

Connecticut Middle School Mock Trial Competition Competition Rules

The Connecticut Middle School Mock Trial competition is co-sponsored by the Connecticut Consortium for Law & Citizenship Education, Inc. and the Connecticut Bar Association. The following people may be contacted for questions regarding these rules:

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100. Teams

101. Each middle school may enter up to two teams in the competition. 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.

102. Coaches: Each team shall work with their school's teacher and a practicing attorney (or attorneys) to prepare for competition. Coaches may attend their team's competitions but may not give advice or signals to their team during the competition.

103. Judges: There will be an attorney judge 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.

200. Competition Format

201. 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.

202. 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.

203. Viewing of Enactments: 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. A video or audio tape recording of a team's mock trial proceedings is permitted so long as it is acceptable to all participants involved. The cost of such recording must be borne by the school(s) involved and may not be charged to the Consortium.

204. Competition: Assignments in the competition will be done by the Mock Trial Committee.

206. Semi-Final Competition: All teams winning both sides of the trial will advance to this round.

207. Final Round—Between the top two teams. Will be held in January.

300. Facts in Trial Enactments

301. Statement of Facts: Each team will receive a Statement of Facts (including witness affidavits and stipulations) at the Orientation meeting. These facts may not be disputed or changed at trial.

302. Witnesses and Affidavits: Witnesses may not use notes while testifying at trial. Each witness is bound by his or her 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.

303. 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's 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. **(See Rules 701 and 702 of the Modified Rules of Evidence for further discussion.)**

304. Stipulated materials: For Mock Trial purposes all witness statements contained in the case materials have already been stipulated as admissible evidence. This means that both sides have Agreed that all statements are admissible. **(See Rule 601 of the Modified Rules of Evidence.)**

400. Research and Resources

401. 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.

402. 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.

500. Roles in the Competition

501. 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 in violation of Rule 303.

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.

502. Witnesses: Witnesses tell the court the facts in the case. Each witness must follow Rule 303 to the best of his or her ability. 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 the attorneys or communicate during the trial, but shall stay in the courtroom at all times during the proceedings.

503. 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 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).

504. 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 issue a decision as to which team made the better presentation in light of all the evidence and will discuss the case with the students if time allows. No ties will be allowed. Ballots will be given to teams and coaches after completion of the round with the name of the judge removed.

600. Courtroom Decorum

601. 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.

602. 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.

603. 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!"

605. 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.

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

607. **Be courteous during security checks.**

700. Courtroom Procedures

701. Opening Court: When the Judge enters the courtroom, the Bailiff shall 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."

702. Call of the Calendar: The Judge will announce the name of the first case and ask if the parties are ready:
"The first matter on today's docket is _____. 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."

703. Opening Statements (4 minutes per team): In the opening statement, the Plaintiff/Prosecution, followed by the Defense, introduces the members of their teams and outlines the case as they intend to present it; introducing a team's members; highlighting key testimony; describing the relief requested.
"Your Honor, my name is _____ attorney for Mr./Ms. _____, the (Plaintiff/Defendant). My colleagues are _____, _____, and _____."

704. Direct Examination by the Plaintiff/Prosecution (6 minutes per witness). Plaintiff's attorneys conduct direct examination of their own witnesses to bring out the facts of the case.
"Your Honor, I would like to call Fran Witness to the stand." (Bailiff 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.")

705. Cross-Examination by Defense. (6 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. You may show inconsistencies in the witnesses' statements, bias, or try to secure admissions which help your case.

706. Redirect Examination: Following the Cross-examination, the Plaintiff/Prosecution attorney who did the direct 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.

707. Re-Cross Examination: Again, the defense attorney may ask **three questions** to recross examine the witness on points brought out during redirect examination.

708. Direct Examination by Defense (6 minutes per witness): After the Plaintiff's team has presented all of its witnesses, the Defense may present its witnesses, which are examined following the same format as Rules 705, 706 and 707 above.

709. Closing Arguments (4 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.

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

HINTS ON PREPARATION FOR A MOCK TRIAL TOURNAMENT

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

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

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.

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.

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."

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.

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.

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. Students should be prepared for interruptions by judges who like to question the attorneys, especially during the closing argument.

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.

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

JURY BOX

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)

STEPS IN A MOCK TRIAL

The Opening of the Court

Either the clerk of the Court or the judge will call the Court to order.

When the judge enters, all participants should rise and remain standing until the judge is seated.

The case will be announced ... i.e., "The Court will now hear the case of _____ v. _____."

The judge will then ask the attorneys for each side if they are ready.

Opening Statements

1. Plaintiff (in a civil case)
Prosecution (in a criminal case)

After introducing himself/herself and colleagues to the judge, the plaintiff's attorney in a civil case (or prosecutor in a criminal case) summarizes the evidence which will be presented to prove the case.

2. Defendant (in a civil or criminal case)

After introducing himself/herself and colleagues to the judge, the defendant's attorney in a civil or criminal case, summarizes the evidence for the Court which will be presented to rebut the case the plaintiff/prosecution has made.

Direct Examination by Plaintiff/Prosecution

The plaintiff/prosecution's attorneys conduct direct examination (questioning) of each of its own witnesses. 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.

Cross Examination by the Defense Attorneys

After the attorney for the plaintiff/prosecution has completed questioning a witness, the judge then allows the defense 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.

