

I. Procedure for Witness Examination

Court controls the questioning of witnesses so as to make the presentation evidence effective, to avoid wasting time, and to protect witnesses from harassment or undue embarrassment. The questioning of witnesses during trial must take place as follows:

I-A. Direct Examination

Attorneys call and question their own witnesses.

I-A(1). Form of Questions. As a general rule, witnesses may not be asked leading questions by the direct examiner (the attorney who calls them testify). A leading question is one that suggests the answer you want, and often requires a "yes" or "no." Direct questions generally should be phrased to evoke a set of facts from the witness.

I-A(2). Personal Knowledge [See Rule 11-D]. Direct examination cover all facts relevant to the case of which the witness has personal knowledge.

I-B. Cross Examination Cross examination follows the opposing attorney's direct examination of his/her witness. Attorneys conduct cross examination to explore the weaknesses in the opponent's case, test the witnesses credibility, and establish some of the facts of their team's case when possible.

I-B(1). Form of Questions. An attorney should ask leading questions when cross examining the opponents witnesses. A leading question allows the attorney to control the witnesses' answers to some degree. Questions tending to evoke a narrative answer that usually begin with "how," "why," or "explain," should be avoided.

I-B(3). Impeachment. On cross examination, the attorney may want to attack the credibility of a witness to show the Court that the witness should not be believed. A witness's credibility may be impeached by showing evidence provided in the case materials of the witness's character and conduct, past convictions, and prior inconsistent statements.

I-B(3c). Prior Inconsistent Statement:

"Did you state on direct that the light was yellow?"

"Is this your affidavit?"

"Did you swear to the affidavit?"

"Does it say in paragraph 2, line 3 of the affidavit, given under oath, that the light was red."

If the witness does not admit to a prior inconsistent statement, the witness may be impeached. When the prior statement was signed and sworn by the witness, the student attorney should introduce the statement and ask the witness:

- 1) "Is this your statement?"
- 2) "Did you make it under oath, at a time much closer to the events in controversy?., And
- 3) "Did it contain all you could then remember?"

I-B(4). Recross Examination. Recross is allowed if there is time. The team attorney does not need to specifically reserve time for Recross examination follows redirect examination, but is strictly limited to the issues raised on redirect and should avoid repetition.

II. Evidentiary Objections

Students are restricted to the use of specific evidentiary objections during the mock trial that are outlined below. These simplified rules were developed by the Constitutional Rights Foundation and modified by the North Carolina academy of Trial Lawyers and Professor Vanderhoof.

II-E Character Evidence

Witnesses generally cannot testify about a person's character unless character an issue. Character evidence is generally inadmissible because jurors may decide the case based on the kind of person a party is rather than the facts the case. (The honesty of a witness, however, is one aspect of character always at issue.)

"Objection, your honor. Character is not an issue here," Or

"Objection, your honor. The question calls for inadmissible character evidence."

II-F. Opinion/Speculation

Witnesses may not normally give their opinions on the stand. Judges and juries must draw their own conclusions from the

evidence.

Example: 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."

"Objection, your honor. The question calls for inadmissible opinion testimony (or inadmissible speculation) on the part of the witness. I move that the testimony be stricken from the record."

II-G. Hearsay

If a witness offers an out-of-court statement to prove the truth of the matter asserted in that statement, the statement is hearsay. Because they are very unreliable, these statements ordinarily may not be used to prove the truth the matter asserted. For reasons of necessity, a set of exceptions allows certain types of hearsay to be introduced. Hearsay is a very tricky subject.

Testimony not offered to prove the truth of the matter asserted is, by definition, not hearsay. For example, testimony to show that a statement as 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.

III. Inappropriately Phrased Questions

During the mock trial, students are restricted to the following objections when counsel is inappropriately questioning a witness.

I-A. Leading Questions

As a general rule, the direct examiner is prohibited from asking leading questions: he/she cannot ask questions that suggest the desired answer. Leading questions are permitted on cross examination.

Example.- Counsel for the plaintiff asks the witness. "During the conversation, didn't the defendant declare that he would not deliver the merchandise?"

"Objection, your honor. Counsel is leading the witness."

Counsel could rephrase the question, "Will you state what, if anything, the defendant said during this conversation, relating to the delivery of the merchandise?"

III-B. Argumentative Questions

An argumentative question challenges the witness about an inference from facts in the case.

Example: Assume that the witness testifies on direct examination that the defendant's car was going 80 m.p.h. 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 m.p.h.?"

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 "How can you expect the judge to believe that?" Are similarly argumentative and objectionable. The attorney may argue the during the closing argument, but the attorney must ordinarily restrict questions to those calculated to elicit facts.

"Objection, your honor. Counsel is being argumentative." Or,
"Objection, your honor. Counsel is badgering the witness."

III-C. 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.

Example 1: On Direct Examination - Counsel A asks B, "Did X stop for the stop sign?" B answers, "No, he did not." A then asks, "Let me be sure we understand. Did X stop for the stop sign?"

"Objection, your honor. This question has been asked and answered."

Counsel for X correctly objects and should be sustained, BUT...

Example 2. On Cross Examination - Counsel for 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.? Counsel is not asking the same question. It is a sound policy to permit cross-examining attorneys to conduct a searching probe of the direct examination testimony.

III-D. 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.

Example 1: (Using "Or") "Did you determine the point of impact (of a collision) from conversations with witnesses, or from physical marks, such as debris in the road?"

Example 2: (Using "And") "Did you determine the point of impact from conversations with witnesses and from physical marks, such as debris in the road?"

"Objection, your honor, counsel is asking a compound question."

The best response if the objection is sustained on these grounds would be, honor, I will rephrase the question," and then break down the question. Remember, there may be another way to make your point.

III-E. 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 truth 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.

"Objection, your honor. Counsel's question calls for a narrative response."

III-F. Nonresponsive Witness

Sometimes a witness's reply is too vague and does not give the details the attorney is asking for, or he/she "forgets" the event in question. A Witness may use this tactic to prevent some particular evidence from being admitted. The questioning attorney may use this objection to "force" the Witness to answer.

"Objection, your honor. The witness is being nonresponsive."

III-G. Outside the Scope of Cross Examination

Redirect examination is limited to issues raised by the opposing attorney on cross examination. If the questions go beyond the issues raised on cross, they may be objected to as "outside the scope of cross examination."

"Objection, your honor. Counsel is asking the witness about matters that did not come up in cross examination."

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