



 TEXAS YOUTH AND GOVERNMENT

# TRIAL COURT

## JUDGE AND ATTORNEY STUDY GUIDE



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## SECTION 1: JUDGE'S RESPONSIBILITIES

1. Thoroughly know all of the "Simplified Rules of Evidence" and Trial Procedure Rules and make sure they are strictly enforced
2. Thoroughly know all objections: make sure you know definitions and know if any given question is objectionable
3. Strictly enforce and maintain the rules of decorum
4. Be early to your courtroom
5. Be the trier of law and trier of fact
6. Evaluate and score all witnesses
7. Rule on objections and admissibility of evidence
8. Determine whether or not the Prosecution met the burden of proof, and then give the verdict (if time permits, can explain the basis for the decision – you have up to 4 minutes for this process)
9. Bring the courtroom to order, call the case, and begin the trial
10. Swear in the witnesses

## SECTION 2: COURTROOM DECORUM

1. When the Judge ascends the bench, complete order should be observed.
2. In addressing the Judge, attorneys should at all times stand and address the Judge from his/her position at counsel table, and should not approach the bench except with permission of or at the request of the Judge. While interrogating witnesses, the attorney shall remain seated at the counsel table except when permitted by judge to handle or display exhibits or to make objections or to approach the witness.
3. The Judge should be respectfully and properly addressed at all times, and all objections and legal arguments by counsel shall be directed to the Judge and not to opposing counsel.



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4. When the Judge addresses counsel, it should be done impersonally, as by "Counsel", rather than by first name. Counsel should also behave impersonally toward the Judge.
5. Lawyers shall never lean on the bench or engage the Judge in a confidential manner, except at the request of the Judge.

## SECTION 3: SCHEDULE AND ORDER OF TRIAL

**NOTE:** Please review training video on Texas YG website for overview of Mock Trial round. <https://www.youtube.com/watch?v=gtQD0QM4dM8>

### PART I - TRIAL TIME LIMITS

1. While you will have a courtroom bailiff to keep time, it is the judge's responsibility to ensure that the trial begins and ends on time.
2. The whole trial shall **NEVER** exceed 90 minutes, from the scheduled start time.
  - a. Opening statements are limited to two (2) minutes for each team.
  - b. Closing statements are limited to three (3) minutes for each team. The party with the burden of proof may reserve a portion of their time for rebuttal after the defense closing. The maximum amount of time that is allowed for rebuttal is one (1) minute. The one minute for rebuttal is part of the three minutes allotted for closing, not in addition to.
  - c. Each team has 18 minutes to present its side (direct and re-direct examination). The team may divide the time among the witnesses however they choose, but each team must call all three (3) witnesses to testify for their side.
  - d. Each team has 15 minutes for cross and re-cross examination; The team may divide the time among the witnesses however they choose, but the team must cross-examine all of the witnesses.
  - e. Each team has 2.5 "free minutes" that they can use at any place in the trial. These "free minutes" are to make up for time used for objections. It is up to each team to notify the bailiff at the beginning of each round how and where they want their "free minutes" allotted.
  - f. Judge's rulings on any issue, including the final verdict should not take more than 4 minutes total (this include the time that the judge exits the room to deliberate and the time it takes to make a ruling)
  - g. Judge and Evaluator's Critique should be not more than 5 minutes and preferably evaluators will submit written critiques



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## PART II - ORDER OF TRIAL

1. Bailiff will announce the all rise and that the court is in session as the judge enters
2. Judge will sit and announce to the courtroom "you may be seated"
3. Judge should ask "is the prosecution ready" and then ask "is the defense ready"
4. Judge **MUST** announce these rules of court:
  - a. No food or drink in the courtroom
  - b. Instructors and observers shall not talk to, signal, communicate with, or coach their teams during trial. It is unacceptable to nod at witnesses to prompt their answers, to make noises indicating answers are right or wrong, or communicate in any other way with any trial participant while the trial is ongoing.
  - c. Any concerns about how the trial is conducted, sidebar coaching from the audience, evaluator critiques, dress code, etc. MUST be addressed with the designated judicial official immediately after the trial. These matters should not be discussed in the courtroom.
  - d. Judge needs to announce that photographing and recording of trial is only allowed by designated/identified Media Delegates or State Office volunteers to minimize distractions in court room.
5. Judge should next ask for any questions before starting.
6. Judge should swear in all witnesses, ask the Defendant to rise and read the indictment aloud.
7. Judge should tell the Prosecution they may proceed with their opening statement.  
**NOTE, THE PROSECUTION ALWAYS GOES FIRST**
8. When the prosecution finishes their opening, the Judge should ask the Defense attorney if they want to give their opening now or at the beginning of their case in chief.
  - a. **PURPOSE of OPENING STATEMENTS:** Introduction and acquaint the judge with the nature of the case and what is expected to be proven, i.e. - what the evidence will show.



