



JUDICIAL CASE QUESTIONS

2021-2022

Trial Questions/Comments

1. Is this a bifurcated case or do we have to discuss damages and payment in the trial?
 - a. Answer: You can briefly discuss damages if you wish. Treble damages are calculated by taking the amount awarded and multiplying it by three. If you wish to discuss damages, have a witness briefly testify to the amount of loss, then in your closing argument quickly explain the treble damage calculation and your requested claim amount.
2. Can attorney teams enter part of an exhibit or do they have to enter the entire exhibit?
 - a. Answer: (Attorneys offer evidence. Judges enter or admit evidence.) An attorney can offer a part of an exhibit. If there are no objections, the Judge will likely enter it into evidence. If there are objections, the attorney would need to explain why the Rules of Evidence do not require the introduction of the entire exhibit into evidence.
3. Do we have to mark the Stipulated Facts as an Exhibit # to put them into evidence?
 - a. Answer: **They can be considered Exhibit 9.** If an updated case does not pre-mark the exhibit, the attorney can premark the first page of the document using a pen in a similar manner as the other printed exhibit stickers.
4. Can you pre-admit the Stipulated Facts into evidence during pre-trial matters if you plan to use it?
 - a. Answer: (Attorneys offer evidence. Judges enter or admit evidence.) Yes. You cannot read the stipulated facts pretrial. However, you can offer them pretrial.
5. Exhibit 4 is not marked.
 - a. Answer: See Page 60, top left. Exhibit 4 consists of seven pages.



6. If Exhibit 2 is the painting, do we need to put it on a canvas and try to replicate a "painting" or can we just oversize and call it a painting? How big should it be - references say 4 feet by 3 feet approximately?
 - a. Answer: The Rules of Procedure are relaxed for Exhibit 2 as explained on Page 10, Point 5. Teams can use Exhibit 2 as a regular letter-size copy, create an oversized paper print, or create a canvas print. The size of the exhibit will not change or alter the facts regarding "the painting" as they are presented in the case packet. Just as teams are pretending to be the real witnesses, teams will pretend that the version of Exhibit 2 that has been admitted into evidence is the actual (albeit fake) painting referenced in the case.
7. For authentication purposes, who created Exhibit 1? Is Ann Freedman the only one who can put that into evidence?
 - a. Answer: Exhibit 1 was created by the Plaintiff's attorney. Teams should consider Exhibit 1 as a stipulated exhibit – both sides agree to the authenticity. No attorney may object to its introduction into evidence. Exhibit 1 may be offered into evidence pretrial without the need for a legal foundation.
8. In trial court, if a side runs out of time before they are able to call all witnesses is the opposing side allowed to call an cross the witnesses who were not called?
 - a. Answer: Yes. The Judge should permit cross examination. The team who managed their time will not be penalized because the opposing side expended all available time.
9. How many of the 5 categories are needed to enter a witness in as an expert?
 - a. Answer: Refer to the text and comments of Rule of Evidence 702.
10. David Anfam is declared as profoundly deaf in his affidavit. We find this to be a problem considering that profoundly deaf can be interpreted differently between teams and



there could be unfair concessions made throughout the competition. If this statement is allowed, how should we proceed in trial?

- a. Answer: The strength of your case and the points awarded by the evaluator will not turn on the interpretation of Dr. Anfam's lifelong disability. If a witness attempts to twist facts contained in their affidavit, the attorney can follow legal processes regarding impeachment of the witness. However, no witness should overtly disrupt court proceeding by pretending that they cannot hear the cross examination questions.

11. Is the identification of Exhibit 7 on page 14 of the Stipulated Facts, footnote 6, as a pamphlet from Beyeler Foundation a typo? Exhibit 7 in the case is the Laili Nasir letter.

- a. Answer: **That footnote is incorrect and should be constructively removed.** The author chose not to create the Beyeler pamphlet for the case packet.

12. What does Rothko's meeting with Herbert have to do with the paintings by Newman? On page 32 of David Anfam's Affidavit, line 21: "In June 2008, I received another e-mail from Knoedler librarian Ms. Edye Weissler. It read, "I'm a little worried about the Newmans, I don't want to you to get into hot water, and we haven't enough to go on with D. Herbert. I have found an appointment in Rothko's calendar where he met with the Herbert once, but that is it."

- a. Answer: The Knoedler was considering the provenance of the Rosales collection as a whole. Ms. Weissler appears to be explaining a lack of evidence connecting David Herbert to the Rosales collection.

13. Does "pattern of racketeering" refer to two or more wire/mail acts involving the subject Rothko only, or any paintings? If just the subject Rothko, then attorneys can only question witnesses about the subject Rothko. If any paintings, then attorneys can question witnesses about any painting.

- a. Answer: The "pattern of racketeering" extends beyond the De Soles' Rothko. Discussion of the entire collection is relevant in the trial.



