

Objections

Objections are an attorney's way of formally notifying a judge that opposing counsel is not following the rules of evidence and requesting the judge to make a ruling on the issue. Objections should be made after the question has been asked, but before the answer has been given. Once the witness has answered the question, it is too late to make an objection. An objection should be made if it is apparent the question calls for inadmissible evidence (e.g. hearsay), or the question is in improper form (e.g. leading). If the question calls for an answer that is apparently admissible, but the answer itself is inadmissible (e.g. hearsay), the objection is made by way of a motion to strike. All objections must include the reason for the objection. A common list follows.

DEFINITIONS

Objections to Questions:

- **Ambiguous/Confusing:** The question is confusing, contains more than one question, and/or can be understood in more than one sense.
- **Argumentative Question:** The attorney is arguing their case with the question. The attorney is arguing with the witness
- **Asked and Answered:** Opposing counsel asks the same question over and over again. The witness has already answered the question.
- **Assumes Facts not in Evidence:** The question contains information that has not been introduced into evidence.
- **Beyond the Scope of Direct Examination:** Asking a question not brought up during direct examination.
- **Compound:** Asking two questions at once.
- **Improper Question:** You should only use this objection as a last ditch effort if you cannot think of the proper objection. Either the court will help you out or you will have more time to think of the proper objection and form your argument.
- **Incompetent Witness:** When a witness lacks the mental capacity, qualifications, or personal knowledge to testify as to a particular matter.
- **Leading Question:** The way the question is asked tends to suggest the answer. Clue: Listen for questions that end in "didn't you?", "correct?", "isn't it true?", etc. IMPORTANT: Leading questions may always be used on cross-examination.
- **Misquoting a Witness:** Opposing counsel's question misstates the prior testimony of the witness.
- **Narrative:** Witness is rambling, just telling a story.
- **No Proper Foundation:** When the opposing attorney has not laid a proper foundation to authenticate a document or a piece of evidence or to show that the witness is able to testify to the question which opposing counsel is asking.
- **Opinion:** The testimony calls for a particular type of opinion to be made by the witness that the witness is not qualified to give.
- **Privileged:** When the answer to a question would violate the counselor/pupil, teacher/ pupil, or attorney/client privileged.
- **Speculation:** The witness is required to guess in order to answer. The witness does not have personal knowledge of the actual answer. Listen for "isn't it possible" questions.
- **Unfairly Prejudicial:** When the relevant value of a piece of evidence is outweighed by the prejudicial effect which it may have to a jury.

Objections to Evidence:

- **Irrelevant:** Evidence will not prove or disprove the case. If irrelevant evidence is blurted out by a witness before you have time to raise your objection, you may ask the Judge to instruct the jury to disregard the testimony.
- **Hearsay:** Out of court statement to prove the truth of the matter stated.

EXCEPTIONS:

- Present sense impressions (Look! It's dark outside)
- Excited Utterance (Oh my, that car was going too fast)
- Present mental/physical state (I meant to do that)

PURPOSE AND PROCEDURE OF OBJECTIONS

STRATEGY ON OBJECTIONS: When making an objection, you are permitted and encouraged to state more than one ground if more than one applies. The more proper grounds you have for your objection, the more likely the evidence will be kept from the jury or that opposing counsel will be asked by the Court to restate his or her question.

TIMELINESS:

If a question is improper, an objection must be made before the response is given by the witness

1. If the question itself is prejudicial, object promptly when it becomes apparent
2. If answer is improper, objection must be made as soon as it becomes apparent

Object to answer

-If sustained, ask that answer be stricken from the record and that jury be instructed to disregard it.

LEGAL BASIS:

1. State legal basis
2. Do it succinctly without argument

Example: "objection your honor, the question calls for a hearsay answer"

PROCEDURE:

1. Stand up
2. Make the objection
3. State basis

ORDER OF PROOF

1. When opponent has succeeded in persuading judge to exclude a critical piece of evidence, make an offer of proof
 - It may convince judge to reverse
2. Ways to offer proof:
 - Both are done outside the hearing of the jury either at sidebar or without jury present
 - If judge denies, then you write it down
 - Narrative Form

Example "Your honor, if we were permitted to pursue this line of questioning, the witness would testify that one week before the incident, the Defendant asked her if she wanted to go to the park to smoke weed."

