimony that when the professor handed over the book, he said “this is a loan.” Testimony about the professor’s statement is --

1. Hearsay – offered to prove its truth
2. Not hearsay – offered for effect on hearer.
The witness who changed his story.
A witness testifies “the light was green.” The opponent offers evidence that before trial, the same witness told his investigator “the light was red.” The out-of-court statement is --

1. Not hearsay, because not offered for its truth.
2. Not hearsay, because the witness testified and hence was subject to cross-examination.
3. Hearsay.
In the previous hypo, the witness’s inconsistent out of court statement fits the requirements of the exemption from the hearsay rule set forth in Rule 801(d)(1)(A).

1. True.
2. False
The missing sponge

(from “Hearsay from Square One”)

![Image of surgeons in an operating room]
In an action against a surgeon who left a sponge in a patient’s body, the plaintiff offers evidence that in the operating room, a nurse told the surgeon that a sponge was missing. The statement is hearsay if offered --

1. to show that the doctor was warned.
2. to show that a sponge was left in the body.
3. Neither.
Assume the evidence is admissible. If there is a dispute about whether a sponge was left in the body, the judge should give a limiting instruction.

1. True
2. False
A case of self-defense
Buzzy is accused of murder. He asserts that when he saw the decedent, a long-time enemy, approaching him on the beach with club in hand, he reasonably believed he had to use deadly force to protect himself. He offers evidence that someone told him that the decedent had beaten two people to death.
The evidence that someone told Buzzy that the decedent had beaten other people to death is --

1. Not hearsay if offered to show the decedent was dangerous.
2. Not hearsay if offered to show Buzzy’s fear.
3. Not hearsay in either case.
4. Hearsay in either case.
The statement that the decedent had beaten people to death is not hearsay because

1. It is offered to show effect on the hearer’s state of mind.
2. It is legally operative language.
3. Both of the above.
4. It is offered as circumstantial evidence of declarant’s state of mind.
5. All of the above.
Character evidence review. The testimony that Buzzy heard that the decedent beat two others to death is --

1. Not character evidence when offered to show Buzzy’s fear.
2. Not character evidence because it’s a signature crime.
3. Character evidence that is admissible to show an alleged victim’s propensity for violence.
4. All of the above.
5. Inadmissible character evidence
Subramaniam v. Public Pros., p. 189

Privy Council, 1956
“Fight with us or we’ll kill you”

1. Hearsay
2. Not hearsay
The “fight with us” statement is not offered to show the truth of anything asserted in it. Instead, it is being offered --

1. To show effect on hearer
2. As circumstantial evidence of declarant’s state of mind
3. As legally operative language
4. Other
Vinyard v. Vinyard Funeral Home, p. 190
Vinyard funeral home case. The statement “the lot is slick when wet” can be used to prove a fact of consequence without using the statement as evidence of the truth of the matter asserted.

1. True

2. False
Vinyard case. The statement “the lot is slick when wet” is not hearsay when used to prove --

1. The lot was hazardous when it rained.
2. Declarant had seen the lot when it was slick.
3. Defendants had notice of the hazardous condition of the lot.
4. All of the above.
Declarant saw a robber running out of a bank with a sack of money. At a lineup, declarant told the police, “Subject D looks like the man I saw running out of the bank.” The lineup statement is offered in lieu of declarant’s testimony at trial.
The statement “D looks like the man I saw running out of the bank” is hearsay if used to show –

Cf. McCormick excerpt, p. 187

1. D robbed the bank.
2. D ran out of the bank.
3. Declarant saw D running out.
4. Any of the above.
The statement “Dr. Salinsky is incompetent” is not hearsay because --

1. It is evidence of the declarant’s state of mine.

2. It is evidence that the hospital would have found something had it used due diligence.

3. It is legally operative language.

4. Other.
Reis Biologicals v. Bank of Santa Fe, p. 193
The statement “I guarantee it,” offered to show that declarant guaranteed it, is

1. Hearsay because offered for its truth
2. Not hearsay because it is legally operative language.
3. Not hearsay because it is offered for the effect on the hearer.
4. Other.
Fun-damental Too, Ltd. V. Gemmy Ind. Corp., p. 194
The statement “it’s not fair for you to sell your toilet bank to other retailers for less than you charge us” is, under the facts, --

1. Not hearsay
2. Hearsay

0% 0%
If declarant said “I’m confused. I can’t tell one Toilet Bank from the other,” the statement would be

1. Hearsay, but admissible
2. Inadmissible hearsay
3. Not hearsay
The end.
Hearsay?

1. Yes
2. No