



*TEACHER
ATTACHMENTS*

TEACHER ATTACHMENT #1

WHO ARE THE CHARACTERS IN A MOCK TRIAL?

Directions: Match each of the characters that participate in a trial with the description of what they do.

- | | |
|-----------------------------------|---|
| 1. Bailiff | a. Responsible for timekeeping |
| 2. Plaintiff/Prosecution Attorney | b. Records everything said and done at the trial |
| 3. Plaintiff/Prosecution | c. Gives his or her account of what he or she believes to be the facts in the case. Is asked questions by attorneys from both sides. |
| 4. Presiding Judge | d. The person in charge of the court. Rules on the admissibility of evidence, instructs the jury on the principles of law which apply to the case or, in a bench trial, serves as the finder of fact. |
| 5. Clerk | e. Gives his or her opening and closing statements last, cross examines the plaintiff/prosecution witnesses and objects to improper questions asked by the opposing attorney. Tries to show that there is not enough evidence to justify judgment against the defendant. |
| 6. Court Reporter | f. Announces that the court is in session and which judge is presiding, calls and swears in witnesses, and marks evidence for identification. |
| 7. Defendant | g. Initiates legal action against the defendant |
| 8. Defendant Attorney | h. Person accused of some wrong-doing. May be found guilty of a crime or liable for money damages (depending on the type of case) if he or she loses. |
| 9. Witness | i. Gives his or her opening and closing statement first, cross-examines the defense witnesses, and objects to improper questions asked by the opposing attorney. Tries to show enough evidence to persuade the judge or jury that judgment should be in favor of the plaintiff/prosecution. |

CHARACTERS IN THE MOCK TRIAL

Answers

1 = f	4 = d	7 = h
2 = l	5 = a	8 = e
3 = g	6 = b	9 = c

TEACHER ATTACHMENT #2

THE STEPS IN A TRIAL QUICK QUIZ

Directions: Re-order the following sentences in the order that the events would occur in a real trial. (Fill in the blanks that follow the sentences below.)

Facts of the Case: Mark is on trial for murder.
His attorney is Ms. Heath.
The prosecuting attorney is Mr. Stevens.
Judge Kelly is presiding.

The Trial:

- a. Mr. Stevens delivers his closing argument.
- b. Ms. Heath cross-examines the prosecution's witness.
- c. Mr. Stevens examines the prosecution's witness.
- d. Ms. Heath gives her opening statement.
- e. Mr. Stevens cross-examines the defense witness.
- f. Mr. Stevens gives the prosecution's opening statement.
- g. Ms. Heath delivers her closing argument.
- h. Mr. Stevens briefly rebuts Ms. Heath's closing argument.
- i. Ms. Heath conducts her direct examination of the defense witness.

- | | | |
|----------|----------|----------|
| 1. _____ | 4. _____ | 7. _____ |
| 2. _____ | 5. _____ | 8. _____ |
| 3. _____ | 6. _____ | 9. _____ |

STEPS IN A MOCK TRIAL

Answers

1 = f	4 = b	7 = a
2 = d	5 = i	8 = g
3 = c	6 = e	9 = h

**TEACHER ATTACHMENT #3A
RULES OF EVIDENCE HYPOTHETICALS**

Indicate the correct answer. If an objection should be raised, fill in the letter of the appropriate objection.

1. Doug told me he had killed his brother and Doug is on trial for the murder. Should I be able to testify to what he told me? Yes ____ No ____ []

2. On direct examination, the attorney wants to show that the witness, David, was at school on November 30. Can he or she ask, "you were at school on November 30, isn't that correct?"
Yes ____ No ____ []

3. Same situation as in #2. Can the attorney ask David, "Where were you on November 30?"
Yes ____ No ____ []

4. Harry is being sued in a civil trial for breach of contract. Can the plaintiff introduce evidence that Harry has been unfaithful to his wife? Yes ____ No ____ []

5. Can Harry's unfaithfulness be introduced in a civil trial for divorce? Yes ____ No ____ []

6. John made a sworn statement two days after the automobile accident he witnessed. When the case finally came to trial and he is called as a witness, John cannot remember what happened.
Can the attorney show John the statement that will help him remember? Yes ____ No ____ []
Must the attorney introduce the statement into evidence? Yes ____ No ____ []

7. Same situation as #6, only John does remember and testifies on direct examination. However, his testimony contradicts his earlier sworn statement. On cross-examination, can the other attorney bring up the inconsistencies? Yes ____ No ____ []

8. Michelle is a doctor. The attorney has Michelle testify to this when Michelle is on the stand. Can Michelle testify that, in her expert opinion, the victim was suffering from a spiral fracture of the right tibia and fibula? Yes ____ No ____ []

9. Can Debi, a plumber who worked with the victim, testify that the victim was suffering from a spiral fracture of the right tibia and fibula? Yes ____ No ____ []

