

TRIAL PROCESS: OBJECTIONS

GENERAL CATEGORIES

IRRELEVANT

Something is "relevant" when it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without

IMMATERIAL

Something is "material" when it has an effective influence or bearing on the decision of the case

INCOMPETENT

Something is "competent" when, in legal proceedings, is admissible for purposes of proving relevant facts

MISLEADING

forces an answer

CONFUSING

too fast or redundant

IMPROPER

compound sentence

ARGUMENTATIVE

opinionated

PREMATURE

before foundation

CONCLUSIONARY

calls for hearsay

The first three (Irrelevant, Immaterial, and Incompetent) are referred to as the three tests (hurdles) of admissibility. Something is irrelevant when it is "collateral", or totally unrelated to the charges or the penal code which applies in the case. Asking an offbeat

question like "Do you believe in UFO's?" would be an example of an irrelevant question. Something is immaterial when the jury doesn't need to be bothered with it. Materiality is the main standard for determining if something leaves an impression on their minds, and anything that would clutter up the jury's mind, annoy them, or just plain isn't necessary. "Materiality" also has another meaning, as in "material" witness, one who doesn't wish to testify, but because they are an eyewitness or needed to convict, they are compelled to testify. Examples of immaterial questions affecting the jury would be requests to visit the crime scene (when the sketch should suffice) or other in-court demonstrations (when the jury should be allowed to draw their own inferences). Something is incompetent when it has no place in court. Hopefully, anything unconstitutional should have long ago been suppressed, but incompetency refers to either the person or the evidence as being of such low quality as to be beneath the court's dignity. Examples would include using the testimony of ex-convicts or people who use jargon (although there is some leeway with allowing a witness to describe things in their own words) or using some shady private investigator to dig up evidence when that person has lost their license or is unethical in their work.

Particular objections may or may not fit into any of the categories above. To appreciate the full variety, the following alphabetical list has been provided.

AMBIGUOUS, CONFUSING, MISLEADING, VAGUE, UNINTELLIGIBLE

Objection Your Honor, the question is (confusing) (ambiguous) (vague) (unintelligible) (misleading)

Any of these is the proper objection to a question not posed in a clear and precise manner so that the witness knows with certainty what information is being sought.

ARGUING THE CASE

Objection, your Honor. Counsel is arguing his/ her case

Lawyers often do this, and are allowed some leeway. It occurs most often in opening statements where counsel states their version of the facts and then goes on to state what conclusions should be drawn from them.

ARGUING THE LAW OR FACTS, ATTEMPTING TO INDOCTRINATE THE JURORS ON THE LAW

Objection, your Honor. The purpose of counsel's question is to argue his case or pre-instruct the jury on the law.

Lawyers often make this kind of mistake, and it is improper for them during voir dire, or at any point, to give the jury a crash course in law. That is the judge's job, but lawyers get around it by saying "As you will undoubtedly hear from the judge, the law in this case requires...."

ARGUMENTATIVE

Objection, the question is argumentative

An argumentative question is where counsel states a conclusion and then asks the witness to argue with it, often in an attempt to get the witness to change their mind. Also known as "badgering" the witness.

ASKED AND ANSWERED

Objection, the question has already been asked and answered

Lawyers will often try to emphasize a point by repeating the question that elicited a crucial answer. Some limited repetition is allowed, but most courts will sustain an objection if the question has been asked two or three times.

ASKING THE JURY TO PREJUDGE THE EVIDENCE

Objection, the question asks the jury to prejudge the evidence

Questions at voir dire or whenever are improper if they call for a promise from the jurors to vote a particular way if certain facts are proven. For example, it is improper to say "If I prove the defendant was somewhere else at the time, would you promise to acquit him?"

ASKING A QUESTION WHICH INTRODUCES PREJUDICIAL OR INFLAMMATORY EVIDENCE

Objection, the question introduces inadmissible prejudicial evidence

Most any line of questioning which would unduly prejudice or inflame the jury is inadmissible. For example, a series of questions which create the impression that the defendant has a long history of prior criminal conduct.

ASKING A QUESTION WHICH IS NOT RELATED TO AN INTELLIGENT EXERCISE OF A PEREMPTORY CHALLENGE OR CHALLENGE FOR CAUSE

Objection, the question is not related to an intelligent exercise of..

Questions asked during voir dire must be designed to assist in the intelligent exercise of peremptory challenges whether or not such questions are also likely to uncover grounds sufficient to sustain a challenge for cause,

ASSUMES FACTS NOT IN EVIDENCE

Objection, the question assumes facts not in evidence

This objection is used when the introductory part of a question assumes the truth of a material fact that is in dispute. Questions that assume facts are permitted only under cross-examination, and usually to impeach a witness' credibility.

BEST EVIDENCE RULE

Objection, offered exhibit fails to meet the best evidence rule

Applies to writings, such as a last will and testament, which are not the original writings -- that is, the best evidence. Requiring the original document insures that nothing has been altered in any way.

BEYOND THE SCOPE

Objection, Your Honor, this is beyond the scope of the direct

Permissible questions during cross, redirect, and recross must be related to information gathered during direct examination. Questions during redirect cannot go beyond the scope of cross, and questions during recross cannot go beyond the scope of redirect; and so on.

CALLS FOR CONCLUSION

Objection, counsel's question call for a conclusion

Conclusions regarding the end result of reasoning flowing from a series of facts are left to the jury. Normally, the witness shouldn't draw conclusions, but rather present facts. However, expert witnesses present conclusions, and lay witnesses are allowed to under certain conditions. For example, the court might allow the statement that "the car was going too fast" instead of requiring "the car was going very fast".

