

Handout / Types of Oral Argument Questions

In appellate arguments, lawyers do not call witnesses or present new evidence. Rather, they advocate for a specific position. Lawyers for the petitioner challenge the ruling of a lower court while lawyers for the respondent advocate for the ruling of the lower court. The lawyers face a panel of judges who ask them questions. Those questions often fall into the following five categories.

- 1. Questions that apply precedent:** Cases that make their way from the lower courts to the Supreme Court of the United States almost always rely on precedent. Precedent cases deal with similar issues that the Supreme Court has already decided. The justices typically rely on precedent in making their decision. This is called *stare decisis* and it ensures that cases presenting the same legal question are decided the same way. This reliance on precedent builds stability and reliability into the legal system—people can typically predict how a dispute will be resolved by looking to past decisions on the same legal question. On rare occasions the Supreme Court overturns an existing precedent when the existing precedent is no longer workable or when the original decision was wrongly decided.
- 2. Questions that deal with the limitations of the Court:** The court system plays an integral role in separation of powers. Judges may ask questions as to whether the court would be overstepping its boundaries by making a ruling in a certain case. Judges in federal courts may be wary of infringing on matters reserved to the states or to a co-equal branch of the federal government.
- 3. Hypothetical questions:** Judges focus not just on the dispute between the two parties in front of them, but with the broader legal rule that will be established. In order to see how a new rule would work in a variety of circumstances, they often present alternate factual situations and ask the advocates to apply their proposed solution to the current case to the hypothetical case or cases.
- 4. Questions that deal with a “slippery slope”:** What comes next? This is at the heart of any slippery slope question. The case at hand may deal with a seemingly minor issue but may have far-reaching implications for future cases. Lawyers have to be prepared to address the judges’ concerns that they are not upending the American justice system without knowing it.
- 5. Questions that focus on the facts/procedural history/record:** Judges frequently want to know exactly what issues are in dispute based on the record that has been developed. They often ask factual questions or questions about the basis of a lower court’s opinion to clarify the nature of the issues in dispute. The record refers to statements made by witnesses in the trial court or decisions made by judges in lower courts. Judges may want the record clarified to arrive at a decision that is consistent with the original facts in the case.