

TRIAL OBJECTIONS: PROSECUTION CASE IN CHIEF

I. Introduction.....	<u>1</u>
II. General.....	<u>2</u>
III. Subject Matter.....	<u>2-6</u>
o Relevance.....	<u>2</u>
o Time consuming/unduly prejudicial (§352)...	<u>3</u>
o Lacks foundation.....	<u>3</u>
o Improper impeachment/rehabilitation.....	<u>4</u>
o Settlement discussions.....	<u>5</u>
o Poverty of client.....	<u>5</u>
o Hearsay.....	<u>5</u>
IV. To The Question.....	<u>6-9</u>
o Leading on direct.....	<u>6</u>
o Beyond the scope.....	<u>7</u>
o Calls for speculation.....	<u>7</u>
o Calls for narrative.....	<u>7</u>
o Assumes facts not in evidence	<u>8</u>
o Asked and answered.....	<u>8</u>
o Misstates evidence/misquotes witness.....	<u>8</u>
o Ambiguous.....	<u>8</u>
o Calls for legal conclusion.....	<u>9</u>
o Improper hypothetical.....	<u>9</u>
V. Witnesses.....	<u>9-13</u>
o Incompetent.....	<u>9</u>
o Doesn't understand duty to tell truth..	<u>10</u>
o Inability to express themselves.....	<u>10</u>
o Experts.....	<u>10</u>
o Unqualified.....	<u>10</u>
o Improper subject/basis for opinion....	<u>11</u>
o Improper hypothetical.....	<u>11</u>
o Lacks personal knowledge.....	<u>11</u>
o Non-responsive answer.....	<u>11</u>
o Narrative answer.....	<u>12</u>
VI. Exhibits.....	<u>12-14</u>
o Lacks foundation.....	<u>12</u>
o Lack of authentication.....	<u>13</u>
o Cumulative.....	<u>13</u>
o Relevance.....	<u>14</u>
o §352.....	<u>14</u>
Appendix, Additional resources	<u>15</u>

I. Introduction

Disclaimers. This outline is intended to assist public defense practitioners with making evidentiary objections at jury trial and should not be shared outside of the defense team. While every effort has been made to include updated and competent information, this outline is not legal advice nor a substitute for an attorney's independent legal research.



Acknowledgements. This outline is a combination of information from various sources as well as independent research by and experience of the author. Please see the [Appendix](#) for a list of additional resources you may want to consult on trial objections.

Suggestions and additions. Please contact Teresa DeAmicis regarding future suggestions or additions at: Teresa.DeAmicis@ospd.ca.gov.

Practice Tips: This symbol » before text signifies practice tips and suggestions.

II. General Bases for Objections

Requirements and timeliness. Evid. Code §353.¹ A motion and/or objection to exclude or strike evidence must be timely made and use language that makes clear the specific ground(s) for the objection or motion.

Language. While there is no required language, the record must show a *specific* objection. General objections will not preserve the issue for appeal.

“Objection + concise and specific ground(s).”

- » Something may be objectionable on multiple grounds. Include all possible grounds when making an objection, ensuring timeliness and specificity.
- » Whatever the objection(s), it is best practice to allow the prosecutor to finish their question or the witness to finish their answer before stating your objection. The court usually needs to hear and consider the question / answer to rule on the objection, and if you object in the middle, the objectionable question/answer may have to be repeated (now with a captive audience from the jury.)

Federalize objections. Include analogous federal constitutional claims to your objection. There are no magic words, and when in doubt, object on “due process” grounds. Failure to federalize objections will forfeit any federal constitutional claims for your client and could rise to ineffective assistance of counsel. See

People v. Rivera (2003) 107 Cal.App.4th 1374; *Strickland v. Washington* (1984) 466 U.S. 668.

“Objection, federal due process.”

Obtain a ruling. To preserve any objection for appeal, you *must* get a final ruling from the court. *People v. Morris* (1991) 53 Cal.3d 152, 190; *Martin v. Inland Empire Utils. Agency* (2011) 198 Cal.App.4th 661, 630.

Avoid speaking objections. You should state the specific grounds of your objection in concise language. Long explanations may be disallowed by the judge. If you must explain your position in something more than a concise statement, ask for a sidebar (with court reporter) or a recess.

Request relief. If your objection is sustained, you may also need to request specific relief. E.g. move to strike the answer/evidence from the record; request immediate jury admonishment and/or curative instruction; or move for a mistrial.

