

## EVIDENTIARY OBJECTIONS FROM A TO Z

OBJECTION(S)	RULE(S)	SUBSTANTIVE ANALYSIS AND JUSTIFICATION FOR OBJECTION
<b>Argumentative</b>	CRE 611(a)	Question intended to require witness to agree with examining attorney's summary, inference, or conclusion regarding the subject of the question; can also be raised in response to a witness's testimony.
<b>Asked and Answered</b>	CRE 611(a)	Question calls for an answer already provided in earlier testimony or repeats an earlier question (even if phrased differently)
<b>Badgering/Harassing the Witness</b>	CRE 611(a)(3)	Provoking witness, not permitting witness to respond, mocking witness.
<b>Beyond the Scope of Direct/Cross-Examination</b>	CRE 611(b)	Cross-examination should be limited to the subject matter of direct examination and credibility of witness Court may grant permission to inquire into other matters as if on direct examination
<b>Calls for a Conclusion</b>	CRE 602/701	Question asks for an opinion or conclusion rather than facts.
<b>Compound Question</b>	CRE 611(a)	Question contains two or more inquiries
<b>Confuses the Issues</b>	CRE 403	Question does not clarify issues or assist the trier of fact.
<b>Cumulative Testimony</b>	CRE 403	Question calls for testimony or evidence already received in the record Objection also applies to exclusion of evidence where probative value substantially outweighed by danger of prejudice if evidence admitted; confusion of issues; misleading jury; undue delay; or waste of time.
<b>Failure to Provide Original Document (Best Evidence Rule)</b>	CRE 1002	Proponent of an exhibit fails to provide the original of the item (writing, recording, photograph) when attempting to prove the content of the exhibit offered
<b>Hearsay</b>	CRE 801/802	Witness is asked to testify or attempts to testify concerning: <ol style="list-style-type: none"> <li>(a) An oral or written assertion OR</li> <li>(b) Nonverbal conduct intended to be communicative</li> <li>By a "declarant," a person who makes a "statement" covered by CRE 801(a)(1) or (2)</li> <li>Offered to prove the truth of the matter asserted</li> </ol>
<b>Improper Attempt to Prove Conduct in Conformity with Character</b>	CRE 404	Person's character or trait of character inadmissible to prove that the person acted in conformity with that character or trait on a specific occasion EXAMPLE: Evidence of predisposition to anger or violence used to prove violent action in specific alleged domestic violence incident
<b>Improper Bolstering</b>	CRE 403/608	Questions that improperly ask the witness to vouch for his/her testimony, report, or other sponsored evidence
<b>Improper Expert Opinion Testimony</b>	CRE 702/703	Witness not qualified by knowledge, skill, experience, training, or education to offer the proposed opinions <ol style="list-style-type: none"> <li>Scientific or technical principles or methodologies the witness applied are not reliable (e.g., there is no scientific consensus about the principles or methodologies or the proposed area of expertise is not recognized and accepted in the scientific community)</li> <li>Proposed expert lacks the qualifications – knowledge, skill, experience, training, or education – to testify to an opinion on the subject matter(s)</li> <li>The expert's testimony and opinions will not assist the trier of fact</li> <li>The evidence the expert considered or relied upon in forming the opinions or inferences is not of the type reasonably relied upon by experts in the particular field (NOTE: Facts and data the expert considers may not be admissible at trial (e.g., hearsay), but opinions may still be admissible)</li> </ol>

