



Mock Trial Training

Objections, Hearsay, and Impeachment

SC Bar Law Related Education (LRE) Division
(803) 252-5139, www.sctbar.org/lre, lre@sctbar.org



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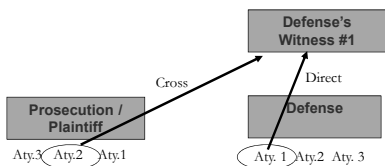
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Who May Object?

- **WHO** -- Only the attorney assigned to the witness on the witness stand may object during that witnesses' 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 to 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 the students handle the objection is what affects the score.



Objections

Focus on

Quality of Objections

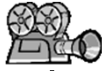
vs.

Quantity of Objections



Types of Objections

- Argumentative
- Lack of Proper Foundation
- Assuming Facts Not in Evidence
- Questions Calling for Narrative or General Answer
- Non-Responsive Answer
- Repetition / Asked and Answered
- Irrelevant Evidence
- Leading
- Improper Character Testimony
- Hearsay
- Opinion
- Lack of Personal Knowledge
- Creation of Material Facts



Video Examples:
www.scbar.org/lre

What is considered Creation of Material Fact?

Rule 2.2: Witness Conduct

Each witness is bound by the facts contained in:

- His/her own witness statement (affidavit);
- Stipulations; and/or
- Any exhibits referenced in his/her affidavit.

A witness is not bound by facts contained in the statements of other witnesses.

Rule 2.3: Creation of Material Fact

Teams may not present testimony or evidence that constitutes a creation of material fact.

Material Fact:

- A fact that gives one side in the case a significant legal advantage

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 a Creation of Material Fact.
- Giving the witness a nickname when referring to him/herself to add character only is not a 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 wears glasses.*
(This refers to the witness' actual need for glasses and is against the rules.)



How to Handle a Creation of Material Fact (COMF)

- Best way to expose the opponent's Creation of Material Fact is through impeachment and closing arguments, in the ordinary course of trial.
 - *A team that deals with it in this fashion will generally be considered more sophisticated, accomplished, and experienced.*
- An objection, "Creation of Material Facts," was created to remedy situations where COMF cannot easily be challenged through impeachment or closing argument.
 - *For each COMF objection, the presiding judge will be completing a COMF objection sheet so that they may be tracked in the event any penalties are to be assessed.*



Witness Impeachment

Rule 607

- The credibility of a witness may be attacked by any party, including 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:

- Use the witness' affidavit to point out an omission.
- Use the witness' affidavit to point out a contradiction.


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.



Procedure for Impeaching a Witness with Statement/Affidavit

Narrative:


1. Mr. X, you just stated _____. (You have to clarify the statement to give them a chance to correct their answer.)
2. Do you remember giving a statement in this case?
3. And that statement was a true and correct version of the facts as you understood them to be?
4. And you had a chance to review that statement?
5. And when you were done giving and reviewing the statement, you signed the statement?
6. (Ask permission from the presiding judge to show opposing counsel the affidavit from the Case Materials provided and return to your spot.)
7. Ask the witness to follow along from their copy (provided at the witness stand) as you reference their affidavit.

(continued next slide) 

Procedure for Impeaching a Witness with Statement/Affidavit

Narrative Continued:

8. What you are looking at is your sworn statement, correct?
9. And at the end of your statement, that is your signature, right?
10. (Direct them to the page and line number in the statement you are about to reference.)
11. A. For a Contradiction, state: On page/line ____, you stated ____, correct? (always read if for them)
B. For an Omission, state: Please show me in your sworn affidavit where you said _____.
12. (Now diverting their attention away from the statement and back to you, return to where you were located.)

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Procedure for Impeaching a Witness with Statement/Affidavit

Narrative Continued:

13. A. For a Contradiction, state: So when I asked you ____, the correct answer was actually _____ (whatever is in the statement) _____.
B. For an Omission, state: (There are different ways to say this. Two options are provided here.)
 1. So when you said ____, that was the first time you have ever made that statement.
 2. So you did not find it important to add ____ to your sworn statement?



Video Example to follow on Impeachment:
www.scbarr.org/lre 

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.



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 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! He has a gun in his hands."



3

Hearsay Exception: Then Existing Mental, Emotional, or Physical Condition

A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional sensory, or physical condition (such as mental feeling, pain, or bodily health).

This does not include a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

Examples:

Emotional – Bob said he was scared.

Physical - Jim said he had a headache.

Mental – He said he was going to take the car out and see how fast it would go.

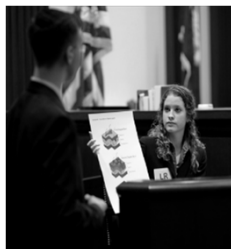


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Hearsay Exception: Medical Diagnosis or Treatment

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

Describes medical history; past or present symptoms or sensations; their inception; or their general cause.



