

# Connecticut Mock Trial Competition

## Competition Rules

Please remember that this program is intended to be an academic, educational and enjoyable experience for all involved. This is neither a battle of sophisticated legal strategy nor a theatrical presentation. Please follow a proper sense of fairness in competition and remember the spirit of the competition is to provide an engaging educational activity for students.

All rounds of the CCLCE Connecticut Mock Trial Competition are governed by these rules. Each competitor and coach should be thoroughly familiar with these rules. Failure to comply with these rules may result in disqualification. Consequences will be determined by the competition coordinator(s). **All rule violations must be brought to the judge's attention by participating student "attorneys" during the trial in a timely and appropriate manner. UNDER NO CIRCUMSTANCES may any coach or member of the audience interrupt the trial for ANY reason, nor may they communicate rule violations to the student "attorneys" in any way during the trial. It is the responsibility of the students participating in the competition to be thoroughly familiar with the rules and alert the judges to any and all violations. Failure to do so results in missed opportunity.** It is simply too difficult for competition coordinator(s) to witness all violations or to make a ruling based upon an alleged violation that they did not witness. Trial judges will be instructed to note violations and discuss them with the coordinators after the trial as the judges are present and can make the best assessment at the time of the actual occurrence of the alleged violation if it is brought to their attention in a timely and appropriate manner. Rule violations should be brought up as an objection like any other objection.

### 100. Teams

A. **Team members:** Each school may enter up to three teams in the regional rounds. A school with multiple teams may be asked to compete in different regions. **WE MUST HAVE A COMMITMENT THAT ALL TEAMS REGISTERED WILL COMPETE.** Each team shall be composed of **not less than six nor more than fourteen students** (with extras). For any single round in the competition, **three students shall act as attorneys and three students shall act as witnesses**. Thus, on larger teams, some students will be observers for a given round. **PLEASE NOTE MINIMUM NUMBER OF STUDENTS IS SIX.** If a team has less than 12 students, students who have 2 roles must have their second role on the opposite side from the first role in the competition (i.e.: prosecution and defense sides).

B. **Coaches:** Each team shall work with a school instructor and a practicing attorney (or attorneys) to prepare for competition. Coaches may attend their team's competitions but **may not give advice or signals or communicate in any way with their team during the competition.**

C. **Judges:** There will be a panel of up to three judges for each trial, to be chosen by the Mock Trial Regional Coordinators. The Committee shall endeavor to find judges who are impartial to either competing school. If not enough judges are available for a given round, there may be a single judge.

### 110. Competition Format

A. **Roles:** Teams must be prepared to present both sides of the case. There will be two trials for each school at the regional level, and teams will switch sides (plaintiff's case or defendant's case) for each round. Members within a team may reverse roles at different rounds so that witnesses may serve as attorneys at another round. If teams competing at a subsequent round had both represented the same side at the prior round, the competition staff will flip a coin to determine assignments for the next round.

- B. **Delay of Trial:** The failure of a team to report promptly at the assigned time should be reported to the judge, who will notify the competition staff. A team arriving more than 15 minutes late may forfeit the round.
- C. **Viewing of other trials:** Team members (including coaches, understudy witnesses and attorneys, etc.) **may not view other teams in competition so long as they remain in the competition themselves. This includes viewing other teams from the same school.**
- D. **Picture/Video-taping:** There will be **NO** picture taking or video-taping allowed during **any** mock trial competitions. If guests wish to take pictures before or after the mock trial competitions and those pictures include anyone but their own child/ren they must receive express consent from the students in the pictures, their parent(s) and their school faculty representative. Permission from a coach that is not part of the school faculty does not suffice.
- E. **Regional Competition:** All teams will be participating in a regional tournament. The CCLCE will notify schools as to specific dates. All schools compete twice at the regional level, once for each side, prosecution and defense. No guarantees can be made regarding which site you will attend.
- F. **Quarter and Semi-Finals:** Teams that win in both trials of their regional round will be invited to advance to the quarterfinals. At the high school level the quarterfinals will be a two-round single elimination tournament; that is, all teams will compete in the first trial. Only those teams that win in the first round of the quarterfinals will be invited to compete in the second round of the quarterfinals. Only the top four teams that win their case in the second round of the quarterfinals will advance to the semi-final round. The semi-final round will be a single elimination tournament. The two winning teams from the semi-finals will advance to the final competition. At the middle school level the quarterfinals are a two-round double elimination tournament. Only the top four teams that win their case at the quarterfinals will advance to the semi-final round. The two winning teams from the semi-finals will advance to the final competition immediately following.
- G. **Final Competition:** The two winning teams of the semi-final competition will compete for the state championship. The sides will be determined by a flip of a coin in advance by the Consortium. All participating schools will be invited to attend.
- H. **Uneven number of teams:** In the event an uneven number of teams are ready for trial at any given level of competition, the site coordinator will randomly draw from a group of volunteer teams which have separate Plaintiff and Defendant teams to compete against the unmatched team. Either or both of the two separate Plaintiff and Defendant teams may advance, depending solely on their win/loss record. In the event NO team volunteers to compete against the unmatched team, the unmatched team will advance by default.

## 120. Facts in Trial Enactments

- A. **Statement of Facts:** Each team will receive a Statement of Facts, including witness affidavits and stipulations. These facts may not be disputed or changed at trial.
- B. **Witnesses and Affidavits:** Witnesses may not use notes while testifying at trial. Each witness is bound by his or her own written statement. A witness is not bound by facts contained in other witnesses' statements. ALL WITNESSES MUST TESTIFY - that is, you cannot choose NOT to call a witness. Coaches must notify their opponents in advance of the trial concerning changes in name or sex of a particular witness. **"Testify" means "to bear witness; to give evidence as a witness." (Black's Law Dictionary) For purposes of these rules and this mock trial competition, ALL WITNESSES MUST TESTIFY means that all witnesses must give facts from their affidavits under both direct and cross examination. Attorneys may not limit the scope of either direct or cross-examination to merely biographical information. Further, if an attorney does limit the direct examination of a witness, this may not preclude opposing counsel from**

**conducting a complete cross-examination of that witness. Any objection to a cross-examination of "outside the scope of direct" based upon a limited direct examination must be overruled. In addition, any attorney that deliberately limits a direct examination to merely biographical information, thereby leaving out a substantial amount of relevant facts from the witness' affidavit, should be penalized in scoring. Any witness that gives half a performance by having a direct examination based upon limited biographical questions, may also be down-scored accordingly per judge's discretion.**

C. **Witnesses Dress:** No props will be allowed during any mock trial competition. A prop is defined as any object that is not a part of the person's clothing/attire. In addition, witnesses may dress to their role as their character would dress for a court appearance but no costume accessories such as badges, wigs, false skin or skin flaws, bandages, etc. will be allowed.

