

# **MASSACHUSETTS BOYS STATE**

## **CRIMINAL CODE AND RULES OF COURT**

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**Boys State Criminal Code  
Rules of Criminal Procedure  
Rules of Civil Procedure  
Rules of Appellate Procedure  
Rules of Evidence**

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# BOYS STATE CRIMINAL CODE

## Chapter 1. Crimes of Violation of the General Rules of Boys State

(1) Whoever violates any of the General Rules of Massachusetts Boys State shall be punished by serving not less than one hour of community service or, in the case of offenses where jurisdiction is assumed by the Chairman of Boys State, by a penalty up to and including expulsion from Massachusetts Boys State.

(2) Subject to the Chairman's jurisdiction described in Chapter Eight below, the Trial Court shall have jurisdiction over the following offenses under the General Rules of Massachusetts Boys State:

- (a) Rule 3: Failure to Check Car Keys with the Chairman;
- (b) Rule 4: Soliciting Rides;
- (c) Rule 5: Consuming Food and Beverages Outside of Dining Commons;
- (d) Rule 9: Failure to Adhere to Boys State T-Shirt and Attire Policy;
- (e) Rule 10: Failure to Carry Boys State I.D. Card
- (f) Rule 11: Failure to Maintain Neat Appearance; Wearing Hat Indoors;
- (g) Rule 12: Failure to be in Attendance at Schedule Events or Adhere to "Lights Out";
- (h) Rule 13: Loitering in Residence Halls During Recreation Period;
- (i) Rule 14: Posting Campaign Signs and Materials in Unauthorized Locations;
- (j) Rule 15: Failure to Maintain Access to Dormitory Room After "Lights Out";
- (k) Rule 16: Using iPods, Games, or Similar Device During Scheduled Events;
- (l) Rule 18: Gambling at Boys State;
- (m) Rule 19: Unauthorized Defacing or Marking of Boys State T-Shirts;
- (n) Rule 20: Smoking or Using Smokeless Tobacco;
- (o) Rule 21: Using Cell Phones or Sending Text Messages During Classes or Lectures;
- (p) Rule 22: Trespassing on Stonehill College Property Not Assigned to Boys State.

(3) Where jurisdiction over any of the General Rules of Massachusetts Boys State has not been granted to the Trial Court, jurisdiction shall reside solely and exclusively with the Chairman or, as he may designate, the Staff of Massachusetts Boys State.

(4) Notwithstanding any of the foregoing, the Chairman in his sole and absolute discretion may assume jurisdiction over any violation of the General Rules of Massachusetts Boys State.

## Chapter 2. Crimes Against The Public Peace

(1) Whoever intentionally causes a disturbance of the peace of Massachusetts Boys State shall be punished by serving not less than one hour of community service or, in the case of offenses where jurisdiction is assumed by the Chairman of Boys State, by a penalty up to and including expulsion from Massachusetts Boys State.

(2) Notwithstanding any of the foregoing, the Chairman in his sole and absolute discretion may assume jurisdiction over any offense encompassed in this Section.

## Chapter 3. Crimes Against the Person.

(1) Whoever shall intentionally commit an assault or an assault and battery upon another shall be punished by serving not less than three hours of community service or, in the case of offenses where jurisdiction is assumed by the Chairman of Boys State, by a penalty up to and including expulsion from Massachusetts Boys State.

(2) Notwithstanding any of the foregoing, the Chairman in his sole and absolute discretion may assume jurisdiction over any offense encompassed in this Section.

## Chapter 4. Crimes Against Property.

(1) Whoever shall intentionally cause destruction to any of the property belonging to Stonehill College, or to any other Boys State Citizen or Counselor, or to any resident or visitor to the Stonehill College campus shall be punished by serving not less than two hours of community service or, in the case of offenses where jurisdiction is assumed by the Chairman of Boys State, by a penalty up to and including expulsion from Massachusetts Boys State.

(2) Whoever shall intentionally trespass in the dormitory quarters of another Boys State Citizen, or in another Boys State municipality at times not authorized, or shall enter a location on campus in violation of the direct instruction of a member of the Boys State Staff shall be punished by serving not less than one hour of community service or, in the case of offenses where jurisdiction is assumed by the Chairman of Boys State, by a penalty up to and including expulsion from Massachusetts Boys State.

(3) Notwithstanding any of the foregoing, the Chairman in his sole and absolute discretion may assume jurisdiction over any offense encompassed in this Section.

#### **Chapter 5. Attempt To Commit A Crime.**

(1) Whoever attempts to commit a crime by doing any act toward its commission, but fails in its perpetration, or is intercepted or prevented in its perpetration, shall, except as otherwise provided, be punished by serving not less than one hour of community service or, in the case of offenses where jurisdiction is assumed by the Chairman of Boys State, by a penalty up to and including expulsion from Massachusetts Boys State.

(2) Notwithstanding any of the foregoing, the Chairman in his sole and absolute discretion may assume jurisdiction over any offense encompassed in this Section.

#### **Chapter 6. Accessory To A Crime.**

(1) Accessory Before the Fact. Whoever aids in the commission of a crime, or is accessory thereto before the fact by counseling, hiring or otherwise procuring such crime to be committed, shall be punished in the manner provided for the punishment of the principal offender.

(2) Accessory After the Fact. Whoever, after the commission of a crime, harbors, conceals, maintains or assists the offender or accessory before the fact, or gives such offender any other aid, knowing that he has committed a crime or has been accessory thereto before the fact, with intent that he shall avoid or escape detention, arrest, trial or punishment, shall be an accessory after the fact, and shall be punished in the manner provided for the punishment of the principal offender.

(3) Notwithstanding any of the foregoing, the Chairman in his sole and absolute discretion may assume jurisdiction over any offense encompassed in this Section.

#### **Chapter 7. Repeat Offenders; Default of Court Appearance**

(1) Whoever shall be convicted of more than one violation of the Criminal Code of Massachusetts Boys State, or any offender who fails to appear in court to answer for a criminal complaint, shall be deemed a "Class II Offender." Any Citizen found to be a Class II Offender shall be punished by serving cafeteria duty or such other campus maintenance task as may be assigned by the Boys State staff in consultation with Stonehill College staff or any other penalty which the Boys State staff, in its sole discretion, may deem appropriate.

(2) Lack of knowledge of a criminal complaint shall be no defense for failure to appear. In cases where a Citizen has had his Boys State I.D. card taken by a staff member for an alleged crime, or in cases where a Citizen has lost or has otherwise become dispossessed of his Boys State I.D. card, it is the duty of the Citizen to appear in the Trial Court to answer for his missing card, no matter how it left his possession.

#### **Chapter 8. Jurisdiction Assumed By The Chairman.**

(1) In the case of any conduct committed by a Citizen of Massachusetts Boys State, whether or not such conduct is in direct violation of the General Rules of Boys State or the Criminal Code of Massachusetts Boys State, but is otherwise determined by the Chairman to be contrary to the general good order of Massachusetts Boys State, the Chairman may, in his sole discretion, assume jurisdiction over the offender and the subject matter and impose any penalty which he, in his discretion, may deem appropriate, up to and including expulsion from the Massachusetts Boys State Program and notification to the offender's school principal or school board of the nature of the offense and the reasons for expulsion.

# BOYS STATE RULES OF COURT

## RULES OF CRIMINAL PROCEDURE

1.1 Criminal Complaint. Upon a finding of probable cause to believe that an offense has occurred, a staff member may issue a citation to the offender to appear in the Boys State District Court. Along with the citation, the staff member shall file a criminal complaint with the court clerk not more than 24 hours following the offense. The citation shall contain the offender's name, Boys State city or town, a brief description of the offense, and the date and time when the offender is to appear in court for arraignment. It shall be assumed for the purposes of this Code that the arraignment will occur during the next scheduled mini-course hour at the location where the court regularly sits.

1.2 First Session of the District Court.

(a) First Call - Arraignment; Appointment of Counsel. Defendants shall be arraigned in the First Session of the Boys State District Court. The clerk shall read the charges and enter a not-guilty plea on the defendant's behalf, whereupon the defendant shall be appointed public counsel. At his option, the defendant may proceed *pro se*.

(b) Second Call - Tender of Plea or Motions. Immediately following entry of the defendant's not-guilty plea, he will be provided a brief opportunity to confer with counsel and the matter will be held briefly for a second call. After conferring with counsel, if the defendant desires to tender a plea he or his counsel may take this opportunity to discuss a mutually-agreed plea with the district attorney for the disposition of his complaint. At second call, the defendant may also file with the court any motions he may feel may have sufficient ground (e.g. motion to dismiss, motion for continuance). If the defendant has not disposed of his complaint, whether by plea or by motion, the complaint shall be thereafter transferred to the Second Session court for pretrial conference and trial.

1.3 Second Session of the District Court.

(a) Pretrial Conference; Discovery. Once the complaint has been transferred to Second Session, the defendant or his counsel shall confer with the district attorney concerning discovery. Defense counsel (or pro se litigant) and the district attorney shall finalize all matters of discovery and the issues to be presented for trial. Any pretrial motions which have not been previously argued should be presented at this time.

(b) Lobby Conference. If any dispute concerning discovery, witnesses, or any other pretrial issue remains outstanding, a judge will be available for lobby conference in order to narrow any issues. Barring any such disputes, the parties will appear in the Second Session Court for trial, at which point, the defendant shall elect a jury or bench trial. As the lobby conference judge deems appropriate, he may bring the dispute into open session and issue any orders he deems appropriate to narrow or resolve and pretrial dispute.

(c) Judges' Discretion on Trial Scheduling. The presiding judge, in consultation with the court clerk, may make available additional judges and courtrooms for motions, trials, or such other matter as the administration of court business may dictate.

1.4 Trial. Once all pretrial matters have been resolved, the parties shall proceed to trial.

(a) Bench Trial. If the defendant has not elected a bench trial, the complaint shall be presented before the judge of the Second Session as trier of fact. The matter shall be prosecuted in accordance with the Trial Procedure described below.

(b) Jury Trial. If the defendant has elected a jury trial, he shall be entitled to a trial before a jury of six of his peers chosen at random from the population of Boys State. The matter shall be prosecuted in accordance with the Trial Procedure described below.

1.5 Trial Procedure. Trial shall proceed in the following manner:

(a) Jury Selection. Voir dire shall be conducted by the trial judge. Each party shall be allowed two (2) peremptory challenges, whereupon jurors may be dismissed without any cause given. The trial judge shall seat six (6) jurors and one alternate juror for each trial. The alternate juror shall be selected at random from among the seven sitting jurors at the conclusion of closing arguments.

(b) Opening Statement. Beginning with the prosecution, each party shall be entitled to an opening statement to the court. Opening statements shall be no more than two (2) minutes each.

(c) Prosecution's Case. Following open statement, the prosecution shall have *no more than* ten (10) minutes to present its evidence to the trier of fact. Evidence shall be presented in accordance with the Boys State Rule of Evidence.

(d) Defendant's Case. After completion of the prosecution's case, the defendant shall have *no more than* ten (10) minutes to present its evidence to the trier of fact. Evidence shall be presented in accordance with the Boys State Rule of Evidence.

(e) Closing Argument. Once all evidence has been presented, beginning with the defendant, the prosecution and defense shall each be allowed three (3) minutes for a closing argument.

(f) Deliberation; Verdict. The trier of fact shall thereafter retire to deliberate. The defendant shall remain in the courtroom until deliberations are complete and the verdict has been delivered, unless the trial judge orders otherwise.

(g) Sentencing. Upon a finding of guilt, the court shall issue penalty in accordance with sentencing standards provided by the Boys State Director of Staffing.

# RULES OF CIVIL PROCEDURE

2.1 Scope and Purpose. Rules of procedure in all civil actions in Boys' State district courts are included in this section. These rules shall be administered to secure the just, speedy, and inexpensive determination of every action.

2.2 Records Kept by Clerk. The clerk of the court shall enter each civil action in the docket. Additionally, each entry in the docket will note the nature of the paper filed, proof of service, the substance of the matter, and date of entry of order and judgment.

2.3 Commencement of Action. Each civil action commenced in the Boys State court shall begin with the filing of a complaint. Upon filing, the plaintiff shall cause to be served upon each defendant a copy of the complaint, along with a summons to the defendant to appear before the court to answer the allegations of the complaint.

2.4 Service of Process. Service of process on an individual may be made in person. Substitute service of process, by leaving the summons and complaint at the defendant's campus residence, is not valid. A person who is served process must appear at the designated time and location detailed. A person may not purposely avoid service of process. Service on a municipality shall be made by handing to the city or town clerk for the defendant municipality.

2.4 Pleadings and Other Court Papers.

(1) Complaint. All complaints (this includes counter claims, third-party claims, and cross-claims) must contain a statement of the claim and relief. This should be a short plain statement of the claim asking for judgment and relief for the pleader and, in the case of an original complaint, the plaintiff demand for a trial by jury if so desired.

(2) Answer; Defense, Admission, or Denial. A defendant should state in a short and plain statement his defenses to each claim asserted if he has any. Where a claim is not denied it is thereby admitted. Defendants may also provide affirmative defenses to the complaint. Affirmative defenses may include: lack of jurisdiction, insufficient service of process, and failure to state claim upon which relief can be granted. These defenses must be made before the trial begins in the answer. The answer shall be served upon the claimant by the end of the next breakfast following service of the complaint, and shall be filed with the court clerk at the beginning of the next scheduled court session, at which time the parties shall appear for pretrial status conference.

(3) Counterclaims and Cross-claims. Defendants are allowed to bring counterclaims against the plaintiff. Counterclaims involving the same transaction or occurrence as the original claim must be brought together. Those counterclaims not involving the same transaction or occurrence are allowed, but not required to be brought at the same time. A claim may be brought against a co-party called a cross-claim. Cross-claims must arise from the same transaction or occurrence as the original claim.

(3) Requirements for Court Filings. All papers filed with the court shall include the name of the filing attorney, the attorney's dormitory address and, if applicable, an on-campus phone number for the filing attorney. Additionally, each document filed with the court shall include a certificate of service by the filing attorney certifying that a copy of the document has been served upon each opposing party, the manner of service, and the date and approximate time of service.

(4) Frivolous Pleadings. Pleadings must not be frivolous, and should not be issued to harass, delay or needless increase in the cost of litigation. A lawyer who fails in this duty may be sanctioned or fined by the court.

2.5 Motions. Parties may file motions with the court by serving a copy of the motion upon each other party to the action and with the clerk of courts at the next scheduled session. Hearings on motions outside of court session hours shall be at the discretion of the assigned judge.

(1) Ex Parte Motions. Motions made *ex parte* may be presented to the on-call judge for the day. The judge issuing a ruling on an *ex parte* motion shall, on the face of any order made on the motion, provide a specific time and place for a full hearing with all parties to the action present, which shall not be later than the end of breakfast on the following day.

2.6 Discovery. Each party should have equal access to all relevant material. Without request from another party you must automatically disclose all witnesses and tangible items that will be introduced in the case. Coaching of witnesses by lawyers is prohibited. Forms of discovery may include:

(1) Interrogatories. A party to an action may propound interrogatories on another party to be answered under oath. Interrogatory responses shall be provided to the requesting party by breakfast of the next following day or by such other deadline as the court may order. No more than ten (10) interrogatories may be made.

(2) Request for Production of Documents. A party to an action may request another party to produce documents for inspection or copying. No more than ten (10) document requests may be made.

(3) Discovery Disputes; Abuse of Discovery. In the event of any dispute over discovery, the assigned judge shall have continuing jurisdiction in order to resolve any issues, whether or not in formal session. The court shall may fashion any appropriate order in resolving discovery disputes including, without limitation, issuing contempt orders, orders to compel discovery or any other order which may be fair and appropriate under the circumstances.

2.7 Trial by Jury; Trial by the Court. All persons have the right of trial by jury. A party may waive his right to a jury trial. The process of selecting jurors from the pool is called voir dire. Each party may ask questions of prospective jurors to look for any bias. Each party may also dismiss 3 jurors without cause. This is called a peremptory challenge and bias does not have to be shown. At minimum six (6) jurors and no more than twelve (12) will decide each case. The verdict by the jury must be unanimous.

2.8 Trial Procedure. Trial shall proceed in the following manner:

(a) Jury Selection. Voir dire shall be conducted by the trial judge. Each party shall be allowed two (2) peremptory challenges, whereupon jurors may be dismissed without any cause given. The trial judge shall seat six (6) jurors and one alternate juror for each trial. The alternate juror shall be selected at random from among the seven sitting jurors at the conclusion of closing arguments.

(b) Opening Statement. Beginning with the plaintiff, each party shall be entitled to an opening statement to the court. Opening statements shall be no more than two (2) minutes each.

(c) Plaintiff's Case. Following open statement, the plaintiff shall have *no more than* ten (10) minutes to present its evidence to the trier of fact. Evidence shall be presented in accordance with the Boys State Rule of Evidence.

(d) Defendant's Case. After completion of the plaintiff's case, the defendant shall have *no more than* ten (10) minutes to present its evidence to the trier of fact. Evidence shall be presented in accordance with the Boys State Rule of Evidence.

(e) Closing Argument. Once all evidence has been presented, beginning with the defendant, the plaintiff and defense shall each be allowed three (3) minutes for a closing argument.

(f) Deliberation; Verdict. The trier of fact shall thereafter retire to deliberate. The verdict, once reached, shall be reduced to writing and filed with the trial judge.

## **RULES OF APPELLATE PROCEDURE**

- 3.1 Criminal Matters; Notice of Appeal. With respect to criminal cases, after a judgment of guilty is entered at the trial court, the court shall advise the defendant of his right to appeal. In the District Court, upon the request of the defendant, the clerk of the court shall prepare and file a notice of appeal within 24 hours after a judgment of guilty is entered. In a criminal case, the Commonwealth may only appeal a decision, order, or judgment of the lower court (a) allowing a motion to dismiss a complaint; or (b) allowing a motion to suppress evidence.
- 3.2 Civil Matters; Notice of Appeal. With respect to civil cases, a party shall file a notice of appeal within 24 hours after a verdict is entered in the lower court.
- 3.3 Direct Appellate Review. All cases shall be heard on direct appellate review by the Supreme Judicial Court. If a notice of appeal is properly filed, the Supreme Judicial Court shall certify the appeal.
- 3.4 Parties to Appeal. The aggrieved party shall be treated as the appellant. The responding party shall be treated as the appellee.
- 3.5 Transmission of Record. The clerk of the District Court shall transmit the record, including exhibits, to the appellate court.
- 3.6 Briefs. Within 12 hours of the notice of appeal being filed, the appellant's brief must be filed with the Clerk of the Supreme Judicial Court. Within 12 hours of the filing of the appellant's brief, the appellee's brief must be filed with the Clerk of the Supreme Judicial Court. All briefs must be no longer than one double-spaced page and must contain one-inch margins. If type-written, no unusual font of any kind or size are permitted. A brief of an amicus curiae may only be filed by leave of the Clerk of the Supreme Judicial Court and must conform to the specifications above. Copies of all briefs must be served on all parties simultaneously with filing.
- 3.7 Oral Argument. The Clerk of the Supreme Judicial Court shall notify all parties of the time and place at which oral argument be heard. A request for postponement of the argument must be made by motion filed reasonably in advance of the date fixed for hearing and may be permitted within the sole discretion of the Clerk of the Supreme Judicial Court. At oral argument, each side will be allowed 5 minutes for argument. Either side may reserve any portion of its time for rebuttal.
- 3.8 Issuance of Rescript. The Clerk of the Supreme Judicial Court shall announce the rescript and the opinion of the Court that night.

## RULES AND GUIDELINES OF EVIDENCE

4.1. Types of Evidence. There are four traditional types of evidence: real or physical, demonstrative, documentary, and testimonial. Some rules of evidence apply to all four types and some apply only to some or one of them.

- (a) Physical Evidence is usually a thing that was directly involved in some event in the case. Examples: a bloody glove or a recently-fired handgun.
- (b) Demonstrative Evidence is evidence which illustrates testimony from a witness. Examples: maps, illustrations of a crime or accident scene, photographs – all of which require authentication to prove competence.
- (c) Documentary Evidence is evidence offered in document form. Examples: contracts, reports, written confessions, letters, public records, etc. In certain cases, documentary evidence may be fraught with hearsay issues.
- (d) Testimonial Evidence is the most basic form of evidence, and it is the oral testimony of a sworn witness who is competent to give testimony on the subject at issue. In order for a witness to be competent to testify:
  - (i) He must, with understanding, take the oath or a substitute;
  - (ii) He must have personal knowledge about the subject of his testimony. In other words, the witness must have perceived something with his senses that is relevant to the case.
  - (iii) He must remember what he perceived, and
  - (iv) He must be able to communicate what he perceived.

