

Handout 8

Evidence Overview

Not all of this evidence can be used at trial. The Rules of Evidence regulate what kinds of evidence can be used during the trial. The following explains some of the rules of evidence. We will use the case about the Bible-only prison policy to provide an example of the rules, including potential objections that can be raised, responses, and likely outcomes.

- *Relevance.* All evidence and witness questions and answers must be *relevant*—that is, only evidence that is related to the case's subject and helps to establish a legal proposition at issue in the case may be considered.
 - **Question:** Mr. Anthony, are you a Christian?
 - **Objection:** Objection, Your Honor, this question is irrelevant to this case.
 - **Response:** Your Honor, this series of questions will show that Mr. Anthony is using the Bible-only policy to push a Christian agenda.
 - **Likely result:** The question is probably proper.
- *Hearsay*, or second-hand testimony, is often inadmissible (not allowed) in court. Witnesses usually must have directly seen, heard or experienced whatever it is they are testifying about. This is to improve the reliability of the testimony. For purposes of this mock trial hearsay evidence is only allowed if the witness is repeating a statement that was made directly to him by another witness in the case.
 - **Testimony:** My cellmate Joe told me that the rule in this prison was, I couldn't keep the Koran in my cell.
 - **Objection:** Objection, Your Honor, hearsay.
 - **Likely result:** This hearsay testimony isn't reliable (there are much better ways to find out what the rule was), so the objection would be sustained.
- *Character evidence*, defined broadly as any evidence showing a person's general tendency to act in a certain way, is nearly always inadmissible. This is because character evidence is often unfairly prejudicial, wastes time, and confuses the jury.
 - **Question:** Mr. Williams, how many times have you been incarcerated?
 - **Objection:** Objection, Your Honor, counsel is trying to introduce character evidence.
 - **Response:** Your Honor, this series of questions will show that the bible-only policy is commonly used in prisons.
 - **Likely result:** The response is very unpersuasive. It seems much more likely that the real goal of the question is to taint Mr. Williams' credibility by portraying him as a repeat offender. The objection would likely be sustained.
- *Privileged information*, such as conversations between a husband and wife, a client and a lawyer, or a patient and a doctor, is excluded from trial. This is because we want to respect these types of private relationships, and not encourage distrust or betrayal.

Other rules of evidence govern the form of questions and answers.

- Lawyers cannot ask their own side's witnesses *leading questions*—questions phrased in a way that suggests the desired answer. This is to protect against untruthful answers.
 - **Question.** Mr. Williams, you tried to keep the Koran in your cell, didn't you?
 - **Objection.** Objection, Your Honor, counsel is leading the witness.
 - **Resp.** Your Honor, I'll rephrase the question: Mr. Williams, did you try to keep a book in your cell?
- The witness must answer reasonably specific questions, not provide *narration*. In other words, they must limit their answer to the information that the question calls for. This is to limit testimony so that it is relevant and time efficient.
 - **Question:** Did you try to keep any books in your cell?
 - **Witness:** I tried to keep the Koran in my cell. I have read the Koran every day since I could read and keeping the book in my cell, is the only way for me to keep up with my daily prayers. The Koran is a really important book for Muslims like me. It represents . . .
 - **Objection** Objection, Your Honor, the witness is narrating.
 - **Response:** Your Honor, the witness is giving us a complete statement of the reason he wanted to keep the Koran in his cell.
 - **Likely outcome:** The judge is likely to say something like: Mr. Williams, please just answer the question; don't go on to talk about related things.
- Except for technical experts, who can give opinions about matters relating to their field, witnesses cannot give opinions in their testimony. Testimony is limited to *facts, not opinions* for witnesses that are not testifying as experts. This is because the opinions of witnesses are typically irrelevant.
 - **Testimony.** Inmate Witness: If every inmate was allowed to keep just one book in their cell, it wouldn't cause a safety hazard.
 - **Objection.** Objection, Your Honor, the witness is giving an opinion.
 - **Likely outcome.** Objection sustained. That kind of opinion is appropriate for an expert, but not for this witness.

Introducing Documents into Evidence

Many times attorneys will want to question a witness about a document—for example, a letter, policy, or report. Before asking the witness about the item, the attorney must first introduce the evidence. To introduce documents (or physical evidence), the parties must follow this procedure.

Attorney: Your honor, I wish to have this document marked for identification as [Plaintiff's Exhibit A, Defendant's Exhibit 1].

(Attorney takes the document to the clerk who marks the Exhibit letter/number. The attorney shows the item to opposing counsel. The attorney then shows the item to the witness)

Attorney: Do you recognize the item marked as [Plaintiff's Exhibit A]?

Witness: Yes.

Attorney: Can you please identify this item?

Witness: [States what the document is e.g. a letter I sent to Brad Smith].

The attorney can begin to ask the witness questions about the document.