D. **Inferences from Affidavits:** The teams are limited to facts in the record and any reasonable inferences therefrom. The teams cannot make up new facts or introduce exhibits other than those provided to them as part of the problem. At the same time, however, a team may make and argue any reasonable inferences from the facts in the record. If an attorney's question or a witness' answer violates this rule, the opposing attorney may object and ask the court for a bench conference to decide whether the testimony is a reasonable inference from the record.

### 130. Research and Resources

- A. Case Materials for Competition: During the trial, teams may use only those exhibits, court rules, statutes, and cases provided in the official competition case materials. Neither team may submit briefs to the Court.
- B. **Exhibits:** The CCLCE will provide all exhibits for use during the mock trial competitions-which will be pre-marked for identification. Exhibits are to be left on the bench and re-used by both parties. Exhibits must still be admitted as full exhibits by parties during the trial.
- C. **Further Study:** Teams **may** read other cases, statutes, and materials to add to their understanding of the problem and strategies others have used in similar situations. However, no competitor shall be held responsible for knowing any information that is not contained in the packet, a reasonable inference or common knowledge.

### 140. Roles in the Competition

A. **Attorneys:** Attorneys control the presentation of evidence at trial and argue the merits of their side of the case. They do not themselves supply information about the facts of the case. Instead, they introduce evidence and question witnesses to bring out the full story. Attorneys must be sufficiently familiar with the witnesses' statements to recognize instances when testimony contradicts or extrapolates upon the affidavit.

Attorneys research the case by reviewing the case materials supplied for the competition and plan their team's strategy for presenting evidence. Attorneys help witnesses study their roles and prepare their testimony. Attorneys may use notes in presenting their cases (opening statements, direct and cross-examination, objections and closing arguments).

Each team must examine each witness, either on direct or on cross-examination, as appropriate. **Each of the three attorneys on a team must engage in the direct examination of one witness and the cross-examination of another.** An attorney for a team presenting the opening statement may NOT make the closing arguments. Only the attorney doing the direct or cross of the witness on the stand may make objections for that witness.

B. **Witnesses:** Witnesses tell the court the facts in the case. Each team must see that their witnesses are thoroughly prepared and familiar with their roles and must call all of its assigned witnesses. Teams may not call any "surprise" witnesses (witnesses whose testimony is not outlined in the case materials.)

Witnesses may NOT use notes in testifying during the trial. **Witnesses may NOT sit with nor communicate with the attorneys during the trial**, but shall stay in the courtroom at all times during the proceedings.

C. **Bailiff:** The Bailiff assists the judge in conducting the trial by opening court, swearing in witnesses, and serving as timekeeper. The bailiff should have a stopwatch for timekeeping and keep a record of the time used by each side on the official time sheet. The bailiff will indicate that a team has 2 minutes, 1 minute, 30 seconds and no time remaining in a category by holding up a sign. **IT IS THE RESPONSIBILITY OF EACH SCHOOL TO BRING ONE PERSON TO ACT AS BAILIFF (can be a student), A STOPWATCH AND TIME-REMAINING CARDS.**

D. **Judges:** THE DECISIONS OF THE JUDGES ARE FINAL. During the trial the judges will evaluate the quality of a team's presentation, including the performance of ALL witnesses and attorneys. At the end of the trial, the judges will discuss the case with the students if time allows. No ties will be allowed. Copies of the ballots will be mailed to teams and coaches after completion of the round with the names of the judges removed.

## 150. Courtroom Decorum

A. **Courtesy Toward Judges:** All participants should rise when a judge enters or exits the courtroom. Judges should be addressed as "Your Honor," even when making an objection. Request the court's permission to approach a witness or the bench. Do not interrupt or argue with the judge.

B. **Courtesy Toward Witnesses:** Do not intimidate or insult witnesses. Avoid confusing witnesses with verbose or convoluted questions. Do not insinuate facts which your team will not present evidence to support. For example, do not ask an opposing witness "have you been released yet from treatment by a psychiatrist for being a habitual liar?" unless you have evidence that this is true.

C. **Courtesy Toward Attorneys:** The judges may not interrupt an attorney's opening or closing statement. Attorneys should avoid frivolous objections. Direct all your remarks to the judge or the witness, not to opposing counsel. For example, when making an objection, say "Your Honor, I object on the ground that...." rather than saying "Attorney Dumkoff, you know that evidence is hearsay!"

D. **Personal Appearance: Personal appearance (clothing, grooming, etc.) creates an impression. Participants, both witnesses and attorneys, should consider the impression they wish to make. Avoid distracting habits such as gum-chewing, pencil-tapping, or nervous fidgeting and dress appropriately for a courtroom.**

E. **No food or beverages should be brought to any courthouse.**

F. **Be courteous during security checks.**

## STEPS IN A MOCK TRIAL

### 160. Courtroom Procedures

A. **Opening Court:** The bailiff will open court by saying: " All Rise. The Superior Court for the State of Connecticut is now open and in session, the Honorable Judges \_\_\_\_\_ presiding. All persons having due cause of action herein, draw near and give attention according to law. You may be seated." When the judge enters, all participants should rise and remain standing until the judge is seated.

B. **Call of the Calendar:** The Judge will announce the name of the first case and ask if the parties are ready: "The Court will now hear the case of \_\_\_\_\_ v. \_\_\_\_\_." Is the Plaintiff ready?

(Plaintiff's attorney answers "Ready, Your Honor"). Is the Defense ready? (Defense's attorney answers "Ready, Your Honor"). "You may proceed."

**C. Opening Statements (5 minutes per team):** The plaintiff in a civil case or prosecution in a criminal case makes an opening statement first, followed by the defense. This is an opening **statement**, not an argument. Arguments regarding the law to be applied in a case are not appropriate in an opening statement. In the opening statement, the attorney introduces the members of his/her team and outlines the case as they intend to present it, highlighting key testimony, summarizing the evidence which will be presented to prove the case and describing the relief requested. "Your Honor, my name is \_\_\_\_\_ attorney for Mr./Ms. \_\_\_\_\_, the (Plaintiff/Defendant). My colleagues are \_\_\_\_\_, and \_\_\_\_\_." (In a criminal case the prosecution would say: "Your Honor, my name is \_\_\_\_\_ attorney for the State of New Justice. My colleagues are \_\_\_\_\_, and \_\_\_\_\_.")

