



objections yippee!

some of the contents of these notes were taken from *Winning Objections: Mock Trial Guidebook* by Brian Pilchik, Amanda Mundell, and Emily Miller



How to format objections?

- Under rule number, (explain the rule briefly).
- Here (what are they doing).
- Therefore, (thing happening) is not admissible.



How do you approach these rules of evidence?

- If I have not directly put a number, letter, etc. just object with the rule number (some rules you don't even really have to say the rule number... take leading question, just say,

“objection leading question”)

- Take Rule 401, say:
 - Under rule 401, relevant evidence has any tendency *to make a fact of consequence more or less likely*
 - Here, the witness’ testimony is _____ or the question was say question which.....
 - Therefore, this testimony is *not* admissible
- There are a few *callouts* which are to help provide supplemental information & further options beyond these objections
 - ? - WHAT? please explain more
 - 🗨️ - objection defense... you say this the other team is dead
 - 💰 - this also exists relating to this objection... more things to say to sound strong and powerful
 - 😬 - be careful of this
 - 🦊 - examples

Rule 101 - Scope

- hooray! we use this documents for the rules!

Rule 102 - Purpose and Something Not Important

- the purpose of these rules is to make sure that the trial proceeds fairly... blah, blah, blah

Rule 105 - Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes

- limiting instruction - allows you to ask the judge to *limit* the purpose of that testimony or piece of evidence



for example:

- take someone bringing up someone's past allegations to show untruthfulness but not propensity (that they acting in the same way in this particular case) of that particular crime
- someone may object to 404, BUT the judge will overrule if it is only used to show untruthfulness
- as the objecting attorney, however, you can be likee, "heyyyyy your honor, that is chill and all if they want to use this for untruthfulness, but we ask for a limiting instruction to the jury (to just use it for the matter of truthfulness and not propensity purposes)"

Rule 106 - Remainder of or Related Writings or Recorded Statements

- **rule of completeness** - allows a witness to read more of a document or a different part of the document
- "that in fairness out to be considered at the same time"

Rule 201 - Judicial Notice of Adjudicative Facts

b. court can notice a fact as it is not subject to dispute because it is a mathematical or scientific certainty

- ex. $10 \times 10 = 100$

Rule 401 - Judicial Notice of Adjudicative Facts

evidence is relevant if:

- "It has *any tendency to make a fact of consequence more or less likely*"

? what is a fact of consequence?

- something that either...
 - proves or disproves one of the elements of charge
 - affects the credibility of a witness during a trial

Rule 402 - General Admissibility of Relevant Evidence

relevant evidence is admissible 🧑



conditional relevance

- when evidence is not YET relevant but it will be later in the trial
- 🦉 for example:
 - say bob killed debra and is saying he did it in self defense
 - bob's friend mike sent him a letter that told him that debra was going to kill him
 - this piece of evidence is not going to be relevant UNTIL we know that bob actually saw it
- how you would respond to something like this:
 - heyyy your honor, we have a **good faith belief** that bob will testify about receiving this note. we ask that this evidence be **conditionally relevant**, and if opposing counsel has problems later on, they may re-raise their objection.

 **goes to the weight and not the admissibility**

- basically, what you are saying is relevant - the opposing counsel is saying that it is just not *that relevant*
- response:
 - your honor, I believe that opposing counsel is arguing towards the weight and not the admissibility. under rule 401, evidence is relevant if it makes a fact of consequence more or less likely. here, (witness) is saying (blah blah blah) which goes to further prove that (charges or credibility). therefore, this statement is relevant, and if opposing counsel has problems to do with the weight of this piece of evidence, we ask them to handle that on cross examination.

Rule 403 - Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

the court may exclude relevant evidence if its “probative value is substantially outweighed by a danger of one or more of the following”:

- unfair prejudice
 - explain that there are other less prejudicial ways to achieve this same probative value



for example:

- bringing up someone being an alcoholic just for funsies!
- 😬 do not mistake this with character evidence... character evidence (404) is trying to assert a certain trait to show that someone acted in accordance with that trait on a different occasion (propensity)
 - for instance, if the case was about a DUI... showing that they are an alcoholic would be more applicable for character evidence
 - unfair prejudice would be like saying Lynn Roper liked to gamble

- **confusing the issues**

- bringing something up that is only tangentially related



for example:

- saying that Swift killed Pearce... this is not a murder case
- thus, its tendency to confuse the issues (murder rather than negligence) substantially outweighs its probative value

- **misleading the jury**

- shows an incomplete picture of the events

- **undue delay, wasting time, needlessly cumulative**

- mostly all saying the same thing, but frame it around **needlessly cumulative**
- this is when they beat a dead horse - they keep on asking different people about the same thing



for example:

- Jordan died by steriods!?! to like every person



demonstratives & visual aids can also be substantially more misleading than probative

- okay, so this is only when they are doing something insane like showing how blood splattered by stabbing a tomato or like showing how to inject drugs (inject drugs? idk how to drugs im sorry)

Rule 404 - Character Evidence; Crimes or Other Acts

a. **character evidence defined**

1. “evidence of a person’s character or character trait is NOT admissible to prove that on a particular occasion the person acted in accordance with the character or trait”



when should you be objecting improper character evidence?

- when they are talking about someone’s (or COMPANY’S) behavior or another situation not at hand
 - essentially REPUTATION or PAST ACTS
- **need to:**
 - establish a certain character trait
 - ask yourself: can I put this character trait into one word? like “violent,” “empathetic,” etc.
 - if you can’t likely that it is being used for a **non-character purpose**
 - talking about a character buying a hot dog at a baseball game
 - COOL! this doesn’t give them a certain character... like what would you even say??? “hot-doggedness”
 - that they are using it to show “propensity” (that they used this same trait in the future/trial at hand)
- **NOTE...**
 - it applies to GOOD and BAD character traits
 - can apply to character of corporations... not just people

2. EXCEPTIONS for the DEFENDANT in a CRIMINAL CASE

- a. DEFENDANT may offer trait of the DEFENDANT; however, afterwards, the Prosecution can try to rebut such trait
- b. DEFENDANT may offer trait of the alleged victim; however, afterwards Prosecution can...
 - i. say NO! (rebut it)
 - ii. reverse it on the defendant (say they have the same trait)

3. Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608, and 609 (reference those)

b. other crimes, or other acts

1. can't use past crimes to show propensity for the same crime

2. *HOWEVER*, can use to show...

- **motive** = this is why he did it



for example:

- a month before Terry Swift got a significant pay cut due to his track team's falling performance

- **opportunity** = he had the chance to do it... right place, right time



for example:

- defendant said that they were out of state when something happened
- however, there is footage of them hours before breaking into someone's car in the city where the other robbery happened

- **intent** = he did it on purpose



for example:

- someone was talking with Swift and brought up the parent pool
- and he was oogling, drooling, etc.
- not using to show the character trait of being money hungry or anything like that
- but rather to show the intent behind wanting his athletes to do better... namely, the parent pool funds he would get

- **preparation or plan** = he was getting ready to do it



for example:

- in a murder case, defendant stole a gun from a store
- not using to show criminality, but rather that he had the means and preparation behind shooting the victim

- **knowledge** = he knew how to do it



for example:

- say bob convicted for identity theft online
- if you show a case where bob did this in the past... you must be using it to show that he has the **SKILLS/KNOWLEDGE** to hack... not that he has the propensity to do it again



cannot be skills that everyone knows

- ooooo he knows how to light a match!!!! OMG he knows how to open a door!!!! INSANE.
- NO. don't do this.

- **identity** = he's the only one who does it this way



for example:

- often refer to this as an “MO” (modus operandi)
- for instance, someone was convicted with robbing a bank in the past & they always leave a little coin with their initials on the cash register
- if this coin was found in the current robbery - you are not bringing up the past robberies to show that they have the propensity to rob banks... but rather, that they have a certain identity for leaving these coins

- **absence or mistake or lack of accident** = he knew better



for example:

- say, a runner in a prior year had died by EPO overdose and Terry Swift had learned what the symptoms were like beyond his professional training
- basically not showing that he is a negligent coach, but rather, he had the knowledge to address it a second time