¹ All further statutory references are to the California Evidence Code, unless otherwise specified.

III. Subject Matter Objections

Relevance. §§210, 350, 351. No evidence is admissible except relevant evidence. §350. Except as otherwise provided by statute, all relevant evidence is admissible. §351. “Relevant evidence” = having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. §210. This includes evidence relevant to the credibility of a witness or hearsay declarant. *Id.*

- » Brief, neutral background information when a witness begins testifying is usually permitted. There is no specific CA authority for this. See *U.S. V. Masino* (1960) 275 F.2d 129, 133, an example from a jurisdiction that explicitly allows this type of evidence.
- » The standard for whether evidence is “probative” of a material fact or issue on the merits (and therefore relevant) is very low. If you can object on additional grounds, do so. You should object on all grounds that are available to you.

“Objection, relevance.”

Time consuming and/or unduly prejudicial. §352. The court may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues or of misleading the jury.

Circumstances Where §352 Applies			
Danger of undue prejudice to the defense from the evidence exceeds its probative value.	Danger that the evidence will confuse the issues exceeds its probative value.	Danger of the jury being misled by the evidence exceeds its probative value.	When undue consumption of time is required to admit the evidence.

- » The only way this objection succeeds is if the probative value is *substantially outweighed* by one of the dangers listed. Something can be time-consuming, misleading, confusing or prejudicial, but still admissible.
- » Limiting prejudicial evidence is the most common use of this objection. Ideally, you will also raise the issue of any anticipated prejudicial evidence *in limine*.
- » This objection can also be used to attack cumulative/repetitive questions.
- » If your objection is overruled, ensure that the court states the result of its balancing on the record. This is an area where the appellate court may overturn the trial court’s decision, so do your best to obtaining a full ruling.
- » See *Old Chief v. U.S.* (1997) 519 U.S. 172 for an argument (based on F.R.E. 403²) that if an alternative form of evidence exists - i.e. one that poses dangers of unfair prejudice/confusion/delay and one that does not - the court must exclude the former and force the proponent of the evidence to use the latter form of proof.

“Objection, 352 + basis.”

E.g. “Objection, 352, unduly prejudicial.”

² “F.R.E.” refers to Federal Rules of Evidence. F.R.E. §403 is the federal counterpart to §352. While the language in both is quite similar, judicial interpretation of these statutes has differed.

Lacks foundation. §§403, 405. This objection is directed at the failure of the prosecutor to establish the preliminary facts necessary for admission of the evidence. A preliminary fact (i.e. foundation) may be required when the evidence raises questions, for example, about relevance, personal knowledge of the witness, authenticity of a writing, hearsay, privilege, identity, or an opinion.

§403 vs. §405. Two code sections deal with attacking foundation. They apply under different circumstances, and each carries a different procedure.

- » **§403:** Applies only to a problem of (1) relevancy, (2) personal knowledge, (3) authenticity of a writing, or (4) identity. The judge only determines whether there is enough evidence to sustain a finding by the jury of the existence of the preliminary fact. The burden of proof is on the side offering the evidence. §403(a). The final determination about the evidence rests with the jury.

<u>Required Preliminary Fact (Foundation)</u>	
Using a felony conviction to attack credibility (§788)	➡ Whether the witness was the actual person who suffered to conviction
Introducing hearsay (§§1200-1350)	➡ Identity of the hearsay declarant

- **§405:** Applies in all situations where §403 does not. The judge alone decides whether the preliminary fact exists, and counsel can request this determination be made outside the presence of the jury. §402(b); *Mize v. Atchison, T. & S. F. Ry. Co.* (1975) 46 Cal.App3d 436, 448.

<u>Required Preliminary Fact (Foundation)</u>	
Introducing hearsay (§§1200-1350)	➡ Whether an exception exists under the circumstances (e.g. voluntariness of confession, sense of impending death for dying declaration) See <i>People v. Chapman</i> (1975) 50 Cal.App.3d 872.
Introducing opinion testimony (§§720, 801-02, 1415)	➡ Whether the witness is a qualified expert on the subject matter of the question

- » Even if the court overrules this objection, it could still exclude the evidence under §352. Make both objections.
- » It is best practice to specify why the foundation is deficient when making your objection. This will ensure the issue is preserved for appeal. *People v. Modell* (1956) 143 Cal.App.3d 724, 728.
- » There is a relatively low standard of proof required to overcome a foundation objection under §403 – a mere sufficiency of evidence for a reasonable jury to find existence of the necessary preliminary fact. The judge looks at the issue at face value, without any witness credibility determinations.

“Objection, foundation + specific deficiency.”

“Objection, foundation, lacks personal knowledge.”

Improper impeachment or rehabilitation. §786. This section limits evidence related to the character of a witness to only that involved in determining credibility - i.e. honesty or veracity. Evidence of traits of the witness's character other than honesty or veracity, or their opposites, is inadmissible to attack or support their credibility. §786.

- » Consider making this objection if the prosecutor is attempting to sneak good character evidence in during their direct under the guise of "background information."
- » Even if the court overrules an improper impeachment / rehabilitation objection, it could still exclude the evidence under §352. Make both objections.
- » See *People v. Harris* (1989) 47 Cal.3d 1047 for discussion of §786 and Prop. 8.
- » See §788 for rule on impeaching with prior felony conviction (including limitations).

"Objection, improper impeachment / rehabilitation."

Mentioning settlement discussions. §§1153, 1153.5. Evidence of an offer to plea or a guilty plea later withdrawn is inadmissible in any action or proceeding. §1153. Evidence of an offer of civil resolution/compromise is also inadmissible in any action. §1153.5.

- » The purpose of making evidence of settlement negotiations inadmissible is to encourage disposition of criminal cases without trial. *People v. Crow* (1994) 28 Cal.App.4th 440, 441.
- » **WARNING:** In certain circumstances, evidence of statements made by a client during settlement discussions have been admitted for impeachment. See *People v. Pacchioli* (1992) 9 Cal.App.4th 1331, 1341; *People v. Scheller* (2006) 136 Cal.App.4th 1143, 1145.

"Objection, settlement."

Poverty of client. §350. Evidence of the client's poverty is unfair and the probative value of such evidence is outweighed by the risk of prejudice. *People v. McDermott* (2002) 28 Cal.4th 946, 999. Evidence of poverty or indebtedness is also inadmissible to establish motive to commit the crime. *People v. Wilson* (1992) 3 Cal.4th 926, 938.

- » **WARNING:** In some circumstances, evidence of your client's poverty may be admissible - e.g. to refute a claim that client didn't commit offense because didn't need the money; to eliminate other possible explanations for sudden wealth after theft. *People v. Koontz* (2002) 27 Cal.4th 1041, 1076.
- » This objection is closely tied to §352. Be sure to raise "unduly prejudicial" as part of your objection.
- » If you do not want to highlight your client's poverty for the jury during your objection, consider objecting to "relevance" and "unduly prejudicial" only.

"Objection, relevance, unduly prejudicial."

"Objection, relevance, poverty, unduly prejudicial."

Hearsay. §1200. "Hearsay" is evidence of an out-of-court statement offered for the truth of the matter asserted. Hearsay is inadmissible at trial unless an exception applies. §1200(b).

- » “Out-of-court” = any statement made other than by a witness testifying at the trial.
- » Prosecutors may insist that the statement isn’t being offered for the truth of the matter asserted. If the statement isn’t offered for its truth, then it isn’t hearsay. For this argument to succeed, the statement must be logically relevant even if untrue. If it is not clear how the statement is relevant for something other than its truth, push for an explanation.

“Objection, hearsay.”

<u>E.g. Statements not offered for the truth</u>	
Offered as circumstantial evidence of the thoughts/mental state of the speaker	➡ “I am Santa Claus.”
Offered for the effect on the hearer/listener	➡ Officer hears the alleged victim yell “He’s going to kill me!” and thus takes some specific action

- » If the statement is admitted as “non-hearsay”, ask for an immediate limiting admonishment to the jury (and a pinpoint jury instruction). §355.
- » Even if the court overrules your objection, it could still exclude the evidence as irrelevant or under §352. Make all applicable objections.
- » Sometimes the question from the prosecutor will be innocuous, but the answer will contain hearsay. Object as soon as you hear hearsay. Interrupt if you must. This is an exception to the general rule that you need to wait for the question or answer to be finished before making your objection. If the witness’s answer is clearly hearsay, the court should recognize this and permit a mid-testimony objection – e.g. “I heard him/her/them say”
- » Below is a list of some common hearsay exceptions that apply at jury trials. This is not exhaustive. Some exceptions require witness unavailability or have other requirements. It is a good idea to familiarize yourself with the exceptions so you can make an argument in support of your hearsay objection. Hearsay exceptions are found in §§1220-1370.

