

Testimonial Objections

Objections to testimony are formal protests against the admissibility of testimony.

The most common objection to a witness's testimony is based on hearsay. You can read more about hearsay in our Hearsay article. If the witness is testifying to what someone else said, it is hearsay and can only be admitted if it falls into one of the categories discussed above.

Another common testimonial objection is relevance. For example, let's say you are charged with battery and the prosecutor calls a checkout clerk from a local grocery store to testify. During direct examination the prosecutor asks if the clerk saw you chewing gum at the checkout on the day before the alleged crime. The objection would be relevance. So what? What does chewing gum at the grocery store the day before have to do with any element of the crime of battery? You would object on the grounds of relevance.

Objections are raised before the witness answers. The judge will either agree with the objection (sustain) and prevent the witness from answering or disagree with the objection (over-rule) and allow the witness to answer.

Some other common objections to witness testimony are:

- Leading the witness,
- Lack of foundation,
- Beyond the scope of direct examination
- Asked and answered.

Leading the witness occurs when the questioner asks the witness a question on direct examination and suggests the correct answer, calling for a "yes or no" answer. For example, "Ms. Whitefeather, isn't it true you saw the defendant swinging a belt at the victim?" This question calls for an answer of yes or no. It is a leading question and not allowed on direct examination. However, you can ask leading questions when you cross-examine the witness.

Lack of foundation objection is made when the prosecutor calls someone to the stand and begins asking them questions without first establishing how that person is qualified to testify. For example, at trial the prosecutor calls a counselor to testify that you have violent tendencies but fails to ask the counselor what their qualifications are and how they came to their conclusion. This is a lack of foundation. Without a proper foundation, testimony cannot be admitted.

Asked and answered objection is appropriate when the prosecutor doesn't get the answer they want and makes attempts to re-phrase the question in hopes of getting a better response. This is not allowed. A judge will usually sustain (agree with) this objection if the questioner asks the same question more than twice.

Beyond the scope of direct examination is an objection that is made when the opposing party is questioning a witness called by the other party. This is called cross-examination. On cross-examination, the questioner can only ask about things that the witness testified to in response to the other party's questions on direct examination. For example, if a witness testified on direct that she saw the defendant driving a red car on the day of the alleged crime, the defendant cannot ask about the color of the carpeting in the alleged victim's home if it wasn't part of the testimony on direct examination. The only way to elicit testimony about something else is to subpoena and call the witness yourself.

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