What does it mean to Object? Objections and Basic Rules of Evidence

Posted December 2, 2014 by Ugur Nedim (https://nswcourts.com.au/articles/author/ugurnedim/) & filed under NSW Courts (https://nswcourts.com.au/articles/category/nsw-courts/).

People seem to be fascinated with the legal profession and the role of criminal lawyers in the courtroom.

This interest has resulted in the creation of numerous 'legal dramas' on TV.

Law and Order, *Suits*, *Boston Legal* – the list goes on!

Much of the action in these shows takes place in a courtroom, with lawyers portrayed as ruthless advocates; ripping apart witnesses on the stand, pacing back-and-forth, making dramatic gestures and constantly shouting 'objection!'.

But what does it mean to object?

An objection is simply a means by which a lawyer protests against evidence being admitted in a court hearing.

'Evidence' can comprise oral testimony, CCTV footage, expert statements, objects or a whole range of other materials.

Being 'admitted into evidence' means that the evidence can be taken into account when the court is reaching a decision.

There are special rules which govern how evidence is to be presented in court, and which prohibit certain types of evidence from being given.

When a lawyer foresees that evidence may be in breach of these rules, they may make an objection.

Objections can be made during pre-trial hearings, called 'interlocutory hearings' or during defended hearings and jury trials (https://nswcourts.com.au/articles/what-are-the-different-stages-of-an-average-court-case/).

They are often made during the examination of witnesses; specifically while the opposing party is asking the witness questions.

During the examination of witnesses, each party is given the opportunity to put forth questions to their own witnesses, after which the opposing party is allowed to 'cross-examine' the witnesses.

Objections generally arise when the opposing party asks a question which may be prejudicial or unfair.

Before the witness has a chance to answer the potentially injurious question, the lawyer may interject by saying words to the effect of 'I object,' and stating their reasons for the objection.

The magistrate or judge will then make a ruling as to whether or not the witness should be allowed to answer the question.

Alternatively, the opposing party may be asked to rephrase the question.

So, what evidence may a lawyer object to?

The Evidence Act 1995 governs the rules of evidence in New South Wales and lists a wide range of scenarios in which objections may be raised.

Some of the most common objections are discussed below.

Irrelevant evidence

Under the rules of evidence, only 'relevant' evidence can be admitted in court.

Evidence will be considered to be relevant where it 'could rationally affect the assessment of the existence of a fact in issue in the proceedings.'

Generally, the 'facts in issue' in a criminal case will relate to whether or not the elements of the offence have been made out.

There must be a logical connection between the evidence in question and the issue that is in dispute.

Evidence that is ambiguous or inconclusive will be deemed to be irrelevant, and will therefore be liable to exclusion.

For example, in the case of *Evans v The Queen* [2007] HCA 59, the defendant was accused of robbery.

In CCTV footage tendered to the court, the perpetrator was seen wearing a balaclava, sunglasses and overalls.

The prosecution sought to have the defendant dress up in a similar outfit in court, and walk around in front of the jury and say things said in the video.

The court held that this kind of evidence would be irrelevant, as anyone wearing the outfit would have resembled the person in the CCTV footage.

It was therefore immaterial when considering whether or not the defendant was the person who committed the offence.

Opinion evidence

The opinion rule says that witnesses are not allowed to give their opinions to prove the existence of a fact in issue.

There are certain exceptions to the opinion rule – for example, in certain cases expert opinions will be allowed.

Hearsay evidence

The rules of evidence also prohibit the admission of hearsay evidence.

Hearsay evidence is essentially 'word of mouth' evidence – for example, evidence that a driver in a drink driving case was drunk because their friend had informed you that they had been drinking heavily earlier that day.

However, there are a range of exceptions to the hearsay rule – for example, if the person who made the original statement is not available to give evidence and, due to the facts and circumstances of the case, there is a high probability that the representation is reliable.

Tendency and coincidence evidence

Interestingly, evidence about a person's character, conduct or reputation is not admissible to prove that a person had a tendency to act in a particular way.

In the drink driving example cited above for example, a witness would not be able to give evidence that the defendant had a tendency to drink heavily at a particular time each day.

However, tendency evidence may be admitted if the court believes that the evidence may have 'significant probative value.'

This essentially means that it must be capable of rationally affecting the assessment of the probability of a fact in issue.

So, if a person had previously been convicted of a crime where they had a distinctive 'modus operandi', that evidence may be admissible if the same method was apparent in the crime charged.

For example, if a defendant had previously been convicted of a murder whereby distinctive markings were found on the deceased's body, the evidence of that crime may be admissible in a subsequent case where the same defendant were charged with another murder where the same markings were found on the deceased.

Finally, evidence that a crime was committed by the defendant in similar circumstances cannot be used to prove that a person did a particular act.

This is known as the coincidence rule.

However, again, where the court deems the evidence to have significant probative value, it may be admitted.

This involves a balancing exercise as to whether the probative value of the evidence would substantially outweigh any unfair prejudice caused to the defendant.

About Ugur Nedim

Ugur Nedim (https://nswcourts.com.au/articles/author/ugurnedim/) is an Accredited Specialist Criminal Lawyer and Principal at Sydney Criminal Lawyers® (https://www.sydneycriminallawyers.com.au), Sydney's Leading Firm of Criminal & Traffic Defence Lawyers.

Website (https://www.sydneycriminallawyers.com.au/) • Facebook (https://www.facebook.com/ugur.nedim) • Twitter (http://twitter.com/sydcrimlawyers) • LinkedIn (http://www.linkedin.com/profile/view?id=238364338) • YouTube (https://www.youtube.com/user/sydcriminallawyers)

View all posts by Ugur Nedim → (https://nswcourts.com.au/articles/author/ugurnedim/)

Drug Defence Lawyers

Charged with drug possession or supply? Get the best defence in any NSW Court Visit (https://www.sydneycriminallawyers.com.au/criminal/offences/drug-offences/)