10. Sally has never seen Orren with the baby. Can Sally testify that Orren is a terrible father?
Yes ____ No ____ []

TEACHER ATTACHMENT #3B
RULES OF EVIDENCE HYPOTHETICALS
Answer Sheet

1. Yes Although this is hearsay, (an out of court statement being used to prove the contents of the statement, it is an admission by the defendant that goes against him or her – one of the exceptions to the hearsay rule.
2. No [B] Leading questions are not allowed on direct examination, so it will have to be rephrased (e.g., “Where were you on November 30?”)
3. Yes See #2 above.
4. No [A]
5. Perhaps The evidence is admissible only if Harry’s wife has sued for divorce on the grounds of adultery, or in some other way the issue has become relevant to the divorce action.
6. Yes/No The attorney can show John the statement he made after the accident. He or she can use the statement to refresh John’s recollection by showing it to him. The statement need not be admitted into evidence.
7. Yes This is called impeaching the witness by pointing out a prior inconsistent statement.
8. Yes Michelle was properly qualified as an expert in this area.
9. No [E] Debi is not an expert in this area.
10. No [F] Sally has no personal knowledge of this.

TEACHER ATTACHMENT #4A OBJECTION HYPOTHETICALS

In each of the situations below, the defendant is on trial for murder and is claiming self-defense. Would you object to any of the following testimony or evidence? If so, how would you phrase your objection?

1. On direct examination the defense attorney asks. *"You could hear the voices from Mr. Eldon's apartment very clearly, couldn't you, Ms. Spencer?"*
2. Mr. Wirtz, an English teacher who has known Joe and Steve since they were in high school, testifies that Joe did not do well in high school because he had deep psychological problems.
3. Miss Cook, who lives in the apartment below Ray (the defendant), testifies that she heard Matt (the victim) yell, *"Put down that gun, Ray! Enough's enough!"*
4. Police Officer Jones testifies that when he entered Ray's apartment, he saw Matt's body on the floor, bleeding all over.
5. The same police officer says that the defendant told him, *"I killed him; the filthy swine had it coming to him."*
6. The police officer says that he talked to the defendant in the police car and that he was quite drunk in a matter of minutes.
7. Roger McClanahan, a bartender at the Wanderer Saloon, says that drinking seven "boilermakers" would make anyone drunk.
8. The defendant, on direct examination, stated that the police officer did not say a word to him from the time of his arrest until they reached the police station. On cross-examination, the prosecuting attorney hands the defendant a sworn statement that he made before the trial and says, *"The story you told in this pre-trial statement isn't the same, is it Mr. Eldon?"*
9. Terry Robinson, a waiter at the Wanderer Saloon, says that Pam Sullivan, a waitress at the same saloon, mentioned to him how sweet the defendant was to be *"so protective"* of her when his friend, Matt, was *"hitting on her"* and *"acting like an animal."*
10. Joanne testifies that she has known the defendant since high school and that he is an extremely nice and considerate guy.

TEACHER ATTACHMENT #4B
ANSWERS: OBJECTION HYPOTHETICALS

1. *"Objection, Your Honor. That's a leading question."*
2. *"Objection, Your Honor. Counsel is asking the witness to give an opinion, but the witness is not an expert."*
3. This is hearsay, but it probably fits within the "state of mind" exception and is therefore admissible. (It can be argued that the victim's state of mind is important where the defendant is claiming self-defense.)
4. The officer can't say he saw Matt's body unless he previously testified that he knew Matt; otherwise, he has no personal knowledge that it was Matt and could only state that he saw a body on the floor.
5. This is hearsay but it is admissible because it is an admission by the defendant.
6. Although he is not an "alcohol expert," the police officer can testify as to his opinion about things that do not necessarily require an expert to describe—like drunkenness, size, speed of a moving object, etc. (He might have to say that the defendant "SEEMED quite drunk.")
7. This is not objectionable if McClanahan has been qualified as an expert in this area.
8. This is proper impeachment through the use of a prior inconsistent statement.
9. *"Objection, Your Honor. This is hearsay."*
10. Joanne can testify about the defendant's good character since it is an issue in the case (because he is claiming self-defense).

TEACHER ATTACHMENT #5A
INTRODUCING PHYSICAL EVIDENCE
Hypothetical Scenarios

1. Sam is on trial for murder. The prosecution is trying to prove that he got the gun that was used to kill the victim from a friend's (Jeff's) gun cabinet. Jeff, who has an extensive collection of both revolvers and shotguns, is on the witness stand. You are the prosecuting attorney and you want to get the murder weapon admitted into evidence. What do you do?
2. Mr. Slumlord is being sued in a personal injury case. A tenant in his building tripped on the back stairs and hurt her back. She claims that the stairs had been in terrible condition for some time. Mr. Slumlord wants to prove that the stairs were actually in good condition the day before the tenant's accident, so he had brought a picture of the stairs that was taken just before the tenant fell. Another tenant from the building is not testifying and, as the attorney for Mr. Slumlord, you want to get the photograph of the stairs admitted into evidence. What do you do?
3. Rose was walking one morning when she saw a car and a bus collide at an intersection. When the police arrived, Rose told them that Jim, the driver of the car, had been going about 20 mph. She later signed a statement to that effect at the police station. At trial, in the case between Jim and the bus company, Rose testifies that Jim was traveling at 45 mph. On cross-examination, she now denies that she ever said that Jim was driving at 20 mph. You are Jim's attorney and you want to get Rose's sworn statement to the police into evidence in order to impeach her. What do you do?