CALLS FOR SPECULATION

Objection, Your Honor, calls for speculation

Anything that invites a witness to guess is objectionable. Speculation as to what possibly could have happened is of little probative value. Some leeway is allowed for the witness to use their own words, and greater freedom is allowed with expert witnesses.

COMPOUND QUESTION

Objection, Your Honor, compound question

A compound question asks two or more separate questions within the framework of a single question. Generally reserved for situations if the witness answers "No", it is confusing as to which part of the question is being answered.

CUMULATIVE

Objection, Your Honor, this evidence is cumulative

Cumulative evidence repeats evidence already introduced. It is up to the judge's discretion when to stop production of the same evidence by one witness after another, or the introduction of similar exhibits if no new information is being offered.

FACTS STATED WILL NOT BE PROVEN

Objection, Facts stated will not be proven by evidence adduced at trial

Counsel cannot allude to evidence which, though true, is incapable of being proven at trial because of a pretrial ruling or some other test of admissibility.

FAILURE OF DEFENDANT TO TESTIFY

Objection, counsel is commenting on defendant's failure to testify

This objection is available only to defense counsel when the prosecution comments on the defendant's failure to testify. Such comments are only allowed in civil cases, and are forbidden by the Fifth Amendment in criminal cases.

HEARSAY

Objection, the question calls for hearsay

Hearsay is a statement made by someone other than the witness testifying and offered to prove its own truth. There are exceptions to the hearsay rule, but it exists because second-hand statements are unreliable and cannot be tested by cross-examination.

IMPROPER IMPEACHMENT

Objection, Your Honor, improper impeachment

This is used when attacks on a witness's credibility go beyond the allowable grounds for impeachment. Beyond the usual method of pointing out contradictory evidence, there are generally 5 *WAYS TO IMPEACH* a witness: (1) bias or prejudice, if paid, stands to gain, a friend or rival; (2) Poor character, for honesty or veracity; (3) Conviction, if less than 10 years ago; (4) Poor memory, if lack ability to observe, remember, or recount; and (5) Prior inconsistent statement, but only if an important fact, such as saying they worked that day, then later saying they had the day off. With expert witnesses, beyond the usual method of attacking credentials, unsubstantiated attempts to overturn the presumption of regularity that imply substitution, contamination, or tampering are improper.

LEADING

Objection, the question is leading.

A leading question suggests the answer one expects to hear; "You were at the victim's home that night, weren't you?". The lawyer should not be doing the testifying. Leading questions are permitted under certain circumstances, usually in cross-examination, with expert witnesses, with young, old, or poor recall witnesses, and with any hostile, evasive, or adverse witness.

MISSTATING THE EVIDENCE

Objection, counsel is misstating the evidence offered at trial

While reasonable inferences may be drawn, it is objectionable if the evidence is misstated or the testimony misquoted. Often, the ground for a "we except" statement, if overruled, which preserves grounds for appeal. In addition, some states require showing that the outcome of the trial was prejudiced by the misstatements.

MISSTATING THE LAW

Objection, counsel is misstating the law or jury instructions

Judges allow attorneys to paraphrase jury instructions, so long as they do it fairly and accurately in their closing arguments.

NARRATIVE CALLED FOR

Objection, counsel's question calls for a narrative

This is used when there is danger of a witness running away with their story, or to start pouring out their testimony. There are times when a narrative is appropriate, and better than question and answer, but in this case, the objection is to prevent inadmissible evidence from pouring out before counsel has a chance to object.

NON-RESPONSIVE ANSWER

Objection, Your Honor, non-responsive

Used when an answer does not directly answer the question. And if the answer goes beyond the question, the excess is objectionable.

OPINION BY AN UNQUALIFIED WITNESS

Objection, counsel's question calls for an improper opinion. Or, objection, the witness hasn't been sufficiently qualified as an expert. Or, objection, insufficient foundation

Opinion testimony is proper only in the area of expertise or specialized knowledge that an expert witness is qualified in. Lay witnesses may give opinions only when their perception is helpful to the jury; e.g., time, distance, speed, sobriety.

PERSONAL ATTACKS ON COUNSEL, DEFENDANT, OR WITNESS

Objection, counsel is personally attacking (me) (defendant) (witness)

This is usually reserved for cases when a lawyer acts like a bully. It is proper to attack testimony or credibility, but personal attacks, in an effort to vent or inflame emotions, is forbidden.

PERSONAL OPINIONS BY COUNSEL

Objection, counsel is giving his/her personal opinion

Any statement based on a counsel's personal belief that something is or is not true is strictly forbidden. Lawyers can only comment on the credibility of a witness, the weight of the evidence, and arguments about the evidence, not if anything is true or false. This objection is also used for when a lawyer expresses their personal opinion about the integrity of opposing counsel, the defendant, or any witness. Attacks on credibility should never become personal.

PREJUDICIAL OR INFLAMMATORY REMARKS

Objection, counsel's argument is solely designed to prejudice the jury

Improper arguments include anything devised to appeal to the jury's sympathy, passions, or prejudice. For example, it is improper for a prosecutor to say that the jury has a moral obligation to protect society from the defendant, that the defendant will commit more crimes if released, or to imply that the defendant might strike back personally against the jury. Equally objectionable is for the defense to remind the jury of the defendant's family responsibilities, his/her sobbing young children, or bright future. These kinds of comments are only allowed at sentencing hearings.

RELEVANCE

Objection, the question calls for an irrelevant answer.

Something is irrelevant if it does not serve, by any natural pattern of inference, to establish an issue of fact. The court is bound by efficiency and must prevent distractions on extraneous issues that do not have a relationship to the trial.

None of this is my own work and it was all taken from:

<http://faculty.ncwc.edu/mstevens/425/Objections%20Lecture.htm>