REVIEW OF TIPS/TRICKS TO OBJECTIONS:

Jurors dislike objections:

- Think you are keeping the real truth from them
- Disruptive
- Annoying
- Confusing

Consider “Will the answer really hurt your case?”

- Unless answer will hurt your case, better not to object
- Let the more technical objections go (leading, compound, unless it is damaging)
- Save your objections for when it really matters and will really affect your case

Does your objection have a solid legal basis?

- have rules ready to support the major objections you anticipate making
- always bring your cheat sheet with you to trial as a reference
- have more than one possible basis for an objection if applicable

Overcome the Fear

- Do not abandon objections due to fear
- If your opponent objects, think about a response that will convince the judge that the question is proper or that the answer is relevant and non-prejudicial
- Don't just sit down and assume that the Judge will sustain an objection; you are going to have to fight for it, whichever side you are on.
- Confront the fear and overcome it

Objections as a tactical device

- Making objections breaks the flow and pace of opponent's examination or argument, so use them wisely
- You can object to your own witness, if you have a witness that has gotten out of control or who is about to say something very bad for your case, object.

Making Objections before Trial (Motions in Limine):

1. Advantageous for attorney and judge to consider
2. Prevents jury disfavor
3. Ensures certain evidence will not be introduced or will be permitted with a limiting instruction

PREPARATION FOR IN-CLASS PARTICIPATION AND MOCK TRIAL

Prior to the Objections Class, you need to read the below information and have responses ready as indicated below. Objections class will be part lecture, but mostly interactive and participation based. Objections are theater and there is no better way to learn it than to Do It! You will have fun, so read, prepare and think about the Brittany Jones case and how objections will hurt or help your case.

Trial Preparation & Objections

- Develop Case Theme (Make a list of possible themes and confer with co-counsel on strongest)
(Example: Defense for Mock Trial: "Wrong Place Wrong Time")

You want to establish a theme early on, and make sure that you incorporate it into every facet of trial. A theme is a road map for the jury to follow and helps tie all of your evidence and arguments together into a very simple and short phrase that resonates with the jury. Your theme will also play into when and how you object during trial, so make sure you have selected your theme for mock trial before you come to Objections class.

- **Review all case materials**

As you review the case, think about the evidence and the witness testimony that will likely come out for both sides. Anticipate responses and think about potential objections, so you have mentally rehearsed when you hear a certain question, what objection you will make. We will work on examples during our class time.

- **Prepare Evidence Grid for each element of claim or defense**

*(Example: Constructive Possession- Photo of Skateboard & Waterpipe
Testimony of Police Officer)*

If you prepare a grid, and keep it in front of you during the trial, you will be able to ensure that all elements of the crime have evidence to support them and that the appropriate witness has authenticated/identified the evidence so it can be introduced and/or provided testimony to substantiate a fact or element that you need in order to prove your case. We will go over a sample evidence grid in class that will help you prepare for Mock Trial. You also include what testimony or evidence your opponent will likely try to introduce and anticipate your objections to such testimony or evidence.

- **Prepare Opening/Closing/Jury Instructions**

(Example for Defense of Mock Trial: This is a case about a girl being in the wrong place at the wrong time. You will hear testimony today that Brittany was simply hanging out with friends, riding skateboards and sitting in the park. You will hear testimony about other kids in the park having drugs on them, but not Brittany. You will hear that Brittany was sitting near a skateboard with several other kids nearby, and you will hear that when the police officers approached the group, everyone was nervous and moving things around except for Brittany. Brittany just sat there, and while the officers found a water pipe under the skateboard near Brittany, you will not hear any testimony that Brittany possessed or had any knowledge that the pipe was there, nor will you hear that Brittany possessed any drugs. Brittany was simply in the wrong place at the wrong time....