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<b>Improper Impeachment/ Extrinsic Evidence of a Prior Inconsistent Statement of Witness</b>	CRE 607/ CRE 613(b)	Extrinsic evidence of witness's prior inconsistent statement inadmissible unless witness given opportunity to explain or deny the extrinsic evidence and opposing party can examine the witness concerning the extrinsic evidence  Permitted Methods of Impeachment: <ol style="list-style-type: none"> <li>1. Untruthful Character of Witness</li> <li>2. Bias</li> <li>3. Prior Inconsistent Statement of Witness</li> <li>4. Defects of Capacity</li> <li>5. Contradiction</li> </ol> Statements must be inconsistent and the inconsistency must be relevant
<b>Improper Lay Witness Testimony</b>	CRE 701	Witness is asked to testify or attempts to testify regarding opinions or inferences that are NOT: <ol style="list-style-type: none"> <li>1. Based upon the witness's rational perception (e.g., speed, time, distance, color)</li> <li>2. Opinions or inferences helpful to understanding the witness's testimony OR</li> <li>3. Intended to determine a fact in issue</li> <li>4. Based on scientific, technical, or other specialized knowledge with the scope of CRE 702</li> </ol>
<b>Improper Refreshing/ Writing Used to Refresh Memory</b>	CRE 612	Witness using a document/writing to refresh recollection (1) while testifying or (2) before testifying may be required to produce to the adverse party the document used to refresh, to cross-examine the witness on the document, and to introduce into evidence other portions of the document relating to the witness's testimony
<b>Improper Summary</b>	CRE 1006	Proponent of a summary exhibit – such as a chart, summary, or calculation summarizing voluminous writings, recordings, or photographs which cannot be conveniently examined in Court – has failed to: <ol style="list-style-type: none"> <li>1. Make the originals of the underlying documents used to prepare the summary available for inspection or copying</li> <li>2. Provide a copy of the summary to other parties in advance of hearing or trial</li> <li>3. Establish the foundation for admissibility of all entries contained in the summary exhibit</li> </ol>
<b>Inflammatory/Prejudicial</b>	CRE 403	Question is intended to create prejudice against another party or witness
<b>Irrelevant/Not Relevant</b>	CRE 104(b) / 401/402	Question asked or testimony given does not make the existence of any consequential fact more or less probable than the fact would be without the evidence; question is not about the issues in the hearing or trial
<b>Lack of Authentication</b>	CRE 901	Proponent of evidence fails to provide evidence that would support a finding that the matter in question is what proponent claims
<b>Lack of Foundation/ Calls for Speculation/ Assumes Unestablished Facts</b>	CRE 602	Witness lacks the personal knowledge – or the examiner has not established the existence of the personal knowledge – that would allow the question to be answered  Question requires the witness to speculate or guess about the answer because there is a lack of information or personal knowledge about the subject of the question  Examiner includes in the question a fact that has not been established by other evidence received in the record (e.g., “when did you stop beating your wife?”)

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<b>Leading</b>	CRE 611(c)	Leading questions not permitted on direct or redirect examination except to develop witness's testimony or when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party and permission of the court to lead the witness has been granted  Question suggests/contains its own answer
<b>Misleading Question</b>	CRE403/611(a)	Question misrepresents facts, law, record, or prior testimony; may include misquoted testimony or misstated facts
<b>Nonresponsive</b>	CRE 611(a)	Objection made when witness does not answer the question asked or volunteers information. Also applies during a witness's testimony and includes volunteered information
<b>Privilege</b>	CRE 501	Question calls for the disclosure of privileged information
<b>Question Calls for a Narrative</b>	CRE 403/611(a)	Question calls for extended testimony from the witness without further questioning from the examiner Question prevents opposing counsel from objecting to the specific content of the testimony
<b>Vague/Ambiguous</b>	CRE 611(a)	Question is unclear, uses undefined or indefinite terms, or is susceptible of one or more interpretations or the answer may create a lack of clarity or certainty in the record

