

**QUESTION 3 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I
OR IN SOFTEST ANSWER SCREEN 3**

Defendant Harris is on trial for the murder of his girlfriend, Anita, with whom he had a turbulent relationship. His trial defense is that he acted in self-defense. The prosecution seeks to introduce two statements made by Anita. The first statement was made to a police detective three weeks before the homicide describing a death threat made to her by Harris. A second statement was made by Anita to her friend, Chelsea, while the two women were having lunch a couple of weeks before the killing. In this statement, Anita told Chelsea she had seen Harris hiding in the bushes outside her house the night before. She also asked Chelsea not to tell anyone. Chelsea will be a prosecution witness because she was subpoenaed by the prosecutor to testify. The police detective is prepared to testify as well.

Harris's attorney objects to both statements being introduced, contending their introduction would violate his Sixth Amendment right to confrontation. He augments his position by contending 1) the statements made by Anita to the police detective and to Chelsea are testimonial hearsay, 2) Anita is unavailable for trial, and 3) Harris had no prior opportunity to cross examine Anita.

The prosecutor challenges Harris's claim that the statement to Chelsea would be testimonial hearsay and, as such, would be covered by the Sixth Amendment right to confrontation. The prosecutor concedes the statement to the police detective would be testimonial and subject to Harris's Sixth Amendment confrontation right. The prosecutor adds, however, that Harris has forfeited his Sixth Amendment right to confrontation. In support of her position, the prosecutor says simply, "Of course, Anita is unavailable. He killed her and now she can't be a witness. He forfeits his right."

Please specifically answer these two questions: 1) is Anita's statement to Chelsea testimonial hearsay; and 2) based on the prosecutor's argument, has Harris forfeited his right to confrontation. Explain your answers.

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