El Derecho Del Pueblo

Columna de comentario social y asesoría legal por el abogado y maestro Matthew "Mateo" Katz.

Limitaciones de Responsabilidad

The People's Right

A column of social commentary and legal advice by attorney and teacher Matthew "Mateo" Katz.

Disclaimer

Ever wondered what "hearsay" really means? What about "leading question?" These catch phrase objections are thrown out all the time on our evening sitcoms, yet are they used correctly? Do the actors and other non-lawyers who toss these terms about really know their meaning? Let's take a moment and review their basic purpose and definition.

The rules of evidence exist to help a trial court which is conducting a hearing, trial or other evidentiary proceeding, and to help parties to litigation "admit" into the court record evidence that appropriately bears on the matter at hand without wasting time or causing unnecessary prejudice to either party. If this sounds like a bunch of gobble-die-gook to you, then let's take a closer look at some individual objection types.

LEADING QUESTION: This objection is appropriately made by opposing counsel when a lawyer is questioning his or her own witness, called "direct examination." Say, for example, a State's Attorney is questioning a witness to the crime scene, asking her what she saw. If this lawyer asks his/her witness "you saw the Defendant commit the crime, didn't you!?" this is a leading question! Why? Because the lawyer is leading the witness to answer the way s/he wants the witness to answer – and this is his/her own witness! This witness should have been prepared before trial, not in the middle of the trial, and should know how to answer without her own lawyer's help.

HEARSAY: The precise definition for this objection is "a statement made out of court offered to prove the truth of the matter asserted." The purpose of this rule of evidence is to prohibit someone's statement from coming into evidence where the person who made the statement is not available to undergo cross examination in court. Say a blind person said something like, "I know it was Mr. Smith who's guilty of the shooting!" but this witness is not in court to be asked about his/her eyesight. Thus, we would have a statement made out of court which would come into evidence to help someone be convicted of a crime based upon shoddy evidence without

corroboration.

PREJUDICE: If evidence is presented to the court wherein the "probative value of the evidence is outweighed by any unfair prejudice" the court should deny its admission. For example, where a conviction that is fifteen years old is attempted to be brought into evidence by the prosecution, the defense should object that this conviction's admission into evidence would cause much more harm/prejudice to the litigant than value to the court.

EXPERT OPINION: This one is relatively simple. If you are not a licensed physician, you can not testify to the function of the pulmonary artery or the manner in which the synapse in a nerve ending is bridged. If you are not a products chemist, you can not testify to the molecular formula of Coca-Cola. Both sides can always debate about a witness' credentials, but you've got to have some credentials in an area to get in the door as an expert witness.

PRIVILEGE: This rule of evidence prohibits anything that is a confidential communication between you and your priest, or other clergy, attorney, psychologist, or other professionals whose confidentiality between you and him/her is required for the profession to effectively function, and thus can not be admitted into evidence. This rule is why a consultation between you and your attorney is always confidential, where had in private. Even the government can never force your own lawyer to testify against you!

Next week: Beyond the scope, argumentative, cumulative, volunteered, foundation, and character testimony. E-mail me with a suggested column topic!