Confessions	§1220	Spontaneous Statement	§1240
Adoptive Admissions	§1221	Dying Declaration	§1242
Declaration Against Interest	§1230	Business Record	§1271
Inconsistent Statements	§1235	Public Employee Record	§1281
Prior Consistent Statements	§1236	Former Testimony	§§1290, 1291, 1294
Past Recollection Recorded	§1237	Threat of Injury	§1370

IV. To The Question

Evidence Code §765: “Catch all” for Objections to the Form of the Question

While there is no evidence code section specifically prohibiting *questions that assume facts for which no evidence has been introduced, asking the same question over and over, ambiguous or compound questions, questions that call for narrative answers, questions that are argumentative, or questions that misstate evidence or a witness’s testimony*, §765 imposes an affirmative duty on the trial judge to control witness questioning in order to achieve rapidity, distinctness, and effectiveness for the ascertainment of truth. Section 765 is a mandate to courts to identify impermissible questions. Many of the following objections rely on §765 as their sole authority.

Leading on direct. §§764, 765, 767. A leading question suggests to the witness the answer.

Leading questions may not be asked of a witness on direct/redirect examination. §767(a)(1).

- » Leading question on direct will likely be allowed for (1) preliminary matters, (2) witnesses with communication issues due to forgetfulness, handicap or age, (3) experts, and (4) reluctant, evasive or adverse witnesses. *People v. Collins* (2010) 49 Cal.4th 175, 214.
- » A leading objection will be more successful the more important the subject matter. Your objection may be overruled on more trivial matters.
- » Look out for prosecutors who serially abuse leading questions on direct. If your objections are being sustained, but the prosecutor continues to lead the witness on important subjects, consider a prosecutorial error objection.

"Objection, leading."

Beyond the scope of prior examination. §§760-61, 763, 767, 772-74. Questioning during cross examination and redirect examination is limited to matters that are within the scope of the prior examination. §§773, 774.

- » The judge has discretion to allow cross examination and redirect examination beyond the scope. §772.
- » If a witness gives an answer beyond the scope of the question asked, be ready to object as non-responsive and move to strike that portion. §766. See "[V. Witnesses, Non-responsive answer.](#)"

"Objection, beyond the scope of [direct/cross]."

Calls for speculation. §§702, 765. The testimony of a witness concerning a particular matter is inadmissible unless the witness has personal knowledge of the matter. §702.

- » This objection is to the question by the prosecutor, i.e. if from the phrasing of the question, you believe they are asking the witness to speculate. But §702 can also be used to object to an answer. See "[V. Witnesses. Lacks personal knowledge.](#)"
- » If an objection is made, personal knowledge must be shown before the witness may testify concerning the matter. §702. Best practice is to raise this *in limine*.

"Objection, calls for speculation."

Call for narrative. §765. A question that is too general and/or calls for a narrative answer runs the risk of the witness giving an answer that includes hearsay, opinion, irrelevant material and/or other inadmissible matter.

- » Pursuant to §765(b), a child witness (under 14) or a witness with cognitive impairment may be allowed to testify in narrative fashion. These witnesses may also trigger competency issues. See "[V. Witness. Incompetent.](#)"
- » Sometimes the question from the prosecutor will be proper, but the answer from the witness will become a narrative. See "[V. Witness. Narrative answer.](#)"

"Objection, calls for narrative."

Assumes facts not in evidence. §765. If the prosecutor's question incorporates disputed information which has not yet been elicited or contains an assumption that a fact exists but no evidence has been introduced to establish that fact, the question assumes facts not in evidence.

- » *McDonald v. Price* (1947) 80 Cal.App.2d 150, 152, "the inherent vice of the matter lies in the attempt to bring before the jury ... facts which could not be proved and which from all appearances may have been entirely false."

"Objection, assumes facts not in evidence."

Asked and answered. §765. When the prosecutor's question has already been asked and the witness appropriately answered the question the first time, asking the same question again is potentially a violation of §765. Repeat questions cause delay and put an undue emphasis on particular information.

- » Look out for a prosecutor highlighting damaging evidence against by asking the same question repeatedly.
- » Courts should give more leeway to questions on cross examination and should not immediately sustain this objection against the defense. *People v. Riel* (2000) 22 Cal.4th 1153, 1197. However, if you ask the same question to the point where it is viewed as witness harassment, expect a sustained objection against you.

"Objection, asked and answered."