Rule 405 - Methods of Proving Character

- okay this one is a doozy - this only applies when you are dealing with ADMISSIBLE CHARACTER EVIDENCE (that is you ARE establishing a certain trait AND ARE using it to show propensity). there are 4 times you can do this
 - **opening the door (608)** - witness' credibility has been attacked, you have the ability to establish good character against that previous point
 - **essential element of the crime (405)**
 - another exception is when the trait is so intertwined with the elements of the charge that it NEEDS to be mentioned
 - this only applies to very particular cases use this exception sparingly

- defamation, libel, slander cases - did these statements accurately describe defendant
- **parental fitness or custody** - past situations that go to show whether this parent was good or bad
- **negligent hiring or entrustment** - to prove whether the person being hired was trustworthy or not
- entrapment
- **goes to the truthfulness of the witness (801d1)s**
- **sexual offense cases**
- HOWEVER, even if you have a character trait that fits one of these descriptions - you can only prove them in certain ways...
 - a. **reputation or opinion or specific instances**
 - 🐱 reputation - this person had the reputation of being a violent parent - everyone always saw them yelling at the kid
 - 🐱 opinion - yeah, I always saw this parent yelling at their kid
 - 🐱 specific instances
 - note 405b, deals specifically with character traits that are pertinent to the elements of the crime
 - THUS, if it does not meet this requirement by 405b (say, it is admissible bc it goes to the truthfulness), per 405a, you can only address it on cross examination
 - b. **specific instances of conduct**
 - NOW, needs to meet the *essential element of crime* exception
 - THEN, you can ask about specific instances on direct examination !!! YIPPEE HOW EXCITING!!
 - 🐱 - one day, I saw parent hit the kid and it really worried me

Rule 406 - Habit, Routine Practice

- there was some sort of routine that happened every day
- even non-eye witnesses can testify about a common routine that they have been a part of but maybe were not there that day



for example:

- cleaning a restaurant a particular way
- even if the owner wasn't there that night - they can still testify to the routine

Rule 407 - Subsequent Remedial Measures

- measures after the fact may NOT be used to prove:
 - negligence
 - culpable conduct (boo they suck, you are blaming them for whatever reason)
 - a defect in the product of design
 - a need for a warning (like they should have done this in the past)



for example:

- say after Jordan died the school implemented mandatory drug testing (this didn't happen btw)
- evidence would not be admissible as it tries to point that the school took action because they were liable for his death

Rule 408 - Compromise Offers and Negotiations

Rule 409 - Offers to Pay Medical And Similar Expenses

- offers to pay medical expenses - not admissible to prove **liability**



for example:

- say Swift paid for medical bills... not admissible to prove that he was liable for Jordan taking steroids

Rule 410 - Pleas, Plea Discussions, and Related Statements

Rule 411 - Liability Insurance

Rule 501 - General Rule

Rule 601 - General Rule of Competency

- every person is competent to be a witness wahoo!

Rule 602 - Need for Personal Knowledge

- lack of personal knowledge/lack of foundation
- **when should you object to this:**
 - when the witness is saying something that they wouldn't actually know (is it in their witness affidavit?)
 - they are talking about something they did not perceive (talking about a place at a certain time they were not there for)
 - they had impaired perceptions (like they couldn't see well)



weight and not admissibility

- in the case-scenario that a witness had impaired vision or something and they object to lack of personal knowledge... just be like heyyy opposing counsel is arguing to the credibility of this witness' testimony, and she is free to bring it back up during cross exam.



note: you don't have to really do the whole: here, under, therefore... just say lack of foundation then elaborate why

Rule 607- Who May Impeach A Witness

- you can impeach your own witness
- please for the love of god do NOT do this

Rule 608 - A Witness's Character For Truthfulness of Untruthfulness

- “bolstering”
 - you cannot “bolster” a witnesses good character until they have been attacked
 - after a character's truthfulness has been put in question (trying to point out that they are not truthful) - opposing party can try to establish their truthfulness
 - like “bias is always relevant”... but afterwards, you can try to reestablish credibility



for example:

- this may be a good space to object for a kelly simon direct examination
- you could respond and be like - there has been no other witness testimony to suggest yet that we are attacking her character
- response to THAT - well, your honor, the defense has taken up the second affirmative defense (if they have) or if not just try to say you are not establishing a character trait