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9. Once opening statements are made, the Judge should tell the prosecution that they can call their first witness. Once the Prosecution has called its witnesses, then the Judge should tell the Defense that they can begin (either by giving their opening statement or calling their first witness).
10. Both the prosecution and defense have three witnesses each and each team must call all three witnesses and cross examine all three witnesses. (re-direct and re-cross are optional to each team but re-direct must relate to direct and cross and re-cross must relate to the questions asked on re-direct)
  - a. **PURPOSE of DIRECT EXAMINATION:** To present evidence which proves the team's position and warrants submission of case to court.
  - b. **PURPOSE of CROSS EXAMINATION:** To discredit the opponent's witnesses and secure admissions favorable to the questioner's side.
  - c. **PURPOSE of REDIRECT/RECROSS:** To rehabilitate a witness who has been discredited.
  - d. Once the Defense rests, the Judge should ask the Prosecution to give their closing statement. After the prosecution finishes their closing, the Defense must be given an opportunity to make a closing statement. When the Defense finishes their closing, the Prosecution will be given an opportunity to give a rebuttal of up to 1 minute (if they have any time left in their closing)
  - e. **PURPOSE OF CLOSING:** To summarize the important facts of the case in the light most favorable their side. Should forcefully and dynamically urge their position in a clear and logical, persuasive argument. Highlight weakness of opponent's case.
11. Once both sides have given their closing, the Judge will state: "the court will now stand in recess while I deliberate." The bailiff will say "all rise" and the Judge will leave the room to briefly deliberate. You have 4 minutes allotted to deliberate and return to give your decision. A sample of what you might say is:
  - a. "Would the defendant please rise. After hearing all the witnesses and reviewing the evidence, I find the defendant guilty of murder in the first degree.
  - b. You may also make some sort of personal statement for example: "Ms. Smith, the act of murder, the taking of an innocent child's life is reprehensible. I hope you have some measure of remorse for your actions but even remorse does not absolve you this heinous act you committed."



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- c. You will conclude with "Sentencing will be done on a later date to be set by the court."

## PART III - SAMPLE SCRIPT (this is a sample that you should generally follow)

Wait until the attorney teams are seated at counsel table, the evaluator is in the courtroom and all the initial information is filled in on the evaluation forms. Then you will proceed as the judge walks in the room or when the judge signals the bailiff to begin:

**BAILIFF:** "All rise, the honorable Judge of the 5<sup>th</sup> civil district court is now in session"

**JUDGE:** "You may be seated. The Court calls "U.S. District Court for Northern District of Texas" the case "394-CV-2291-D James O'Callahan v. Continental Catering Consolidated Company" then asks, Is the plaintiff/prosecution ready."

**PROSECUTION ATTORNEYS:** (Rise) The Prosecution is ready

**JUDGE:** Is the Defense ready

**DEFENSE ATTORNEYS:** (Rise) The Defense is ready

**JUDGE:** Does the Defendant waive reading of the charges against her?"

**DEFENDANT:** (Rises) "Yes/no, your honor."

**JUDGE:** "The State will read the charges (STATE READS CHARGES if the Defendant does not waive)

**JUDGE:** "Would all witnesses who are planning to testify please rise, raise your right hand and repeat after me. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God."

**JUDGE:** "The Court will hear opening statements on behalf of the State."

**PROSECUTION:** Makes the opening statement.

**JUDGE:** "Does the Defense wish to make an opening statement at this time, or wait until the conclusion of the State's case?"