**D. Direct Examination by the Plaintiff/Prosecution (7 minutes per witness).** The plaintiff/prosecution's attorneys conduct direct examination (questioning) of each of its own witnesses to bring out the facts of the case. At this time, testimony and other evidence to prove the plaintiff/prosecution's case will be presented. The purpose of direct examination is to allow the witness to narrate the facts in support of the case.

NOTE: The attorneys for both sides, on both direct and cross examination, should remember that their only function is to ask questions; attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in away that might violate this rule.

The attorney calls a witness by saying: "Your Honor, I would like to call Fran Witness to the stand." The bailiff then swears in the witness by asking the following: "Do you solemnly swear or affirm that the testimony you may give in the cause now pending before this Court shall be the truth, the whole truth and nothing but the truth according to the Mock Trial Rules?" The witness takes the oath or affirmation by saying: "I do."

**E. Cross-Examination by Defense. (7 minutes per witness).** After the direct examination of a witness for the Plaintiff/Prosecution, a defense attorney cross-examines the witness in order to show the weaknesses in his or her testimony and test the witness's credibility. The cross examiner seeks to clarify or cast doubt upon the testimony of the opposing witnesses. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judge through the use of effective cross-examination.

**F. Redirect Examination:** Following the Cross-examination, the Plaintiff/Prosecution attorney who did the direct may conduct redirect examination of its witnesses to clarify any testimony that was cast in doubt or impeached during cross examination. The attorney may ask **three questions** to "rehabilitate" the witness, to explain any damaging admissions, or to reestablish the testimony. The attorney cannot ask questions about facts not already brought out during the cross-examination. These questions are limited to the scope of the cross-examination.

**G. Re-Cross Examination:** The defense attorney who conducted the cross-examination of that witness may conduct a re-cross examination of the same opposing witness to impeach previous testimony. The defense attorney may ask **three questions** on points brought out during redirect examination only.

**H. The Defense's Case: Direct Examination by Defense (7 minutes per witness):** After the plaintiff/prosecution has presented its case, the defense attorneys conduct direct examination (questioning) of each of their own witnesses. At this time, testimony and other evidence to prove the defendant's case will be presented. The purpose of direct examination is to allow the witness to narrate the facts in support of the case.

**I. Cross Examination by the Plaintiff/Prosecution Attorneys (7 minutes per witness):** After the attorney for the defense has completed questioning a witness, the judge then allows the

plaintiff/prosecution attorney to cross examine the witness. The cross examiner seeks to clarify or cast doubt upon the testimony of the opposing witnesses. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judge through the use of effective cross-examination.

**J. Redirect Examination:** Following the cross-examination, the defense attorney who did the direct may conduct redirect examination of its witnesses to clarify any testimony that was cast in doubt or impeached during cross examination. The attorney may ask **three questions** to "rehabilitate" the witness, to explain any damaging admissions, or to reestablish the testimony. The attorney cannot ask questions about facts not already brought out during the cross-examination. These questions are limited to the scope of the cross-examination.

**K. Re-Cross Examination:** The plaintiff/prosecution attorney who conducted the cross-examination of that witness may conduct a re-cross examination of the same opposing witness to impeach previous testimony. The defense attorney may ask **three questions** on points brought out during redirect examination only.

**L. Closing Arguments (7 minutes per team):** The defense, followed by the plaintiff/prosecution, summarizes the case in the light most favorable to their respective positions, with reference to testimony which supports their case and relevant case and statutory provisions. This is where the legal arguments are relevant and should be made.

**M. Verdict:** The Judges will retire (leave the courtroom) to review their notes and to reach a decision. **The decision of the judge(s) is final.**

## **HINTS ON PREPARATION FOR A MOCK TRIAL TOURNAMENT**

170. The following tips have been developed from previous experiences in training a mock trial team.

**A.** All students should read the entire set of materials, and discuss the information/procedures and rules used in the mock trial contest.

**B.** The facts of the case, witnesses' testimony, and the points for each side in the case then should be examined and discussed. Key information should be listed on the chalkboard as discussion proceeds so that it can be referred to at some later time.

**C.** Even though a school team has to represent only one side in the case during any single round of the competition, all roles in the case should be assigned and practiced. This will help in practicing the case as well as preparing for future rounds.

**D.** The credibility of the witnesses is very important to a team's presentation of its case. As a result, students acting as witnesses need to really "get into" their roles and attempt to think like the persons they are playing. Students who are witnesses should read over their statements (affidavits) many times and have other members of the team or their class ask them questions about the facts until they know them "cold."

**E.** Based on the experiences obtained through several years of mock trial competitions, we have found that the best teams generally had the students prepare their own questions, with the teacher-coach and attorney-advisor giving the team continual feedback and assistance on the assignment as it was completed. Based on the experience of these practice sessions, attorneys should revise their questions and witnesses should restudy the parts of their witness statements where they are weak.

**F.** Opening statements should also be written by team members. Legal and/or non-legal language should be avoided where its meaning is not completely understood by attorneys and witnesses.

**G.** Closing arguments should not be totally composed before the trial, as they are supposed to highlight the important developments for the plaintiff and the defense, which have occurred during the trial. The more relaxed and informal such statements are, the more effective they are likely to be.

**H.** Judges should not interrupt students during the trial. When in panels of more than one, judges should not confer on rulings but rather take turns or designate a lead judge to rule on objections.

**I.** As a team gets closer to the final round of the contest, the tournament requires that it conduct at least one complete trial as a "dress rehearsal." All formalities should be followed and notes taken by the teacher coach and students concerning how the team's presentation might be improved. A team's attorney advisor should be invited to attend this session and comment on the enactment.

**J.** The ability of a team to adapt to different situations is often a key component in a mock trial enactment, since each judge or lawyer acting as a judge, has his or her own way of doing things. Since the proceedings or conduct of the trial often depend in no small part on the judge who presides, student attorneys and other team members should be prepared to adapt to judicial rulings and requests.

