



FACULTY OF JURIDICAL SCIENCES

**MOOT COURT EXERCISE AND
INTERNSHIP
(CLINICAL)**

Course : BALLB , 3rd Semester

Subject code : BAL903

Faculty Name : Ms Taruna Reni Singh

Moot Court Exercise and Internship

Objective: The objective of having moot courts is to give the students practical training on how the proceedings of the court take place.

The Paper will have following components

- Moot Court: Every student may be required to do at least one moot court in a year. The moot court work will be on assigned problem.
- Observance of Trial in one case, either Civil or Criminal.
 - Students may be required to attend one trial in the course of the last year of LL.B. studies. They will maintain a record and enter the various steps observed during their attendance on different days in the court assignment.
- Interviewing techniques and Pre-trial preparations and Internship diary.
 - Each student will observe one interviewing session of clients at the Lawyer's Office/Legal Aid Office and record the proceedings in a diary. Each student will further observe the preparation of documents and court papers by the Advocate and the procedure for the filing of the suit/petition.
- The fourth component of this paper will be Viva Voce examination on all the above three aspects.
- Student will be required to undertake legal awareness programme in association with N.S.S. and other authorities as directed by the Faculty.

LECTURE 23

ART OF INTERROGATION

B.K. Somasekhara (ed.) *Aiyar & Aiyar's The Principles and Precedents of the Art of Cross- Examination* (Tenth Edition, 2004), pp. 145-182

1. FORMS OF INTERROGATION

Strictly speaking, interrogation is not cross-examination, but cross-examination is a form of interrogation. Literally, interrogation is a process of questioning of or enquiring a person closely, thoroughly or formally.

'Interrogatory' is the questioning of or suggestive enquiring, i.e., a formal set of questioning in law, formally put to an accused person. Grammatically, as an adjective or pronoun it is the interrogative asking of a question. It is put in a wider capsule to mean question, query, inquiry, demand, probe, challenge, controvert, debate, probing, leading, question, cross question, etc. Academically, 'interrogation' includes all forms of questioning to elicit information for the purpose of drawing conclusions to know the truth. Legally, interrogation is not cross-examination. It is not defined in law, but is understood as a part of investigation which includes all the proceedings under the Code of Criminal Procedure (or criminal procedural law) for the collection of evidence, conducted by a police officer or by any person (other than a magistrate) who is authorized by a magistrate in this behalf.

'Trial' is not defined but used in law very frequently, for instance-trial before a court of sessions (Ch. XVIII and Ss. 225 to 237), trial of warrant cases (Ch. XIX, Ss. 238 to 250), trial of summons cases (Ch. XX, Ss. 251 to 259) and summary trials (Ch. XXI, Ss. 260 to 265 of Cr PC). They are all part of judicial proceedings and are included within its definition and include any proceeding in the course of which evidence is or may be legally taken on oath [s 2(i) of Cr PC]. The Indian Evidence Act while dealing with implications of investigations under Ss. 24 to 30 and the effect of a statement to police officers during investigations, distinguished it from evidence given in court (s 3 of the Indian Evidence Act) and examination of witnesses by the court and parties and advocates. The separate Ch. IV is provided in the Indian Evidence Act in this regard and cross-examination is covered by s 137. The totality of all this keeps 'interrogation' beyond the meaning of cross-examination. Categorically stated in the true sense, 'interrogation' is a conversation between the interrogator and the suspect who is accused of involvement in a particular incident or group of incidents. Many companies use the word interview as a substitute for interrogation. For the sake of clarity in this text, interview will be used to indicate a non-accusatory conversation while interrogation will represent the change to an accusatory tone.

Without meaning an investigation into the expression and using it in the sense of questioning during cross-examination in different ways and for different legal results, several components of interrogation could be:

- (i) Leading questions.
- (ii) Misleading questions.
- (iii) Direct questions.
- (iv) Indirect questions.
- (v) Fishing questions.