**DEFENSE:** Defense can make a statement now (or wait until the last witness for the Prosecution is excused).



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**JUDGE:** "The Court will hear evidence on behalf of the Prosecution. You may call your first witness."

**PROSECUTION:** The State's case is presented, witnesses called and physical evidence is introduced. After calling all three witnesses, the State will rest.

**JUDGE:** (If Defense has not yet made an opening statement) "The Court will now hear an opening statement from the Defense."

(If Defense has presented opening statement) "The Court will hear evidence on behalf of the Defendant."

**DEFENSE:** Defense case is presented, witnesses called and physical evidence is introduced. After calling all three witnesses, the State will rest.

**JUDGE:** "The Court will hear closing arguments for the State."

**PROSECUTION:** State's closing arguments.

**JUDGE:** "The Court will hear closing arguments on behalf of the Defendant."

**DEFENSE:** Defense closing arguments.

**PROSECUTION:** (Rebuttal if requested and time permits)

**JUDGE:** "The Court will be in recess while I deliberate."

**BAILIFF:** (As Judge leaves courtroom) "All rise."

**BAILIFF:** (As Judge re-enters courtroom after deliberating) "All rise."

**JUDGE:** "Would the defendant please rise. After hearing all the witnesses and reviewing the evidence, I find the defendant not guilty/guilty of negligence in hiring and/or supervising of Dr. John Martin."

- a. If you find the Defendant guilty, you may also make some sort of statement for example: "Your negligence resulted in the death of...."
- b. You will conclude with "A trial by jury will be done on a later date to be set by the court."

**JUDGE:** This court is now in recess and you are excused.



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**BAILIFF:** (If judge is leaving courtroom) "All rise."

## SECTION 4 – OBJECTIONS (DEFINITIONS AND EXAMPLES OF USAGE)

NOTE: This is not an exclusive list of objections but is a sampling of the most common objections you will see in Texas YG Mock Trial. However, teams may use other valid objections as long as they are proper under Texas YG Rules of Trial Procedure or Rules of Evidence. In addition, please reference the following video for Objections, Responses, Hearsay Exceptions [https://youtu.be/RNc0xEKP\\_98](https://youtu.be/RNc0xEKP_98)

\*Asterisked objections below are those objections where the judge MAY NOT allow argument from either counsel. The attorney will make the objection and the Judge will rule immediately after objection is made.

### 1. \*LEADING QUESTION

- a. Definition: A question that suggests the answer is leading and not permissible on direct examination. The other forms of leading questions: A) when part of the question is concrete and detailed and the other part vague, and B) when a question describes an incident in detail and asks if this happened. (Natural inference is the affirmative answer.)
- b. Test: Whether a reasonable man would get the impression that the examiner desires one answer rather than another. **Leading questions can and should be used on cross exam!**
- c. Permissible Leading Questions:
  - i. To reasonably refresh recollection.
  - ii. Hostile Witness: Where party has to call a hostile witness, **and** is declared hostile by judge.
  - iii. Handicapped Witness: Difficulty in self-expression, ignorant, young, aged, timid, weak-minded, infirm, and embarrassed.
  - iv. Preliminary foundational matters (such as identifying an object).
  - v. Cross-examination: Leading questions are permissible on cross-examination!
- d. NOT EVERY YES OR NO QUESTION IS LEADING. Examples of leading and non-leading yes or no questions:
  - i. Not leading: "Did you see the body?"
  - ii. Leading: "You saw the body, didn't you?"
  - iii. Not leading: "Did you call 911?"
  - iv. Leading: "You refused to call 911, didn't you?"
- e. Form of making the objection:
  - i. "Objection, leading."

### 2. \*NARRATIVE



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- a. Definition: An open-ended question that is too broad in scope and allows the witness to add additional information not asked in the question. This objection is in the nature of "irrelevant," in that a question inviting a narrative answer (too broad) 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. However, the judge has the discretion to permit narrative questions in special circumstances.
- b. Note: This objection is applicable, though rarely invoked, to questions asked on cross-examination.
- c. Examples of narrative questions:
  - i. "What happened the next day?"
  - ii. "What occurred after Mr. Jones' arrival?"
  - iii. "What do you know about this accident?"
- d. Form of Objection:
  - i. "Objection, the question calls for a narrative answer."
  - ii. "Objection, the answer has become narrative."