# TRIAL SETTING

Before participating in a mock trial, it is important to be familiar with the physical setting of the courtroom, as well as the events that generally take place during the exercise and the order in which they occur. This section outlines the usual steps in a 'bench" trial- - that is, a trial without a jury.

## COURTROOM LAYOUT

JUDGE

BAILIFF

WITNESS STAND

DEFENDANT'S TABLE

PLAINTIFF'S TABLE

AUDIENCE SEATING

## PARTICIPANTS

The Judge

The Attorneys

- Plaintiff - Defendant (Civil Case)
- Prosecution - Defendant (Criminal Case)

The Witnesses

- Plaintiff - Defendant (Civil Case)
- Prosecution - Defendant (Criminal Case)

# Modified Rules of Evidence and Procedure

In trials in federal and state courts in the United States, formal rules regulate the admission of and exclusion of evidence (what evidence can and cannot be presented in court). Evidence may be testimonial (a witness' testimony) or physical (documents, objects, photographs, etc.). The rules of evidence are designed to ensure that both parties receive a fair trial and to exclude any evidence that is irrelevant, untrustworthy, or unduly prejudicial.

Studying the rules will prepare you to make timely objections, avoid pitfalls in your own presentations, and understand some of the difficulties that arise in actual cases. The purpose of using rules of evidence in the competition is to structure the presentations to resemble those of an actual trial.

Almost every fact stated in the materials will be admissible under the rules of evidence. Because rules of evidence are so complex, you are not expected to know the fine points. To promote the educational objectives of this program students are restricted to the use of a select number of evidentiary rules in conducting the trial.

Because of their complexity, for purposes of this mock trial competition, the rules of evidence have been modified and simplified as follows:

## Scope of These Rules

**Rule 200: Scope:** These rules govern all proceedings in all rounds of the Mock Trial Competition. **The only rules of evidence to be considered in the competition are those included in these rules. All evidence will be admitted unless an attorney objects.**

### **Rule 201: Objections:**

- A. An objection which is not based upon these rules shall not be considered by the court (the judge).**
- B. The time keeper shall stop the clock when an objection is raised and re-start the clock after said objection has been ruled on by the judges.**
- C. It is the responsibility of the party opposing evidence to prevent its admission by a timely and specific objection. Objections not raised in a timely manner are waived. An effective objection is designed to keep inadmissible testimony, or testimony harmful to your case, from 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.
- D. An attorney may object if s/he believes that the opposing attorney is attempting to introduce improper evidence or is violating the modified rules of evidence. The attorney wishing to object should stand up and object at the time of the claimed violation. The attorney should state the reason for the objection. It is not necessary to cite by rule number the specific rule of evidence that has been violated. (Note: Only the attorney who questions a witness may object to the questions posed to that witness by opposing counsel.) The attorney who asked the question may then make a statement about why the question is proper. The judge will then decide whether a question or answer must be discarded because it has violated a modified rule of evidence ("objection sustained"), or whether to allow the question or answer to remain in the trial record ("objection overruled"). Objections should be made as soon as possible; however, an attorney is allowed to finish his/her question before an objection is made.
- E. Attorneys may not object during opening statements or closing arguments. Any objections related to either opening statements or closing arguments are timely at the conclusion of said opening or closing so as to not interrupt the student making the statement/argument.
- F. Judges may make rulings that seem wrong to you. Also, different judges may rule differently on the same objection. Always accept the judge's ruling graciously and courteously. Do not argue the

point further after a ruling has been made. As with all objections, the trier of fact will decide whether to allow the testimony, strike it or simply note the objections for later consideration.

**Judges' rulings are final. You must continue the presentation even if you disagree.**

- G. Judges should avoid interrupting students during the trial.
- H. When Judges are in panels of more than one, they should not confer on rulings but rather either take turns or choose one person to be the lead judge and rule on objections.

A proper objection includes the following elements:

1. attorney addresses the judge,
2. attorney indicates 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 side is violating.

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

**Rule 202: Summary of Allowable Evidentiary Objections For Mock Trial Competitions:**

Allowable objections are further explained individually below. The allowable objections are invention of facts, relevance, lack of foundation, lack of personal knowledge, inadmissible character evidence, improper opinion, hearsay, leading question, argumentative question, asked and answered, compound question, narrative, non-responsive and outside the scope of cross, re-direct or re-cross. **If an objection is made that is not included in this list of allowable objections it is the responsibility of opposing counsel to object on the basis that the objection made is outside the scope of the rules.**

**Rule 203: Violation of Mock Trial Rules:** This objection is to be used by the student "attorneys" during the competition to report an alleged competition rule violation to the judge, such as witnesses or others communicating with attorneys, or attorneys conducting more than one direct or cross examination for their team or an attorney other than the examining attorney making an objection, etc. This objection is to be used for violations of any competition rules, not for rules of evidence as they are their own objections.

**Invention of Facts and Extrapolation** (special rules for Mock Trial competition)

**Rule 204: Invention of Facts:** One objection available in the competition which is not an ordinary rule of evidence allows you to stop an opposing witness from creating new facts. The object of these rules is to prevent a team from "creating" facts not in the material to gain an unfair advantage over the opposing team. On direct examination the witness is limited to the facts given in the case materials. If the witness goes beyond the facts given (adds new facts or speculates about facts), the testimony may be objected to by opposing counsel as speculation or as invention of facts outside the case materials. If a witness testifies *in contradiction* of a fact given in the witness statement, opposing counsel should impeach witness' testimony during cross-examination. **Note: This is a different situation calling for an impeachment NOT a 204 objection.**

If you believe that a witness has gone beyond the information provided in the Fact Situation or Witness Statements, use the following form of objection:

"Objection your honor. The answer is inventing 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 and calls for an invention of facts."