Example:

I am allergic to penicillin. I broke out in a rash.



5

Hearsay Exception: Recorded Recollection

A record that:

- Is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately
- Was made or adopted by the witness when the matter was fresh in the witness's memory; and
- Accurately reflects the witness's knowledge.

Examples: Police Report, Doctor's Report



6

Hearsay Exception: Records of a Regularly Conducted Activity

- A record of an act, event, condition, opinion, or diagnosis if:
 - Was made at or near the time by someone with knowledge;
 - Record kept in regular course of business;
 - Was regular practice of that activity;
 - All these conditions are shown by testimony of the custodian or another qualified witness; and
 - Neither the source of information nor the method or circumstances of preparation indicated a lack of trustworthiness.

Example: Attendance Records, Receipts



7

Hearsay Exception: Absence of Records of a Regularly Conducted Activity

- Evidence that a matter is not included in a record described in #6 if:
 - The evidence is admitted to prove that the matter did not occur or exist;
 - A record was regularly kept for a matter of that kind; and
 - Neither the possible source of the information nor other circumstances indicate a lack of untrustworthiness.

Example: All vehicles are maintained according to Company X. The vehicle involved in the accident is missing its maintenance record.



8

Hearsay Exception: Public Records

- A record or statement of a public office if:
 - It sets out the offices activities;
 - A matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law enforcement personnel;
 - Or in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
 - Neither the source of information nor other circumstances indicate a lack of trustworthiness.

Example: A Fire Marshall's safety inspection report gets used, but the Fire Marshall is unavailable to testify.



9

Hearsay Exception: Record of Vital Statistics

A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

Examples:
Birth Certificate,
Death Certificate, and/or
Marriage License



10

Hearsay Exception: Absence of a Public Record or Entry

- Testimony that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:
 - The record or statement does not exist; or
 - A matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

Example: A property title was transferred 20 years ago, but no deed is currently on record.



11 Hearsay Exception: Records of Religious Organizations

- Statements contained in a regularly kept record of a religious organization to include:
 - Births,
 - Marriages,
 - Divorces,
 - Death,
 - Legitimacy,
 - Ancestry,
 - Relationship by blood or marriage, or
 - Other similar facts of personal or family history.



Example: Church bulletin, church directory, etc.



13 Hearsay Exception: Family Records

- Statements of facts concerning:
 - Personal or family history contained in family Bibles,
 - Genealogies,
 - Charts
 - Engravings on rings,
 - Inscriptions of family portraits
 - Engravings on urns,
 - Crypts, or tombstones, or the like.



16 Hearsay Exception: Statements in Ancient Documents

- A statement in a document that is at least 20 years old and whose authenticity is established.

Examples:

Marriage License, Birth Certificate, Diploma, etc.



18

Hearsay Exception: Statements in Learned Treatises, Periodicals or Pamphlets

A statement contained in a treatise, periodical, or pamphlet if:

- The statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
- The publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.



If admitted, the statement may be read into evidence, but not received as an exhibit.

Example: *The author's attendance is not necessary because his/her resource is recognized in the field.*



19

Hearsay Exception: Reputation Concerning Personal or Family History

- Reputation among members of a person's:
 - Family by blood, adoption, or
 - Marriage, or
 - Among a person's associates, or
 - In the community
- Concerning a person's:
 - Birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or
 - Marriage, ancestry, or
 - Other similar fact of personal or family history.

Example: *Child speaks about grandparents' family values carrying over into their business success.*



21

Hearsay Exception: Reputation Concerning Character

- A reputation among a person's associates or in the community concerning the person's character.



Example: *City of the year employee, the person is always on time, the neighbor is a fast driver, etc.*



22

Hearsay Exception: Judgment of a Previous Conviction

Evidence of a final judgment of conviction if:

- The judgment was entered after a trial or guilty plea, but a nolo contendere plea;
- The conviction was for a crime punishable by death or by imprisonment for more than one year;
- The evidence is admitted to prove any fact essential to the judgment; and
- When offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

** The pendency of an appeal may be shown, but does not affect admissibility.*

Example: Prisoner says, "I was found guilty for robbing multiple banks."



Hearsay Exceptions Video Examples

www.scbar.org/lre

Under Videos for Coaches and Students:

- 803 Hearsay Exceptions (3 minutes)
- Hearsay Exception Song to the tune of Party in the USA (1 minutes)
- In-Depth Hearsay Exception narration by Legal Geeks Blog (11 minutes)



Questions?

Contact:

Cynthia H. Cothran
 Law Related Education Director
 SC Bar Law Related Education Division
 P.O. Box 608, Columbia, SC 29202-0608
 (803) 252-5139

ccothran@scbar.org

www.scbar.org/lre