## RESPONDING TO EVIDENTIARY OBJECTIONS

### HEARSAY OBJECTIONS ONLY

OBJECTION	RESPONSE(S) TO OBJECTION	RULE(S) SUPPORTING RESPONSE	REASONING/JUSTIFICATION FOR OVERRULING OBJECTION
Hearsay	Non-Hearsay	801(d)	<p>(1) Prior Statement of Witness</p> <ul style="list-style-type: none"> <li>a. Inconsistent with witness's prior sworn testimony (i.e., trial, hearing, deposition, or other proceeding)</li> <li>b. Consistent with testimony and offered to rebut charge against witness of recent fabrication/improper influence or motive</li> <li>c. Identification of a person after perceiving that person</li> </ul> <p>(2) Admission of a party opponent</p> <ul style="list-style-type: none"> <li>a. Party's own statement (individual or representative capacity)</li> <li>b. Party manifested adoption or belief in truth of statement</li> <li>c. Party authorized person to make statement concerning subject</li> <li>d. Party's agent/service makes statement concerning matter within scope of agency/employment during existence of agency</li> <li>e. Statement of co-conspirator during conspiracy</li> </ul>
Hearsay	Non-Hearsay	801(a)	<p>Not an oral or written assertion [CRE 801(a)(1)]</p> <p>Non-verbal conduct NOT intended to be communicative [CRE 801(a)(2)]</p> <ul style="list-style-type: none"> <li>1. Verbal Acts (offer and acceptance of contract)</li> <li>2. Verbal Parts of Acts (explanatory words which accompany and give character to the transaction, e.g., handing over money to another person)</li> <li>3. Utterances and Writings Offered to Show Effect on Hearer/Reader</li> <li>4. Group Statements (e.g., decision reached after doctor consultation)</li> <li>5. Reputation</li> </ul> <p>Non-assertive conduct or statements that may not be hearsay:</p> <ul style="list-style-type: none"> <li>1. Offered as proof of something other than the matter asserted</li> <li>2. Knowledge: Statement evidence that declarant aware or conscious of fact discussed</li> <li>3. Silence: Failure to speak (evidence of absence of complaints from other customers; evidence from family members that a particular member never mentioned an event)</li> <li>4. Negative results of inquiries</li> </ul>

Hearsay	Exception to Hearsay Exclusion Declarant Available or Availability Immaterial	803(1)-(23), 807	<ul style="list-style-type: none"> <li>(1) Spontaneous Present Sense Impression</li> <li>(2) Excited Utterance</li> <li>(3) Then Existing Mental, Emotional, or Physical Condition</li> <li>(4) Statements for Purpose of Medical Diagnosis</li> <li>(5) Recorded Recollection</li> <li>(6) Records of Regularly Conducted Activity (Business Records Exception)</li> <li>(7) Absence of Entry in Records Kept in Accordance with 803(6)</li> <li>(8) Public Records and Reports</li> <li>(9) Records of Vital Statistics</li> <li>(10) Absence of Public Record or Entry</li> <li>(11) Records of Religious Organizations</li> <li>(12) Marriage, Baptismal, and Similar Certificates</li> <li>(13) Family Records</li> <li>(14) Records of Documents Affecting an Interest in Property</li> <li>(15) Statements in Documents Affecting an Interest in Property</li> <li>(16) Statements in Ancient Documents (20-Year Existence)</li> <li>(17) Market Reports, Commercial Publications</li> <li>(18) Learned Treatises</li> <li>(19) Reputation Concerning Personal or Family History</li> <li>(20) Reputation Concerning Boundaries or General History</li> <li>(21) Reputation as to Character</li> <li>(22) Judgment of Previous Conviction</li> <li>(23) Judgment as to Personal, Family, or General History or Boundaries</li> </ul>
Hearsay	Residual Exception to Hearsay Exclusion	807	<p>Statements not covered by CRE 803 or 804 that have “equivalent circumstantial guarantees of trustworthiness” and Court determines:</p> <ul style="list-style-type: none"> <li>(A) Statement offered as evidence of material fact</li> <li>(B) Statement more probative on point for which offered than another evidence proponent can offer</li> <li>(C) General purposes of rules and interests of justice served by admission of statement into evidence</li> </ul> <p>Requires advance disclosure of statement to opposing party before trial</p>
Hearsay	Exception to Hearsay Exclusion Declarant Unavailable	804	<ul style="list-style-type: none"> <li>(1) Former Testimony: Witness’s sworn testimony at a deposition or previous hearing used against party in current proceeding</li> <li>(3) Statements Against Interest: Statement contrary to declarant’s pecuniary or proprietary interest, potential exposure to civil or criminal liability, or invalidation of claim against another person</li> <li>(4) Statement of Personal or Family History</li> </ul>