Seminar 4: Hearsay Evidence

“Maybe you should try it another way.”

Read Chapter 5 of Uniform Evidence, pp 138-146 of Proof and the Preparation of Trials and ss 59, 60 and 66A of the Evidence Act 2008. Your goal is to learn to identify the uses that can rationally be made of evidence of an out-of-court act and be capable of saying whether a particular use is permitted or prohibited in court proceedings by the UEL’s hearsay rule.

Prepare for this seminar by reading the e-mail print-outs below and doing the following:

- First, consider in detail the inferences that can be drawn from the printouts of e-mails found on Michael’s computer, below. What can be inferred from a print-out? Now think about the computer that the print-out came from. How did the e-mail get into the computer? When? Who did it? You should now have a picture in your head of an ‘out-of-court act’ (or ‘previous representation’ under the UEL lingo): the creation of an e-mail with a text matching the print-outs you have. Now, think hard about what inferences a court could draw from the fact that that out-of-court act happened. Which of these inferences could help prove the prosecution’s case?

- Next, consider each chain of inferences and identify whether all of the facts in your chain is permitted (as falling outside of s59(1) or within ss 60 or 66A of the UEL):
  - **Unintended facts** (9.4.5): Which of the facts in your chains of inferences are ones that the author wanted a reader to infer (i.e. that it ‘can be reasonably supposed that the [author] intended to assert by the’ e-mail)? Which of them are ones that the author let slip unintentionally? The latter are not forbidden by s591(1), the UEL’s hearsay rule, meaning the court can find those facts. But be careful. If your chain includes other people’s out-of-court acts (e.g. things Michael’s been told about his finances), then the court can only find facts that neither person intended to assert.

  - **Internal facts** (9.4.2): Do your chains of inferences contain facts about the author’s state of mind (or body) at the time of writing the e-mails? If so, then s66A permits the court to find those facts, even if the author intended to assert them. But note the requirement of contemporaneity! If your chain of inferences includes the author’s internal state before or after the e-mails were sent, then s66A won’t help with those (but perhaps the author didn’t intend to assert those particular facts?)
• **Non-hearsay facts** (9.4.1, 9.4.3, 9.4.4): The textbook spends ages on various categories of facts you can rationally draw from the out-of court act or the accompanying mental state. You might want to work out how these would apply to the e-mails, e.g. what could the court infer from the fact that the e-mail was sent, or the fact that the author was in a particular mood when it was sent, which might bear on whether Michael killed Kathleen. But that’s just for interest. Under the UEL, there are no separate permissions for these sorts of facts (unlike the common law notions of ‘original’ non-hearsay evidence) and you will have to instead rely on the UEL’s general permission for courts to draw unintended inferences (which typically covers all these categories, but not always.)

• **Multiple facts** (9.5.3): Still stuck? Now think about the particular bit of the e-mail print-out that supports the inference you want the court to draw. Can more than one relevant inference be drawn from that bit of the e-mail? Are any of those other chains permitted by both the UEL hearsay rule and by the other rules of evidence discussed later in this course? If so, s60(1) provides that the hearsay rule doesn’t bar the court from drawing every inference supported by that bit of the print-out.

Finally, identify whether there are any remaining chains of inferences that don’t fall within the other permissions. They’re forbidden by the UEL hearsay rule. But all is not lost. See if you can use any of the exceptions to the hearsay rule, discussed next seminar. (One covers most of the e-mails! Which one is it?)
SOME E-MAILS RECOVERED FROM MICHAEL'S COMPUTER:

----- Original Message -----  
From: Michael Peterson <mpeterson@nc.rr.com>  
To: THOMAS W RATLIFF <TRatliff1@prodigy.net>  
Sent: Wednesday, April 18, 2001 10:53 PM  
Subject: Re: Martha  
Tommy,  
Apparently everyone is coming for Martha's graduation, including Aunt  
Margaret Blair, who has personally spoken in Tongue with the Virgin Mary and  
is even more loony than your mother, Aunt Rosemary, who  
do drinks more than  
your sister, and her daughter Kerry, who is apparently even more promiscuous  
than you. What a circus. So why aren't you coming? Or is the answer  
self-explanatory? Coward!  
Come save me. Bring Demerol.  
Seriously, we'd love to have you and you could find amusements here.  
Now on to apr  
's graduation—Martha goes to College.  
I have to send a commitment check to USF by May 1, the deadline for  
admission. So before I do, I want to get a clear understanding what this  
all means  
. The total cost—tuition, board, room and books—according to USF  
is $33,160. This does not include living expenses—like going into SF for  
movies or whatever, and not the cost of roundtrip airfare for the two or  
three times a year she'll be traveling: to school, home for Christmas,  
perhaps in the spring (home or certainly somewhere) and then for the summer.  
Martha will get a VA allowance that should cover her living expenses and  
maybe all her travel.  
What she will need from you is about $5,000  
per semester. I know this is  
awful but I need to ask for it—either from you personally, or an advance on  
hers share of the future estate. She would need a check sent to the  
University in August, and again in January.  
Once she gets there, I will press her to plead her case to the University  
for money and perhaps she can knock down the needed amount considerably.  
Certainly she can if she gets good grades, which she should.  
Is this all right with you?  
Sorry as hell to have to come begging but I  
warned you I might years ago.  
I could easily pay the whole freight here in North Carolina at Greensboro  
but I honestly think that for a life experience—and we only get one—it  
would be far better for her to have a chance in the big wide world. Because
From: "THOMAS W RATLIFF" <TRatliff1@prodigy.net>
To: "Michael Peterson" <mpeterson@mc.rr.com>
Subject: Re: Martha
Date: Thu, 19 Apr 2001 19:08:33 -0500

