



Objection Overruled!

Examples and Explanations for Trial Advocacy



Objections: What's your point?

What is an objection? Why do we have them?

- 1 Keeps testimony fair and honest
- 2 Protects your witness
- 3 Ensures proper questioning
- 4 Eliminates waste of time

An easy list of objections

- **MSBA Mock Trial Rules, Rule 4.18** contains a list of many common objections

Basic Guidelines for Objections

How do I make an objection?

- 1 Stand up.
- 2 Say, “Objection.”
- 3 Identify the specific objection
- 4 Be prepared to state the reason for your objection

Objecting with style

- Be quick: Seize opportunity
- Be honest: Honestly believe in your objection
- Be reasonable: Speak to reason, not purely for argument's sake
- Be brief: Keep it simple and to the point

Plan on making objections. Plan ahead. Plan often.

- Practice
- Discuss objections with your witness and with your co-counsel
- Listen to testimony for both sides and learn the facts
- Anticipate
- Study your opposing counsel

Examples

Theory of Objections:

- 1 Identify specific objection
- 2 Identify the rule that provides the basis for this objection
- 3 Identify facts or testimony that would raise this objection
- 4 Apply the rule to the facts to support your analysis

Example #1: Repetition a.k.a. “Asked and Answered”

- Rule 4.18; See also, Rule 403
- Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.
- The *same attorney* continues to ask the same question and they have already received an answer. Usually seen after direct, but not always.

Example of a Repetitious Question

- On Direct Examination – The prosecution asks Robin Caldwell, “Were you and Mar desperate for money?”
- Caldwell answers, “Yeah, I guess you could say that.”
- Counsel then asks, "Let me be sure we understand. Were you and Mar desperate for money?”
- Counsel for Caldwell correctly objects.

Example #2: Argumentative Question

- Rule 4.18
- Explanation: The question makes an argument rather than asking a question.
- An attorney shall not ask argumentative questions, i.e. one that asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. The court, however, in its discretion, may allow limited use of argumentative questions on cross- exam.

Example of an Argumentative Question

- Robin Caldwell testifies that he/she was not in Minnesota on the night of the murder.
- The cross-examining attorney asks, “**Robin, how can you expect the judge to believe that?**”
- The question is argumentative because it does not seek to elicit factual information. Instead, it is designed to make the witness argue back.

Example #3: Leading Question

- Rule 4.18; Article VI, Rule 611(c).
- The question suggests the answer to the witness. Look for closed-ended questions (questions which lead to a “yes” or “no” answer.)
- In contrast, leading questions are permitted on cross-examination, because witnesses called by the opposing party are presumed hostile.

Example of a Leading Question

- On direct examination, counsel asks Robin Caldwell, “Isn’t it true that only someone who was already living with Elisabeth Congdon could have been in a position to murder her?”
- As a general rule, the direct examiner is prohibited from asking leading questions: he/she cannot ask questions that suggest the desired answer. Leading questions are permitted on cross examination.

Responding to a Leading Question Objection

- Leading may be permissible in direct examination when it is appropriate to save time and provide background or context on preliminary matters which are not in dispute.
- Example: Robin Caldwell's work experience or education
- You may be able to argue that your question was a preliminary or background question to provide context.

Responding to an Objection with Style

- You respond to the judge, *not to opposing counsel*.
- Remember, we are much more interested in whether you can get an objection, recover, and move on, rather than having the perfect response, so don't be afraid to give a response, get the judge's ruling, and move on.
- If the response is to sustain the objection (that is, agree with the opposing counsel), be ready to stop, think, and most likely rephrase the question or move on to the next question.

What if a leading question objection is sustained?

- Stay calm.
- Offer to rephrase the question.
- Avoid close-ended questions. Questions that lead to a yes or no answer will get another objection.
- Try to ask a question which begins with Who, what, when, where, why, or how.