Misquotes the witness / misstates the evidence. §765. Though attorneys frequently preface a question to a witness by restating part of the evidence or quoting a portion of the witness's prior testimony, if the evidence or testimony is not stated correctly, that question is objectionable.

- » When a prosecutor does this, there is the very real possibility that the jury and the judge may be tricked. Object strenuously, especially if the misquote is damaging to your client. Depending on the nature of the misstatement, it may rise to the level of prosecutorial error.
- » If there is debate on whether the prosecutor's question was improper on these grounds, and the judge's own memory is insufficient, there is the option of having the court reporter find and accurately read back the prior testimony.

"Objection, misquotes the witness / misstates the evidence."

Ambiguous. §765. A question is ambiguous if it is not concise or clearly phrased, or that it may not be easily understood by the witness.

- » See *People v. Slocum* (1975) 52 Cal.App.3d 867, 890, ambiguous questions are objectionable under §765.
- » Object any time you have a doubt as to what the prosecutor's question means, or else you run the risk of allowing them to twist the ambiguous question and answer into whatever meaning they want at closing.

"Objection, ambiguous."

- » The judge may respond to your objection by asking the witness if they understood. If the witness claims they understood the question, your objection is likely to be overruled.
- » If the prosecutor asks a compound question – i.e. multiple questions within a single question – consider objecting as ambiguous *and* compound.

Calls for legal conclusion. §310. All questions of law are to be decided by the court. The prosecutor cannot ask a question that calls for an opinion about the meaning of a statute or law which usurps the duty of the judge to instruct the jury on applicable law. *Issakhani v. Shadow Glen Homeowners Ass’n.* (2021) 63 Cal.App.4th 917, 934.

- » This objection can be made to the question and also to the answer by the witness if the legal conclusion is only in the answer.
- » The most common scenario where this arises is the questioning of an expert witness. An expert’s testimony on an issue of law is not admissible, especially the application of the law to the facts of the case.
- » Any opinion testimony can be subject to this objection (expert or lay).

“Objection, legal conclusion.”

Improper hypothetical. §801(b). An expert may only base their opinion on facts set forth in a hypothetical question posed by the prosecutor if the hypothetical is rooted in facts shown by the evidence. *People v. Boyette* (2002) 29 Cal.4th 381, 449.

- » *People v. McVey* (2018) 24 Cal.App.5th 405, 416 discusses hypothetical questions after *Sanchez*.³
- » Listen carefully to what the prosecutor includes in their hypothetical. If they attempt to include any fact that was not shown by prior evidence, object immediately. Be prepared to specifically address which assumed fact from the hypothetical was not actually proven.
- » As with misstatements/misquotes, if there is debate about whether a fact was proven, the court can consult the court reporter’s transcript.

“Objection, improper hypothetical.”

V. Witnesses

Incompetent. §701. Best practice is to anticipate witness incompetency issues before trial and litigate the issue during *in limine*. A trial judge determines witness competency as a preliminary fact under §405, and this determination can happen outside the presence of the jury. Because §700 presumes all witnesses are competent, as the objecting party, you have the burden of proving the witness is incompetent and the legal standard is preponderance of the evidence. A successful competency objection may require an expert. These objections are rarely sustained but must be made at trial to preserve the issue for appeal.

³ *People v. Sanchez* (2016) 63 Cal.4th 665, 686, experts cannot relay as true case-specific facts asserted in hearsay statements unless those facts are independently proven by competent evidence or are the statement is covered by a hearsay exception.

There may be situations where you were unaware of the witness's competency issue(s) before trial, so your only option is to object while the witness is testifying. Incompetency objections come in two forms, both discussed in this section: doesn't understand duty to tell the truth and inability to express self.

Doesn't understand duty to tell the truth. §701(a). A person is incompetent and disqualified to be a witness if they lack the capacity to understand the duty to tell the truth. *Id.*

- » Of the two forms of incompetence, this one tends to be litigated more and often in the context of a child witness. Whether or not the defense brings an objection, the prosecutor will likely go through some sort of direct exam questioning of the child to convey to the jury that the child knows the difference between a truth and a lie. Many of the more common ways a prosecutor attempts to do this have their own potential issues. If you anticipate the prosecution calling a child witness, part of your trial preparation should be studying the foundational aspects of child witness competency.
- » It is important to remember that young children and persons with mental impairment can be perfectly competent to testify. Competency is a very low bar.

"Objection, incompetent, inability to understand truth."

