

Mock Trial Training

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South Carolina
BAR FOUNDATION
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Mock Trial Objections, Hearsay, and Impeachment

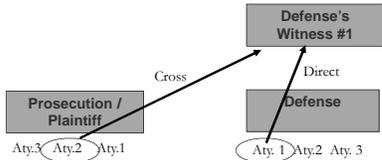
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Who May Object?

- **WHO** -- Only the attorney assigned to the witness on the witness stand may object during that witness's testimony.
- One attorney from each team is assigned to a witness.
- These are the only two attorneys that may make any objections during their assigned witness's testimony.



Objections: What? Where? When? How?

- **WHAT** -- Object on statements/questions made by the opposing attorney or witness that violate Rules of Evidence.
- **WHERE** -- In the courtroom while the trial is taking place, not after the trial.
- **WHEN** -- An attorney may object any time the opposing attorney has violated the Mock Trial Rules of Evidence.
- **HOW** -- Stand, make the objection, respond accordingly to the presiding judge.

Judge's Responses to Objections

- The judge decides whether to sustain or overrule an objection.
 - **Sustained:** Agrees with objection
 - **Overruled:** Disagrees with objection
- A judge's ruling on an objection does not affect the score.
- How a student handles the objection is what affects the score.

Objections

Focus on

Quality of Objections

vs.

Quantity of Objections

Types of Objections

- Irrelevant evidence
- Leading question
- Improper character testimony
- Opinion
- Argumentative questions
- Lack of proper predicate/foundation
- Assuming facts not in evidence
- Questions calling for narrative or general answer
- Non-responsive answer
- Repetition
- Hearsay



Video Example To Follow

Objection



What is considered creation of material fact?

Rule 2.2:

Each witness is bound by the facts contained in his/her own witness statement, the stipulations, if present, and/or any necessary documentation relevant to his/her testimony.

Material Fact:

- Anything that helps your case or hurts the opposing team's case that is made up.
- When a witness testifies outside of their affidavit.

Examples:

- Mentioning a specific date, address, age, etc. that is not in the case materials that helps your case or hurts the others' case is creation of material fact.
- Giving the witness a nickname when referring to him/herself to add character only is not creation of material fact.

Creation of Material Fact (Rule 2.3)

Physical characteristics of a role being played may not be used as a creation of a material fact.

Examples of physical characteristics used as creation of material to be avoided are as follows:

- 1) *I know it was not the Defendant because the person I saw was much taller than this person.*
(This refers to the witness' actual height and is against the rules.)
- 2) *The witness is wearing glasses and the affidavit does not mention that the witness.*
(This refers to the witness' actual need for glasses and is against the rules.)

Witness Impeachment

Rule 607

- The credibility of a witness may be attacked by any party the party calling the witness.
 - (This is an attempt by an attorney to show the Court that the witness should not be believed.)

Rule 608_

- A witness' credibility may be impeached by showing evidence of the witness' character, conduct, prior convictions, and prior inconsistent statements.

Impeachment on Cross Examination Using the Affidavit

Two ways to Impeach:

- Challenge the witness using their own affidavit, or
- Creation of material facts objection.

NOTE: The bound case materials provided by the SC Bar in each courtroom are the only case materials to be used in the event a witness is to be impeached using their affidavit.



Video Example To Follow

Impeachment



Hearsay Rule

Hearsay:

A statement other than one made by the witness testifying at the trial.

Example:

A witness is testifying that s/he heard another person saying something about the facts in the case.

** Hearsay is untrustworthy because the opposing side has no way of testing the credibility of the out of court statement or the person who supposedly made the statement.

Hearsay Rule (continued)

Hearsay evidence is normally excluded from a trial because it is deemed untrustworthy.

There are some cases in which certain out of court statements are not being treated as hearsay and are called hearsay exceptions.

The following slides review the hearsay exceptions.

1 Hearsay Exception: Present Sense Impression

A statement describing or explaining an event or condition made while the person making the statement was perceiving the event or condition or immediately thereafter.

Example: "When I was sitting at the stop light, I saw the car next to me run the red light and I was scared."



2 Hearsay Exception: Excited Utterance

A statement relating to a startling event or condition made while the person making the statement was under the stress of excitement caused by the event or condition.

Example: "Oh my! I hurt them really bad."



3

Hearsay Exception: Medical Statements

Statements made for the purpose of **medical diagnosis or treatment**.

Example: The patient has been diagnosed with X.



4

Hearsay Exception: Recorded Recollection

A memorandum or record that contains information written to retain information for use later.

Examples: Police Report, Doctor's Report



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Hearsay Exception: Records of a Regularly Conducted Activity

- Any type of data compilation in any form if kept in the course of a **regularly conducted business activity** and it was the **regular practice** of that business activity to make data compilation.
- Business activity includes any type of business, whether or not for profit, as well as the records compiled by public officers or agencies.

Example: Attendance Records



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Hearsay Exception: Learned Treatise

Information that an expert witness testifies to and relies upon.

*Examples:
Brochures, Medical
Journals, etc.*



Hearsay Exceptions



Video Example To Follow

Hearsay Exceptions



Questions?

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