

Rules of Evidence

In actual courtroom trials, what spoken testimony and physical evidence are allowed into evidence is governed by very complex rules. These rules are designed to ensure that both sides receive a fair hearing and to keep out any evidence that doesn't relate to the issue of the case, isn't reliable, or whose value as evidence is totally outweighed by how prejudicial it would be.

Standard Objections

An attorney can object any time she or he thinks the opposing attorney is violating the rules of evidence. The attorney may object to questions that the other side's attorney is asking, to answers that a witness is giving, or to exhibits that the other side is attempting to admit into evidence. Generally attorneys are not allowed to object to opening statements or closing arguments.

The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge will ask the reason for the objection. The objecting attorney should state what specific rule of evidence is being violated.

Then the judge will turn to the other attorney who asked the question or offered the exhibit, and that attorney usually will have a chance to explain why the objection should not be accepted (that is, should be "overruled") by the judge.

The judge will then decide whether the question, answer, or exhibit must be discarded because it has violated a rule of evidence ("Objection sustained") or whether to allow the question, answer, or exhibit to become part of the trial record ("Objection overruled").

Irrelevant Evidence "I object, Your Honor. This testimony is irrelevant to the facts of the case." This means that the witness's answer, the attorney's original question, or the exhibit will not help the trier of fact to decide the issues in the case.

Leading Questions "Objection. Counsel is leading the witness." Leading the witness is only objectionable when done on direct examination. Leading questions are proper on cross-examination. A leading question is one that suggests the answer to the question and is usually answered by "yes" or "no."

Hearsay "Objection. Counsel's question (the witness's answer or the exhibit) is based on hearsay." Hearsay is a statement made outside of the courtroom. Statements that are made outside of the courtroom are usually not allowed as evidence if they are offered in court to show that the statements are true.

The most common hearsay problem arises when a witness is asked to tell what another person said to him or her.

There are many exceptions to the hearsay rule. Two of the most common are

- a. That a witness may repeat a statement made by either party in the case if the statement contains evidence that goes against his or her side; OR
- b. If a person's state of mind at the time of a certain event is important, any statements made about that event at the time the event occurred concerning the speaker's intent, knowledge, or belief will be admissible.

Lack of Personal Knowledge "Objection. The witness has no personal knowledge that would enable him or her to answer this question." The witness is testifying to things that the witness has not directly seen, heard, or experienced.

Opinion "Objection. Counsel is asking the witness to give an opinion." Unless it is within the common experience of people to form an opinion on the subject, opinions will not be allowed.

Expert witnesses may give opinions, if they explain the basis for the opinion, which is called "laying a foundation." An expert witness is someone who by training or experience has special knowledge in the case.

Argumentative Question "Objection. That question is argumentative." Attorneys cannot badger or argue with the witness. Questions may also not be argumentative in tone or manner. Badgering is harassing or asking again and again. While attorneys questioning the other side's witnesses can be forceful and pressing, if they go too far a judge will sustain an objection for being argumentative.

Speculation "Objection. Counsel is asking the witness to speculate in order to answer the question." Attorneys cannot ask questions that get witnesses to guess at answers.

Special Rule for Mock Trials An opposing witness cannot create new facts that would change the outcome of the case, although witnesses can add minor details. If the attorney believes a witness has gone beyond the information provided and is providing new information that is totally out of character and will change the outcome of the trial, use the following objection:

"Objection. The witness is creating material fact that is not in the record."

Hints on Objections Attorneys should object only when they are sure there is a reason and they have a specific objection in mind. Remember, too many objections during a trial are objectionable!

Only one attorney should stand and object at a time. The attorney assigned to do the direct or cross-examination of a particular witness should be the only attorney able to raise objections when the opposing side conducts its examination of that witness.

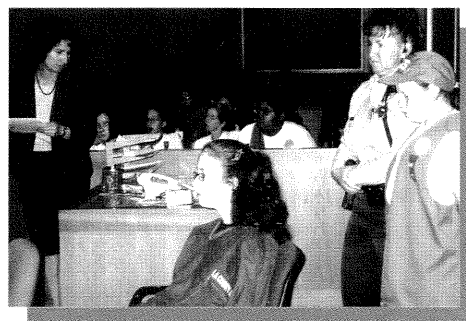
Once an objection has been made, the witness should stop talking until the objection has been resolved. If the objection has been overruled, the attorney asking the question should persevere and ask the question again to ensure that the witness gets to answer the question or the exhibit gets admitted into evidence. Many times once the objection is overruled, the attorney doesn't follow up and pursue the issue.

When judges rule against attorneys, attorneys should take the ruling gracefully, not making facial expressions or gestures that show the ruling affected them. Similarly, attorneys pleased with a ruling should not thank the judge for it.

When objections are sustained, attorneys should move on to another question and end their questioning on a strong note.

If the judge has overruled an objection by an attorney, that attorney should not be afraid to object to another question.

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Helpful Hints for Mock Trial Participants

Opening Statement: Prosecution or Plaintiff

1. **Purpose** To inform the jury of the nature and facts of the case. Argument, discussion of law, or objections by defense attorney or defendant are not permitted.
2. **Include**
 - Name of the case.
 - Your name.
 - Client's name.
 - Opponent's name.
 - A description or story of the facts and circumstances that led to the case.
 - A summary of the key facts each witness will bring out in testimony and the importance of any documents to be introduced.
 - Conclusions and request for relief.
3. **Avoid**
 - Too much detail. It may tire and confuse the jury.
 - Exaggeration and overstatement. Don't use such phrases as "prove it to a mathematical certainty" or "prove it absolutely beyond question."
 - Argument. It violates the function of the opening statement (which is to provide the facts of the case from your client's viewpoint), and you risk rebuke from the bench.
 - Anticipating what the defense attorney will say.
 - Walking or pacing. It distracts juries and irritates judges.

Opening Statement: Defense

1. **Purpose** To deny that the prosecution or plaintiff has a valid case and, in a general way, to outline the facts from the standpoint of the defendant. Interruptions by prosecution or plaintiff are not permitted.
2. **Include**
 - Your name and your client's name.
 - General theory of defense.
 - Facts that tend to weaken the plaintiff's case.
 - A rundown of what each defense witness will testify to.
 - Conclusion.
3. **Avoid**
 - Repetition of facts that are not in dispute.
 - Exaggeration and argument.
 - Strong points of the plaintiff's case.
 - Walking or pacing. It distracts juries and irritates judges.

Direct Examination of Witnesses

1. **Purpose**
 - To present the evidence necessary to warrant a verdict favorable to your client. All the elements of a law or criminal charge must be brought into evidence by witness testimony or documents.
 - To present the facts with clarity and understanding; to convince the jury of the soundness of your client's case.
 - To present your witnesses to the greatest advantage; to establish their credibility.

2. Refreshing memory

In the event that your witness's memory fails, you may refresh his or her memory by the use of the witness statement.

3. General suggestions

- Ask “open-ended” questions. Those usually begin with *who*, *what*, *when*, *where*, or *how*, or by asking the witness to “explain” or “describe.”
- Avoid complex or long-winded questions—questions should be clear and simple.
- Be a “friendly guide” for the witnesses as they tell their stories. Let the witnesses be the stars.
- Be prepared to gather information via questions and answers. Narratives, though very effective, may be open to objections.

Cross-Examination of Witnesses

1. Purpose

- To secure admissions from opposing witnesses that will tend to prove your case.
- To negate your opponent's case by discrediting his/her witnesses.

2. Scope

- Witnesses may be cross-examined regarding their direct testimony. Cross-examination is used to explain, modify, or discredit what a witness has previously stated.

3. Approach

- Use narrow, leading questions that suggest an answer to the witness. Ask questions that require “yes” or “no” answers.
- Expose lack of sincerity or the existence of bias.
- Never ask “Why?” It gives a well-prepared witness a chance to explain.
- Generally, don't ask questions unless you know what kind of answer you are going to obtain. Fishing trips may be expensive.
- Be fair, courteous; avoid the “Isn't it a fact...?” type of questioning.
- It may be useful *not* to insist on an answer.

Closing Argument

- Summarize the highlights of the testimony and documents as they support your case and undermine your opponent's case. Use actual examples from the trial that you have written down.
- Tie the facts to the law. Be persuasive.
- Confidently request the judge or jury to grant you the decision that you want.

Source: Adapted with permission from the Mock Trial Manual of the Law, Youth & Citizenship Program of the New York State Bar Association, www.nysba.org.