Inability to express self. §701(a). A person is incompetent and disqualified to be a witness if they lack the capacity to express themselves concerning the subject matter of their testimony so as to be understood by the jury either directly or through an interpreter. *Id.*

- » This objection essentially boils down to, "Can the witness communicate?"
- » If you are raising this objection during the witness's testimony because they exhibit difficulty with their capacity to perceive and recollect, also make a personal knowledge objection under §702.

"Objection, incompetent, inability to express themselves."

Experts. Best practice is to anticipate expert witness issues before trial and attempt to litigate any issues during *in limine*. This section covers three objections specific to experts: unqualified, improper subject/basis for opinion, and improper hypothetical.

Unqualified. §§702; 720. A person can testify as an expert if they have special knowledge, skill, experience, training or education sufficient to qualify them as an expert on the subject to which their testimony relates. §720(a). A trial judge determines whether the witness is qualified to testify as an expert as a preliminary fact under §405, and this determination can happen outside the presence of the jury. The prosecutor has the burden to prove by a preponderance of the evidence that the witness is qualified.

- » A witness may testify to their own qualifications, and this can be sufficient to establish special knowledge, skill, experience, training or education. §720(b).
- » A trial judge has wide discretion in determining whether a witness qualifies as an expert. Their decision will only be overturned on appeal if the witness clearly lacks qualification. See *People v. Hogan* (1982) 31 Cal. 3d 815, 851 as an example of a witness improperly qualified.

“Objection, unqualified.”

Improper subject / basis for opinion. §801. An expert’s opinion testimony is limited to a subject that is sufficiently beyond common experience that the opinion of that expert would assist the trier of fact. §801(a); *McCleery v. City of Bakersfield* (1985) 170 Cal.App.3d 1059, 1074, n10. An expert’s opinion must be based on matter that is observed by the expert, personally known by the expert, make known to the expert at or before trial, or a type that reasonably may be relied on by experts in forming opinions on the subject to which the opinion relates. §801(b).

- » If the jury is able to draw their own conclusion from the facts as easily and intelligently as an expert, the expert’s testimony is not admissible. *People v. McDowell* (2012) 54 Cal.4th 395, 426.
- » You can ask the court to cross-examine the witness on the basis of their opinion before they are allowed to state that opinion. Ask the court to “voir dire” the witness.

“Objection, improper expert subject matter.”

Objection, improper basis for opinion.”

Improper hypothetical. See “[IV. To the Question. Improper hypothetical.](#)”

Lacks personal knowledge. §§702, 801. The testimony of every witness, whether expert or lay, concerning facts is inadmissible unless the witness has personal knowledge of those facts. §701.

- » If making this objection to an expert witness, keep in mind that an expert may testify via hypothetical questions without having personal knowledge of the facts of the case but that they are also subject to more expansive cross-examination.
- » This also applies to hearsay declarants. To be admissible, the statement must be an exception to the hearsay rule and the hearsay declarant must have personal knowledge of the matter relayed in their statement. *People v. Valencia* (2006) 146 Cal.App.4th 92.

Non-responsive answer. §766. A witness must give responsive answers to questions, and answers that are not responsive shall be stricken on motion of any party. *Id.*

- » Listen carefully to a witness's answers! Object to anything that is non-responsive and you don't want in. Sometimes a witness says something non-responsive that you want to stay in evidence.
- » The judge will likely want to know what portion you believe is non-responsive, and will only strike that portion, if any.
- » If the non-responsive answer is also unduly prejudicial, add a §352 objection.
- » If your objection is sustained, consider asking for specific relief – i.e. strike the portion of the answer from the record; a curative instruction made by the judge to the jury immediately. You may also consider asking for a mistrial if the non-responsive portion of the answer is prejudicial.
- » You can use this objection during the prosecution's direct examination *and* during your own cross examination.

"Objection, non-responsive, everything after [insert last responsive word/phrase]."

Narrative answer. §765. In addition to objecting to a question that calls for a narrative answer, this objection can be used if the witness's answer becomes a narrative.

- » If a witness has begun a narrative, object. Also move to strike any portion of the answer that is narrative – be prepared to specify for the court what portion of the answer you want to be stricken.
- » The harm of a narrative answer is the danger of allowing the witness to testify to hearsay, opinion, irrelevant material and/or other inadmissible matter. Be on the lookout for these topics specifically, but in general, it is a good idea to attempt to cut off a witness from testifying in the narrative.
- » Consider using this objection whenever a witness is testifying about a conversation due to the complex nature of hearsay and hearsay exceptions. The best approach is to have the prosecutor limited to one statement at a time.
- » Sometimes the prosecutor asks a question so broad that it requires a narrative answer. See ["IV. To the Question. Calls for narrative."](#)

"Objection, narrative. Move to strike everything after [last admissible word/phase]."