The most common objection to opening statements is "argumentative". Generally, you should refrain from objecting to an opening as it often frustrates the jury and sets a tone for your case that you have something to hide. You should really only object if the opposing party says something that is extremely prejudicial and improper.

- **Prepare to examine nonparty and opposing party witnesses**

(Example for Defense of Mock Trial:

Questions to ask the Officers

Prior to the date in question, you had never met Brittany before, correct?

And she had never been arrested before your encounter with her?

You didn't find any drugs on Brittany did you?

But you did find them on the other kids that were there, right?

You didn't see Brittany holding the pipe did you?

You didn't see her place it under the skateboard did you?

When you approached Brittany, she didn't run did she?

She didn't move or appear to be hiding anything did she?

Brittany just sat there and politely answered your questions and cooperated didn't she?

Isn't it fair to say that Brittany was just in the wrong place at the wrong time?

Read through the above example, think about what objections the Prosecution would make to these questions think about what answer the officer may give and if you are defense, what you would argue in response to the Prosecutions objection. We will go through this example in class so be ready to object and respond.

- **Prepare exhibits & Demonstrative Evidence**

Similar to the evidence grid, you need to have your exhibits prepared and marked for mock trial. Have a list of your exhibits and be sure to prepare responses to any objection you may get from opposing counsel.

- **Motions in Limine**

Prior to trial, you may want to make motions in limine to the judge outside of the presence of the jury. Motions in limine are preliminary objections to evidence and/or testimony that you anticipate being introduced at trial. Because you want to try and keep certain things out and don't want to risk your opponent sliding a question or an answer getting out before you have a chance to object. The saying goes "you cannot unring a bell" so for severely prejudicial information, a motion in limine, or preliminary objection is an excellent strategy.

Make a list of your motions in limine and leave a blank for you to record whether the judge has sustained the motion or provided a limiting instruction. We will discuss examples of motions that either side may want to raise for Mock Trial during class. In anticipation, create a list of things you would want excluded from the fact pattern regardless of which side you represent.

OBJECTIONS CHEAT SHEET FOR TRIALS

To Questions:

- **Ambiguous/Confusing:** The question is confusing; not understandable.
- **Argumentative:** The attorney is arguing his/her case with the question; the attorney is arguing with the witness.
- **Asked and Answered:** Opposing counsel asks the same question over and over again.
The witness has already answered the question.
- **Attorney/Client Privilege:** The question would require the witness to divulge privileged information (generally only applies if Defendant testifies)
- **Calls for Speculation:** The witness is required to guess in order to answer.
- **Compound:** Asking two questions at once.
- **Foundation:** When the opposing attorney has not laid a proper foundation to authenticate a document or a piece of evidence or to show that the witness is able to testify to the question which opposing counsel is asking.
- **Hearsay:** Out of court statement to prove the truth of the matter stated.
 - Exceptions:**
 - Present sense impressions (Look! It's dark outside)
 - Excited Utterance (Oh my, that car was going too fast)
 - Present mental/physical state (I meant to do that)
 - Non-Hearsay**
 - Prior Inconsistent Statement
 - Identification of a person made soon after perceiving him
 - Statement of a party offered against him or an Admission
- **Leading:** Question is trying to get a specific answer.
- **Narrative:** Witness is rambling, just telling a story.
- **Opinion Testimony:** The testimony calls for a particular type of opinion to be made by the witness that the witness is not qualified to give.

To Evidence:

- **Foundation:** Opposing counsel has not asked
 - 1) What is this?
 - 2) How do you recognize it?
 - 3) Does it accurately reflect/depicted the item on the date...?
- **Irrelevant:** Evidence will not prove or disprove the case, and solely being offered to prejudice the jury.
- **Hearsay:** Out of court statement (document) to prove the truth of the matter
 - Exceptions:**
 - Business Records
 - Police Reports (regarding factual information, not officer's opinions)
 - Non-Hearsay**
 - Confession (Statement Against Interest/Admission)