**Rule 205: Invention of Facts - Cross-Examination.** If on cross-examination a witness is asked a question, the answer to which is not contained in the facts given, the witness may respond with any answer, so long as it is responsive to the question, does not contain unnecessary elaboration beyond the scope of the witness statement, and does not contradict the witness statement. An answer which is unresponsive or unnecessarily elaborate may be objected to by the cross-examining attorney. An

answer which is contrary to the witness statement may be impeached by the cross-examining attorney.  
**Note: This is a different situation calling for an impeachment NOT a 205 objection.**

**Rule 206: Reasonable Inference:** Due to the nature of the competition, testimony often comes into question as to whether it can be reasonably inferred given facts A, B, C, etc. A reasonable inference is a fact not in the record but that can follow naturally from the facts provided and that does not change the material facts of the story. For example, the height or eye color of a witness may be a material fact if it identifies him/her as a suspect in a crime but an insignificant inference if it means nothing to the issues of the case. It is ultimately the responsibility of the trier of fact to decide what can be reasonably inferred. However, **it is the students' responsibility to work as closely within the fact situation and witness statements as possible.**

## Relevancy

**Rule 301: Relevancy.** Only relevant evidence is admissible. Relevant evidence is evidence (physical or testimonial), which tends to make the existence of a fact, which is important to the case more or less probable than the fact would be without the evidence. However, relevant evidence may be excluded by the court if it is unfairly prejudicial, may confuse the issues, or is a waste of time. Evidence, which is not relevant is not admissible.

### *Examples*

1. *Relevant evidence:* In a lawsuit by Driver B for personal injuries sustained in a car accident at an intersection, testimony that Driver A ran a red light is relevant because it tends to prove that Driver A was at fault in causing the accident, and fault is an issue that is important to the case.
2. *Relevant evidence that may be excluded because it is unfairly prejudicial:* A plaintiff presents a photo of himself/herself after an accident which depicts gruesome, bloody injuries. Although the picture is relevant to show the existence and nature of the plaintiff's injuries, it may be found to be unfairly prejudicial if it is likely to inflame feelings of anger and sympathy to such an extent that a fair decision is jeopardized. Evidence that is extremely helpful to one side is not the same as evidence that is unfairly prejudicial.
3. *Relevant evidence that may be excluded because a waste of time:* Testimony about any matter that has already been fully presented through other evidence.
4. *Irrelevant evidence:* Testimony that Driver A has donated money to many charities when the only issue in the case is who caused a car accident.

Form of objection: "Objection, your honor. This testimony is not relevant to the facts of this case (or this testimony is unfairly prejudicial). I move that it be stricken from the record," or "Objection, your honor. Counsel's question calls for irrelevant (or unfairly prejudicial) testimony."

## Lack of Foundation

**Rule 401: Lack of Foundation:** To establish the relevance of certain evidence, you may need to lay a 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.

Example: If an 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.

**Rule 402: Introduction of Physical Evidence:** Physical evidence (objects) must be relevant and authentic (shown to be what they appear to be) in order to be admissible. For mock trial purposes, all exhibits contained in the case materials have already been **stipulated as admissible evidence and should not be altered** to give either side an unfair advantage. This means that both sides have agreed that all exhibits are admissible. Therefore, it is **not necessary to demonstrate through a witness' testimony that an exhibit is relevant or that it is authentic**, nor is it necessary to seek a ruling from the court that the physical evidence is admissible. **But a simple foundation in presenting the evidence through a witness is still necessary.** Exhibits are generally presented to the court through witness testimony.

Steps to follow: Make sure you

1. show the object or document to opposing counsel;
2. have the witness identify the object or document;
3. offer it into evidence.

**These steps must be taken before a witness can read from any document out loud or before any physical object can be shown to the trier of fact or discussed by a witness. Note: This is not the same as refreshing recollection. As long as these steps are followed, no objection for lack of foundation for physical evidence may be made. However, if one or more of these steps are missing then an objection for lack of foundation is appropriate.**

### *Example*

Attorney: Your honor, may we please have this marked as Plaintiff's Exhibit 1 (or Defendants Exhibit A)? (Exhibit is marked.) Let the record reflect that I am showing Plaintiff's Exhibit 1 (or Defendant's Exhibit A) to opposing counsel. (Exhibit is shown to opposing counsel.)

Your Honor, may I approach the witness?

The Court: You may.

Attorney: Witness X, I'm showing you what has been marked as Plaintiff's Exhibit 1. Do you recognize that exhibit?

Witness: Yes.

Attorney: Could you explain for the Court what that is?

Witness: It's a picture I took of the accident scene. (At this point, the attorney may ask the witness any additional relevant questions about the exhibit, and then give it to the judge).

Form of Objection: "Objection your honor. There is a lack of foundation."

## **Lack of Personal Knowledge**

**Rule 501: Lack of Personal Knowledge.** A witness may not testify on any matter of which the witness has no personal knowledge. Personal knowledge means what the witness did, said, saw, heard, or otherwise perceived. Only if the witness has directly observed an event may the witness testify about it. Witnesses sometimes make inference 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.

### *Examples*

1. If Witness X did not personally see arsenic in the medicine cabinet of the decedent's wife, he cannot testify that she had arsenic in her medicine cabinet. (This testimony would be based on his assumption from other facts, based on speculation, or based on what someone else told him, and not upon his own personal observations).

2. The witness knew the victim and saw her on March 1, 2001. The witness heard on the radio that the victim had been shot on the night of March 3, 2001. The witness lacks personal knowledge of the shooting and cannot testify about it.
3. From around a corner, the witness heard a commotion. Upon investigating, the witness found the victim at the foot of the stairs, and saw the defendant on the landing, smirking. The witness cannot testify that the defendant had pushed the victim down the stairs, even though this inference seems obvious, because the witness did not actually see that happen.

Form of objection: "Objection your honor. The witness has no personal knowledge to answer that question." Or "Your honor I move that the witness's testimony about . . . be stricken from the record because the witness has been shown not to have personal knowledge about the matter." (This motion would follow cross-examination of the witness, which revealed the lack of a basis for a previous statement.)

## Character Evidence

**Rule 601: Character.** Witnesses generally cannot testify about a person's character unless character is an issue. Such evidence tends to add nothing to the crucial issues of the case. (The honesty of a witness, however, is one aspect of character always at issue.) In criminal trials, the defense may introduce evidence of the defendant's good character and, if relevant, show the bad character of a person important to the prosecution's case. Once the defense introduces evidence of character, the prosecution may try to prove the opposite. The defense has effectively "opened the door" to character evidence. These exceptions are allowed in criminal trials as an extra protection against erroneous guilty verdicts. Evidence about the character of a party or witness, other than his/her character for truthfulness or untruthfulness, may not be introduced. Evidence about the character of a party for truthfulness or untruthfulness is only admissible if the party testifies.

