

**Mock Trial Rules of Evidence  
Study Guide  
(Updated September 4, 2018)**

The following chart is provided only as a study guide for students.

It is **NOT** meant to replace the Mock Trial Rules of Evidence in Part VI of the Mock Trial Workbook.

The chart will **NOT** be distributed to mock trial judges and should **NOT** be presented to judges at trial.

OBJECTION	RULE	EXPLANATION
Irrelevant evidence	401 - 402	Testimony is irrelevant to the facts of the case.
Evidence is unfairly prejudicial, confusing or waste of time	403	Evidence may be excluded at the discretion of the presiding judge if it is unfairly prejudicial, may confuse the issue or is a waste of time.
Compound question	403	Counsel is asking the witness a compound question.
Mischaracterization of testimony	403	Counsel is mischaracterizing the witness' testimony. (More common on cross.)
Assuming facts not in evidence	403	Counsel's question assumes facts not in evidence (also relevant to closing argument – see rule 611e)
Unfair extrapolation	403	Witness' testimony is unfair extrapolation in that it goes beyond the witness' statement and any reasonable inference that can be drawn therefrom.
Improper character testimony	404(a)	Evidence of a person's character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character trait. ("Question is inadmissible as it goes to the witness's character.")
Improper use of crimes, wrongs	404(b)	Evidence of a crime or wrong is inadmissible to prove character and that on a particular occasion the person acted in accord with the character trait.
Crimes, wrongs admissible	404(b)	Evidence of crimes or wrongs can be used to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.
Proving character	405	Methods of proving character; by reputation or opinion when evidence of character or trait is admissible; by specific instances of conduct when trait is essential element of claim or defense.
Character exception	406	Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice.
Lack of personal knowledge	602	The witness has no personal knowledge that would enable him/her to answer this question.
Speculation	602	Question calls for speculation on the part of this witness.
Argumentative question	611a	Counsel's question is argumentative. (Common on cross.)
Narrative answer	611b	Counsel's question calls for a narrative answer.
Leading question	611b	Counsel is leading the witness. (Counsel is suggesting the answer in the question; usually calls for a "yes" or "no" answer.)
Non-responsive answer	611b	The answer is not responsive.
Beyond the scope	611d	Beyond the scope of cross-exam or re-direct.
Opinion	701	Counsel is asking witness to give an opinion. <b>No witness may give an opinion on how the case should be decided ("ultimate issue question" – 704).</b>
<u>Opinion Exception</u> -Lay Witness	701	Lay witness may offer opinion if (1) rationally based upon the perception of the witness <b>AND</b> (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.
<u>Opinion Exception</u> -Lay Witness	701	Lay witness may offer opinion based on the common experience of laypersons in the community and of which the witness has firsthand knowledge.

<u>Opinion Exception</u> -Expert Witness	702	Expert may offer an opinion only if (a) the expert's specialized knowledge will help the trier of fact to understand the evidence (b) testimony is based on sufficient facts/data (c) testimony is the product of reliable principles and methods AND (d) expert has reliably applied the principles and methods to the facts of the case; <b>may offer testimony in the form of an opinion only if the subject matter is within area of expertise.</b>
Hearsay  *Witness on direct exam is not permitted to quote from the witness statement of another witness.	801, 802	Counsel's question calls for hearsay OR witness' answer is based on hearsay. MUST also ask that the jury be instructed to disregard the statement.  <b>Hearsay is evidence of a statement (oral or written assertion or nonverbal conduct intended as an assertion) by a person <i>who is NOT a witness in the case offered to prove the truth of the statement.</i></b>
<u>Not Hearsay</u> – Admission Against Interest	801(d)1	Statement is admissible if <i>said by a party</i> <b>and</b> contains evidence which <i>goes against that party's interest</i> (admits something).
<u>Not Hearsay</u> – Opposing Party's Statement	801(d)2	Statement is admissible if it is offered against an opposing party and was made by the party.
<u>Not Hearsay</u> – Relied Upon By Expert	801(d)(3), 703	Statement is admissible if relied upon by an expert and forms the basis for the expert's opinion.
<u>Hearsay Exception</u> - Present Sense Impression	803(1)	Hearsay is admissible if it is a statement describing an event made while or immediately after the declarant perceived it.
<u>Hearsay Exception</u> - Excited Utterance	803(2)	Hearsay is admissible if it is a statement related to a startling event, made while the declarant was under the stress of excitement that it caused.
<u>Hearsay Exception</u> - State of Mind	803(3)	Hearsay is admissible if it consists of evidence of what someone said which describes that person's state of mind at the time it was said, such as motive, intent or plan (i.e., I was angry, I was shocked)(Circumstantial evidence of subsequent acts)(not admissible to prove the truth of the statement.)
<u>Hearsay Exception</u> - Business Records	803(6)	Record kept in the ordinary course of business.
Hearsay Within Hearsay	805	Hearsay within hearsay is admissible so long as each part of the statement conforms to an exception to the rule.
Lack of proper foundation	1203	Counsel has not laid a proper foundation for the question - often with experts (or for admission of an exhibit).
Improper conclusion of law	1203	Counsel is calling for the witness to make a conclusion of law.
Statement of Facts	5:1-2	Statement of Facts and stipulations may not be disputed.