VI. Exhibits

Lacks foundation. Exhibits also require foundation before they can be admitted.

- » Records, photographs, audio/video recordings, maps and other types of evidence that the prosecution seeks to introduce as an exhibit have different foundation requirements. If you know the prosecution will seek to admit evidence as an exhibit ahead of time, study the foundation requirements for those records.

"Objection, lacks foundation + specific deficiency."

"Objection, lacks foundation, irrelevant."

- » Sometimes the existence of proper foundation is determined by the judge. See "[III. Subject Matter Objections. Lacks foundation. §403 v. §405.](#)"
- » See also Secondary Evidence Rule, §1521. While the content of any writing may be proved by otherwise admissible secondary evidence, the court must exclude secondary evidence if: (1) a genuine dispute exists concerning material terms of the writing and justice requires exclusion; or (2) its admission would be unfair.

Lack of authentication. §§1400, 1401. Before a writing may be admitted into evidence, the prosecution must make a preliminary showing that the writing is relevant to an issue to be decided in the action, and this relevancy requires that the writing be authentic. The authentication requirement is tied into foundation for the writing and is governed by §403. The prosecution has the burden of proof, and the judge only determines whether a reasonable jury could find the item is genuine. The judge's "authentication" finding merely means that enough evidence has been presented of its genuineness.

"Objection, lacks authentication."

- » "Writings" are broadly defined by §250.

<u>"Writings"</u>		
Handwriting	Typewriting	Printing
Photographing	Photocopying	E-mail
Fax	Letters	Words
Pictures	Sounds	Symbols
	Any recordings	

- » Sections 1410-1421 lay out the various ways to authenticate writings.
- » Even if a writing is admissible, you can challenge its genuineness and a jury can find the writing not authentic despite the judge's initial finding. *People v. Valedes* (2011) 201 Cal.App.4th 1429, 1434.
- » Sometimes the way the prosecution seeks to authenticate a writing is through opinion testimony of lay or expert witness. You can challenge that opinion with a foundation objection under §405, and the judge determines whether the witness is qualified to express that opinion.

Cumulative. §§352, 723, 765. Cumulative evidence is evidence that repeats the substance of evidence already introduced.

- » A cumulative objection is a companion to the "asked and answered" objection. Cumulative is the appropriate objection to the prosecutor attempting to introduce exhibits that are repetitive, especially if the exhibits are damaging to the defense.
- » One of the bases for this objection is §352, though to be absolutely clear for the record, you may want to specify that you are objecting as cumulative and as a violation of §352.

"Objection, cumulative."

Relevance. §§210, 350, 351. In addition to witness testimony being irrelevant, exhibits can also be irrelevant if they do not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. §210.

"Objection, relevance."

- » For more, see "[III. Subject Matter Objections. Relevance.](#)"

Evid. Code. §352. If the prosecution is attempting to admit an exhibit that is unduly prejudicial, cumulative, confuses the issues or will mislead the jury, the §352 objection may apply.

"Objection, §352 + basis."

- » For more, see "[III. Subject Matter Objections. Time consuming and/or unduly prejudicial.](#)"

Appendix

You may be interested in consulting some or all of the following resources for more information and advice on trial objections. Most of these resources must be purchased, but you may know someone who has a copy you can borrow. If you work in an institutional public defender office, your office may have some of these as hardcopies or subscriptions to electronic versions.

