
Common Objections

Argumentative (611a)

- This is not an objection to opposing counsel making a good point. It is used when the questioning attorney is not asking a question and is instead making an argument of law or application of law that should be argued in summation. It is only valid when the witness is not being asked a question that he or she can properly answer.

Asked and Answered (611a)

- When the question being asked has both been asked and been answered before by this attorney and this witness. It is not an objection to a question on cross that has been covered in direct.

Assumes Facts Not in Evidence (611a)

- A question by the directing attorney that contains information not yet in the record. On cross, the counsel is the one testifying, so this is not an objection.

Best Evidence (1002)

- Used when the evidence being solicited is not the best source of the information. Usually occurs when a witness is being asked a question about a document that is available to be entered into evidence. The document should be entered as proof of its contents.

Beyond Scope (of direct, cross) (1002)

- The evidence being solicited was not covered by the opposing counsel while questioning the witness and is not relevant to any of the previous issues covered.

- Since Louisiana has a wide-open cross, as does the Federal court in practice, this is basically available only as an objection on re-direct. In other words, this is NOT an objection to cross questions that were not covered on direct.

Compound (611a)

- The question is really two questions posed as one. Objection should only be used when the question is misleading and the answer could be misconstrued by the jury.

Cumulative (403; 611a)

- The material being asked has been covered before. This generally isn't an issue in mock trials, where there are only four witnesses.

Hearsay (802)

- A statement made out of this court offered in court to prove the truth of the matter asserted. A statement is not hearsay if the words spoken are relevant, not what the words mean.

- Most exceptions are found in 801, 803, and 804. Live them, learn them, love them.

Improper Characterization (404-405)

- Used when a question or an answer describes something that is highly prejudicial and not helpful to the jury. A typical example is describing the defendant or her actions as "crazy." This is a charged word and has no real meaning unless the witness is a medical doctor who actually means "crazy." - It's not a very useful objection most of the time because the objection generally draws more attention to the word and thus cements the idea into the minds of the jurors.

Improper Expert Opinion (702)

- Used when the testimony involves some degree of skill or expertise and the witness has not been entered as an expert in that area. Daubert challenges are covered under this objection, and do not have to come pre-trial.

Improper Impeachment (607-610, 613)

- Many things "are" improper impeachment, but the most important factors of a correct impeachment are

1. Have a concise question that the witness is currently not answering truthfully. Make sure the witness answered the question.
2. Refer the witness to the previous statement, providing the opposing counsel with a page or line number to which you are referring.
3. Ask the witness if that statement was made by her previously.

- Trying to confuse the witness into contradicting herself, not having a prior statement that directly relates to the current testimony, and not referring opposing counsel to the source of the previous

statements are the big objectionable factors.

Improper Lay Opinion (701)

- The witness is giving testimony that does not require an expertise, but is still an opinion that does not assist the jury in its understanding of the case.

Lack of Authentication (901a)

- This is a question of foundation when trying to introduce a document into evidence. A document that is not self-authenticating or whose authenticity has not been stipulated to must be identified as true and accurate by a competent witness.

Lack of Foundation (602; 901a)

- The prerequisite evidence has not been entered that would make this evidence admissible. This could be proof that a confession has been made knowingly and voluntarily (predicate), that a witness is competent to testify to a fact, or that a document is admissible.

- This is a good objection to make when you're sure that the evidence about to come in is objectionable in some way, but you're not sure how so.

Leading (611c)

- The question on direct suggests an answer. This is (1) not an objection on cross, and (2) actually allowed in some circumstances. Which circumstances depends on the court, as Louisiana and the Federal rules differ, but this basically covers all cases where leading is necessary to develop the testimony.

More Prejudicial Than Probative (401-403)

-This is the argument: "The evidence being introduced is highly prejudicial to your client and this prejudice far outweighs the probative value."

- This is not an objection of "This really hurts my case." All evidence by opposing counsel will hurt your case. An objectionable piece of evidence is one that not only hurts your case but is not relevant enough to the merits of your opponent's case to be let in.

Non-responsive (611a)

- The witness is not answering the question asked.

- Opinions differ, but this objection is primarily thought to be used only by the person asking the question.

Relevance (401)

- The evidence being solicited does not relate to merits of the case or another admissible purpose such as foundation or permissible character evidence.

- This is not the same as “Irrelevancy” which is neither a real objection nor a real word.

Speculation (602; 701)

- The witness does not have first-hand knowledge of the fact she is testifying to.

- This could be what someone else thought or why someone did something. It could also include what would have happened had x occurred.

To Introduce Exhibit

1. Mark for identification.
2. Show opposing counsel.
3. Ask to approach witness.
4. "What is this?"
5. "How do you know?"
6. "Has it been altered since you last saw it?"
7. Move to Offer, File, and Introduce exhibit.
8. Publish exhibit to jury (and USE IT).

To Impeach With Prior Inconsistent Statement

1. Lock witness into current statement.
(*"It's your testimony that..."*)
2. Confirm witness's memory of making prior statement.
(*"You gave deposition on...?"*)
3. Read the witness the prior statement.
(*"Do you remember me asking the question and you answering ..."*)
4. If witness denies, approach with prior statement, have witness identify it, and repeat the reading
5. If witness still denies, introduce the prior statement.

To Refresh Memory

1. "Would a copy of ___ refresh your memory?"
2. Show opposing counsel copy of statement.
3. Ask to approach witness, hand witness the document.
4. "Please review the statement silently to yourself and tell me when your memory is refreshed."
5. "Do you remember now?"
6. Take back the document, re-ask question.