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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 27

15. NEVER ASK A QUESTION UNLESS SURE OF THE ANSWER

'There is the old theory, never ask a question unless you are sure of the answer, but that would destroy a good deal of cross-examination. No counsel should ever risk an important question unless he knows and feels the question is proper and right in its form, having regard to form only. I will tell you why this is a dangerous thing. Counsels on the other side are waiting for an opportunity at every turn to pass of their client if he is in the hands of a skillful cross-examiner. Counsel gets up very often and objects; he is asked, what is your objection? 'Well, I object to the form of the question.' It may or may not be a good objection but you have defeated by your objectionable form of question, that which you have been laboring to obtain for 15 minutes or half an hour. How did you do it? The witness has stopped, but has heard the question and he is given a moment or two of thought, and he knows what you are driving at, no matter how cleverly you have put it. And by the time you get back to the question, the witness has got his 'mind', and you get your answer favorable of course to the opposing party.

In a criminal case, especially in a capital case, so long as your cause stands well, ask few questions; and be certain never to ask any the answer to which, if against you, may destroy your client, unless you know the witness perfectly well, and know his answer will be favourable, or unless you will be prepared with testimony to destroy him if he plays traitor to the truth and your expectations.

16. AVOID EQUIVOCAL QUESTIONS

An equivocal question is almost as much to be avoided and condemned as an equivocal answer; and it always leads to, or excuses an equivocal answer. Singleness of purpose clearly expressed is the best trait in the examination of witnesses, whether they be honest or the reverse. Falsehood is not detected by cunningness but by the light of truth, or if by cunningness it is the cunningness of the witness and not of the counsel.

17. Do NOT REPEAT QUESTIONS

During cross-examination, though sometimes by sheer repetition you may be able to unnerve a witness and get the truth out from him. Let your questions be couched in simple and homely phrases. