

Object and Respond with Authority

3,700 Cases Cited

Ideally suited to the demands of trial and last minute trial preparation, *Texas Objections* provides a time-saving alternative to lengthy treatises. Its concise but well-supported text puts the rules and cases at your fingertips. And its practical orientation guides you through the realities of evidentiary battles.

Covers All Important Objections

Texas Objections is more than an evidence book. In addition to evidentiary objections, you'll find objections to jury selection, opening statement, closing argument, jury charges, judicial conduct and more. Coverage of all significant trial objections—from jury selection through directed verdict—gives *Texas Objections* vastly greater practical value than an evidence-only book.

Delivers More than Objections

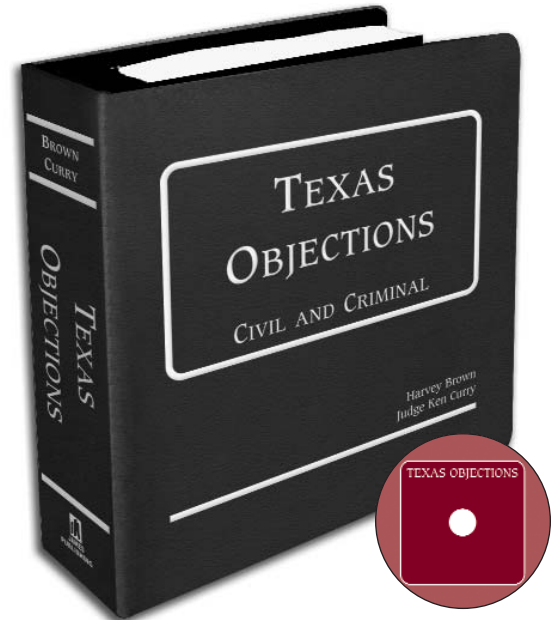
The scope and breadth of *Texas Objections* far exceeds the mechanics and arguments of making and meeting objections. Rules, definitions, distinctions, scope, weight, advice from the bench, examples, and procedures are provided for key evidentiary issues. Principles are extensively supported with case authority, and the underlying scholarship will impress you.

From pretrial proceedings through expert testimony to summation, the practical coverage in this new trial practice book will quickly earn its inexpensive keep.

Most evidentiary rulings are within the judge's discretion, and are made in seconds. Bad rulings are almost never reversible. As a result, victory usually goes to the lawyer who can prevail on the big objections in the heat of battle.

The key to winning evidentiary debates is objecting and responding with arguments and supporting authority at your fingertips. That is where Harvey Brown and Judge Ken Curry's *Texas Objections* comes in.

It uses a courtroom-friendly format to cover **175 objections** with clear and concise explanations, trial-tested tips, persuasive arguments, and supporting cases.



The free full-text CD requires no installation before use, and may be searched by key words, case names, or topics.

Book and CD cost \$99.

Designed for Eve-of-Trial and Courtroom Use

When time is short, *Texas Objections* delivers quickly with:

- ▶ Pattern objection language
- ▶ How to respond when faced with the objection
- ▶ Comments on how the rules apply
- ▶ Practice tips and cautions with detailed advice from the bench
- ▶ Arguments and strategies to support your objection
- ▶ Tactics and arguments to counter your opponent's objection
- ▶ Relevant case cites, with a synopsis of each case

Sample pages and table of contents inside...

Organized for Quick Access

7-5 Relevance §7-60

Sanbury v. State, 88 S.W.2d 229, 233 (Tex. Crim. App. 2002). In the guilt stage, statutory language determines the material trial issues and matters of relevance. In the punishment stage, the finder of fact does not determine the existence of discrete facts. Assessment of punishment is normative, as opposed to fact based. Since punishment issues are not individual, evaluative processes determine relevancy. *Alsup v. State*, 777 S.W.2d 94, 92-63 (Tex. Crim. App. 1988) (plurality opinion on rehearing).

The Code of Criminal Procedure establishes the following areas of admissible evidence in the punishment phase of all criminal trials:

- Any matter the trial court deems relevant to sentencing.
- The prior criminal record of the defendant.
- The defendant's general reputation and character.
- Opinions regarding the defendant's character.
- The circumstances of the offense for which the defendant is on trial.
- Evidence of extraneous crimes or bad acts shown beyond a reasonable doubt to have been committed by the defendant.
- Evidence of extraneous crimes or bad acts shown beyond a reasonable doubt for which the defendant could be held criminally responsible notwithstanding the defendant has not been charged or finally convicted of such crimes or bad acts.
- Juvenile adjudications of delinquency for delinquent and misdemeanor punishable by confinement.

