

A plaintiff has sued a defendant, a former employee, for trespass and conversion. The plaintiff alleges that the defendant unlawfully entered the plaintiff's car lot at night and caused irreparable damage to a vintage car while doing so. There are no witnesses to the incident. At trial, the plaintiff seeks to introduce evidence that the defendant was the trespasser.

Which of the following would most likely be excluded by the rule against hearsay?

- A. A printout of a satellite image with a marker drawn by the plaintiff's wife of where the vintage car was parked on the lot.
- B. An automatically generated fax confirmation showing that the defendant sent the fax from the property the day before the damaged car was discovered.
- C. The defendant's cell site location history showing that the defendant was on the property.
- D. Time-stamped security footage from the car lot of the plaintiff's dog barking at something outside the view of the camera on the night in question.

Explanation:

The **rule against hearsay** bars the admission of **out-of-court statements** offered to prove the **truth of the matter asserted** therein. A statement is defined as a person's assertion (oral, written, or nonverbal) that was intended to be an assertion. Therefore, the hearsay rule only applies to statements **made by a person**.

Here, the only statement made by a person is the marker that the plaintiff's wife drew on a printout of a satellite image. Since the wife's marker is a written, out-of-court statement that is being used to prove the truth of where the damaged car was parked, it would most likely be excluded by the rule against hearsay. Had the marker been automatically produced by computer software, then the hearsay rule would not apply.

Similarly, an automatically generated fax confirmation and cell site location history would not be excluded on hearsay grounds because this information is generated by technology—not a person (**Choices B & C**). The same logic applies to security footage. And though a dog barking may be used to prove that there was an intruder, the hearsay rule does not apply to "statements" made by an animal (**Choice D**).

Educational objective:

The rule against hearsay bars the admission of an out-of-court statement made by a person—not a machine or animal—that is offered to prove the truth of the matter asserted therein.

References

Fed. R. Evid. 801 (defining "statement" as a person's oral, written, or nonverbal conduct that is intended as an assertion).

Examples of nonhearsay assertions



Dog's bark

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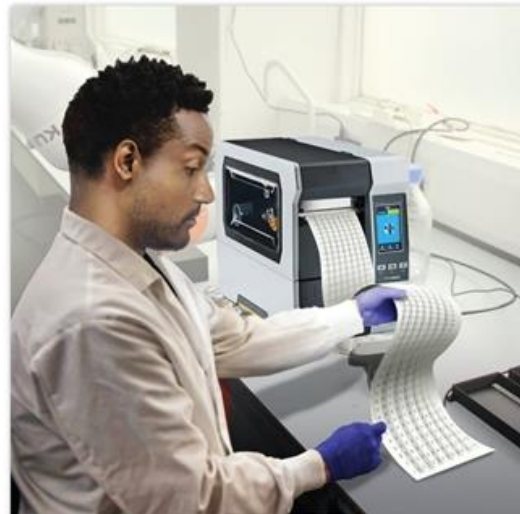
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