- (vi) Questions testing credibility.
- (vii) Questions that divert the attention.
- (viii) Digressive questions.
- (ix) Progressive and cumulative questions.
- (x) Retrogressive questions.
- (xi) Developing questions.
- (xii) Conducive questions.
- (xiii) Searching questions.
- (xiv) Suggestive questions.
- (xv) Cross-interrogation.
- (xvi) Intimidating questions.
- (xvii) Incriminating questions.

2. MEANING OF LEADING QUESTIONS

'A question' says Bentham, is a leading one, when it indicates to the witness the real or supposed fact which the examiner expects and desires to have confirmed by the answer. These include questions like; Is your name not so and so? Do you reside in such a place? Are you not in the service of such and such a person? Have you not lived with him for so many years? It is clear that under this form every sort of information may be conveyed to the witness in disguise. It may be used to prepare him to give the desired answers to the questions about to be put to him; the examiner while he pretends ignorance and is asking for information is in reality giving instead of receiving it. It has often been declared that a question is objectionable as a leading one which embodies a material fact and admits of an answer by a simple affirmative or negative. While it is true that a question which may be answered by 'Yes' or 'No' is generally leading, there may be such questions which in no way suggest the answer desired and to which there is no real objection. On the other hand, leading questions are by no means limited to those which may be answered by 'Yes' or 'No'. A question proposed to a witness in the form whether or not, that is, in the alternative, is not necessarily leading. However, it may be so when proposed in that form, if it is so framed as to suggest to the witness the answer desired. It would answer no practical purpose to cite the numerous decisions which determine whether particular questions are leading or not, as each case must be determined with reference to its own particular circumstances and to the definition continued in this section, namely, that a question is leading which suggests to the witness the answer which he is to make, or which puts into his mouth words, which he is to echo back. 'Leading' is a relative, not an absolute term. If a question merely suggests a subject which suggests an answer or a specific thing, it is not leading. A question is proper when it merely directs the attention of the subject in respect of which he is questioned. It follows from the broad and flexible character of the controlling principle that its application is to be left to the discretion of the trial court. Evidence which is improperly obtained by leading questions without first declaring the witness hostile should not be considered. It was held by the Kerala High Court in *State of Kerala v Vijayan alias Rajan*, that leading questions relating to undisputed matters or introductory matters or matters already proved are beyond the purview of the discretionary powers of the court, vide second para of s 142 of the Indian Evidence Act. Almost invariably, the examiner will know in a general way what his witness is going to say since the witness will

earlier have signed a statement, called his 'proof' of what he can depose to, and it will be on the basis of this proof that the counsel will have decided to call him. Nevertheless, the witness must tell his own story in court. This means that he must not be asked leading questions. A leading question is one which suggests the answer. Similarly, one must not ask a question such, 'Did you see John Smith at the scene of the crime?' but rather 'Did you see anyone?' and 'Whom did you see?' A question which admits of a simple 'Yes' or 'No' as an answer is usually a leading one, but not always. It is seriously in dispute. Thus, 'Did you see anyone?' is usually all right, because it is not usually in dispute whether the witness saw anyone or not, but the question 'Did you see John Smith?' is usually objectionable.

A leading question is one which puts words into the witness's mouth, or suggests directly the answer which the examiner expects of him. It is, however, permissible to lead the witness on the following matters:

- a. On preliminary matters, preparatory to questions about the facts in issue. It is usual, for example to lead the witness's name and address.
- b. On any matters which are not in dispute.
- c. Where a witness is called to deal with some fact already in evidence, he may be asked directly about that fact.
- d. Where leave has been granted to treat the witness as hostile.
- e. By agreement between all concerned.

It is common and good practice for an advocate to indicate to his opponent over what area the opponent may lead a given witness without objection.

Any question suggesting the answer which the person putting wishes or expects to receive, is called a leading question. It is a question framed in such a manner that it throws a hint as to or suggests directly or indirectly, the answer which the examiner desires to elicit from the witness, e.g., when a witness called to testify to an alleged assault on A by B is asked 'Did you see B take a stick and strike A?' or 'Did you not hear" him say this?' Leading questions, says Taylor, are questions which suggest to the witness the answer desired or which, embodying a material fact, admit of a conclusive answer by a simple negative or affirmative.

