MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

Criminal trials are conducted using strict rules of evidence to promote fairness. To participate in a Mock Trial, you will need to know a little about the role that evidence plays in trial procedure.

Studying the rules will prepare you to make timely objections, avoid pitfalls in your own presentations (so you won't feel completely foolish), and understand some of the difficulties that arise in actual cases. The purpose of using rules of evidence in our competition is to structure the presentations to resemble those of an actual trial.

Reasonable Inference

Consider the following:

Defendant while inside a department store puts a necklace into her purse. The security guard sees her. The guard approaches defendant and says, "I want to talk to you." The defendant runs away.

The fact at issue us, did the defendant steal something? The logical inference is that a reasonable person does not run away if he/she has nothing to hide. The fact of running away can be used to show the defendant's **state of mind**, i.e. that the defendant had a culpable (guilty) mind.

The above hypothetical is an jury example of an accurate use of reasonable inference. It is ultimately the responsibility of the jury to decide what can reasonably inferred. However, **it is the students; responsibility to work as closely within the fact situation and witness statements as possible.**

Objections

An effective objection is designed to keep inadmissible testimony, or testimony harmful to your case, form being admitted. It should be noted that a single objection may be more effective in achieving this goal than several objections. Attorneys can and should object to questions which call for improper answers before the answer is given, (You must know your case and be QUICK)

As with all objections, the JUDGE will decide whether to allow the testimony, strike it or simply note the objection for later consideration. **Judges' rulings are final.** You must continue the presentation even if you disagree. A proper objection included the following elements:

1. attorney addresses the judge,
2. attorney indicated that he/she is raising an objection.
3. attorney specifies what he/she is objecting to, e.g. the particular word, phrase or question, and
4. attorney specifies the legal grounds that the opposing sides is violating.

Example: (1) "Your honor, (2) I object (3) to that question (4) in the ground that it is compound"

Allowable Evidentiary Objections

1. **Facts in the Record**

   One objection available which is not an ordinary rule of evidence allows you to stop an opposing witness from creating now facts. If you believe that a witness has gone beyond the information provided in the Witness Statements, use the following form of objection:

   "Objection, your honor. The answer is creating a material fact which is not in the record." or

   "Objection, your honor. The question seeks testimony which goes beyond the scope of the record.

2. **Relevance**

   To be admissible, any offer of evidence must be relevant to an issue in the trial. This rule prevents confusion of the essential facts of the case with details which do not make guilt more or less probable.

   Examples:

   1. A witness may say that she saw a man jump from a train. This is direct evidence that the man had been on the train. It is circumstantial evidence that the man had just held up the passengers.
   2. Eyewitness testimony that the defendant shot the victim is direct evidence of the defendant's assault, while testimony establishing that the defendant had a motive to shoot the victim, or that the defendant was seen leaving the victim's apartment with a smoking gun is circumstantial evidence of the defendant's assault.

   Form of Objection: **"Objection, your honor. This testimony is not relevant to the facts of this case. I move that it be stricken from the record."**

3. **Laying a Proper Foundation**

   To establish the relevance of circumstantial evidence, you may need to **lay the foundation**. Laying a proper foundation means that, before a witness can testify to certain facts, it must be shown that the witness was in a position to know about those facts, which is really background information like you saw in the clips from last year.

   Example:

   If attorney asks a witness if he saw X leave the scene of a murder in question, opposing counsel may object for a lack of foundation. The questioning attorney should ask the witness first if he was at or near the scene at the approximate time the murder occurred. This lays the foundation that the witness is legally competent to testify to the underlying fact.

   Sometimes when laying a foundation, the opposing attorney may object to your offer of proof on the ground of relevance, and the judge may ask you to explain how the offered proof related to the case.

   Form of Objection: **“Objection, your honor. There is a lack of foundation.”**

4. **Personal Knowledge**

In addition to relevance, the only other hard and fast requirement for admitting testimony is that the witness must have a personal knowledge of the matter. Only if the witness has directly observed an event may the witness testify about it.

Witnesses will sometimes make inferences from what they actually did observe. An attorney may properly object to this type of testimony because the witness has no personal knowledge of the inferred fact.

Example: The witness knew the victim and saw her on March 1, 1991. The witness heard on the radio that the victim had been shot on the night of March 3, 1991. The witness lacks personal knowledge of the shooting and cannot testify about it.

Form of Objection: **"Objection, your honor. The witness has no personal knowledge to answer that question."**

5. **Character Evidence**

   Witnesses generally cannot testify about a person's character unless character is an issue.

   Examples:

   1. The defendant's minister testifies that the defendant attends church every week and had a reputation in the community as a law-abiding person. This would be admissible.
   2. The prosecutor calls the owner of the defendant's apartment to testify. She testifies that the defendant often stumbled in drunk at all hours of the night and threw wild parties. This would probably not be admissible unless the defendant had already introduced evidence of good character. Even though, the evidence and the prejudicial nature of the testimony would probably outweigh its probative value making it inadmissible.

   Form of Objection: **"Objection, your honor. Character is not an issue here." or**

   "Objection, your honor. The question calls for inadmissible character evidence.

6. **Opinion/Speculation**

   Witnesses may not normally give their opinions in the stand. Juries must draw their own conclusions from the evidence. However, estimates of the speed of a moving object or the source of a particular odor are allowable opinions.

   Example: A taxi driver testifies that the defendant looked like the kind of guy who would shoot old people. Counsel could object to this testimony and the judge would require the witness to state the basis for his/her opinions.

   Form of Objection: **"Objection, your honor. The question calls for inadmissible opinion testimony (or inadmissible speculation) on the part of the witness. I move that the testimony be stricken from the record."**

7. **Hearsay**

   If a witness offers an out-of-court statement to prove a 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 of the

witness's testimony. **For reasons of necessity, a set of exceptions allows certain types of hearsay to be introduced.**

Examples:

1. Joe is being tied for murdering Henry. The witness testifies, "Ellen told me that Joe killed Henry." If offered to prove that Joe killed Henry, this statement is hearsay and probably would not be admitted over an objection.
2. However, if the witness testifies, "I heard Henry yell to Joe to get out of the way," this could be admissible. This is an out-of-court statement, but is not offered to prove the truth of its contents. Instead, it is being introduced to show that Henry had warned Joe by shouting. As I told you in class,Hearsay is a very tricky subject.

Form of Objection: **"Objection, your honor. This testimony is hearsay. I move that it be stricken from the record."**

8. **Leading Questions**

   As a general rule, the direct examiner (like we saw in the clips). is prohibited from asking leading questions: he/she cannot ask questions that suggest the desired answer. Leading questions are permitted on cross-examination.

   Examples:

   1. Counsel for the plaintiff asks the witness, "During the conversation, didn't the (BAD) defendant declare that he would not deliver the merchandise?"
   2. On the other hand, counsel could rephrase her/his question, "Will you state what, if anything, the defendant said during this conversation, relating to the delivery of the merchandise?"

   Form of Objection: **"Objection, you honor. Counsel is leading the witness."**

9. **Argumentative Questions**

   An argumentative question challenges the witness about an inference from the facts in the case.

   Example: Assume that the witness testifies on direct examination that the defendant's car was going 80 mph just before the collision. You want to impeach the witness with a prior inconsistent statement. On cross-examination, it would be permissible to ask, "Isn't it true that you told your neighbor, Mrs. Ashton, at a party last Sunday that the defendant's car was going only 50 mph?"

   The cross-examiner may legitimately attempt to force the witness to concede the historical fact of the prior in consistent statement.

   Now assume that the witness admits the statement. It would be badgering to ask, "How can you reconcile that statement with your testimony on direct examination?" The cross-examiner is not seeking any additional facts; rather, the cross-examiner is challenging the witness about an inference from the facts.

   Questions such as "How can you expect the judge to believe that?" are similarly argumentative and objectionable. The attorney may argue the inferences during summation or closing argument, but the attorney must ordinarily restrict his or her questions to those calculated to elicit facts.

Form of Objection: **Objection, your honor. Counsel is badgering the witness."**

10. **Asked and Answered**

    Asked and answered is just as it states, that a question which had previously been asked and answered is asked again. This can seriously inhibit the effectiveness of a trial.

    Examples:

    1. **On Direct Examination - Counsel A asks B, "Did X stop for the stop sign?" B answers, "No, he did not." A then asks, "Let me get your testimony straight. Did X stop for the stop sign?"**

       Counsel for X correctly objects and should be sustained.

       BUT:

    2. **On Cross-Examination - Counsel for X asks B, "Didn't you tell a police officer after the accident that you weren't sure whether X failed to stop for the stop sign?" B answers, "I don't remember." Counsel for X then asks, "Do you deny telling him that?"**

       Counsel A makes an **asked and answered objection.** The objection should be **overruled. Why?** It is sound policy to permit cross-examining attorneys to ask the same question more than once in order to conduct a searching probe of the direct examination testimony.

    Form of Objection: **"Objection, your honor. This question has been asked and answered.**

11. **Compound Question**

    A compound question joins two alternatives with "or" or "and" preventing of a witness from being as rapid, distinct, or effective for finding the truth as is reasonably possible.

    Example:

    1. (Using "Or") "Did you determine the point of impact (of a collision) from conversations with witnesses, or from physical marks, such as debris in the road?"
    2. (Using "and") "Did you determine the point of impact from conversations with witnesses and from physical marks, such as debris in the road?"

    Form of Objection: **"Objection, your honor, on the ground that this is a compound question."**

    The best response if the objection is sustained on these grounds would be, "You honor, I will rephrase the question," and then break down the question accordingly. Remember, there may be another way to make your point.

12. **Narrative**

    A narrative question is one that is too general and calls for the witness in essence to "tell a story" or make a broad-based and unspecific response. The objection is based on the belief that the question seriously inhibits the successful operation of a trial and the ultimate search for the truth.

    Example: The attorney asks A, "Please tell us all of the conversations you had with X before X started the job."

The question is objectionable and the objections should be sustained. (Pay Attention Judges)

Form of Objection: **"Objection, your honor. Counsel's question calls for a narrative."**

13. **Non-Responsive Witness**

    Sometimes a witness's reply is too vague and doesn't give the details the attorney is asking for, or he/she "forgets" the event in question. This is often purposely used by the witness as a tactic in preventing some particular evidence to be brought forth. This is a ploy and the questioning attorney may use this objection to "force" the witness to answer.

    Form of Objection: **"Objection, your honor. The witness is being non-responsive."**

14. **Outside the Scope of Cross-Examination**

    Re-direct examination is limited to issues raised by the opposing attorney on cross-examination. If an attorney asks questions beyond the issues raised on cross, they may be objected to as "outside the scope of cross-examination."

Form of Objection: **"Objection, your honor, "Beyond the scope"**