

Overlap of Evidence and Trial Advocacy/Mock Trial

1. Pretrial objections - motions in limine¹

- a. Core Competencies
 - i. Identify evidentiary issues pretrial
 - ii. Discern which objections are best raised pretrial
 - iii. Research and write persuasive pretrial motions
 - iv. Argue pretrial motions using FRE, cases, and facts
 - v. Clarify, and follow up on, court rulings
- b. Rules of Evidence for typical pretrial motions (FRE)
 - i. Relevance (401-402)
 - ii. unfair prejudice, confusing, waste of time, etc. (403)
 - iii. Improper character evidence (404(a) & 405) & other acts (404(b))
 - iv. Privilege (501, et seq.)
 - v. Improper impeachment – specific acts (608(a)) & prior convictions (609)
 - vi. Hearsay (801-804) & residual hearsay (807)

2. Foundations - Direct Exam

- a. Core Competencies
 - i. Identify examination goals & testimony and evidence needed for closing
 - ii. Outline interesting, well-planned and comprehensive direct exams
 - iii. Establish the context and foundation to undercut evidentiary objections
 - iv. Elicit the testimony needed, refreshing recollection if necessary
 - v. Understand concise re-direct exams questions, if any
- b. Federal Rules of Evidence
 - i. Relevance (401-402) & conditional relevance (104(b))
 - ii. Authentication - exhibits (901, et. seq.), handwriting (b)(4) & voice (4)
 - iii. Hearsay predicates – conversations & documents (801-807)
 - iv. Refreshed recollection & prior recollection recorded (803(5))
 - v. Expert testimony² (701-704)

¹ Trial competitions typically allow for 1 or 2 motions in limine per side and oral argument, typically less than 5 minutes. Some competitions permit, and some teams write, short written motions in limine as well.

² Trial competitions sometimes do include expert witnesses, which present issues related to qualifications, reliability, helpfulness and whether the witness may testify to inadmissible evidence, most often hearsay, at trial.

3. Trial objections

Core Competencies

- i. Understand form objections (leading, compound, vague, etc.)
- ii. Understand non-evidentiary objections (badgering, outside the scope, etc.)
- iii. Understand timing, form, and style of evidentiary objections
- iv. Understand objection/response before the jury & outside jury's presence
- v. Understand limiting instructions, renewed objections and offers of proof

4. Impeachment - Cross Exam

a. Core Competencies

- i. Identify examination goals and potential helpful testimony for closing
- ii. Outline the goals in blocks (crediting, impeaching, challenging, etc.)
- iii. Draft leading questions calling for "yes/no" answers for each block
- iv. Listen to answers from witnesses for unscripted blocks/questions
- v. Appreciate the questions NOT to ask (open, narrative, one too many, etc.)
- vi. Include the achieved examination goals in closing argument

b. Federal Rules of Evidence

- i. Perception, memory & bias (no FRE)
- ii. Prior inconsistent statements (613 & 801(d)(1))
- iii. Prior convictions (609)
- iv. Specific acts of untruthfulness (608(b))

5. Other Evidence Overlaps

- a. Stipulation:
 - i. agreement about (i) facts, (ii) legal issue; or (iii) treatment of evidence
- b. Judicial notice (201)
- c. Limited objections during jury addresses: Openings and Closing
- d. Using demonstrative evidence
 - i. maps, charts, etc. to help the jury understand evidence
- e. Summary witness and summary exhibits (1006)
- f. Voir dire - upon your opponent:
 - i. seeking to admit evidence
 - ii. qualifying expert witnesses (702-704)