Rule 609 - Impeachment by Evidence of a Criminal Conviction

- a. you can only use evidence of a criminal conviction to undermine a witness' reliability if:
 1. for a crime that was punishable by death or imprisonment for more than 1 year
 - A. must follow 403 (cannot be more prejudicial than probative)
 - B. must regard a CRIMINAL case in which the witness with the crime IS NOT the defendant

2. OR if the crime shows dishonesty in some way... it is also admissible regardless of the sentencing for that crime
- b. for convictions that have been over 10 yrs, you must prove that this information is SUBSTANTIALLY more probative than PREJUDICIAL (very hard to prove)



note: 403 specifies this as well... extra specification here... thus this is a very high burden to reach

- c. cannot be used if...
1. they have some proof of rehabilitation (pardon, annulment, certification of rehab, etc.) of the crime they committed & have not committed any crimes of one year sentencing or greater
 2. been later found innocent of that crime
- d. for cases regarding juveniles... character evidence is admissible if...
1. it is a criminal case
 2. not the defendant (person being charged)
 3. attack's the adults credibility
 4. admitting this evidence will fairly determine guilt or innocence

Rule 610 - Religious Beliefs or Opinions

- cannot use witness' religious beliefs to bolster their credibility

Rule 611 - Mode and Order of Interrogation and Presentation

a. **control by court**

- badgering the witness - just protecting the witness from aggressive attorney humans



rather call for a "point of order"

- point of order to let the witness be heard

b. scope of cross

- not limited to the direct examination

c. leading questions

- cannot use leading questions on DIRECT EXAMINATION
- unless they are a hostile witness

Rule 612 - Refresh a Witness' Memory

- if the witnesses does not remember something, you have permission to approach them with their affidavit

Rule 613 - Witness's Prior Statement

b. IMPEACHMENT

- if a witness contradicts their affidavit, you can approach them with their witness



note you can object to a team that do NOT do impeachment correctly (PROCEDURALLY... not with the content... that would be 801 d)

Rule 701 - Opinion Testimony for Lay Witness

- if a witness is not testifying as an expert they can only
 - a. rationally based on witness's perception
 - OBJECTION - SPECULATION
 - cannot testify to what another witness was thinking, feeling, etc.
 - "cannot peer into someone else's mind"
 - c. not based in expertise

Rule 702 - Testimony by Experts

- if you want to qualify someone as an expert - you need to
 - a. their education, specialties



NOTE - Lynn Roper does not have specialized knowledge to attest to what the school should and shouldn't have done

b. the materials they relied on to come to their conclusion



NOTE - this was recently changed!!!! MAKE SURE THAT THEY ESTABLISH THESE TWO IF THEY WANT TO TREAT THEM AS AN EXPERT

- you may catch them on the MATERIALS that they relied on to come to their conclusion

Rule 703 - Bases of Expert's Opinion Testimony

- experts don't have to testify to EVERY single fact if experts in that field typically use the same means to reach that conclusion
- however those facts CAN come in if they are "substantially more PROBATIVE than PREJUDICIAL"



note: often called reverse 403

Rule 704 - Opinion on Ultimate Issue

a. not necessarily objectionable if it embraces an ultimate issue



however, you can argue against this

- when a witness is telling the jury what conclusion they should come to, that is NOT admissible
 - not necessarily in the rules - but you should argue that this is something the "trier of fact should come to"

b. in criminal case, expert witness must not state an opinion about whether the defendant did or did not have a mental state of condition that constitutes an element of the crime

Rule 705 - Disclosing the Facts or Data Underlying An Expert's Opinion

- can use if you want witness to talk about their opinion before you necessarily discuss all of their qualifications
- just say that you will establish it later



don't recommend doing this yippee!

