

QUESTION 15 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V

The Smiths' divorce trial is starting next week, and the main focus will be whether Mr. Smith was having an extra-marital affair. To prove that he was, Mrs. Smith will be calling her private investigator, Mr. Clark, to testify about a conversation he overheard between Mr. Smith and the alleged paramour, Diane. Specifically, while walking along a sidewalk, Clark saw Mr. Smith and Diane in a neighborhood park. After getting within earshot, Clark listened to the end of the conversation where Diane said, "You told me you loved me and that you would marry me as soon as you could leave your wife." In response, Mr. Smith nodded his head affirmatively, simultaneously hugged her, and then said, "I know about all that, but if you show up at trial and testify to that, I promise you that the world as you know it will be over and there will be hell to pay." Furious and frightened by this threat, Diane responded, "I can't believe you are doing this to me; I have been like a second wife to you all of these years." She then left the country and is not expected to return until after the trial.

Clark went to Mrs. Smith's attorney, and related what he overheard. Mrs. Smith's attorney was thrilled with this evidence, realizing that he could use it to prove that an affair was taking place and obtain a better property division. He sent a process server out to serve Diane with a subpoena, but she could not be located for trial. Mrs. Smith's attorney also contacted Mr. Smith's attorney hoping this damaging evidence would gain Mrs. Smith a last-minute settlement. Instead, it resulted in a motion *in limine* from Mr. Smith's attorney, seeking to preclude Clark from testifying about Diane's statement.

Assess under the Michigan Rules of Evidence (1) whether Diane's first statement ("you told me you loved me") can be attributed to Mr. Smith as a party admission and admitted through Clark; and (2) whether Diane's second statement ("I can't believe you are doing this to me") is admissible through Clark. Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V*******