### *Examples*

1. *Inadmissible character evidence:* Testimony that a student has a reputation as a heavy drinker.
2. *Admissible character evidence:* Testimony by witness B that witness A has told lies on several occasions.
3. *Admissible character evidence:* *The defendant's minister testifies that the defendant attends church every week and has a reputation in the community as a law-abiding person.*
4. *Inadmissible character evidence:* 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 then, 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."

## Opinion Testimony

**Rule 701: Opinion Testimony by Non-Experts.** Witnesses may not normally give their opinions on the stand. Judges and juries must draw their own conclusions from the evidence. For mock trial purposes, most witnesses are non-experts. If a witness is not testifying as an expert, the witness' testimony in the form of opinions is limited to opinions which are rationally based on what the witness saw or heard and which are helpful in explaining the witness' testimony. Non-experts (lay witnesses) are considered qualified to reach certain types of conclusions or opinions based on what they see or hear. Generally, lay witnesses may give opinions about matters, which do not require experience or knowledge beyond that of the average lay-person. Note, however, that the opinion must be *rational*

based on what the witness saw or heard and must be helpful in understanding the witness' testimony. Estimates of the speed of a moving object or the source of a particular odor are allowable opinions.

*Examples*

1. Witness X, a non-expert, may testify that the defendant appeared to be under the influence of alcohol. However, it must be shown that this opinion is rationally based on witness X's observations by bringing out the facts underlying the opinion, e.g., the defendant was stumbling; his breath smelled of alcohol; his speech was slurred. If witness X thinks the defendant was under the influence because he had a strange look in his eye, then the opinion should not be permitted since it is not rational.
2. Witness X, a non-expert, may not testify that in his opinion the decedent died of arsenic poisoning, since this is not a matter that is within the general knowledge of lay persons. Only an expert, such as a forensic pathologist, is qualified to render such an opinion.
3. 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 opinion.

Form of objection: "Objection your honor. The question calls for inadmissible opinion testimony on the part of the witness. I move that the testimony be stricken from the record."

**Rule 702: Opinion Testimony by Experts.**

- A. Only persons whom are shown to be experts at trial may give opinions on questions that require special knowledge beyond that of ordinary lay-persons. This means that before the witness can be asked for an expert opinion, the questioning attorney MUST bring out the witness' qualifications and experience. This is usually accomplished by asking the witness himself/herself about his/her background, training and experience. The foundation need only be within the confines of the statement. No outside background knowledge is necessary and the witness may not be held accountable for knowledge outside the scope of the materials provided.
- B. When the case stipulations state that a witness is "qualifiable" as an expert this means that if the proper foundation is laid the witness must be treated as an expert and allowed to answer expert opinion questions. It does NOT mean that the witness is already deemed an expert by the court or that the attorney does not need to lay the proper foundation.
- C. However, if there is no stipulation regarding an expert then the party questioning the witness must argue the basis for the witness to be qualified to answer the expert opinion question.
- D. The attorney questioning the witness shall not ask the court to recognize the witness as an expert, but rather must lay a proper foundation, within the scope of the materials provided, that demonstrates the witness' qualifications to answer an expert opinion question. If opposing counsel chooses to object to the witness' ability to answer the expert opinion question, the proper objection would be either lack of foundation or improper opinion. Then the attorney questioning the witness should respond to the objection by demonstrating why the witness is qualified to answer the question. This will be done on a question-by question basis.

*Example*

Attorney: Doctor, please tell the jurors about your educational background.  
Witness: I attended Harvard College and Harvard Medical School.

Attorney: Do you practice in any particular area of medicine?  
Witness: I am a board-certified forensic pathologist. I have been a forensic pathologist for 28 years.

Form of objection: "Objection your honor. No foundation has been laid for this witness to be qualified as an expert." Or "Objection your honor. The question calls for an improper opinion." Or "Objection your honor. The witness has offered an improper opinion."

## Hearsay

**Rule 801: Hearsay.** Any evidence of a statement made out of court by someone other than the witness testifying, which is offered to prove the truth of the matter asserted in the out-of-court statement, is hearsay and is not admissible. This is because these statements are very unreliable. Testimony not offered to prove the truth of the matter asserted is, by definition, not hearsay. For example, testimony to show that a statement was said and heard, to show that a declarant could speak in a certain language, or to show the statement's effect on a listener is admissible. Therefore, if an opposing attorney objects to a statement given in testimony of your witness as hearsay and you or your witness are not offering the statement for the truth of the matter asserted, your proper response to the objection would be "Your honor, the statement is not hearsay as it is not being offered for the truth of the matter asserted but as evidence of . . . (state the reason for using the statement)."

### *Example*

1. Witness X testifies that "Mrs. Smith said that the decedent's wife had a bottle of arsenic in her medicine cabinet." This testimony is inadmissible if offered to prove that the deceased's wife had a bottle of arsenic in her medicine cabinet, since it is being offered to prove the truth of the matter asserted in the out-of-court statement by Mrs. Smith. If, however, the testimony is offered to prove that Mrs. Smith can speak English, then the testimony is not hearsay because it is not offered to prove the truth of the matter asserted in the out-of-court statement. However, the testimony is only admissible if Mrs. Smith's ability to speak English is relevant to the case.

*Comment:* Why should the complicated and confusing condition be added that the out-of-court statement is only hearsay when "offered for the truth of the matter asserted"? The answer is that hearsay is considered untrustworthy because the speaker of the out-of-court statement has not been placed under oath and cannot be cross-examined concerning the statement or concerning his/her credibility. In the previous example, Mrs. Smith cannot be cross-examined concerning her statement that the decedent's wife had a bottle of arsenic in her medicine cabinet, since witness X, and not Mrs. Smith has been called to give this testimony. However, witness X has been placed under oath and can be cross-examined about whether Mrs. Smith actually made this statement, thus demonstrating that she could speak English. When offered to prove that Mrs. Smith could speak English, witness X's testimony about her out-of-court statement is not hearsay.

Form of objection: "Objection your honor. Counsel's question calls for hearsay." Or "Objection your honor. This testimony is hearsay. I move that it be stricken from the record."

**Rule 802: Hearsay Exceptions.** For reasons of necessity, a set of exceptions allows certain types of hearsay to be introduced. Work with your attorney coach on the exceptions, which may arise in this case. The following, which would otherwise fall within the definition of hearsay, are not excluded from evidence by the hearsay rule:

- a. Admission by a party-opponent – any statement made by an opposing party.
- b. Excited utterance – a statement made shortly after an event, while declarant is still excited.
- c. State of Mind – a statement that shows the declarant's mental, emotional, or physical condition.
- d. Statement or admission against interest – statement that puts declarant at risk of civil or criminal liability.
- e. Records made in the regular course of business.
- f. Official records and writings by public employees.

