CAN YOU OBJECT?

Is there a legitimate ground upon which to object? Raising objections that will inevitably be overruled, will almost always backfire.

“Mark Twain’s words capture one approach to objecting: ‘It is better to keep your mouth closed and let people think that you are a fool then to open it and remove all doubt.’” Michael Masuda, *Mark Twain or Potted Plant: Making Objections at Trial*, Los Angeles Daily Journal, October 31, 2011.

Be prepared to cite the specific grounds for the objection. There is no time during trial to research grounds for objections. By the time you try to look up a ground for objection, opposing counsel will have already presented the objectionable evidence to the jury.

**Common Trial Objections**

Be familiar with the common trial objections, SOME of which include:

**Opening Statement**


**Throughout Trial**

- Offers to settle/compromise (Evidence Code §1152)
- Subsequent repairs (Evidence Code §1151)
- Liability insurance (Evidence Code §1155)
- Size and/or wealth of party *(Brokopp v. Ford Motor Co.* (1977) 71 Cal.App.3d 841)

**Witness Examination**

- Competency of witness (Cal. Ev. C. § 700)
- Unqualified opinions (Cal, Ev. C. § 720)
- Hearsay (Cal. Ev. C. § 1200)
- Argumentative (Cal. Ev. Code § 765)
- Asked and Answered (Cal. Ev. Code § 765)
- Calls for Expert Opinion (Cal. Ev. Code § 800)
- Calls for Legal Conclusion (Cal. Ev. Code § 310)
- Calls for Speculation (Cal. Ev. Code § 702)
- Compound (Cal. Ev. Code § 765)
- Leading (Cal. Ev. Code § 767)
- Overly Broad (Cal. Ev. Code § 352)
- Time Consuming, Prejudicial, Confusing or Misleading (Cal. Ev. Code § 352)

**Documentary Evidence**

- The Best Evidence Rule (Cal. Ev. Code § 412)
- Charts and graphs that are unduly prejudicial or argumentative
- Authentication Lacking (Cal. Ev. Code § 1400)
Closing Argument

- Reference to matters excluded from evidence or admitted for a limited purpose
- Misstating evidence (California Rules of Prof. Conduct, Rules 5-200, 5-220)
- Misstating law (California Rules of Prof. Conduct, Rule 5-200)
- Unsupported inferences
- Reference to counsel’s personal opinion or personal knowledge (California Rules of Prof. Conduct, Rule 5-200)

Before trial, research evidentiary issues unique to your case and consider whether it would be appropriate to address any evidentiary issues in motions in limine.

**SHOULD YOU OBJECT?**

This is an extremely subjective question. Legal commentators have differing views on the use of objections during trial:

Conservation of Objections

“Objections should be saved for material, critical items of proof, where there is a reasonable argument for exclusion.” Hon. Richard C. Neal (Ret.) and Barbara A. Reeves Neal, *When Not to Object in Trials and Arbitrations*, Los Angeles Daily Journal, June 1, 2011.

Compared to:

Aggressive Approach

“When in doubt – object . . . this cannot be overstated. If you do not object you have lost – regardless of whether you are right or wrong about the issue.” Ira Mickenberg, *Preserving the Record and Making Objections at Trial: A Win-Win Proposition for Client and Lawyer*, North Carolina Defender Trial School (2005).
Strategic Considerations for Objections:

“Every time you object, it costs you something. You are making a withdrawal from your limited credibility account you have with the jury. Each objection says ‘this is evidence I don’t want you to hear. If you knew what it was you would think less of my case.’” McElhaney, “Trial Notebook”, 4th Ed., P. 33 (ABA 2005).

When determining whether to raise an objection, consider the following issues:

- Deterring misconduct by opposing counsel. Being aggressive with objections early in the trial may deter opposing counsel from “pushing the envelope” on evidentiary issues throughout the entire trial.

- Interrupt the flow of the opponent’s presentation. This is almost certain to backfire if there is not a viable ground for the objection. Judges will admonish counsel if it appears objections are being raised for the purpose of interrupting the opponent.

- Preserving evidentiary issue for appeal. In most cases, failure to raise an evidentiary objection at trial will waive the right to an appeal on that issue. An objection stating no specific legal ground preserves no ground for appellate review. (People v. Smith (1970) 13 Cal.App.3d 897, 910)

- Objections could be annoying to jurors.

- Objections could cause the jury to have a negative impression of the attorney if the objection is overruled.
HOW SHOULD YOU DELIVER THE OBJECTION?

- **Timing** – Get the objection out as soon as possible to minimize the jury’s exposure to the improper evidence. In the case of witness examination, voice the objection before the witness answers the question:

  “Not only may a tardy objection be overruled as untimely, it will simply highlight the jurors to the precise evidence you want to keep them from hearing.” Michael Masuda, *Mark Twain or Potted Plant: Making Objections at Trial*, Los Angeles Daily Journal, November 1, 2001.

An objection must be timely in order to preserve the issue for appeal. (Cal. Ev. C. § 353(a)). This means the objection must be made when the inadmissible evidence is first offered. The objection must also “make clear the specific ground of the objection or motion.” (Cal. Ev..C. § 353(a)).

- **Body Language** – sitting vs. standing, tone of voice, etc. Be familiar with local rules and any Department rules of the specific judge. Some rules require counsel to stand whenever they address the court. It is imperative to know the local rules and customs before starting trial. When in doubt, ask the judge during the trial readiness/pretrial conference.

- **Speaking Objections** – Avoid argument on the merits of the objection in front of the jury. Seek a sidebar if there is a need to elaborate on the grounds for the objection.

- **Continuing/Running Objections** – Must relate to a specific line of questioning and be clearly defined in the record. A “standing” objection “to this whole area,” rather than directing the objection to “a particular, identifiable body of evidence,” does not preserve the issue for appeal. (Boeken v. Philip Morris Inc. (2005) 127 Cal.App.4th 1640, 1676, 26, fn. 20)