CCP Art. 37.01(3)(a)

II. Objections

§7-60 Evidence Is Not Relevant

Objection, Your Honor: The evidence is irrelevant.

The evidence does not have any tendency to make a consequential fact either more or less likely.

[or]

The evidence should be limited to its proper scope (or party), which is (specific), and the jury should be instructed that the evidence is so limited.

Responses

Your Honor, in light of counsel's objection we offer the evidence for the purpose of (specify) (or against) (specify), and we request that the jury be instructed as to this limitation.

[or]

Since you have overruled our objection, we request that the evidence be restricted to (specify), and that the jury be instructed as to this limitation.

Comments

Relevance goes to whether the offered evidence has any tendency to make a consequential fact more or less likely. Materiality is subsumed in the objection of relevance. For the rule regarding admissibility, see §7-10; for definitions, see §7-20; for determination of relevance, see §7-30.

Any objection to relevance must be specific. Any offer of evidence in light of a sustained objection must be limited to proper purposes or parties. For offering evidence for limited purposes or limited to some parties, see §7-30.

PRACTICE TIPS

Use specific words in objecting. Phrase the objection in language incorporating the word "irrelevant." If the court habitually adds further that the evidence does not tend to prove or disprove a consequential fact. Do not use the word "immaterial," because the charge of immateriality is not used by the Rules of Evidence and is only applicable for specific constitutional considerations. See §7-20.

Object on other grounds first. If a specific rule of evidence applies to the evidence, make a relevance objection secondary to the objection based on the specific rule.

Comments

The application, scope, and purpose of the governing rules in straightforward language.

Practice Tips

Elevate your advocacy with the cautions, strategies, and advice from the bench offered here.

Pattern Objections

Model language for 175 objections. Big headings and logical organization take you to the right objection in seconds.

Responsive Arguments

Never let an unforeseen objection catch you flat-footed again. Anticipate, preclude, and meet objections with the authors' expert strategies for counter-attack.

Objection Tactics

Use these arguments to fight admission of the opposition's evidence, or to minimize its impact. Included are alternative strategies and what you need to put on the record.

§7-60 Texas Objections 7-6

Do not use running objections unless necessary. Use running objections only as a last resort. Do not rely on running objections unless your objections are so numerous as to damage your credibility with the court or jury. A running objection is limited to the previously offered evidence and, if the evidence changes even slightly, you must object immediately.

Responding to the Objection

- Argue that the evidence is irrelevant in that it has a tendency to make a consequential fact more or less likely.
- If only a portion of the evidence is subject to a relevance objection, do not help your opponent if he or she makes a general objection that the court overrules. If the court sustains a general objection, offer again those portions of the evidence that are not objectionable.
- If the opposition is likely to make objections other than relevance, be prepared to refute those objections.
- If it appears the court may grant a relevance objection, be prepared to offer the evidence with limitations as to purpose or parties.
- If the court admits the evidence conditioned on the fulfillment of a condition, remember to fulfill the condition.

Cases

Civil Cases

Coastal Transp. Co. v. Ocean Coast. Promot. Corp., 136 S.W.2d 227 (Tex. 2004). Conclusive or speculative opinion testimony is irrelevant because it fails to make the existence of a consequential fact more or less likely.

Meyer v. Ross, 988 S.W.2d 216 (Tex. 1999). A statement of uncertainty regarding a certain state of facts does not support an inference of those facts and does not satisfy the test of relevancy of making a disputed fact more or less likely.

Classical Control-Tec Co. v. Marston, 977 S.W.2d 328 (Tex. 1998). Evidence of other accidents is admissible if the earlier accidents, though not necessarily identical, occurred under reasonably similar circumstances.

Connell v. Jack, 977 S.W.2d 712 (Tex. 1998). Relevant testimony is sufficiently tied to the case if the acts in the jury's resolution of the facts. Evidence unrelated to the issues of the case is irrelevant.

Gabler v. Lovell, 164 S.W.2d 825, 844 (Tex. 1942). The appellants were entitled to a limiting instruction which they failed to request. The failure to give

an opportunity to timely correct its error.

CAUTION

You must raise a timely and sufficient objection. Failure to object in a timely manner and with sufficient clarity to inform the trial court of the alleged error waives the error.

Making the Objection

- If the evidence does not go to any issue in dispute, object on the basis of relevance.
- Consider whether the evidence has any tendency to make a fact of consequence more or less likely. If so, the evidence is relevant and not objectionable.
- Consider arguments of the evidence, since you may have an objection to only one portion. If part of the evidence only is objectionable, limit your objection to that portion unless you are prepared to show that it taints the whole.
- If the evidence is relevant, but you desire its exclusion, make an objection under an applicable constitutional, statutory or rule provision such as hearsay (see Ch. 10), or state-quest removal (see Ch. 19).
- If the evidence is relevant and there is no constitutional, statutory or rule provision compelling its exclusion, seek its exclusion by asserting under FRP 401 that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading of the jury, considerations of waste delay, or needless presentation of cumulative evidence. See Ch. 8.
- If the court overrules your objection, seek to limit the effect of the evidence by requesting that the court limit the evidence to specific purposes or parties. The limiting instruction must be requested at the moment the evidence is offered.
- Ensure that a record is made of all discussions regarding the evidence, objections,

7-7 Relevance §7-60

a limiting instruction held not grounds for appeal where there was no request for the same.

May v. Burton's Pump Serv., 153 S.W.3d 469 (Amarillo 2004, no pet.). In issue of the second of appellate attorney fees, court of appeal held that even though the appellee failed to request any evidence of appellate attorney fees there was proof in the record of such through the appellant attorney's testimony regarding such fees, which was not limited solely to the issue of appellate attorney fees thus affording a basis for the appeal's attorney fees.

Costello v. Crown Equip. Corp., 118 S.W.3d 736 (Dallas 2004, no pet.). The test for relevancy is if the evidence has a tendency to make a fact of consequence more or less probable. In manufacturing design defect cause of action, the plaintiff contended that a safer alternative design would have included disarms on the forklift which was involved in his injury. The court held that the trial court's exclusion of evidence of the existence of the forklift in certain circumstances is relevant to the proposed safer alternative design. Under such circumstances, the jury could consider the relative risk imposed by the alternative design.

Standard Constructors, Inc. v. Chevron Chem. Co., 101 S.W.3d 619 (Houston 11th Dist. 2003, no pet.). Trial court did not err in excluding evidence of fabrication of a claim offered to show excuse for nonpayment of an account because the jury charge defined excuse inconsistent with fabrication. Accordingly, the proffered evidence was irrelevant because it did not operate to make a fact of consequence more or less probable.

Blanchard v. Texas Dept. of Public Safety, 990 S.W.2d 813 (Austin 1999, pet. den.). Relevancy is not the same as relevancy. The admission of evidence does not require that other evidence going to the same conclusion be excluded.

City of Alamo v. Casan, 960 S.W.2d 240 (Corpus Christi 1997, pet. den.). Evidence concerning financial impropriety, sexual harassment and bribes by a police chief was relevant in light of allegations of excessive force, false arrest and malicious conspiracy in retaliation for filing a complaint against the police to establish a pattern of conduct.

Edwards v. Texas Employment Commission, 916 S.W.2d 462 (Fort Worth 1996, no writ last.). An employer's letter accusing a TREC official of decision was relevant as to the claimant's assertion that his policy expired and the letter retroactively a policy.

Elanco Constructors v. Pex, 922 S.W.2d 694 (Corpus Christi 1996, writ den.). Evidence of theft of company supplies and materials and use of company personnel and materials for a personal catering business was indicative of general untrustworthiness and therefore probative as to whether to discharge a contract.

Frederickville Industries v. Franklin International, 911 S.W.2d 518 (San Antonio 1995, writ den.). Admissibility of similar happenings is analyzed under FRE 401's standard of relevance.

Mid-Mark Stores, Inc. v. State, 904 S.W.3d 718 (San Antonio 1995, no writ last.). USLA regulations were relevant to establish the standard of care in personal liability litigation.

Missouri Pacific Railroad v. Roberts, 819 S.W.2d 367 (Houston 1993, writ den.). The admissibility of prior inspections between one party in the litigation with purpose not parties to the litigation is determined under the FRE 401 definition of relevance, and the former exclusionary rule of "res inter alios acta" does not exist independent of Rule 101.