TEACHER ATTACHMENT #5B
INTRODUCING PHYSICAL EVIDENCE
Hypothetical Scenarios Answer Sheet

1. Have the gun marked as an exhibit. Show opposing counsel and then Jeff the gun and ask Jeff if he can identify it and, if so, how. (This is called “laying a foundation” and it must always be done before physical objects can be entered into evidence.) Once a witness has clearly identified the object (in this case, the gun), then the attorney asks the judge to have it admitted into evidence. Remember that it is marked and given to opposing counsel before questions are asked. If opposing counsel doesn’t object, it is admitted into evidence; if counsel does object, the court rules whether or not to admit it into evidence.
2. Same as #1 above.
3. The statement need not be introduced into evidence here but can still be used to impeach Rose. Once she denies having made the earlier statement, the attorney should hand her a copy of it and ask her if she recognizes her signature. When she identifies the signature, the attorney should then point out the part in which she says Jim was only going 20 mph and have her read it aloud. If the attorney still wants the written statement in the record, it may be marked for identification and shown to opposing counsel even after the witness has been questioned about it, and then the attorney may request the judge to admit it into evidence.

**TEACHER ATTACHMENT #6A
MORE HYPOTHETICALS**

1. Amos is a witness in a personal injury trial. Before trial he told you, the plaintiff's attorney, that the plaintiff's car was facing north after the crash. A photo was taken which shows the accident scene. At trial, you ask Amos which way plaintiff's car was facing after the crash. He answers, "*I can't remember.*" You want the jury to hear that the plaintiff's car was facing north. What do you do?
2. Willie is on trial for murder. He says that he stabbed Jane in self-defense. You are the state's attorney. Willie's attorney has a witness, Tom, who testifies that he knew Jane, and that she was a bum who never paid her bills. What do you do?
3. Willie is indicted for murder. He claims that he stabbed Jane in self-defense. You are the defense attorney. You have a witness, Sally, who testifies that she knew Jane and that Jane was a brute who had once beaten and kicked her for no good reason. Will this be admitted into evidence?
4. This is a personal injury case arising from an auto crash with Bill and Ed. Ed is suing Bill for his medical expenses and car repair bills. Tom is Bill's best friend, but he has never driven with or seen Bill drive. He has heard from other people that Bill is a great driver and has never broken the speed limit or broken any of the rules of the road. Can Bill's attorney ask Tom what kind of driver Bill is?

TEACHER ATTACHMENT #6B
ANSWERS: MORE HYPOTHETICALS

1. Refresh Amos' recollection. First, ask if there is anything that would help him to remember (so he would answer something like, "Yes, *there was a photo taken at the accident scene that I saw— it might help me remember.*") Or, more directly, ask if a photo of the scene of the accident would help jar his memory. Remember that: a) anything may be used to help a witness remember; and b) it need not be introduced into evidence.

2. Object on the ground that this evidence is irrelevant. Since Willie is claiming self-defense, Jane's (the victim's) potentially violent character is an issue in the case; however, her bad credit has nothing to do with whether she had a mean or violent disposition that would have forced Willie to kill her in self-defense.

3. Yes. See the explanation in #2 above.

4. No. Tom has no personal knowledge of this. Also, what he has heard from others is hearsay.

**TEACHER ATTACHMENT #7
SAMPLE**

High School Mock Trial Team Application/Information Form

Name: _____

Grade: _____

Address: _____

Home Phone: _____

Cell Phone: _____

Beeper: _____

Other Emergency Phone: _____

Name of Emergency Contact: _____

Email: _____

Date of Birth: _____

Parent/Guardian(s): _____

Parent/Guardian Work Phone: _____

Second Semester Schedule:

Period	Course	Teacher	Room
1	_____		
2	_____		
3	_____		
4	_____		
5	_____		
6	_____		

Please list any extracurricular activities (including work) in which you will be involved from January through May. How much time will each activity require of you per week? Is any activity likely to conflict with mock trial? If so, how much?

Do you know of any conflicts you have for the regional tournament date or state tournament dates? (please list any conflicts)

Previous Speaking Experience:

State succinctly why you want to be on the Mock Trial Team:

Preferred Position: (circle one)

Attorney

Witness

Either

Tryout notes (for coaches only)

Date:

Position:

Comments:



*STUDENT
ATTACHMENTS*

STUDENT ATTACHMENT #2

Mock Trial Courtroom Participants

1. **Presiding Judge:** The person in charge of the court. Rules on the admissibility of evidence, instructs the jury on the principles of the law which apply to the case or, in a bench trial, serves as the finder of fact.
2. **Scoring Panelists (“Jury”):** Typically a two-three person panel, these are the volunteer adjudicators of the mock trial presentation; they do not render verdicts but score each team’s performance and knowledge of trial proceedings, rules of evidence, procedures and the passion of advocacy and persuasion in their respective roles.
3. **Attorneys (3 per team):** May give his/her opening statements for his/her side of the case, cross examines the opposing side’s witnesses and objects to improper questions asked by the opposing attorney. Also examines own witnesses in order to build a strong case. Tries to show that there is not enough evidence to justify judgment against the defendant.
4. **Witnesses (3 per team):** Gives his/her account of what he or she believes to be the facts in the case. Is asked questions by attorneys from both sides.
5. **Timekeeper (1 per team):** Keeps time for their own team, and notes time records so that each teams’ members doesn’t go over time for their opening statements, closing arguments, and for their direct examinations or cross examinations of the witnesses.
6. **Courtroom Monitor:** Provided by the tournament coordinator (at State), serves as the bailiff who calls the court to session and serves as a clerk/runner for the presiding judge when the round needs assistance from the state coordinator. Also collects score sheets and oversees after chat critiques.

STUDENT ATTACHMENT #3 SEQUENCE OF A TRIAL

Opening Statements

1. Plaintiff/Prosecution (P/P) introduction and opening statement
2. Defense (D) attorney introductions and opening statement

Witness Testimony

1. Direct examination of P/P witnesses
2. Cross-examination by D of P/P witnesses
3. Redirect examination of P/P witnesses
4. P/P rests
5. Direct examination of D witnesses
6. Cross-examination by P/P of D witnesses
7. Redirect examination of D witnesses
8. D rests

Closing Arguments

1. P/P closing arguments
2. D closing arguments
3. P/P rebuttal of D closing arguments (only if time has been reserved)

Deliberation

1. The presiding judge will call a recess and s/he and the scoring panel will leave the room to complete their score sheets.
2. When the judge and scoring panel returns, they will “debrief” the teams about their performances, but they will not tell you which side won the round or how they scored your team.
3. This is a good opportunity to congratulate the opposing team. You may confer with members of the gallery during this time.

Clean Up

1. Recollect your exhibits that you published during the trial from opposing counsel, the scoring panel and/or the presiding judge.
2. Check the area around your trial table and gather all papers and belongings, including any trash (i.e. empty water bottles, etc.)
3. Check the separator area and take with you any items belonging to spectators.

STUDENT ATTACHMENT #4 THE OPENING STATEMENT

1. The opening statement is first given by the plaintiff or prosecution, then the defense. Opening statements should:
 - Outline the case – provide a framework to analyze the case
 - State the facts of the case that you expect to prove
 - Explain facts which may seem to be against you
 - (defense in criminal cases) stress the state's burden of proof, i.e., show guilt beyond a reasonable doubt
 - not be argumentative
 - not make any conclusions
 - not refer to evidence if its admissibility is doubtful because it may violate one of the Rules of Evidence
2. Begin with a formal address to the judge: *“May it please the court, Your Honor, Counsel, my name is _____, counsel for _____ in this action.”*
3. The opening statement, which outlines the case, may be presented in chronological order or another orderly sequence of events.
4. Proper phrasing includes:
 - *“The evidence will indicate”*
 - *“The facts will show. . . .”*
 - *“Witnesses will present evidence to show. . . .”*
 - *“Witness A will testify on the state's/plaintiff's behalf that. . . .”*
 - *“Witness B will tell you. . . .”*

STUDENT ATTACHMENT #5 DIRECT EXAMINATION

1. Direct examination is conducted by the attorneys of their own witnesses. It should be designed to get facts from the witnesses which are understandable and, hopefully, to convince the Court to accept your position. Questions on direct examination should:

- Make the witness seem like he or she ought to be believed
- Keep the witness “in control” (prevent the witness from rambling since this might weaken the effect on his or her evidence)
- Not be leading (where the attorney is telling the story for the witness)

2. The attorney calls the witness for direct examination:

- “Your Honor, we call _____.”

After the witness is sworn in (usually done for all witnesses in pretrial matters in mock trial), some introductory questions should be asked:

- Name, address and occupation
- Length of residence or present employment, if this information is relevant in establishing the witness’ credibility
- Further questions about professional qualifications if you wish to qualify the witness as an expert

3. Examples of proper questions on direct examination:

- *“Directing your attention to (date), could you please tell the court what occurred?”*
- *“What happened then? Or, what did you see?”*
- *“How long did you see. . . ?”*
- *“Did John (defendant) say anything about . . . ?”*
- *“How long have you worked with Ms. Smith?”*

4. Conclude your direct examination:

“Thank you, _____. That will be all, Your Honor.” Or, “I have no further questions for this witness, Your Honor.” (The witness remains on the stand for cross-examination by the opposing attorney.)

