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7 Most Common Objections at Trial

While there are a number of objections that can be made during a trial and the majority of those objections can be pre-emptively handled through motions *in limine*, there are a number of circumstances where objections are necessary during a trial. There a litany of objections. Here are the top seven that I continue to frequently encounter.

(1) Hearsay: 801-808

a. 802 – Rule: A statement made out of this court offered in court to prove the through of the matter asserted. A statement is not hearsay if the words spoken are relevant, not what the words mean.
b. 804 – Exceptions: Declarant Unavailable
    i. Testimony in Prior Proceedings. When opportunity to develop the testimony by examination or cross-examination or not a party to the action
    ii. Under believe of imminent death. (criminal)
    iii. Statement against interest.
    iv. Statement of personal or family history (birth, adoption, marriage, death)
    v. Etc.
c. Way to combat if admitted – attack credibility of the declarant (with info that would be admissible if the declarant had testified as a witness) or use evidence that inconsistent with the hearsay statement.

(2) **Lack of Authentication (901a).** This is a question of foundation when trying to introduce a document into evidence. A document that is not self-authenticating or whose authenticity has not been stipulated to must be identified as true and accurate by a competent witness.

(3) **More Prejudicial Than Probative (401-403).** This is the argument: "The evidence being introduced is highly prejudicial to your client and this prejudice far outweighs the probative value." This is not just an evaluation of the evidence hurting your client's case, but more so that it is not relevant enough to the merits of the case to be let in.

(4) **Best Evidence (1002).** When evidence is not the best source of the information and the document is available to entered into evidence. Enter as a proof of its contents.

(5) **Argumentative (611a).** When the questioning attorney is not asking a question but instead making an argument of law more properly used on summation. This type of question can only be used when the witness can properly answer the question.

(6) **Improper Impeachment (607-610, 613)** with Prior Inconsistent Statement.

a. How to do it right. Lock the witness into the current statement. Then confirm the witness' memory of making the prior statement. Read the witness the prior statement. Then if the witness continues to deny, approach the witness with the prior statement, have them identify it and repeat the reading. If witness is still denying, introduce the prior statement. Basically to mad a concise question that the witness is currently not answering truthfully. Then referring the witness to the previous statement, providing opposing counsel with a page or line and ask the witness if that statement was made by them previously.

b. How most attorneys do it wrong. Not following that procedure, which then makes the situation look like you are trying to confuse the witness into saying something different. Having a prior statement but one that does not relate to the current testimony at hand. Failing to direct opposing counsel to the proper source of the prior statement.

(7) **Speculation (602; 701)** When a witness does not have first-hand knowledge of the fact they are testifying to. Generally what someone else was "thinking" or "feeling." Or this can also come up as what would have happened had something else occurred. Prior preparation of the witness is imperative on this issue.

As a 101 type seminar, I think it is also important to review how to introduce an exhibit properly. First, the exhibit must be marked for identification, show that exhibit to defense counsel, ask to approach the witness, ask them if they know what it is, how do they know, and has it been changed since last seen. The exhibit must then be moved to introduce and publish it to the jury.