

## Objections to Questions

The party or attorney on the opposing side is asking a question of a witness or a party at a deposition or a hearing or trial. The following are possible objections that can be made to the questions he/she is asking. The objector states the objection.

At a deposition, the parties can put their positions on the record. Objections are reserved for when the parties ask a judge to rule on them.

At a hearing or trial, the judge asks for specifics of the objection. The objector states the basis for the objection. The judge gives the other party or attorney the opportunity to respond. The judge rules as to whether the objection is sustained or denied. If sustained, question and answer are “struck” and not to be considered by the fact-finder, be it a jury or the judge.

The question, answer, and exchange will still be in the transcript of the deposition or hearing or trial, and rulings by the judge can be appealed.

- **Argumentative** question. Makes an argument rather than asks a question.
- **Compound** question. The question combines two or more different questions, but calls for a single answer.
- **Asked and answered.**
- **Relevancy.** Question has nothing to do with any part of the case. Character Relevancy is only introducible if the person’s character is an issue or shows truth/untruth.
- **Narrative answer** called for by the question. The answer would essentially relate a string of events as a story, instead of providing a clear and specific answer to a clear and specific question.
- **Conclusion of law or fact** improperly called for by the question.
- **Facts not in evidence** assumed in the question.
- Question calls for **speculation.**
- **Best evidence** rule violated. The rule requires an original document, photograph, or other piece of evidence be introduced to the court to prove the contents of that same item.
- **Dead man rule/act/statute** renders witness incompetent to testify. Prohibits a witness who is an interested party from testifying about communications or transactions with a deceased person (a "decedent") against the decedent unless there is a waiver.
- **Foundation** for introduction of real or demonstrative evidence inadequate (chain of custody in criminal cases, etc.)
- **Foundation** for introduction of writing inadequate to authenticate
- Calls for **hearsay**; for the witness or party to testify as to a statement made out of court and not under oath by another person (who is not a witness or party in the case), and that statement is offered as proof that what was stated is true. The statement that is sought to be testified to, may be oral or written, and may even be a gesture.  
A witness’ unsworn prior inconsistent statement may be admissible to impeach his/her credibility but not as substantive evidence of the truth of the matter.  
There are exceptions to hearsay.
- **Hypothetical** question defective

- **Impeaching** one's own witness
- **Instructions** of trial court incorrect
- **Leading** question (not allowed on direct examination, unless allowed to save time on unimportant and background matters). The question suggests the answer.
- **Cross-examination exceeding scope of the direct examination**
- **Parole evidence** rule violated
- **Privileged** communication (protected by attorney-client, doctor-patient, spousal, etc. privilege)
- Witness **incompetent** to testify
- **Unresponsive** answer

A continuing objection may be made to an entire line of questioning or class of evidence.

In civil cases, the general rule is that evidence of a party's **character** is not admissible to show what his/her conduct was on a particular occasion, but that evidence of his/her habit or custom of doing or omitting a particular thing may be received for that purpose. A **habit** is a regular practice of meeting a particular kind of situation with a certain type of conduct, or a reflex behavior in a specific set of circumstances. In some courts, evidence of habit is admissible only if there is no eye witness to the conduct in question.

### **Exceptions to Hearsay:**

By excluding hearsay, the law seeks to guarantee to the party against whom such evidence is sought to be introduced the right to meaningfully cross-examine the out-of-court declarant who is in substance, though not in form, the real witness against him.

Here are the exceptions:

**Dying declaration** – a statement made by a declarant, who is unavailable to testify in court (typically because of the declarant's death), who made the statement under a belief of certain or impending death. The statement must also relate to what the declarant believed to be the cause or circumstances of the declarant's impending death.

**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.

**Present Sense Impression** – a statement describing or explaining an event or condition made while the person was perceiving the event or condition or made immediately thereafter.

**Business records** – original, routine records.

**Business entry rule** – allows introduction of entries made in usual course of business into evidence though person who made such entry is not in court.

**Absence of entry** in the records kept in accordance with the business entry rule.

**Public records and reports.**

**Marriage, baptismal and other similar certificates.**

**Records of vital statistics.**

**An absence of public record or entry.**

**Records of religious organizations**, such as statements of birth, marriages, divorces, deaths, legitimacy, etc.

**State of mind** – out of court declaration of a present existing motive or reason for acting is admissible even though the declarant is available to testify.

**Statements for the purpose of medical diagnosis or treatment.**

**Admission by party-opponent** – statement offered against a party and is (a) his/her own statement or (b) a statement he/she has adopted. An admission by a party is a waiver of proof.

**Declaration against interest** – statement against declarant's interest that a reasonable person in his/her position would not have made the statement unless he/she believed it to be true.

**Former testimony** – testimony given by party or witness at an earlier trial or hearing.

**Prior identification**

**Past recollection recorded** – A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him/her to testify fully and accurately. The memorandum or record is shown to have been made or adopted by the witness when the matter was fresh in his/her memory and to reflect that knowledge correctly. May be used even though the declarant is available as a witness. The witness reads the relevant parts into evidence.

**Records of documents affecting an interest in property.**

**Statements and documents affecting an interest in property.**

**Statements in ancient documents.**

**Market reports, commercial publications.**

**Learned treatises.**

**Judgment of previous conviction.**

**Judgment as to personal, family or general history or boundaries.**

**Impeachment of a witness:**

Character – bad reputation for truth and veracity; prior convictions; psychiatric condition;  
prior bad acts.

Impeachment by contradiction

Prior inconsistent statements

Bias