A.P.F., Inc. v. Washington, 842 S.W.2d 712 (Amarillo 1992, writ den.). In a FTPA action, testimony of the conduct of the defendant with two unrelated parties on similar oral representations involving the purchase of rights of leased equipment at the end of the term was relevant as tending to make more probable the plaintiffs' assertion that the representations had been made to them.

CNA Resources v. Schaffner, 828 S.W.2d 785 (Houston 1992, writ den.). If it is apparent from the record that the trial court excluded evidence solely because of relevance, the appellate court will not presume that the trial court conducted a FRE 401 balancing test.

Chaulhse v. Rogers, 824 S.W.2d 231 (Tyler 1992, no writ last.). A court-appointed executor's mental health records were relevant to a motion to remove the executor for purposes of appointing a successor executor's expert opinions.

Criminal Cases

Sowers v. State, 129 S.W.3d 91 (Tex. Crim. App. 2001). The court of appeals was in error when it held in a driving while intoxicated cause that breath tests were irrelevant without negligent culpability evidence. The breath tests, even though interrupted by retrograde extrapolation evidence, were probative of whether the defendant had committed the offense of driving while intoxicated because they were evidence that the driver had consumed alcohol.

Abdygumova v. State, 243 S.W.3d 101 (San Antonio 2007, pet. den.). In a capital murder prosecution, the female defendant was charged with the sexual assault of a female victim. The state created to be admitted a letter written to the defendant by an individual unknown to the defendant describing the letter writer's graphic fantasy of

Case Law

These concise summaries speed trial preparation and help you cite supporting authority in your briefs and in the courtroom. Civil and criminal cases are separated.

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About the Authors

Harvey G. Brown served as judge of the 152nd District Court for six years and worked as a litigator at Sewell & Riggs for 14 years before forming Wright Brown & Close in Houston. He is board-certified in personal injury law, and was named to the 2008 Super Lawyers list.

Mr. Brown has been an adjunct professor of Evidence and Trial Advocacy at the University of Houston School of Law. He is a member of the Texas Supreme Court Advisory Committee and the American Law Institute.

An active speaker and writer, Mr. Brown has published two award-winning articles in the Houston Law Review on expert witnesses. He is an honors graduate from the University of Texas Law School, where he was a member of the Texas law review and received the Order of the Coif.

Judge Ken Curry was elected judge of the 153rd District Court, a civil trial court, in 1992. He continues to serve in that capacity. Judge Curry was selected in 1995 to oversee the asbestos trial docket for Tarrant County, and continues to hold responsibility for resolution and trial of asbestos cases in Tarrant County.

In 1998 Judge Curry co-founded and continues as director of the Jury Innovation Legal Education Programs. Sponsored annually by the Tarrant County Bar Association, the programs incorporate case presentations to real jurors.

Judge Curry is a member of the Texas Bar Foundation and College of the State Bar of Texas. Judge Curry has presented at numerous continuing legal education courses. He received his law degree from the University of Houston Law Center and his undergraduate degree from the University of Texas at Arlington.

About the Book & CD

Texas Objections contains 24 tabbed dividers and 880 letter-sized pages in a sturdy looseleaf binder. 175 objections are supported with practice tips from the bench, pattern objection language, arguments to use when objecting and responding, and 3,700 cases. Underlying principles and rules are explained, with citations to governing authority.

Included at no extra charge is an intuitive, full-text CD which requires no installation before use. It may be searched by key word, case name, or topic.

\$99 buys the book and CD. The book is updated annually for \$69 with replacement pages and a new CD. Both the book and its updates are sold on a 30-day trial basis, and may be returned if not to your liking. The update service may be cancelled at any time.

Abbreviated Contents

1. Pretrial Motions

Motion in Limine, Striking Intervention, Striking New Parties, Continuance, Bifurcation of Exemplary Damages, Separate Trials, Severance, Nonsuit, Exclusion or Suppression of Evidence

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Objections, responses, arguments, tips, and cases

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Making and Meeting Objections



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Don't let opposing counsel's objections block the admission of your critical evidence. And don't be caught unprepared when opposing counsel offers evidence you could obstruct—if you made the proper objection.

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- ▲ Preclude trial objections through motions in limine
- ▲ Evaluate the admissibility of the opposition's evidence
- ▲ Preserve the record for appeal
- ▲ Decide when to object and when to remain silent
- ▲ Respond to objections on the spot and with authority
- ▲ Draft briefs on evidentiary objections and motions
- ▲ Prevent jury exposure to adverse inadmissible evidence

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