

Handout 13 *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 prison policy to provide an example of the rule (**Ex.**), as well as potential objections that can be raised (**Obj.**), and responses (**Resp.**).

- 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.
 - **Ex.** Mr. Singh, how often do you attend worship services as part of your religious practice?
 - **Obj.** Objection, Your Honor, this question is irrelevant to this case.
 - **Resp.** Your Honor, this series of questions will show that Mr. Singh’s religious beliefs were sincerely held.
- *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.
 - **Ex.** Nassir said Rajesh was not allowed to express his religious beliefs in his military uniform.
 - **Obj.** Objection, Your Honor, hearsay.
 - **Resp.** Your honor, since Nassir is a witness in the case, he can testify to the statement Nassir made.
- *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.
 - **Ex.** Mr. Singh, have you ever been cited for misbehavior during your military service?
 - **Obj.** Objection, Your Honor, counsel is trying to introduce character evidence.
 - **Resp.** Your Honor, this series of questions will show that the plaintiff did not display a pattern of disobedience during his service.
- *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 inform the ways lawyers can ask questions and the ways witnesses can answer them.
 - Lawyers in a trial cannot ask their own sides’ witnesses *leading questions*—questions phrased in a way that suggests the desired answer to the witness. This is to protect against unreliable, untruthful answers.
 - **Ex.** Mr. Singh, you purposefully disobeyed the Army uniform policy, didn’t you?
 - **Obj.** Objection, Your Honor, counsel is leading the witness.

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- **Resp.** Your Honor, leading is permissible during cross-examination or I'll rephrase the question, Mr. Singh, what hairstyle did you wear during your Army service?
- o 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.
- o 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 and can confuse the jury.
- o Witnesses cannot provide their opinion on the ultimate issue of the case: whether the policy is reasonably related to a legitimate penological interest or an exaggerated response to prison concerns.
 - **Ex.** Witness: I believe the uniform policy is rationally related to the government's interest in keeping members of its military safe.
 - **Obj.** Objection, Your Honor, the witness is giving an opinion of the ultimate issue.

Introducing Documents into Evidence

Many times attorneys will want to question a witness about a document such as a letter, affidavit or some other physical evidence. In order to ask the witness questions about the item, the attorney must first introduce the evidence. To introduce letters, affidavits, or other documents or physical evidence into trial, the parties must follow the following 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.