14. Nasr states “nor did we update anyone at Knoedler that our opinions of the works changed” (p. 52, lines 9-10), is she referring to the 1956 Rothko, the Seagram Murals discussed in the immediate sentence, or the relationship between the 1956 Rothko and the Murals?
 - a. Answer: “The opinions of the works” references the Rosales Collection works viewed by Ms. Nasr and the National Gallery of Art.
15. Can the Stipulated Facts be offered into evidence during pretrial matters?
 - a. Answer: Yes. However, they cannot be read into evidence unless the attorney is “on the clock” – either in opening, closing or in an examination.
16. Must an attorney reserve time after direct/cross examination, or be barred from re-direct/re-cross?
 - a. Answer: No. Judges should not require “reservation of time” in the manner referenced in the question including for the Plaintiff’s closing argument.
17. Is constructive sequestration allowed under Rule of Evidence 614?
 - a. Answer: Yes, the witnesses will not leave the room. However, they cannot testify as to testimony they have heard in the courtroom. For example, they cannot say “Earlier when Mr. Rogers was testifying he said the sky is green. He is a liar.” They must testify as if they were not in the courtroom for the prior testimony.
18. Please clarify whether re-cross is allowed at District. At District last year, some judges were not allowing re-cross, stating it was not allowed at District, even though the rules clearly anticipate re-cross. Rules of Procedure, p. 15, no. 2; Rules of Procedure, p.19 of Sample Trial Script; Rules of Evidence, p.15 no. 611(b).
 - a. Answer: Yes, re-cross is allowed at District.



19. How are the stipulated facts supposed to be used during the trial? Can they be shown to the witness like evidence and affidavits?
 - a. Answer: Yes. The attorneys can read from them while “on the clock” and also have a witness read from them. However, not all witnesses will have personal knowledge of or agree with everything that is contained in the stipulated facts.
20. In the case there are stipulated facts. Are these considered to be admitted pretrial? If not, what is the procedure to have these admitted?
 - a. Answer: You can offer them pretrial. “Your honor, both sides have drafted Stipulated Facts. At this time we offer them into the record.”
21. Did Laili Nasr review the Rothko that was sold to Dominico De Sole? Or did Laili Nasr review the Rothko that was sold to the Martin Hilti Family Trust?
 - a. Answer: Ms. Nasr reviewed the Rothko that sold to Domenico De Sole.
22. Ann Fredman says she bought a Rothko but it is not included in exhibit 1, does that mean she is lying?
 - a. Answer: No.
23. Are the stipulated facts considered hearsay?
 - a. Answer: No.
24. My team and I were looking over the trial case and we noticed that the case didn't include the statute or the components needed to prove mail fraud. I was wondering if you could provide us with that information, as we need it to prepare our case.
 - a. Answer: See Page 8.
25. How did exhibit 3 (the invoice) get to Jim Kelly? Was it through wire or mail?
 - a. Answer: See Page 14, Point 11.



26. Since this year's case is a well-known case, are we allowed to use information online from reliable news sources? When I was doing research for my closing speech for Judicial try-outs, I was looking at information online and in the case file, and some of it did not match.
- Answer: No. See Page 10, Point 2.
27. Is the witness's name Jamie Martin or James Martin?
- Answer: **James Martin. All references to Jamie Martin should be constructively updated to read James Martin.**
28. The stipulated facts say that the Dedalus Foundation advised Freedman that it believed seven of the Motherwell works from the Rosales Collection were fakes. But in exhibit 1, there are only 4 Motherwell works.
- Answer: **This was not a purposeful inaccuracy. Page 14, Point 15 of the Stipulated Facts should be constructively updated to "...that it believed all of the Motherwell works..."**
29. On page 35, line 18, it is said that Glafira Rosales met Ann Freedman for the first time in 1995. On page 36, starting at line 19, it is said that the first sale from the Rosales collection was a Diebenkorn sold in 1994. How is it possible that Ann's first sale from Rosales was a year before they were even introduced? Is this a typo? If so, what year is it supposed to be?
- Answer: **This was not a purposeful inaccuracy. Page 35, line 18 should be constructively updated to read "1994" instead of "1995."**
30. Is there anyway to change the names of the witnesses to be gender neutral? Example - Ann Freedman to Andy. Thanks.
- Answer: No. This would insert more confusion into the mock trial and hinder the "willing suspension of disbelief."



Appellate Questions/Comments

1. Do the font requirements apply to the cover page of the brief?
 - a. Answer: Please use sample cover sheets for briefs posted on the website for Appellate Section. Do follow the font requirement throughout briefs. Brief Cover Sheet link [Bench Brief](#) [Attorney Brief](#)
2. Can there be one person teams of attorneys on appeals?
 - a. Answer: No there are no solo teams. Individual participants can serve as a Justice only not as part of a team.