## 3. \*NONRESPONSIVE/OUTSIDE (or BEYOND) the SCOPE of the QUESTION

- a. Definition: When the witness does not answer the question asked, OR an answer that goes beyond the scope of the question and includes subject matter not called for by the question (any voluntary statements by a witness).
- b. Note: An answer is not necessarily non-responsive simply because it is unexpected or broader than anticipated. Rather, it contains information that is not confined to the question asked to the witness. Ordinarily, this motion is invoked only by counsel conducting the examination. Opposing counsel should state a different objection, i.e., "hearsay", "opinion", etc.
- c. Form:
  - i. "Objection, the witness is nonresponsive. I would ask the court to instruct the witness to answer the question."
  - ii. "Objection, the witness' answer contains information not asked in the question. I move that the answer be stricken from the record."

## 4. COMPOUND / MULTIFARIOUS QUESTION

- a. Definition: A question that contains two or more questions and each require a different answer.
- b. Examples:
  - i. "Mr. Jones, did you, or did anyone else, talk to Mrs. Smith at that time?"
  - ii. "Did Mrs. Brown type this letter in your presence and call Mr. Blue on the phone regarding this transaction?"
  - iii. "Ms. Baker, did you or anyone else see George Smith shoot



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Linda?"

- c. Form of Objection:
  - i. "Objection, this is a compound question."

## 5. AMBIGUOUS or UNINTELLIGIBLE:

- a. Definitions:
  - i. Ambiguous: Equivocal, uncertain; capable of being understood in two or more possible senses.
  - ii. Unintelligible: Not capable of being understood.
- b. Example:
  - i. "After the cat caught the mouse, did it die?"
- c. Form of Objection:
  - i. "Objection, the question is ambiguous."
  - ii. "Objection, the question could be interpreted in multiple ways."
  - iii. "Objection, the question is not easily understood, or does not make sense."

## 6. IMPROPER CHARACTER TESTIMONY

- a. Definition: Evidence regarding a witness' character is never admissible, unless: A) it relates to the witness' character of truthfulness or untruthfulness, or B) evidence about a conviction of a crime by the witness
- b. Form of Objection:
  - i. "Objection, the witness character is not in question."

## 7. ASKED and ANSWERED / REPETITIVE

- a. Definition: The purpose of the question is to persuade the trier of fact rather than elicit information. The question calls for no new facts, but only asks the witness to agree to conclusions drawn by the questioner. This objection should be used when the question or answer has already been put into evidence. There is more liberality given for repetition on cross exam.
- b. Form of Objection:
  - i. "Objection, the witness has already been asked and has answered the question."

## 8. IRRELEVANT

- a. Definition of Relevance: Rule of Evidence 401: "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.
- b. All evidence (verbal or physical) must be relevant. However, relevant evidence may be excluded for other reasons such as hearsay or because the probative value of the evidence is outweighed by the inflammatory nature of the evidence.
- c. Generally, the problem of relevancy lies with circumstantial rather than direct



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evidence.

- i. Circumstantial evidence is evidence which to any reasonable degree tends to establish the probability or improbability of fact in controversy. Circumstantial evidence tends to prove or disprove a fact from which an inference can be drawn concerning an ultimate fact in controversy. All evidence must have probative value in proving a fact or to influence the issues of the case.
  - ii. Common kinds of relevant circumstantial evidence:
    1. Habit - requires a foundation if there is no direct evidence for the matter
    2. Custom - show parties knew the cultural customs; similar acts and occurrences (including other crimes), flight, concealment, etc. (these kinds of evidence inferences concerning ultimate issues are drawn, such as motive, knowledge, intent, identity, absence of mistake, common scheme, guilt, mental state, etc.)
  - iii. Relevancy may depend on existence of a preliminary fact (laying a foundation).
  - iv. The court must weigh conflicting values where there is a relevant issue, but tends to be unduly prejudicial in its effect.
- d. Form of Objection:
- i. "Objection, the question calls for an irrelevant answer."
  - ii. "Objection, the answer contains irrelevant material, and I ask that it be stricken from the record."