There are two types of testimonial evidence: lay testimony and expert testimony. Since it seems unlikely that an expert witness would be required for Boys State courts, these guidelines do not address expert testimony.

4.2. General Rules of Admissibility of Evidence. In general, if evidence is shown to be relevant, competent, and not unfairly prejudicial, and is not barred by an exclusionary rule, it is admissible.

- (a) Relevant. Evidence is *relevant* when it has any tendency in reason to make the fact that it is offered to prove or disprove either more or less probable. For example, if a Boys Stater is caught defacing Stonehill College property, testimony of a counselor who saw the offender would be relevant. Testimony of another Boys Stater that he overheard a confession was also be relevant, although may be inadmissible for other reasons.
- (b) Competent. Evidence is *competent* if the proof that is being offered meets certain traditional tests of reliability. A preliminary showing that the evidence meets those tests, and any other prerequisites of admissibility, is called the foundational evidence. For example, an attorney could prove a witness competent to testify by eliciting testimony that the witness was at the location where the offense took place and saw the incident occur.
- (c) Unfair Prejudice. A trial judge is the ultimate “gate keeper” when it comes to the admissibility of evidence. Even if a piece of evidence is otherwise admissible, the judge may exclude it if he feels that its probative value is outweighed by its potential to *unfairly* prejudice the jury. For example, assume a civil case in which the plaintiff is suing the defendant for a car accident in which he is only seeking money for damage to his car. A judge may decline to admit into evidence a photograph in which next to the damaged car is pictured the plaintiff’s doe-eyed, disabled daughter in her wheelchair. The pictures of the damage to the car may be relevant and otherwise admissible, but the judge may rule that the defendant would be unfairly prejudiced by the sympathy that the daughter might invoke with the jury.

In addition, a judge may exclude evidence if he believes it will mislead the jury, cause undue delay, waste time, or be simply cumulative evidence. Note that an adversary will often be “prejudiced” by the admission of evidence by the other side; but only if the judge deems that prejudice “unfair” will the evidence be excluded.

4.3 Hearsay Evidence. Hearsay evidence includes any out-of-court statement offered in testimony to prove the truth of the matter asserted. It is generally inadmissible, but there are several notable exceptions where hearsay evidence is admissible. An example of hearsay evidence:

Matt from T-1 testifies that he heard Ted from T-2 say, "I spray-painted 'T-2 Rules!' on the wall of the Roche Dining Commons. The statement offered is hearsay, because it is presumably offered to prove that Ted spray-painted the wall. The next question, though, whether it falls into one of the hearsay exceptions.

4.4 Hearsay Exceptions. Certain types of evidence, even though it would otherwise constitute hearsay, is considered generally reliable. We therefore, provide certain exceptions to the hearsay rule of inadmissibility:

- (a) Statement Against Interest. Generally, a statement offered by a witness which is contrary to his own interest is considered reliable and not hearsay.
- (b) Prior Testimony. A statement made under oath in a prior proceeding is generally not considered hearsay.
- (c) Excited Utterance. A statement made in the excitement of the moment is generally considered reliable, and therefore, not hearsay.
- (d) Present Sense Impression. A statement made as an expression of an existing condition is generally considered reliable, and therefore, not hearsay.
- (e) Business Records. Records kept in the ordinary course of business are generally considered reliable, and therefore, not hearsay.
- (f) Admission or "Statement of a Party Opponent". Generally, an out-of-court statement made by the opposing party is admissible against that party.

It bears emphasis that hearsay requires that the statement is offered *for the truth asserted* and not for some other purpose. So, consider the following example:

Defense Attorney: Do you know what time Matt from T-1 was in his dorm room?  
Witness: Yes. It was 5:00 pm.  
Defense Attorney: How can you be so sure it was 5:00?  
Witness: Matt told me that he needed to shower and change for dinner.  
District Attorney: Objection. Hearsay.  
Judge: Overruled.

In this example, the statement is not offered to prove whether or not Matt was actually changing his clothes. The statement is offered into evidence to show consistency with the time of day, when Matt would presumably be changing for dinner.