STUDENT ATTACHMENT #6 CROSS EXAMINATION

1. Cross-examination follows the opposing attorney's direct examination of his or her own witness. The purposes of cross examination are to:
 - Test the witness' trustworthiness and believability in order to cast doubt on the validity of the witness' story
 - Establish some of the facts of the cross examiner's case wherever possible

2. Cross examination should:
 - Use leading questions which are aimed at getting "yes" or "no" responses
 - Never include questions to which the attorney does not know the answer

3. Proper phrasing of questions include:
 - *"Isn't it a fact . . . ?"*
 - *"On (date), when you made a statement in your attorney's office, you said that . . . , didn't you?"*

4. Cross-examination should conclude with, *"Thank you, _____.
That will be all, Your Honor."*

STUDENT ATTACHMENT #7 CLOSING ARGUMENTS

Closing arguments should:

- Being with a proper address to the court
- Persuasively and forcefully summarize the strong points from witness testimony
- Note flaws in the testimony which support the claims of your side
- Be well-organized (it may be wise to present the strongest point at the outset and again at the end of the closing argument)
- If representing a defendant in a criminal case, the prosecution will raise questions about the weight of the evidence
- Be presented so that notes are barely necessary and eye contact can be established
- Be emotional and strongly appealing (unlike the “neutral” opening statements)

STUDENT ATTACHMENT #8
RULES OF EVIDENCE – A STUDENT GUIDE

1. **No leading questions on direct examination.** This means that on direct examination, you may not ask questions that suggest the answer the examiner wants to hear.
2. **Evidence about the character of a party may not be given** unless that person's character is an issue in the case.

Examples:

- The defendant is charged with armed robbery. A witness may not testify that the defendant has been unfaithful to his wife. The issue here is whether or not the defendant robbed someone, not whether the defendant is a good person.
- Mary sues Joe for divorce on the grounds of adultery. A witness may testify that she knows Joe was unfaithful.

3. **Attorneys may help their witnesses remember.** This is called refreshing the recollection of the witness.

Example:

- A witness sees a purse-snatching, offers to testify at the trial, and gives a statement of events to the lawyer. At the trial, the witness has trouble remembering the events he or she saw. The attorney can help the witness remember by showing the statement to the witness. (NOTE: The attorney must first mark and identify the statement and show the other side a copy. However, it need not be actually introduced into evidence, i.e. become a part of the trial record.)

4. **Cross examination may cover the subject matter of the direct examination, matters affecting the credibility of the witness and additional matters, otherwise admissible, that were not covered on direct examination.**
5. **The attorney may make the other side's witnesses look like they should not be believed.** This is called **impeaching** the witness.

Ways to impeach the other side's witness – the attorney asks the witness about:

- **Prior bad acts** of the witness that show he or she cannot be believed;
- **Past criminal convictions** of the witness, if within the past ten years for a felony or a crime involving moral turpitude, and the court determines that the value of this evidence outweighs its prejudicial affect;
- **A prior statement of the witness which is different** from (contradicts) his or her testimony at the trial;
- **Bias or prejudice** of the witness (i.e., the witness has reason to favor or disfavor one side); or
- The witness' **ability to see, hear, smell, or remember accurately** (i.e., the witness' perceptions).

6. **Statements which are made out of court and which are offered to prove the truth of the contents of the statement are HEARSAY statements.** They are generally inadmissible as evidence.

Example:

- Joe is being tried for murdering Henry. The witness may not testify, "Ellen was there. Ellen told me that Joe killed Henry." The underlined statement is hearsay and may not be used.

Exceptions to the Hearsay Rule: Although hearsay is not usually allowed at a trial, a judge may permit it if:

1. the statement (called an admission against interest) was made by a party in the case and it contains evidence which goes against his or her side (e.g., in a murder case, the defendant told someone that he or she committed the murder.);
2. the statement describes the then-existing state of mind of a person in the case, and that the person's state of mind is an important part of the case;
3. the statement is a regularly-kept record of a business or other association, recorded by someone with personal knowledge near the time the matters recorded occurred, or,
4. the statement is a present sense impression, describing an event or condition while the witness was perceiving it, or immediately afterwards.

Examples:

- Joe is being tried for murdering Henry. The witness may testify, "Joe told me that he killed Henry."
- In the same case, the witness may testify, "I once heard Joe say, I'm going to get even with Henry if it's the last thing I do."
- In the same case, an accounts receivable ledger is kept by Henry, Joe's wholesaler, is admissible to show the size of Joe's debts to Henry.
- In the same case, an eyewitness to the murder may testify, "I heard Joe say, 'Oh! I've killed him.'"

7. **Witnesses may not give opinions, except for "opinions" as to what they personally saw or heard.**

Example:

- The witness may say, "Roy staggered, slurred his speech, and smelled of alcohol." The witness may not add, "Roy was incapable of driving a car."

Exception to the rule

- An expert may give an opinion if he or she first testifies that he or she is an expert. For instance, a psychiatrist may say, "Roy has a severe eating problem" after the attorney has qualified the witness as an expert in eating disorders.

8. **Witnesses may not testify about something of which they have no personal knowledge.**

Example

- The witness works with the defendant but has never been to the defendant's home or seen the defendant with his or her children. The witness cannot testify that the defendant is a bad parent.

9. **Only relevant evidence may be presented.** Relevant evidence is any evidence that helps to prove or disprove the facts in issue in the case.

Example

- The defendant is charged with running a red light. Evidence that the defendant owns a dog is not relevant and may not be presented.

