

# ISSUE SPOTTING

## A. OBJECTIONS

### 1. BROAD RULES THAT SUPPORT OBJECTIONS IN LOTS OF SITUATIONS (always look for them)

a) Substantive rules make good objections

---- IRRELEVANT, or more likely, RULE 403 CONFUSION OF ISSUES, MISLEADING, WASTE OF TIME

---- PREJUDICIAL (Rule 403)

---- NO FOUNDATION SHOWING PERSONAL KNOWLEDGE (except experts)

b) Procedural rules make weak objections because easily corrected

---- LEADING on direct examination

### 2. BROAD RULES THAT RARELY SUPPORT OBJECTIONS (look for them anyway)

---- WITNESS IS INCOMPETENT TO TESTIFY (most witnesses are competent)

---- IRRATIONAL / SPECULATIVE OPINIONS (most opinions are admissible)

---- HEARSAY (most statements that look like hearsay are ultimately admissible)

### 3. NARROW RULES THAT SUPPORT OBJECTIONS IN SPECIFIC SITUATIONS

a) Those that are easy to spot

---- INSURANCE (411)

---- OFFERS OF COMPROMISE / OFFERS TO PAY DAMAGES (408-409)

b) Those that are hard to spot

---- CHARACTER -- look for evidence of patterns of behavior

---- REMEDIAL MEASURES -- look for steps taken after the event

c) Those that arise whenever an exhibit is offered

---- AUTHENTICATION (901-902)

---- FAILURE TO LAY HEARSAY EXCEPTION FOUNDATION

d) Objections to expert witnesses

---- IRRELEVANT BECAUSE NO ISSUE ON WHICH EXPERT WOULD BE HELPFUL

---- NO PROOF OF QUALIFICATIONS

---- LACK OF ADEQUATE DATA

---- NO FOUNDATION OF SCIENTIFIC RELIABILITY FOR PURPOSE OFFERED

---- NO FOUNDATION THAT RELIABLE PROCEDURES WERE FOLLOWED

## **B. RESPONSES**

### **1. OPTIONS**

- a) NOT WITHIN DEFINITION. The evidence does not fall within the definition of what is excluded.
- b) NOT FOR PROHIBITED PURPOSE. The evidence is not offered for the purpose mentioned in the rule, but is offered for a different (relevant) purpose
- c) EXCEPTION. The evidence falls into a specific exception to the rule.
- d) FOUNDATION LAID. All foundation requirements for admissibility have been met
- e) A DIFFERENT RULE APPLIES. A different, more specific rule says the evidence is admissible.

### **2. RULES INVOKED PRIMARILY AS RESPONSES TO OBJECTIONS**

- a) IMPEACHMENT (response to relevance, character, hearsay and personal knowledge objections)
  - BIAS
  - CONVICTIONS/BAD ACTS
  - PRIOR INCONSISTENT STATEMENT
  - MENTAL/PHYSICAL PROBLEMS
- b) RULE 404(b) (response to character or relevance objection)
- c) HABIT, CUSTOM (response to character objection)
- d) RULES OF EVIDENCE DON'T APPLY WHEN LAYING FOUNDATIONS (Rule 104)

## **C. UNIQUE RULES**

### **1. HEARSAY (documents, conversations)**

- a) Objection
  - "Hearsay" used as objection when no foundation for exception laid
- b) Response
  - Does not fit definition of hearsay
  - Exempted from hearsay under 801(d), usually admissions of opposing party
  - Falls into an exception under 803 or 804
- c) Reply
  - Foundation not laid

---- Crawford not complied with (Confrontation Clause)

d) Rare

---- Residual exception, Rule 807 (requires pretrial notice)

2. PRIVILEGE -- Protects conversations; applies to documents and testimony about what was said.

3. REMAINDER RULE -- Rule 106 applies to documents & recordings; common law to conversations.

#### **D. RULE THAT ALMOST NEVER APPLIES TO ANYTHING**

ORIGINAL DOCUMENT RULE (Rules 1001-1007)

#### **E. REMEMBER**

**1. THE RULES ARE NOT MUTUALLY EXCLUSIVE** -- hearsay must be relevant, an expert opinion could be too prejudicial, a question that asks for an opinion could be leading, a witness asked to authenticate an exhibit may lack personal knowledge, etc.

**2. PROPER OBJECTION FORM** - timely, specific, motion to strike

X