Redirect Examination by Plaintiff/Prosecution

The Plaintiff/Prosecution's attorneys may conduct redirect examination of its witnesses to clarify any testimony that was cast in doubt or impeached during cross examination.

Recross Examination by the Defense Attorneys

The defense attorneys may recross examine the opposing witness to impeach previous testimony.

Direct Examination by Defense Attorneys

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.

Cross Examination by the Plaintiff/Prosecution Attorneys

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.

Redirect Examination by Defense Attorneys

The defense may conduct redirect examination of its witnesses to clarify any testimony that was cast in doubt or impeached during cross examination.

Recross Examination by the Plaintiff/Prosecution Attorneys

The plaintiff/prosecution may recross examine the opposing witness to impeach previous testimony.

Closing Arguments for the Defense

The attorney for the defense summarizes the case in a light most favorable for their side, with reference to testimony which supports their case, and relevant case and statutory provisions.

Closing Arguments for the Plaintiff/Prosecution

The attorney for the plaintiff/prosecution summarizes the case in a light most favorable for their side, with reference to testimony which supports their case, and relevant case and statutory provisions.

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.

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

I. Scope of These Rules

Rule 101: Scope. These rules govern all proceedings in Mock Trial competition. The only rules of evidence to be considered in the competition are those included in these rules.

Rule 102: Objections. An objection which is not based upon these rules shall not be considered by the court (the judge).

II. Relevancy

Rule 201: 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 type 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 cola picture 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.

Rule 202: Character. 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.

III. Witness Examination

A. Direct Examination (attorney questions witness s/he has called to the stand)

Rule 301: Direct Examination - Form of 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?

Rule 302: 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 303: 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.

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.

3. Having had an opportunity to review your statement, do you now recall what happened after the defendant ran into the alley?

B. Cross Examination (attorney questions witness called by other side following the direct examination)

Rule 304: Cross-Examination - Form or 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 305: 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. The presiding judge may allow an attorney to expand the scope of cross-examination.

Rule 306: 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.

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 307: 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 308: 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.

D. **Recross-Examination** (questions asked by the cross-examining attorney after redirect)

Rule 309: Recross-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. Recross 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 Recross-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 test 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.

IV. Hearsay

A. The Rule

Rule 401: 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.

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.

B. Exceptions to Hearsay Rule

Rule 402: Hearsay Exceptions. The following, which would otherwise fall within the definition of hearsay, are not excluded from evidence by the hearsay rule:

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.

V. Opinion Testimony

Rule 501: Opinion Testimony by Non-Experts. For mock trial purposes, most witnesses are non-experts. If a witness is 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 *rationally* based on what the witness saw or heard and must be helpful in understanding the witness' testimony.

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.

Rule 502: Opinion Testimony by Experts. Only persons who are shown to be experts at trial may give opinions on questions that require special knowledge beyond that of ordinary lay persons. An expert must be qualified by the attorney for the party for whom the expert is testifying. This means that before the expert witness can be asked for an expert opinion, the questioning attorney must bring out the expert's qualifications and experience. This is usually accomplished by asking the expert himself/herself about his/her background, training and experience.

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.

VI. Physical Evidence

Rule 601: 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. Exhibits are generally presented to the court through witness testimony.

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).

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

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.

Rule 701: Invention of Facts - Direct Examination. 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.

Rule 702: 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.

VIII. Additional Rules of Evidence

Rule 801: Non-Responsive Answer. A witness' answer is objectionable if it fails to respond to the question asked.

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).

Rule 802: 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.

Example

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).

IX. Procedural Rules

Rule 901: Procedure or Objections. 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. 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.

The following are examples of common objections. (This is not a complete list. Any objection properly based on these modified rules of evidence is permitted):

- A. *Irrelevant evidence*: "Objection. This testimony is irrelevant."
- B. *Irrelevant evidence that should be excluded*: "Objection. This evidence is unfairly prejudicial (or a waste of time) and should be excluded because
- C. *Leading question*: "Objection. Counsel is leading the witness." (Remember, leading is only objectionable when done on direct or redirect examination.)
- D. *Improper character testimony*: "Objection. This is testimony about character that does not relate to truthfulness or untruthfulness."
- E. *Beyond the scope of direct, cross or redirect*: "Objection. Counsel is asking the witness about matters that were not raised during the direct (or cross or redirect) examination."
- F. *Hearsay*: "Objection. Counsel's question calls for hearsay." If a hearsay response could not be anticipated from the question, or if a hearsay response is given before the attorney has a chance to object, the attorney should say, "I ask that the witness' answer be stricken from the record on the basis of hearsay."
- G. *Improper opinion*: "Objection. Counsel is asking the witness to give an expert opinion, and this witness has not been qualified as an expert." OR, "Objection. Counsel's question calls for an opinion which would not be helpful to understanding the witness testimony (or which' is not rationally based upon what the witness perceived)."
- H. *Invention of facts*: "Your Honor, we object on the basis that opposing counsel's question seeks evidence that is outside the record in this case. Witness X has never given testimony in this case concerning. . ." If the witness gives testimony on direct that is beyond the scope of the materials, the cross-examining attorney should say "move to strike the testimony concerning... as beyond the scope of the case materials."
- I. *Lack of personal knowledge*: "Objection. The witness has no personal knowledge that would allow him to answer this question."

Rule 902: Motions to Dismiss. Motions for directed verdict or dismissal of the case are not permitted.

Rule 903: Closing Arguments. Closing arguments must be based on the evidence and testimony presented during the trial.