1. Not hearsay. This statement has independent legal significance. It is part of a contract to marry.

2. Not hearsay. This statement provides circumstantial evidence of D's state of mind.

3. Not hearsay. This statement has independent legal significance. It shows D took adverse possession of the land.

4. Not hearsay. This statement is being offered for the effect on the listener to show why he was provoked.

5. Not hearsay. This statement is a verbal act. It shows that defendant was conscious after the attack.

6. Hearsay. This statement is being offered to prove X was the shooter.

7. Hearsay. This statement is being offered to show that X was the one who made the threats to shoot. (Note: We need to cross-examine D on how he knew that it was X that shoot. All we have is someone telling us what X said.)

8. Not hearsay. This statement is being offered for the effect on the listener.

9. Hearsay. (Note: This is not circumstantial evidence of state of mind because it is not circumstantial and X's state of mind is not an issue in the case).

10. Not hearsay. This statement has independent legal significance. It is part of the making of the gift.

11. Hearsay. (Note: The words no longer have independent legal significance because they are not made at the time of the gift. They look backward at an event and make an observation).

14. This one is tricky. Although testimony regarding reputation is usually hearsay (for which there will a separate exception), in limited circumstances it is not hearsay. This is true in defamation cases because a person's reputation is relevant to those cases even if it is inaccurate. In these limited situations, the reputation would have independent legal significance.

15. Not hearsay. This statement provides circumstantial evidence of D's state of mind.

16. Not hearsay. This statement is being offered for the effect on the listener.
17. Not hearsay. D's reputation is also being offered for the effect on the listener.

18. Not hearsay. Once again, the reputation evidence is being offered for the effect on the listener.

19. Not hearsay. Once again, the reputation evidence is being offered for the effect it should have had on the listener.

20. Not hearsay. This statement has independent legal significance as part of the verbal act of making the contract.

21. Hearsay. (Note: Now, we are trying to prove the truth of the matter said, not just that it was said.)

22. Not hearsay. This is non-assertive conduct and, therefore, under the Federal Rules it would not be conduct qualifying as a "statement." The answer would be different under the old Tatham case.

23. Not hearsay. This is also non-assertive conduct.

24. Hearsay. If D's conduct was done "in order to draw suspicion upon himself," it was intended as a statement. (Note: This is not one of those situations where the defense is offering the statement to show D's willingness to act. The prosecution is offering the statement to prove his guilt as the equivalent of D's statement that he is guilty. That would be a hearsay purpose).

25. Not hearsay. The confinement to the insane asylum is non-assertive conduct.

26. Hearsay. In essence, D is saying that "You, X, forged a will, but I would never have done that." We need to cross-examine D on why he made the observation and statement.

27. Not hearsay. This act has independent legal significance. It is the means of escape.

28. Not hearsay. These are words of donative intent that have independent legal significance.

29. Not hearsay. This is non-assertive conduct.

30. Not hearsay. This statement is one of the ways that a person can take adverse possession of land.
31. Hearsay. This is not a just conduct of clutching his chest (which might be non-assertive conduct). X makes a "statement" regarding the pain. It is also not circumstantial evidence of state of mind, because it is direct evidence of a state of mind or condition. There will be a separate exception for this type of statement, but it is being used for a hearsay purpose.

32. Not hearsay. This is a classic case of circumstantial evidence of one's state of mind.

33. Not hearsay. This is also circumstantial evidence of state of mind.

34. Not hearsay. This is also circumstantial evidence of state of mind. (Note: All of these are being used to show circumstantially that the testator did not like X and would not have made him the sole legatee of his will).

35. Not hearsay. The words have independent legal significance as part of the sale.

36. Hearsay. (Don't forget: A statement that looks backward at an event is more likely to be hearsay.)

37. Hearsay. The receipt is a written statement that is being offered for the truth of what it "observed"; i.e., that the car was worth a certain value. In order to know whether it was or not, we need to be able to cross-examine the dealer.

38. Hearsay. The statement is being offered to show the spindle was defective, not just the effect on the listener.

39. Not hearsay. Now, the statement is just being offered to show the effect on the listener.

40. Not hearsay. This is non-assertive conduct (although under the broader, Tath= approach, a good argument could be made that it is assertive conduct).

44. Hearsay. This is being offered to show that D made a correct observation and statement to his wife outside of court.

48. Hearsay. This is a backward, out-of-court observation Offered for the truth of the matter asserted.

50. Not hearsay. This is being offered to fix the time and therefore is a collection of verbal markers.

51. Hearsay. There will be a separate Exception (admission) for this statement, but it is being offered for a hearsay purpose.
52. Not hearsay. There was no statement -- oral, written or "intended, assertive" conduct.

53. Hearsay. (Note: There will be a separate exception for this situation, but for the purposes of defining hearsay/ non-hearsay, it is hearsay. A jury's verdict is the same as the jurors' statement that "he did it.").

54. Hearsay. This makes the answer to #53 even clearer.

55. Not hearsay. This is a direct observation. Also, there is no indication that the husband intended to make a statement with his conduct.

56. Not hearsay. The offering of the reward has independent legal significance.

57. Not hearsay. This is non-assertive conduct.

58. Technically, this is hearsay, because children only know who their parents are through someone else. However, most courts will allow it in as mere "background" information unless it is an important issue in the case. Here, it may be inadmissible hearsay because it is an important issue to the heirship proceeding.

59. Hearsay. This is being offered to prove the truth of what the defendant said outside the courtroom.

60. Not hearsay. Machines do not "speak" for hearsay purposes. They are not "persons" under the Federal Rules.

61. Not hearsay. This statement is being offered as circumstantial evidence of knowledge of the speaker. This problem is like the "Paper-Macho man" hypo. We know that the guest had some knowledge of her anatomy because he was able to make such a detailed observation.

62. Not hearsay. The marriage vows are a verbal act having independent legal significance.

63. Not hearsay. This is non-assertive conduct.

64. Not hearsay. This is a verbal act showing the person survived.


66. Not hearsay. This is non-assertive conduct. The conduct was not intended to make a statement, but to buy merchandise.
67. Not hearsay. This is non-assertive conduct. Even if the person uttered words during the scream, those words would be non hearsay as circumstantial evidence of one's state of mind.

68. Not hearsay. The neighbor is testifying to a direct observation.

69. Not hearsay. This statement is being made from the witness stand, not outside of court.

70. Hearsay. This is double hearsay. First, the statement from the client to the attorney is hearsay. Then, the letter purporting to declare what the attorney said about what he was told is another layer of hearsay.

71. Not hearsay. This is a verbal object/ marker.

72. Hearsay. This is an out-of-court statement asserting the fact that the insured is dead. (Note: There will likely be a separate exception for this statement, but it is still being offered for a hearsay purpose.)

73. Not hearsay. This is direct testimony regarding an observation by the witness. It does not involve testimony about what someone else said.

74. Hearsay. This is not "circumstantial" evidence of state of mind, but direct evidence of state of mind. If the defendant had said, "Please get me out of town. He is after me....," then that would be circumstantial evidence of state of mind. (Note: There will be a separate exception for statements that are direct evidence of state of mind, but they are offered for a hearsay purpose.)

75. Hearsay. The wife's conduct is being used as a signal and therefore is assertive conduct and a "statement" under the hearsay definition.