## 9. ARGUMENTATIVE

- a. Definition: Questions that attempt to elicit an argument and do not ask for any new information, and only asks the witness to agree to conclusions drawn by the questioner. The purpose of the question is to persuade the trier of fact rather than to elicit information. The question calls for an argument in response to an argument contained in the question.
- b. Cross-examination: The court, in its discretion, may allow argumentative questions on cross-examination.
- c. Examples:
  - i. "You're not telling the truth, are you?" (though be careful, sometimes this question is appropriate – it depends on the circumstances and your approach in asking the question)
  - ii. "How can you remember what happened on October 10 when you cannot remember anything on the 11th or 12th?"
  - iii. "Can you tell this court what you mean so that we will know what you are talking about?"
- d. Form of Objection:



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- i. Objection, argumentative."

## 10. SPECULATION / LACK OF PERSONAL KNOWLEDGE / OPINION of a LAY WITNESS / OUTSIDE the SCOPE OF EXPERTISE

- a. Definition: A witness may base his answer on personal knowledge but may not base it on speculation. A witness may testify to facts based on his own personal knowledge, but may not base an answer, in any event, on speculation. "I guess," "I think," "I suppose" statements are never permitted.
- b. Lay Witness: A lay witness can **only** give opinion as to matters he has personally perceived, **and** the matter must be within common experience of non-experts (speed, size, etc.). They may not base their opinion on ambiguous matters not within common experience of lay persons, as this is speculation.
- c. Expert Witness: An expert witness' opinions related to their field of expertise are permitted. They may state opinions even if they have no personal knowledge of facts (information may be relayed to him). If the data on which he bases his opinion includes so many uncertain and varying factors that he is required to guess, it is speculative.
  - i. NOTE: You must get an expert qualified and admitted as an expert before opinion questions are asked of the witness
- d. Example of speculative:
  - i. "Ms. Baker, is it possible that Linda threatened Smith before he shot her?"
  - ii. "Is it possible, Mr. Jones, that there were other conversations?"
- e. Form of Objection
  - i. "Objection, the question calls for speculation by the witness."
  - ii. "Objection, the question is outside the scope of the witness' expertise."
  - iii. "Objection, this witness has not been qualified as an expert witness (in this area or at all)."
  - iv. "Objection, the question calls for an answer that the witness lacks personal knowledge of."
  - v. "Objection, the answer has become speculative. I ask that it be stricken from the record."
  - vi. "Objection, the answer contains speculation. I ask that it be stricken from the record."

## 11. HEARSAY

- a. Definition: Rules 801 – 805 of Rules of Evidence. 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.



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Hearsay can be verbal, written, or non-verbal (signal such as the nod of the head). Any means used as a substitute for speaking where there is intent to communicate can be hearsay.

## b. Rule 801 – Definitions

- i. (a) Statement. A "statement" is (1) an oral or written verbal expression or (2) nonverbal conduct of a person, if it is intended by the person as a substitute for verbal expression.
- ii. (b) Declarant. A "declarant" is a person who makes a statement
- iii. (c) Matter Asserted. "Matter asserted" includes any matter explicitly asserted, and any matter implied by a statement, if the probative value of the statement as offered flows from declarant's belief as to the matter.
- iv. (d) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- v. (e) Statements Which Are Not Hearsay. A statement is not hearsay if:
  1. (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. (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 except a grand jury proceeding in a criminal case, or in a deposition;
    - b. (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;
    - c. (C) one of identification of a person made after perceiving the person; or
  2. (2) *Admission by party-opponent.* The statement is offered against a party and is:
    - a. (A) the party's own statement in either an individual or representative capacity;
    - b. (B) a statement of which the party has manifested an adoption or belief in its truth;

## c. Rule 802 – Hearsay Rule

- i. Hearsay is not admissible except as provided by statute or these rules or by other rules prescribed pursuant to statutory authority. Inadmissible hearsay admitted without objection shall not be denied probative value merely because it is hearsay.

## d. Rule 803 – Hearsay Exceptions; Availability of Declarant Immortal

- i. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:



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1. (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. (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. (3) Then Existing Mental, Emotional, 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, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.
4. (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 or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
5. (5) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had personal 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, unless the circumstances of preparation cast doubt on the document's trustworthiness. 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. (6) Records of Regularly Conducted Activity. 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, all as shown by the testimony of the custodian or other qualified witness, or by affidavit that complies with Rule 902(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. "Business" as used in this paragraph includes any and every kind of regular organized activity whether



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conducted for profit or not.