Here's another example involving a disputed debt:

Plaintiff's Attorney: Why did you expect the defendant to pay you back on Monday?  
Witness: His friend, Mike told me.  
Plaintiff's Attorney: What did his friend Mike tell you?  
Defense Attorney: Objection. Hearsay  
Judge: Overruled.  
Witness: He told me that Mike would pay me back on Monday.

In this example, the statement is not offered to prove whether or not the defendant was going to pay the plaintiff back on Monday. The statement is offered to show the plaintiff's state of mind or knowledge about when he expected the defendant to pay him back.

4.5 Privilege. Certain privileges are afforded in circumstances where, although the evidence may be relevant, material, and competent, some policy consideration makes the evidence inadmissible.

- (a) Privilege Against Self-Incrimination. The Fifth Amendment to the Constitution prevents a defendant from being forced to provide evidence against himself.
- (b) Attorney-Client Privilege. Because we want litigants to speak freely with their attorneys, a client holds the right to assert a privilege against use of confidential statements made between an attorney and client for purposes of seeking or providing legal advice.

(c) Other Privileges. As these may not apply to Boys State court cases, we will only list a few other privileges for reference purposes.

- (i) Spousal Privilege
- (ii) Priest-Penitent Privilege.
- (iii) Doctor-Patient.
- (iv) Psychotherapist-Patient.

4.6 Character Evidence. Generally, evidence of a person's character is not admissible. The exceptions where character of evidence may be allowed are:

(a) Evidence of Habit. Although character evidence cannot be offered to prove conformity with a trait of good or bad character, evidence of a *habit or routine* is admissible.

(b) Defendant in a Criminal Case. A defendant in a criminal case may offer evidence of his good character to try to prove conformity with a trait of good character. Conversely, a prosecutor *may not* offer evidence of the defendant's bad character. However, once the defendant puts his character at issue, the prosecution is free to rebut by offering evidence of the defendant's bad character.

(c) Evidence of Truthfulness. Any witness who testifies puts his own character at issue in the form of his history of truthfulness. Evidence of a tendency against truthfulness of a witness is generally admissible.

4.7 Propensity. This concept is closely related to character. Generally, it is not permissible to introduce evidence to suggest that someone has the propensity to do something based on past conduct. For example, unless certain conditions are met, it is not permissible to introduce evidence of a Defendant's arrest for operating under the influence of alcohol ("OUI") in his current trial for a different OUI offense.

4.8 Judicial Notice. Certain evidence is considered beyond reasonable dispute, and a matter of general knowledge, and a court may take judicial notice of certain facts to admit the evidence without challenge. For example, a court may take judicial notice that it is likely that, between 10:30 am and 11:15 am, Boys Staters should be in an elective classroom lecture.

4.9 Common Objections.

(a) Argumentative. Where the questioning attorney is making an argument rather than asking a question to elicit testimony.

(b) Asked and Answered. Where the question has been asked and a clear answer provided.

(c) Assumes Facts not in Evidence. Where a question is asked before proper foundation or authentication has been provided. Appropriate where, for example, an attorney asks a witness a question about a document before the document has been properly authenticated and offered into evidence.

(d) Best Evidence Rule. Where the best evidence is the original source, and not a copy or some other secondary source. For example, if Matt from T-1 wants to testify that the criminal complaint against him misidentified him as the offender, the *best evidence* for that would be the criminal complaint itself.

(e) Calls for Speculation. Where a question requires a witness to speculate about the answer. This is considered unreliable and not competent evidence.

(f) Compound Question. Where a single question is asked with multiple components, which can be confusing to the tribunal.

(g) Lack of Foundation. Where proper foundation has not yet been offered for evidence sought to be admitted.

(h) Hearsay. Where the question or the response calls for hearsay and does not fall within one of the exceptions to the hearsay rule.

(i) Leading Question. Where the form of the question suggests an answer to the witness. Generally a question that begins "Isn't it true. . ." is considered leading. However, leading questions are *allowed* on cross-examination. Also, where a witness has been deemed hostile by the judge, leading questions may be asked.

- (j) Privilege. Where a witness invokes a privilege, he is thereafter immune from testimony on *that* subject matter.
- (k) Relevance (lack of). Where evidence offered is not relevant to the subject matter.
- (l) Non-responsive. Where a witness fails to answer the question asked of him, often opting to provide an editorial statement unrelated to the question.