Example #4: Lack of Foundation

- Rule 4.18
- Attorneys shall lay a proper foundation prior to moving the admission of evidence. Before a witness can testify to anything important, it must be shown that the testimony rests on adequate foundation.
- After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.

Example of questioning that lacks foundation

- On direct examination, Sergeant Waller testifies that blood was splattered on the staircase.
- Counsel for the prosecution snatches up the diagram of the mansion and asks, “Sergeant Waller, that’s right next to Elisabeth Congdon’s bedroom, here, isn’t it?”

Responding to an objection that a question lacks foundation

- If possible, show that proper foundation has been laid.
- Was the exhibit previously admitted?
- Has the witness shown adequate personal knowledge of the exhibit?
- Be prepared to lay foundation.

Introducing an Exhibit

IDENTIFICATION

Attorney: Your Honor, let the record reflect that I am showing what has previously been stipulated as Exhibit #7 to opposing counsel.

Walk over and show Exhibit #7 to opposing counsel.

Attorney: Your Honor, may I approach the witness?

Judge: You may.

Attorney: Sergeant Waller, I'm showing you what has been marked as Exhibit #7. Do you recognize this exhibit?

Waller: Yes.

Attorney: Please tell the Court what this Exhibit is.

Waller: It's a diagram of the second floor of the Glensheen mansion.

Attorney: Is this a fair and accurate depiction of the mansion?

Introducing an Exhibit

ADMITTING THE EXHIBIT INTO EVIDENCE

Attorney: Your Honor, I offer this diagram into evidence as Exhibit#7 and ask that the court so admit it.”

Opposing counsel may look at the evidence and make objections at this time.

The judge rules on whether the item may be admitted into evidence.

The attorney may then proceed to ask the witness questions about the document or item.

Example #5: Argumentative Questions Revisited

- Earlier, we saw that an argumentative question challenges the witness about an inference from facts in the case.
- However, a question is not argumentative just because it challenges the witness.
- The **cross examiner** may legitimately attempt to force the witness to concede the historical fact of the prior inconsistent statement.

Example of a legitimately argumentative question

- Robin Caldwell testifies that he/she was not in Minnesota on the night of the murder.
- The cross-examining attorney asks, “But isn’t it true that you were in Duluth on the morning of June 28, the morning after the murder?”
- This is proper cross-examination because it clarifies the facts and it is not repetitive.

What if the witness misstates the facts?

- Suppose in the earlier example, Robin Caldwell testifies that he/she was not in Duluth on June 28.
- This testimony contradicts Caldwell's affidavit.
- Impeachment is a cross-examination technique used to show that the witness is being untruthful or has changed their testimony.

Improper Impeachment

“Robin, didn’t you say in your affidavit that you were
in Duluth on June 28?”

How to Impeach a Witness

- Identify the affidavit and show it to opposing counsel.
- Attorney: Your Honor, may I approach the witness?
- Judge: You may.
- Mr./Ms. Caldwell, I am showing you a copy of the affidavit you gave in this case. I'll ask you to read along as I read line 103 of your affidavit, "The police interviewed us in the morning on June 28, in Duluth." Did I read that correctly?
- Robin Caldwell: Yes.

Example #6: Hearsay

- Rule 4.18; Refer to Mock Trial Rules of Evidence, Article VIII for an explanation of hearsay and the exceptions allowed for purposes of mock trial competition.
- Generally, testimony is improper where the witness does not know the answer personally but heard it from another.

Hearsay, Explained.

- If a witness offers an out-of-court statement to prove the truth of the matter asserted in that statement, the statement is hearsay.
- Because they are very unreliable, these statements ordinarily may not be used to prove the truth the matter asserted.

Is this Hearsay?

Casey Jackson:

“Clarice’s cousin told me she stood to inherit money.”

Objection Overruled!

Questions?

Object, Debate, Win.

“It is better to debate a question without settling it than to settle a question without debating it.”

- Joseph Joubert (French Essayist and moralist, 1754-1824)