7. (8) Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies setting forth:
    - a. (A) the activities of the office or agency;
    - b. (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding in criminal cases matters observed by police officers and other law enforcement personnel; or
    - c. (C) in civil cases as to any party and in criminal cases as against the state, factual findings resulting from an investigation made pursuant to authority granted by law; unless the sources of information or other circumstances indicate lack of trustworthiness.
  8. (21) Reputation as to Character. Reputation of a person's character among associates or in the community.
  9. (24) 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, or to make the declarant an object of hatred, ridicule, or disgrace, that a reasonable person in declarant's position would not have made the statement unless believing it to be true. In criminal cases, a statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
- e. Rule 805 – Hearsay within Hearsay
- i. Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.
- f. Form of Hearsay Objections:
- i. "Objection, the question calls for hearsay"
  - ii. "Objection, the witness' answer contains hearsay and I ask that it be stricken from the record."
  - iii. "Objection, this document contains hearsay and I would ask that those portions of the document that are hearsay be redacted prior to admission of the document in evidence." (NOTE: with this one, the attorney should be able to articulate which portions specifically are hearsay and why)

## 12. OUTSIDE THE SCOPE OF THE CASE PROBLEM

- a. Witnesses may not embellish the facts of the case. On direct examination, a



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witness may testify to limited additional facts provided the new information is merely incidental and is supported by reasonable inference from the witness' statement. For example:

- i. If the case fact says: "I went to an ivy league school in Massachusetts and was top of my class" a reasonable inference would be: "I went to Harvard and was valedictorian"
- ii. If the case fact says: "I went to college," it would not be a reasonable inference to say: "Not a reasonable inference: I was the valedictorian at Harvard University with a degree in astrophysics"
- b. An expert may only be qualified to give expert testimony in a certain field. For example, an expert qualified as a medical doctor in the field of psychiatry is not therefore qualified in all areas (ie: cannot give expert opinions on gun safety). Experts are limited to their specific field of qualification.
- c. On re-direct the attorney is limited to the scope of the prior side's cross examination. Likewise, on re-cross, the attorney is limited to the scope of the prior side's re-direct.
- d. Form of Objection:
  - i. "Objection, this question/answer is outside the scope of the case problem."
  - ii. "Objection, this is outside the scope of this expert's field of expertise."
  - iii. "Objection, this is out of the scope of my cross examination. I never mentioned anything about \_\_\_\_\_" (for use on opposing counsel's redirect)"
  - iv. "Objection, this is out of the scope of my redirect examination. I never brought up \_\_\_\_\_" (for use on opposing counsel's recross)



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## 13. ASSUMING FACTS NOT IN EVIDENCE

- a. Facts which are not in evidence cannot be used as the basis of a question, unless the court allows the question "subject to later connecting up." A court in the interest of good administration and usage of time may allow the missing facts to be brought in later
- b. Form of Objection:
  - i. "Objection, the question assumes facts not in evidence. We are here to ask for facts from the witnesses, not assume that a fact exists."
  1. Response to such an objection: Your Honor, we will have those facts later in the case, but this witness is here now and it is the best use of the court's time to ask this question now

## 14. BADGERING THE WITNESS/HARASSING

- a. Definition: Quarreling with, arguing with, shouting at, bullying, looming over and threatening a witness
- b. Form of Objection:
  - i. "Objection your honor, counsel is badgering the witness"

## 15. AUTHENTICATION WAS INSUFFICIENT OR IMPROPER

- a. Definition: Rule of Evidence 901
  - i. (a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
  - ii. (b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:
    1. (1) *Testimony of witness with knowledge.* Testimony that a matter is what it is claimed to be.
- b. Form of Objection:
  - i. "Objection, opposing counsel failed to properly authenticate this document/failed to lay the proper predicate."

## SECTION 5– ENTERING DOCUMENTS INTO EVIDENCE

NOTE: Please review training video on Texas YG website for proper way to authenticate and enter exhibits into evidence. <https://www.youtube.com/watch?v=Xik32KGEOqM>