Questions may legitimately suggest to the witness, the topic of the answers; they may be necessary for this purpose where the witness is not aware of the next answering topic to be testified about, or where he is aware of it but its terms remain dormant in his memory until by the emotion of some detail the associated details are revived and independently remembered. Questions on the other hand, which so suggest the specific tenor of the reply as desired by counsel that such a reply is likely to be given irrespective of an actual memory, are illegitimate. The following passages indicate the scope of the rule:

A question is leading which instructs the witness how to answer on material points, or puts into his mouth words to be echoed back, as was here done, or plainly suggests the answer which the party wishes to get from him.

Putting leading questions by the magistrate while recording a confession in the form of questions and answers virtually cross-examining the accused was deprecated and excluded from the evidence.

As a general rule, leading questions must not be asked during the examination-in-chief if objected to by the adverse party except with the permission of the court.

The rule has a rationale. A witness has a natural or sometimes unconscious bias in favor of the

parry calling and he will therefore be too ready to say 'Yes' or 'No', as soon as he realizes from the question that the one or the other answer is desired from him. A hint conveyed by the interrogator as to the sort of answer he would like, would be welcome to a witness who did not know what exactly to say, and in the case of collusion between the witness and the interrogator, the scope of mischief is infinite.

Another reason is that the party calling a witness has an advantage over his adversary, in knowing beforehand what the witness will prove, or at least is 'expected to prove; and that consequently, if he were allowed to lead, he might interrogate in such a manner as to extract only so much of the knowledge of the witness as would be favorable to his side, or even put a false gloss upon the whole. The rule therefore is that on material points. A party will not be allowed to lead his own witnesses but leading questions are allowed during cross-examination (s 143 of the Indian Evidence Act). To an honest or intelligent witness who has come to speak the truth, a leading question may make no difference in his reply; but a witness who is dull or headless or confused, or who has no recollection or who is seeking a hint as to what reply should be given, it is apt to give a reply in the manner suggested, without considering the question properly. When a question is ruled out on the ground that it is suggestive and improper, the same may be allowed to be put in another form but where the mischief created by putting the leading question is irretrievable, there can be no complaint if the court disallows the question even in another shape.

A fair trial and procedural justice is ensured under Ss. 141 to 143 of the Indian Evidence Act which can be read into a constitutional protection of the right to liberty under art 21 of the Constitution. It is a procedure established by law within the meaning of art 21 of the Constitution of India.

The rule is exceptionable, viz.-

- a) it cannot be allowed if objected to by the adverse party,
- b) unless permitted by the court, and
- c) it is allowed if leading questions are introductory or undisputed or which have already been sufficiently proved.

Though no case for general permission to cross-examination is made out, it may be necessary on particular topics to allow leading questions to be put in order to give the court a clear picture of the reaction of the witness to these questions. The section says, 'If not objected to by the adverse party'. In practice leading questions are often allowed to pass without objection, sometimes by express and sometimes by tacit consent. This matter occurs where the questions relate to matters which, though strictly speaking in issue, the examiner is aware of, are not meant to object. On the other hand, however, every unfounded objection is constantly taken on this ground. If the objection is not taken at the time, the answer will have been taken down in the judge's notes, and it will be too late to object afterwards on the score of having been elicited by a leading question. Sometimes, the judge himself will interfere to prevent leading questions from being put; but it is the duty of the opposing counsel to take the objection, and except in cases where, as above-mentioned, the objection is advisedly not taken, it is only through want of practical skill that the omission occurs. At the same time it is to be observed that the evidence is elicited by a series of leading questions unobjected to, the effect of evidence so obtained is very much weakened. It is

advisable, therefore (except where permissible) not to put too many questions, whether it be likely that objection be taken to them or not. The whole subject of leading questions is left entirely to the discretion of the court. The latter part of the section permits putting questions on introductory or undisputed matters. 'The second part of s 142 goes further than English law and requires the judge to give permission in certain cases.'