NOTE: Evidence which is relevant, but which is unfairly prejudicial, confusing to the jury, or wastes time, may sometimes be excluded.

Example

- In an auto accident, both sides agree that the defendant was driving the red Ford that hit the plaintiff. Evidence about the color of the defendant's car is relevant, but will be excluded because it is a waste of time if the parties have already agreed that the defendant was driving the car in question.

10. **Physical evidence may be introduced.**

Steps that an attorney must follow:

- Ask the presiding judge to mark it for identification;
- Show it to the opposing counsel;
- Show it to the witness and ask him or her to explain what it is;
- Offer it into evidence (ask the judge to admit it); and,
- Get a ruling from the judge on whether it may be admitted into evidence.

STUDENT ATTACHMENT #9
Is it Hearsay?

prepared by Eric Trivett, student team member
South Gwinnett High School, Snellville

Step	Explanation – It is . . .	Yes	No
1. Doesn't fall under definition of hearsay	Oral/Written Statement AND made out of Court AND offered to prove the "truth of the matter asserted."	Go to Step 2	NOT HEARSAY (Rule 801)
2. NOT Hearsay	Prior Statement by Witness AND (either) offered to impeach, OR offered on redirect to rebut claim that witness lied (on cross) OR statement of identification after perceiving person.	NOT HEARSAY (Rule 801(d)(1))	Go to Step 2b
2b.	Admission by a party opponent	NOT HEARSAY (Rule 801 (d)(2))	Go to Step 3
3. Exceptions	Present sense impression 803 (1); Excited Utterance 803 (2); Then existing mental, emotional or physical condition 803 (3); Business Record 803 (6); Reputation a to character 803 (21)	NOT HEARSAY (See individual. Rule)	HEARSAY (not admitted)

STUDENT ATTACHMENT #10 HEARSAY IN DEPTH

prepared by Eric Trivett, student team member
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"Hearsay" is testimony as to someone's "statement" other than courtroom testimony, offered as proof of the truth of that statement. As a general rule, hearsay statements are not admissible unless the statement is within one of the recognized exceptions.

Definitions:

"Statement" – (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

"Hearsay" – a statement, other than one made by the declarant while testifying at the trial, offered in evidence to prove the truth of the matter asserted in that statement.

A statement is not hearsay if –

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is

- a. **Inconsistent** with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or
- b. **Consistent** with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of **recent fabrication or improper influence or motive**, or
- c. One of **identification** of a person made after perceiving the person; or

(2) Admission by a party-opponent. The statement is offered **against** a party and is

- a. The party's **own statement**, in either an individual or a representative capacity, or
- b. A statement of which the party has manifested an **adoption or belief** in its truth, or
- c. A statement by a **co-conspirator** of a party during the course and in furtherance of the conspiracy.

A statement may be admitted as an exception if:

AVAILABILITY IMMATERIAL

(1) Present sense impression—a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance—a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then-existing mental, emotion, or physical condition—a statement of the declarant's then-existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health).

(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception of general character of the cause or external source as reasonably pertinent to diagnosis or treatment.

(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of regularly conducted activity (business record)—a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation.

Declarant unavailable to testify:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, if the party against whom the testimony is not offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

STUDENT ATTACHMENT #11

Hearsay Cheatsheet

prepared by Eric Trivett, student team member
South Gwinnett High School, Snellville

Not Hearsay:

1. Prior inconsistent statement
2. Prior statement to rehabilitate witness after charge of lying
3. Statement of identification
4. Admission by party opponent, offered against that party

Hearsay But Exception:

1. Present sense impression
2. Excited utterance
3. Existing mental, emotional, or physical condition
4. Medical diagnosis and treatment
5. Recorded recollection (must show witness has insufficient memory)
6. Business record

Hearsay But Exception (And Declarant Unavailable):

1. Former testimony
2. Dying declaration
3. Statement against interest

Catch-all

Statement made under circumstances of reliability.

STUDENT ATTACHMENT #12
Foundation of a Regularly Kept Record
 produced by Marlene and Carson Melvin, teacher coaches (retired)
 South Gwinnett High School, Snellville

This particular sequence establishes the foundation for the introduction of a standard police report into evidence. The foundation questions for other types of regularly kept records – which include any memo, record, report or other compilation of data in any form which meets the requirements of the rule – would be similar, but not identical.

Requirements of the Rule	Examples of Foundation Questions
1. Establish that the record exists	<i>“Officer Santiago, did you prepare a written report of your investigation?”</i>
2. The record must be kept in the ordinary course of business or as a part of the ordinary conduct of the organization or enterprise.	<i>“Is it your usual custom and practice to prepare such reports?”</i>
3. The record must be part of the ordinary business of the organization to compile the information.	<i>“Is the preparation of such reports a normal part of your job as a police officer?”</i>
4. The information must be compiled for the purpose of recording the occurrence of an event, act, condition, opinion or diagnosis that takes place in the ordinary course of the business.	<i>“Are the reports made for the purpose of recording the findings of police investigations?”</i>
5. The entry in the record or the compiling of the data must be made at or near the time when the event took place.	<i>“When did you prepare the report?”</i>
6. The recording of the event must be made by someone who has personal knowledge of it.	<i>“Was the report based on your own personal knowledge of the incident?”</i>

STUDENT ATTACHMENT #13

Procedure for the Introduction of Exhibits

Please refer to the Colorado Mock Trial Rules of Procedure.

Rule 4.20 – Rules of the National Mock Trial Competition

Step	Action	Dialogue
1	All exhibits will be pre-marked	
2	Ask permission to approach the bench – show the marked exhibit to the judge.	<i>“Your Honor, may I approach the bench to show you what has been marked as Exhibit Number ____?”</i>
3	Show the exhibit to opposing counsel	<i>“Let the record reflect that I am showing what has been marked as Exhibit Number ____ to opposing counsel.”</i>
4	Ask permission to approach the witness.	<i>“You’re Honor, may I approach the witness?”</i>
5/6	Hand the exhibit to the witness and ask him/her to identify it.	<i>“I’m handing you what has been marked as Exhibit Number ____. Without going into its contents, can you identify it?”</i>
7	Witness will answer with the identification only.	<i>“Yes, this is”</i> (i.e. my police report, a map of the downtown area, etc.)
8	Offer the exhibit into evidence.	<i>“Your Honor, we offer Exhibit Number ____ into evidence at this time. It’s authenticity has been stipulated.”</i>
9	Court asks opposing counsel if s/he has any objections.	<i>“Is there an objection?”</i>
10	Opposing counsel states objection, if any – Court will allow response to objection, if answer is “yes”	<i>“Yes/No, Your Honor.”</i> (States grounds for objection) <i>“What is your response?”</i>
11	Court may admit the exhibit, or rule that it is inadmissible, or permit counsel to lay further foundation.	
12	If the exhibit has been admitted, the attorney may then solicit testimony as to its contents.	

STUDENT ATTACHMENT #14 OBJECTIONS

Objections are made when the other side has violated one of the Rules of Evidence. The objection should be made as soon as the question is asked by the other attorney and before the witness answers. If it is not possible to make your objection before the answer is given because it is the answer that is objectionable, object to the answer anyway.

When you make an objection, the judge will ask for the reason for the objection. The other side has a chance to say why you are wrong and why the evidence should be allowed. The judge will allow the objecting attorney to make a counterpoint, then will rule on the objection. If the judge says “sustained”, your objection and the reason for it were correct and the witness will not be allowed to answer. If the judge says “overruled”, your objection or the reason for it was wrong and the witness will be allowed to answer.

Standard Mock Trial Objections.

- | | |
|--|---|
| A. Relevancy | <i>“Objection, Your Honor. This testimony is not relevant to the facts of this case.”</i> |
| B. Leading question on direct examination | <i>“Objection, Your Honor. Counsel is leading the witness.”</i> |
| C. Improper character testimony | <i>“Objection, Your Honor. Counsel is eliciting improper character evidence.”</i> |
| D. Hearsay | <i>“Objection, Your Honor. Counsel’s question (or the witness answer) is based on hearsay”.</i> |
| E. Opinion Testimony | <i>“Objection, Your Honor. Counsel is asking the witness to give an improper opinion.”</i> |
| F. No Personal Knowledge | <i>“Objection, Your Honor. The witness has no personal knowledge to answer the question.”</i> |

STUDENT ATTACHMENT #15

Important Objections at a Glance

Prepared by Eric Trivett, team member
South Gwinnett High School, Snellville

Category	Objection	Possible Responses
To the competency of a witness	Witness lacks personal knowledge (also see hearsay)	Witness saw, smelled, tasted, heard subject of testimony
To the form of a question	Requests a narrative response	Break question down (ask permission to re-phrase)
	Asked and Answered	Explain how the questions are different, if they are in fact different (or move on)
	Argumentative/Vague	Re-phrase if necessary
	Assumes facts not in evidence	Explain when the fact was admitted, or ask permission to lay foundation
	Compound question	Break the question down (ask permission to re-phrase)
	Leading	(direct only) Re-phrase as a non-leading question
	Misquote (witness or exhibit)	
To testimony/exhibits (substantive)	No foundation established	Either argue that sufficient foundation has been laid (that the witness has knowledge), or lay the foundation for the witnesses knowledge about the testimony or exhibit
	Hearsay	1. Argue not hearsay: i.e. not out of court statement, not offered for the truth of the matter asserted (show state of mind, fact that words were uttered, etc.) 2. Find the exception!
	Irrelevant	Explain the relevance to prove/disprove the essential fact
	Opinion (without basis – expert)	Explain why/why not layman can/cannot testify to this
	Reading from document/exhibit not admitted into evidence	Move document into evidence
	Cross exceeds scope of direct; redirect exceeds scope of cross	Explain how related to direct; “thorough and sifting cross examination”
	Improperly calls for character evidence	Find how rules let evidence in
To testimony – move to strike	Testimony improperly relates to character evidence	Find how rules let evidence in
	Witness has lapsed into a non-responsive answer	Witness may give a full response to the question in own words (on cross, should give yes/no and then may give a brief explanation).
	Witness has lapsed into a hearsay response	Respond as above (hearsay)

STUDENT ATTACHMENT #16
SIXTEEN COMMON OBJECTIONS DURING A CRIMINAL TRIAL

Prepared by: Michael Mears, Multicounty Public Defender, Georgia

Objection: Act of objecting; that which is, or maybe, presented in opposition; an adverse reason or argument, a reason for objecting or opposing, a feeling of disapproval. – **Black’s Law Dictionary**

<u>Objection</u>	How to Phrase the Objection	Explanation
Argumentative	<i>I object on the ground that the question is argumentative.</i>	When the purpose of the question is to persuade the trier of fact rather than to elicit information. Questions that call for an argument in answer to an argument contained in the question. Questions that call for no new facts, but only ask the witness to agree to conclusions drawn by the questioner. NOTE: The court, in its discretion, can allow argumentative questions on cross-examination.
Asked and Answered	<i>I object on the ground that the witness has already answered that question.</i>	This objection is a form of the immateriality objection in that it attempts to prevent a waste of time by unnecessary repetition and to avoid giving evidence undue emphasis.
Ambiguous and Unintelligible	<i>I object on the ground that the question is ambiguous (or unintelligible) in</i>	Questions that are equivocal, uncertain; capable of being understood in two or more possible senses.
Compound Question	<i>I object on the ground that the question is.</i>	The compound question confuses the jury because it will be uncertain as to whether the answer is to one of the compound parts or to both parts.
Impeachment	<i>I object. This is an attempt to impeach the witness and is improper because. . . .</i>	Prior contradictory statements, interest of the witness, bias, conviction to observe are some of the ways in which a witness may be impeached, but the form of the question must be articulated in such a way as to comply with the rules of evidence.
Incompetent	<i>I object on the ground that is person is incompetent to be a witness because she has no personal knowledge concerning the matter.</i>	
	<i>I object on the ground that this person is incompetent to be a witness because she has no personal knowledge.</i>	
	<i>I object on the ground that this person lacks the mental competency (because of age, infancy, insanity) to testify as to the matter.</i>	

Objection (continued)	How to Phrase the Objection	Explanation
Irrelevant	<i>I object on the ground that the question calls for an irrelevant answer.</i>	Evidence which influences the issues, having probative value in proving a fact; that which tends to render probable a certain inference important in the case is relevant. Any evidence, which does not perform these functions, is irrelevant. All evidence must be relevant.
Leading Questions	<i>I object on the ground that the question is leading.</i>	A question that suggests the answer is leading. (Test: Whether a reasonable person would get the impression that the examiner desires one answer rather than another.) Permissible Leading Questions: 1) To refresh recollection: Hazy recollection goes to the weight of the testimony, not its admissibility; 2) Hostile Witness: Where party has to call a hostile witness; and 3) Cross-Examination: leading questions are allowed on cross-examination, unless it can be shown that the witness is biased in favor of the cross-examiner.
Misquoting a Witness	<i>I object on the ground that counsel is misquoting the witness. What the witness stated was</i>	
Narrative Answer (Question is too General)	<i>I object on the ground that the question calls for a narrative answer (or is too general).</i>	This objection is in the nature of an "irrelevance" objection in that a question inviting a narrative answer or that is too broad, general, or indefinite allows the witness to inject irrelevant and otherwise inadmissible matter (such as incompetent evidence where no proper foundation has been laid). Each question should limit the witness to a specific answer.
Opinion Testimony	<i>I object on the ground that: a) a sufficient foundation has not been laid showing that the witness is qualified as an expert; b) Counsel is asking the witness to give an improper opinion."</i>	Inadmissible opinion evidence is incompetent evidence (lack of sufficient foundation). (The objection to the effect that the answer would invade the province of the trier of fact or calls for an opinion on an ultimate fact is obsolete.)
Privileged Communications	<i>I object, the questions calls for disclosure of a privileged communication between (attorney, psychiatrist, psychologist, priest, wife or husband) and on behalf of _____, I assert that privilege.</i>	Communications in the course of protected relationships are presumed to be confidential.

Objection (continued)	How to Phrase the Objection	Explanation
Speculation	<i>I object on the ground that the question calls for speculation by the witness.</i>	A witness may testify to facts based on his or her own personal knowledge or, in some instances, the witness may give an opinion. The witness may not base an answer, in any event, on speculation.
Hearsay	<i>I object on the ground that the question calls for hearsay.</i>	Hearsay is testimony as to what someone said, other than while testifying in court (an extra-judicial statement), offered as proof of the truth of the matter asserted. As a general rule, hearsay statements are not admissible unless the statement is within one of the recognized exceptions.
Assuming Facts Not in Evidence	<i>I object on the ground that the question assumes a fact not in evidence.</i>	A question that assumes unproved facts to be true is objectionable as it seeks to bring before the trier of fact facts that have not been proved and may not be true. Further, such a question attempts to trap a witness into implicitly affirming the truth of the assumed fact without, in many cases, the witness meaning to affirm that fact.