- *[COMING SOON] IDID Training SharePoint Resource Library. Available for free to all indigent defense practitioners and members of the defense team. [Registration](#) required.*
- CEB materials – [available for purchase in print and electronic \(OnLaw\) formats](#)
 - California Trial Objections ([here](#))
 - California Criminal Law Procedure and Practice ([here](#))
 - Effective Introduction of Evidence in California ([here](#))
 - Jefferson’s California Evidence Benchbook ([here](#))
 - Laying a Foundation to Introduce Evidence (Preparing and Using Evidence at Trial) ([here](#))
- California Evidence Code Annotated, Imwinkelried & Menaster – [available for purchase in print and electronic formats](#)
- WestLaw and LexisNexis – depending on your subscription, you may have access to some, all, or none of the secondary sources covering evidence and trial objections.
- Alameda County Bar Association’s Trial Evidence Blog Series (2014-2015) by Hallahan
**This information is not criminal law specific, though some is useful in criminal court and those sections have been listed below:*
 - [Part One \(Introduction\)](#)
 - [Part Two \(Relevance\)](#)
 - [Part Three \(Form of Question: Direct Examination\)](#)
 - [Part Four \(Hearsay\)](#)
 - [Part Five \(Hearsay Exceptions\)](#)
 - [Part Six \(Exhibits\)](#)
 - [Part Seven \(Competence and Opinion\)](#)
 - [Part Eight \(Form of Questions: Cross-Exam\)](#)
- Alameda County Public Defender’s Office “Objections Cheat Sheet” ([free download here](#))
**Unknown when written/updated, author unknown*
- Rouda Feder Tietje & McGuinn “California Trial Objections” ([free download here](#)) **Contains some civil-only objections; unknown when written/updated*
- “Objections” prepared by Peterson, Melcher and Storey for the Family Law Section of The State Bar of California ([free download here](#)) **Contains some civil-only objections*
- FDAP “Preserving the Record Cheat Sheet”, revised January 2023 by Braucher ([free download here](#))

Trial Objections - Quick Reference Sheet

Updated April 2024¹

For ALL objections:

Requirements & Timeliness. Evid. Code §353. ² An objection to exclude/strike evidence must be timely and use language that makes it clear the specific ground(s).	Language. No particular language is required, but the record <u>must</u> show a <i>specific</i> objection. General objections will not preserve the issue for appeal.	Federalize. Include analogous federal constitutional claim(s) to your objection. There are no magic words; when in doubt, claim "due process."
Obtain a Ruling. Only a final ruling will preserve the issue for appeal. <i>People v. Morris</i> (1991) 53 Cal.3d 152; <i>Martin v. Inland Empire Utils. Agency</i> (2011) 198 Cal.App. 4th 611, 630.	No speaking objections. State the grounds of your objection in concise language. Long explanations may be disallowed. If you need to say more, ask for a sidebar on the record.	Request Relief. If your objection is sustained, you may need to request specific relief. E.g. Motion to strike, jury admonishment / instruction, mistrial, etc.

Common Objections During Witness Examination:

Objections to Subject Matter

Irrelevant	"Relevant evidence" defined. §210
	No evidence admissible except relevant evidence. §§350, 351
Time Consuming	§352
Unduly Prejudicial	§352
Misleading/Confusing	§352
Lacks Foundation	§§403, 405
Improper Impeachment	§786
Improper Rehabilitation	§786
Settlement Discussions	§§1153, 1153.5
Poverty of Defendant	§350; <i>People v. Wilson</i> (1992) 3 Cal.4th 926
Hearsay	§1200
	*Exceptions §§1220-1370
	<i>If admitted not for the truth, request jury admonishment / limiting instruction. §355</i>

Objection to the Form of the Question

Calls for Legal Conclusion	§310
Assumes Facts Not in Evidence	§765
Ambiguous	§352; 765
Cumulative/ Repetitive	§352
Calls for Speculation	§702
Leading on Direct	§§764, 767
Asked & Answered	§765
Misquotes the Witness	§765
Beyond the Scope of Prior Examination	§§773; 774
	Definitions §§760, 763, 767
Improper Hypothetical	§801
Call for Narrative	§765

Objections to Exhibits

Lacks foundation	§§403, 405
<i>*See also Secondary Evidence Rule</i>	<i>*§§1521, 1523</i>
Lack of authentication	§1400
Cumulative	§352
Irrelevant	§§210, 350, 351
Unduly Prejudicial	§352
Rule of Completeness	§356
Limited Admissibility	§355

Objections to Witnesses

Incompetent	Inability to express self. §701(a)(1)
	Inability to understand duty to tell the truth. §701(a)(2)
Unqualified Expert	§§702; 720
Improper Subject / Basis for Opinion	§801
Improper Hypothetical	§801
Lacks Personal Knowledge	§§702; 801
Non-responsive Answer	§766
Narrative Answer	§765; <i>People v. Davis</i> (1907) 6 Cal.App. 229

¹ Please contact Teresa DeAmicis regarding future suggestions or additions at: Teresa.DeAmicis@ospd.ca.gov.

² All further statutory references are to the California Evidence Code, unless otherwise specified.

