

SIMPLIFIED RULES OF EVIDENCE (FOR OBJECTIONS)

(from <http://www.hawaiiifriends.org/mtsmrule.html>)

The rules of evidence used in real trials can be very complicated. A few of the most important rules of evidence have been modified for mock trial purposes, and these are presented below.

Rule 1. Leading Questions

A "leading" question is one that suggests the answer by the questioner, usually asking the witness to give a yes or no answer.

Example: "So, Mr. Smith, you took Ms. Jim to a movie that night, didn't you?"

There are some exceptions, but generally leading questions usually may not be asked on direct examination. The only exception allowed in mock trials is that leading questions may be used as foundational questions. Leading questions may be used on cross-examination.

Objection: "Objection, Your Honor, counsel is leading the witness." (Opposing Attorney)

Possible Response: "Your Honor, leading is permissible on cross-examination," or "I'll rephrase the question." For example, the above question would not be leading if rephrased as: "Mr. Smith, where did you go that night? Who did you go with?" (This would not suggest the answer the attorney desires nor ask for a yes or no answer.)

Rule 2. Relevance

Questions and answers must relate to the matter of the case; this is called "relevance." Questions or answers that do not relate to the case are "not relevant."

Example: (In a traffic accident case) "Ms. Jim, how many times have you been married?"

Questions or answers that are not relevant are objectionable.

Objection: "Your Honor, this question is not relevant to this case."

Possible Response: "Your Honor, this series of questions will be foundational (or relevant) to show that Ms. Jim's first husband was killed in an auto accident, and this fact has increased her mental suffering in this case."

Rule 3. Hearsay

"Hearsay" is an out-of-court statement, written or oral.

Examples: An oral statement: "Harry told me that he was going to visit Mr. Kong." or a hospital report.

Hearsay evidence is objectionable. However, here are three exceptions to the hearsay rule for purposes of the mock trial. If an exception applies, the court will allow hearsay evidence to be introduced.

Exceptions: In a mock trial, hearsay evidence is allowed when: (a) a witness is repeating a statement made directly to the witness by one of the parties in the case; (b) a witnesses is repeating a statement made directly to the witness by someone who is dead; or (c) when a witness' state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that particular person's state of mind.

Objection: "Objection, Your Honor, this is hearsay."

Possible Response: "Your Honor, since Harry is the defendant (or party in the case) the witness can testify to a statement he heard Harry make."

Exception to the hearsay rule does not extend to witness testimony about what another person heard a witness say. This is "double hearsay."

For mock trials, other exceptions to the hearsay rule are not used.

Rule 4. Firsthand Knowledge

Witnesses must have directly seen, heard, or experienced whatever it is they are testifying about.

Example: "I know Harry well enough to know that two beers usually make him drunk, so I'm sure he was drunk that night, too."

A lack of firsthand knowledge is objectionable.

Objection: "Your Honor, the witness has no firsthand knowledge of Harry's condition that night."

Possible Response: "The witness is just generally describing her usual experience with Harry."

Rule 5. Opinions

Unless a witness is qualified as an expert in the appropriate field, such as medicine or ballistics, the witness may not give an opinion about matters relating to that field.

Example: (Said by a witness who is not a doctor) "The doctor put my cast on wrong. That's why I have a limp now."

Opinions are objectionable unless given by an expert qualified in the appropriate field. An exception to this rule, a lay witness may give an opinion about something based on common experience of people in the community and of which the witness has first-hand knowledge.

Objection: "Objection, Your Honor, the witness is giving an opinion."

Possible Response: "Your Honor, the witness may answer the question because ordinary persons can judge whether a cast was put on correctly."

Opinions on the "Ultimate Issue" are objectionable.

Witnesses, including experts, cannot give opinions on the ultimate issue of the case: the guilt or innocence of the defendant or the liability of the parties. These are matters for the trier of fact to decide.

Example: "I believe that Mr. Smith was negligent in driving too fast."

Objection: "Your Honor, the witness is giving an opinion on the ultimate issue - the negligence of Mr. Smith."

Possible Response: "The witness was commenting that the driver was speeding. This is not the ultimate issue in this case."