That sounds great! I am now committing to $5K per semester 'till death do us part. But, when I go visit, I get to drag Martha through the bars in the Castro!
I thought I was working on the weekend of the graduation, but when is it?
We just merged with another group and our schedules changed some. I just might be able to attend.
Tom-Tom
her to have a chance in the big wide world. Because
From: "Michael Peterson" <mpeterson@nc.rr.com>
To: "Patricia Peterson" <Patricia_Peterson@EUDOEDEA.EDU>
Subject: boys
Date: Thu, 29 Nov 2001 15:41:27 -0500

Patty,
Let me add a little more to the idea of a home equity loan and the boy's plight. Right now Clayton is paying about $750 a month in interest on his credit card debt. He will earn about $1300 from NC State with his teaching fellowship. His rent is $700 a month, plus expenses. He cannot afford to live. Todd is paying probably about $300 a month. Thus the boys are paying $1000 a month in interest and not reducing the principal. If you got a home equity loan of $30,000, you would only have to pay somewhere around $400 a month, even less if you didn't want to reduce the principal.

If you could handle that, they could live nicely. I would help if you need it. Certainly when Todd's car is paid off (at $500 a month) in another two years, I could pick up your payments if they don't do it themselves. I honestly think this is the best way to help the boys out because I think they have learned their lesson.

Please let me know what you think. It would also be a huge relief off my mind because I am worried sick about them. It is simply not possible for me to discuss this with K athleen.

Mike
From: "Michael Peterson" <mpwriter@nc.rr.com>
To: <tr1583@bellsouth.net>
References: <20011203004349.JRXXB3723.imf24bis.bellsouth.net@[127.0.0.1]>
Subject: Re: Re: What closest have you been hiding in?
Date: Mon, 3 Dec 2001 12:04:51 -0500

I had heard South Beach was straightening out. It's a beautiful place but we just drove through it. By the way, I never pushed around a fairy in elementary school or anywhere else. Even in the Marines, there were only a couple queer bashers and the rest of us thought there had to be something wrong with them—along the lines of Shakespeare's, "Methinks the lady doth protest too much."

The girls are coming home in a few weeks. Clayton graduates number 1, the valedictorian, from NC State in computer engineering, which awhile back would guarantee a great job, but who knows these days.

Poor Kathleen is undergoing the tortures of the damned at Nortel. They've laid off 45,000 people. She's a survivor and in no trouble, but the stress is monumental there.

Pattie comes in for the holidays and that's always stressful too. I hope you can find some place for your mom; it's only a matter of time before Connie won't be able to handle it.

Martha has a great gay friend in SF—very very wealthy; the family lives across from Britanny Spears. I told her to marry him anyway. Or maybe set him up with you.

Mike
From: "Michael Peterson" <mpeterson@nc.rr.com>
To: "Kathleen Atwater" <atwater@nortelnetworks.com>
Subject: Fw: Indy
Date: Wed, 5 Dec 2001 10:40:57 -0500

Here's the scoop on the Independent. There were no invitations, but we can still go. Let me know if you want me to call in. Or we could just show up at the door Friday night. You looked great last night. If ONLY we hadn't gone to Pao Lim. Let's work on our marriage tonight. Oh, I'll run a check by Michael today for the haircut. $120?
Received: from ncmx01.mgw.rr.com (24.93.67.251) by Mail6.nc.rr.com with Microsoft SMTPSVC(3.5.1877.687.68); Sat, 8 Dec 2001 23:55:14 -0500
Received: from zrc2a03g.us.nortel.com (h66a122a103n47.user.nortelnetworks.com >); Sat, 8 Dec 2001 22:53:42 -0600
From: "Helen Frislenger" <helenp1@nortelnetworks.com>
To: "mpwriter@nc.rr.com" <mpwriter@nc.rr.com>
Subject: Charts -Nortel
Date: Sat, 8 Dec 2001 22:53:41 -0600

<<Readiness.ppt>>

-----Original Appointment-----

From: Ott, Barbara [NGA:5008:EXCH]
Sent: Friday, December 07, 2001 7:35 PM
Subject: go/No Go Session

To: Eastern Time (US & Canada).
Where: ESN 482-5257 External: 972-684-5257 Passcode: 4451836#