- BUT, you could use it as a response to 702 IF you haven't fully laid out all of qualifications as a cop out
 1. education, expertise, etc.
 2. materials they used to reach conclusion

Rule 801 - Definitions

a. statement : oral, written, or non-verbal assertion

- can be a document
- could be someone pointing at something (like if witness asked where something is, and the person pointed)

b. declarant: the person who made that statement

- note - they must be a person

c. hearsay:

“HEARSAY IS AN OUT OF COURT STATEMENT USED TO PROVE THE TRUTH OF THE MATTER ASSERTED”

- **out of court** - even if it is the person who is testifying, if it is not in court, it could be hearsay
- **to prove the truth of the matter asserted** - using this statement to prove the truth of the statement

- *effect on the listener*
- *knowledge*
- *subsequent actions*



for example: it's raining outside

d. statements are not hearsay:

1. *declarant-witness prior statement:*

- you can use a witness affidavit for impeachment if there is a **CONTRADICTION** in their testimony



if they try to impeach, but there is not a contradiction

- you can object hearsay and explain how there is not a direct contradiction or inconsistency

2. *opposing party's statement:*

- a. was made by the party in an individual or representative capacity
 - this allows Swift's statements
- d. was made by the party's agent or employee
 - this allows Hagar's statements

Rule 802 - Hearsay Rule

- hearsay is NOT admissible

Rule 803 - Exceptions to Rules Against Hearsay

1. **present sense impression**

- describing an action while you are doing it



for example: it's raining outside and saying, "OMG it's raining outside"

2. **exited utterance**

- statement made under intense emotion
- needs to be actively feeling this emotion

3. **then existing mental, emotional, or physical condition**

- elicits the emotion they are feeling in that moment



for example:

- "hey how are you feeling?"
- "i'm sad" "my leg feels like it is about to fall off"

- "motive, intent, or plan"



for example:

- "what are you doing this weekend?"
- "im going to go kill bob"

4. **statement made for medical diagnosis or treatment**

- a PATIENT giving a doctor their medical history



do not do this for the other way around

5. **recorded recollection**

- something written by the witness that is testifying...

- only admissible - if the witness now does not have the same knowledge about the situation... uses this to recollect their memory
- NOTE - only can admit this into evidence on CROSS examination
 - you can however read this into the record on direct, just cannot submit into evidence



for example:

- admitting a diary entry

6. **records of regularly conducted activity**

- needs to meet all these elements
 - a. made near or by someone with knowledge
 - b. the practice happens regularly at this location (standard practice of the business)
 - c. the document is regularly made at this location
 - d. the witness testifying is either custodian or qualified witness
 - e. there's no indication for a lack of trustworthiness



you can catch them if they do not establish all this foundation

7. **absence of a regularly conducted activity**

8. **public records**

- it must be publicly available & by a public office

10. **absence of a public record**

16. **statement in ancient documents**

- any statement in a document that was prepared before Jan 1, 1989 and its authenticity is established is admissible

18. **statements in learned treatises, periodicals, or pamphlets**

- a. can only be read on the record by *an expert who relied on these documents*
- b. is it reliable authority
 - cannot be admitted, but you can read some of its statements onto the record

21. **reputation concerning character**

- statements regarding reputation to prove character

22. **judgement of a previous conviction**

Rule 804 - Hearsay Exceptions; Declarant Unavailable



make sure that you meet both prong a & b

a. criteria for being unavailable

1. they have some sort of privilege
2. subpoena but did not come
3. testifies to not remembering
4. cannot be at trial bc death or then-existing physical/mental illness
5. if we tried to get them to come but they can't come

b. the exceptions

1. formal testimony

- a. testimony from a previous trial, deposition, or affidavit
- b. needs to be in the course of the current proceeding

2. statement under belief of imminent death

- they are speaking when think they are dying (whether they did or not)

3. statement against interests

- a. making a statement against their own interests
- b. for criminal trial - needs to be coming from trustworthy place

4. statement of personal or family history

- just talking about something relating to family matters
6. statement offered against a party that wrongfully caused the declarant's unavailability
- like if someone threatened someone not to go to court, statements against the person who threatened unavailable witness by that unavailable witness are admissible

Rule 805 - Hearsay Within Hearsay

- must lay an exception for EACH layer of hearsay that is brought up

Rule 806 - Attacking and Supporting the Declarant's Credibility

- declarant's credibility can be attacked regardless if they are testifying or not

Rule 807 - Residual Exception

- hearsay is used to keep out statements that have a character for untruthfulness
 1. needs to show that it is trustworthy
 2. there is no other way to accomplish the same point