

Challenging The Admissibility of Evidence Before Trial

- If one party anticipates that the other party will seek to introduce objectionable evidence, one can seek to preemptively have it suppressed through a:
 - Motion to suppress
 - This applies to documents or physical evidence
 - This is generally most relevant to evidence in criminal trials
 - Motion to Exclude
 - This is used to prevent testimonial evidence from being brought in based on the rules of evidence
 - Motion in Limine
 - This is, basically, a motion to be heard on the question of admissibility of evidence or lack thereof.
- The court can hold a full hearing with witnesses, etc., for each of these motions.

Challenging The Admissibility of Evidence During Trial

- Any of the motions discussed earlier can be brought during trial. In addition, at trial, the most common way to challenge evidence is to wait until it's being introduced and then state an...
- **Objection;** It can be
 - As to substance; such as hearsay, privilege, opinion, etc.
 - As to form; including:
 - Leading question (discussed more, later in the course)
 - Non responsive answers
- Motion to strike
 - If a witness already said something inappropriate, the judge can strike the answer from the record.
- Any of these decisions may require a hearing outside the presence of the jury if the judge says so.

Objections

- In response to an objection, the judge can
 - Sustain the objection
 - Overrule the objection
 - Strike testimony or evidence already introduced
- In an extreme case, if the damage from evidence already offered cannot be undone, the judge may order a mistrial!
- If an objection is not made in a timely and specific manner, it can be *waived* and may even be barred from appeal based on that issue.

Offer of Proof

- Sometimes, to determine whether testimony of evidence will be admissible, it first has to be determined what the testimony or evidence will be.
- In such a case, the jury will be excused and the party will introduce the evidence and make his/her arguments in favor of its admissibility.
- The judge will then make the determination whether the evidence is admissible.
- Offers of proof are part of the record and can form a basis for appeal.

Appeal Based on Erroneous Evidentiary Decision

- For admission of evidence (or denial of evidence) to be appealed:
 - There must have been an objection made in a timely and specific manner.
- The basis for the appeal must be an error of law, not an argument as to the facts or credibility of the witnesses.
- Appeals courts are not triers of fact and will not generally examine the strength of evidence. They only determine whether the judge applied the correct law in the case.

Prejudicial and Plain Error

- To be a basis for overturning a verdict, even if a judge made a bad decision, appeals courts will not overturn a verdict if the error was “harmless.”
 - This means that were the decision made correctly by the judge, there’s a substantial likelihood that the verdict may have been different.
 - In this way, appeals courts to try “facts” to a degree.
- However, even if not properly objected to, the “plain error” rule may allow an appeal if the judge’s decision was such a bad mistake that is substantially affected the rights of the party.
 - This applies especially to criminal cases, where there are constitutional protections to be concerned with.