

SHORT LIST OF COMMON OBJECTIONS¹

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OBJECTIONS TO THE FORM OF THE QUESTION	SUBSTANTIVE OBJECTIONS
LEADING QUESTION (611): question suggests its own answer COMPOUND QUESTION: contains 2 separate inquiries VAGUE QUESTION: incomprehensible, incomplete, or answer will be ambiguous ARGUMENTATIVE QUESTION: asks the witness to accept the examiner's summary, inference, or conclusion rather than a fact NARRATIVES: question calls for a narrative answer - answer does not allow opposing counsel to frame objections ASKED AND ANSWERED: repeats the same question (611(a) cumulative) ASSUMING FACTS NOT IN EVIDENCE: contains as a predicate a statement of fact not proven NON-RESPONSIVE ANSWER: answer does not respond to the question	HEARSAY (801(c)): statement, other than made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted Exceptions: <i>Present sense impression</i> (803(1)) <i>Excited utterance</i> (802(2)) <i>State of mind</i> (803(3)) <i>Past recollection recorded</i> (803(5)) <i>Business records</i> (803(6)) <i>Reputation as to Character</i> (803(21), 404) <i>Prior testimony</i> (804(b)(1)) <i>Dying Declaration</i> (804(b)(2)) <i>Statement against interest</i> (804(b)(3)) RELEVANCE (401 & 402): does not make any fact of consequence more or less probable UNFAIR PREJUDICE (403): Probative value is outweighed by the danger of unfair prejudice IMPROPER CHARACTER EVIDENCE (404(a)(1)) generally, (609) conviction, (608(b)) untruthfulness, (608(a)) reputation: character evidence can't be used to prove a person acted in conformity with his or her character LACK OF PERSONAL KNOWLEDGE (602): Witnesses (other than experts) must testify from personal knowledge - sensory perception IMPROPER LAY OPINION (701): lay witnesses can't testify as to opinions, conclusions or inferences SPECULATION: can't be asked to speculate or guess AUTHENTICITY (901): exhibits must be authenticated before they may be admitted LACK OF FOUNDATION: lack of the predicate foundation for admissibility BEST EVIDENCE (1001-1003): copies, or secondary evidence of writings, can not be admitted into evidence unless the absence of the original can be explained (duplicates that accurately reproduce the original are acceptable) PRIVILEGE: (501) excludes otherwise admissible evidence because of special relationship (attorney/client, doctor/patient, marital, clergy, etc.) LIABILITY INSURANCE (411); SUBSEQUENT REMEDIAL MEASURES(407) & SETTLEMENT OFFERS (408): All are not admissible as proof of negligence or liability
MAKING AN OBJECTION STAND STATE THE GROUNDS (No speaking objections) WAIT FOR A RESPONSE FROM THE JUDGE	
RESPONDING TO AN OBJECTION REQUESTING ARGUMENT Politely let the judge know argument is necessary LIMITED ADMISSIBILITY What is the precise purpose for admission CONDITIONAL OFFER Production of additional evidence at a later point NO RESPONSE Rephrase the question	

¹Excerpted from Lubet, **Modern Trial Advocacy** (4th Ed. 2009 NITA). See, in particular, Chapter 9.

EXCERPTS FROM THE FEDERAL RULES OF EVIDENCE

RULE 401 — DEFINITION OF RELEVANT EVIDENCE

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

RULE 403 — EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

RULE 602 — LACK OF PERSONAL KNOWLEDGE

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness’ own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

RULE 701 — OPINION TESTIMONY BY LAY WITNESSES

If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge with the scope of Rule 702.

RULE 801 — HEARSAY DEFINED

(c) Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay (1) Prior statement by witness; (2) Admission by party-opponent.

RULE 803 — HEARSAY EXCEPTIONS

(1) Present sense impression; (2) Excited utterance; (3) Then existing mental, emotional or physical condition; (4) Statements for medical diagnosis or treatment; (5) Recorded recollection; (6) Records of regularly conducted activity; (8) Public records and reports; (9) Records of vital statistics; (11) Records of religious organizations; (14) Records or documents affecting an interest in property; (15) Statements in documents affecting an interest in property; (16) Statements in ancient documents; (17) Market reports; (18) Learned treatises; (19) Reputation concerning personal or family history; (20) Reputation concerning boundaries or general history; (21) Reputation as to character; (22) Judgment of previous conviction; (23) Judgment as to personal, family or general history.

RULE 804 — HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

(b) Hearsay exceptions: (1) Former testimony; (2) Statement under belief of impending death; (3) Statement against interest; (4) Statement of personal or family history.

RULE 1001 - DEFINITIONS OF WRITINGS RECORDINGS AND PHOTOGRAPHS

(1) Writings and recordings consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) Photographs include still photographs, X-ray films, video tapes, and motion pictures.

(3) An “original” of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by the person executing or issuing it. An “original” of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately is an “original”.

(4) A duplicate is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

RULE 1002 — REQUIREMENT OF ORIGINAL

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by Act of Congress.

RULE 1003 — ADMISSIBILITY OF DUPLICATES

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.