- g. Past recollection recorded – something written by a witness when events were fresh in that witness' memory, used by witness with insufficient recollection of the event and read to the trier of fact. (The written material is not admitted as evidence.)
- h. Prior inconsistent statements – generally admissible only as impeachment but not for the truth of the fact asserted.
- i. Statements for purposes of medical or psychological diagnosis or treatment.

Examples:

*Admission Against Interest.* Hearsay is admissible if the out-of-court statement was made by a party in the case and contains evidence which goes against that party's side. Admissions against interest are permitted because they are thought to be more trustworthy than other hearsay, since people generally do not make statements that are against their own interest, unless they are true.

*Examples*

- 1. Witness X testifies that the defendant said she killed her husband.
- 2. Witness X testifies that after the accident, the plaintiff said he ran the red light.

*Excited Utterance.* A statement relating to a startling event or condition made out of court by someone other than the witness testifying, which was made under the stress of excitement caused by the event or condition.

*Example*

- 1. Witness X testifies that Mrs. Smith opened the medicine cabinet and said, "Oh my God!"

*Statements for Purposes of Medical or Psychological Diagnosis or Treatment.* A statement made to a physician or psychological counselor that assists the physician or counselor in arriving at a diagnosis or conclusion about the patient's condition and/or that assists the physician or counselor in prescribing a course of treatment for the patient.

*Example*

- 1. Patient tells physician that he has had stomach pain for three days. The physician may testify that this is what the patient said.

*State of Mind.* A judge may admit hearsay evidence if a person's 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.

## **Witness Examination/Improper or Improperly Phrased Questions**

**Rule 901: Direct Examination - Leading Questions.** Witnesses should be asked neutral questions and may not be asked leading questions on direct examination. Neutral questions are open-ended questions that do not suggest the answer and that usually invite the witness to give a narrative response. A leading question is one that suggests to the witness the answer desired by the examining attorney and often suggests a "yes" or "no" answer.

*Examples*

- 1. Proper direct examination questions:
  - a. What did you see?

- b. What happened next?
  - c. Were you speeding?
2. Leading questions (not permitted on direct):
- a. Isn't it true that you saw the defendant run into the alley?
  - b. After you saw the defendant run into the alley, you called the police, correct?

Form of objection: "Objection your honor. Counsel is leading the witness."

**Rule 902: Scope of Direct Examination.** On direct examination an attorney may inquire as to any relevant facts of which the witness has first-hand, personal knowledge.

**Rule 903: Refreshing Recollection.** If a witness is unable to recall information contained in his/her witness statement or contradicts the witness statement, the attorney calling the witness may use the witness statement to help the witness remember. In this case, the document that the witness is reading does not need to be admitted as evidence. The witness will read the document or portion of a document to himself/herself and then the attorney should take the document away from the witness before the witness responds to any questions. In this case, the witness may not read the document out loud unless it is already admitted as evidence.

*Example*

Witness cannot recall what happened after the defendant ran into the alley or contradicts witness statement on this point:

- 1. Mr./Ms. Witness, do you recall giving a deposition in this case?
- 2. Your Honor, may I approach the witness? (Permission is granted.) I'd like to show you a portion of the summary of your deposition, and ask you to review the first two paragraphs on page three. (Then take the document away from the witness.)
- 3. Having had an opportunity to review your statement, do you now recall what happened after the defendant ran into the alley?

**Rule 904: Cross-Examination - Form of Questions.** An attorney should usually, if not always, ask leading questions when cross-examining the opponent's witnesses. Open-ended questions tending to evoke a narrative answer, such as "why" or "explain" should be avoided. (Leading questions are not permitted on direct examination because it is thought to be unfair for an attorney to suggest answers to a witness whose testimony is already considered to favor that attorney's side of the case. Leading questions are encouraged on cross-examination because witnesses called by the opposing side may be reluctant to admit facts that favor the cross-examining attorney's side of the case.) However, it is not a violation of this rule to ask a non-leading question on cross-examination.

*Examples*

- 1. *Good leading cross-examination question:*

Isn't it true that it was almost completely dark outside when you say you saw the defendant run into' the alley?

- 2. *Poor cross-examination question:*

How dark was it outside when you saw the defendant run into the alley?

**Rule 905: Scope of Cross-Examination.** Attorneys may only ask questions that relate to matters brought out during direct examination or to matters relating to the witness' credibility or believability. **Information being in the witness' statement does not automatically open the witness to questions on those points during cross if they are outside the scope of the direct examination. Whether or not to allow leeway on cross is NOT in the judge's discretion. The question is whether or not the door has been opened on direct. Issues of credibility are always within the scope of cross.**

**Rule 906: Impeachment.** On cross-examination the cross-examining attorney may impeach the witness. Impeachment is a cross-examination technique used to demonstrate that the witness should not be believed. Impeachment is accomplished by asking questions which demonstrate either (1) that the witness has now changed his/her story from statements or testimony given by the witness prior to the trial, or (2) that the witness' trial testimony should not be believed because the witness is a dishonest and untruthful person. **It is not necessary to admit the statement into evidence in order to use it for impeachment purposes.**

Impeachment differs from the refreshing recollection technique. Refreshing recollection is used during direct examination to steer a favorable, but forgetful, witness back onto the beaten path. Impeachment is a cross-examination technique used to discredit a witness' testimony.

*Example*

1. *Impeachment with prior insistent statement:*

Attorney: Mr. Jones, you testified on direct that you saw the two cars *before* they actually collided, correct?

Witness: Yes.

Attorney: You gave a deposition in this case a few months ago, correct?

Witness: Yes.

Attorney: Before you gave that deposition you were sworn by the court reporter to tell the truth, weren't you?

Witness: Yes.

Attorney: Mr. Jones, in your deposition, you testified that the first thing that drew your attention to the collision was when you heard a loud crash, isn't that true?

Witness: I don't remember ever saying that.'

Attorney: Your Honor, may I approach the witness? (Permission is granted.) Mr. Jones, I'm handing you the summary of your deposition and I'll ask you to read along as I read the second full paragraph on page two, "I heard a loud crash and I looked over and saw that he two cars had just collided. This was the first time I actually saw the two cars." Did I read that correctly?

Witness: Yes.

Attorney: Thank you Mr. Jones. No further questions, Your Honor.

2. *Impeachment with prior dishonest conduct:*

Attorney: Student X, isn't it true that last fall you were suspended from school for three days for cheating on a test?

Witness: Yes.

**Rule 907: Impeachment by Evidence of a Criminal Conviction.** For the purpose of attacking the credibility of a witness, evidence that he/she has been convicted of a crime shall be admitted, but only if the crime was a felony or involved moral turpitude, regardless of punishment, and the court determines that the value of this evidence as reliable proof outweighs its prejudicial effect to a party.

*Example*

Attorney: Is it true that you have been convicted of assault?

**C. Redirect Examination** (questions asked after the cross-examination, by the attorney who called the witness)

**Rule 908: Redirect Examination.** After cross-examination, up to three, but no more than three additional questions may be asked by the direct examining attorney, but such questions are limited to matters raised by the opposing attorney on cross-examination. Just as on direct examination, leading questions are not permitted on redirect.

*Comment:* If the credibility or reputation for truthfulness of the witness has been attacked successfully on cross-examination, the attorney whose witness has been damaged may wish to ask questions on redirect which will allow the witness to "rehabilitate" himself/herself (save the witness' truth-telling image). Redirect examination may also be used to strengthen a positive fact that was weakened by the cross-examination. Redirect examination is not mandatory. A good rule to follow is: if it isn't broken, don't fix it.

*Examples*

1. *Cross-Examination of physician called by prosecution in murder case:*

Attorney: Doctor, you testified on direct that the decedent died of arsenic poisoning, correct? Witness:

Attorney: Isn't it true that you have a deposition in which you testified that you did not know the cause of death?

Witness: Yes, that's true.

Redirect:

Attorney: Doctor, why did you testify in your deposition that you did not know the decedent's cause of death?

Witness: I had not yet received all of the test results, which allowed me to conclude that the decedent died of arsenic poisoning.

2. *Cross Examination:*

Attorney: Doctor, isn't it true that the result of test X points away from a finding of arsenic poisoning?

Witness: Yes.

Redirect:

Attorney: Doctor, why did you conclude that the decedent died of arsenic poisoning even though test X pointed away from arsenic poisoning?

Witness: Because all of the other test results so overwhelmingly pointed toward arsenic poisoning, and because test X isn't always reliable.

Comment: Neither one of these redirect examinations should have been conducted unless the attorney had a fairly good idea of what the witness' response would be. As a general rule, it is not advisable to ask a question if you have no idea what the answer will be.

**Rule 909: Re-cross-Examination.** After redirect, up to three, but no more than three, additional questions may be asked by the cross-examining attorney, but such questions are limited to matters raised on redirect examination. Re-cross is not mandatory and should not be used simply to repeat points that have already been made.

*Example*

Assume the cross-examination and redirect examination set forth in the example under Rule 308 above have occurred. A good Re-cross-examination would be the following:

Attorney: Doctor, isn't it true that when you gave your deposition you had received all of the test results except the result of text X?  
Witness: Yes, that's true.

Comment: The cross-examining attorney would then argue in closing argument that the doctor testified in his deposition that he did not know the cause of death at the time of his deposition and that the only test result received after the deposition was text X, which pointed away from arsenic poisoning.

**Rule 910: 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 inconsistent statement.

Now assume that the witness admits the statement. It would be impermissibly argumentative 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 objections: "Objection your honor. Counsel is being argumentative." Or "Objection your honor. Counsel is badgering the witness."

**Rule 911: Asked and Answered:** Asked and answered is just as it states, that a question which had previously been asked and answered is being asked again. This can seriously inhibit the effectiveness of a trial.

- Examples:
1. On direct examination: Counsel A asks B, "Did you 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.
  2. On cross-examination: Counsel 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."

**Rule 912: Compound Question:** A compound question joins two alternatives with "or" or "and" preventing the interrogation of a witness from being as rapid, distinct or effective for finding the truth as is reasonably possible.

- Examples:
1. "Did you determine the point of impact from conversations with witnesses or from physical marks such as debris in the road?"
  2. "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 "Your honor, I will rephrase the question," and then break down the question accordingly. Remember there may be another way to make your point.

**Rule 913: 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.

Form of objection: "Objection your honor. Counsel's question calls for a narrative." Or "Objection your honor. The witness is giving a narrative."

**Rule 914: Non-Responsive Answer.** A witness' answer is objectionable if it fails to respond to the question asked. Sometimes a witness' reply is too vague and doesn't give the details the attorney is asking for, or he/she "forgets" the event in question or gives an answer that has little or nothing to do with the question asked. 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.

*Example*

Attorney: Isn't it true that you hit student B?  
Witness: Student B hit me first. S/he was asking for it, acting like a jerk and humiliating me in front of all my friends.

Attorney: Your Honor, I move to strike the witness' answer as non-responsive and ask that s/he be instructed to answer the question asked. (Another option is to impeach the witness with prior testimony if s/he testified in his/her deposition that s/he hit student B).

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

**Rule 915: Outside the scope of cross, or re-direct examination:** Re-direct examination is limited to issues raised by the opposing attorney on cross-examination. Re-cross is limited to issues raised by the opposing attorney on re-direct examination. If an attorney asks a question that goes beyond the issues raised on cross, they may be objected to as "outside the scope of cross-examination (or re-direct)."

**Rule 916: Attorney is testifying:** An attorney may not make statements during examination of witnesses. Attorneys are to pose questions to witnesses only and allow only witnesses to make statements of fact. If an attorney makes statements during questioning, an opposing attorney should object that "the attorney is testifying."

**Rule 917: Motions to Dismiss**. Motions for directed verdict or dismissal of the case are not permitted.

**Rule 918: Closing Arguments**. Closing arguments must be based on the evidence and testimony presented during the trial.

**List of Participants for Mock Trial Competition**

Team Name \_\_\_\_\_

Side represented: Plaintiff/Prosecution                      Defense

Names of Student Attorneys:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Witnesses:

Name of witness	Name of Student	Gender M/F
_____	_____	_____
_____	_____	_____
_____	_____	_____

**\*\* One copy MUST be submitted to the presiding judge(s) of the competition and one copy given to opposing counsel prior to the start of the trial.\*\***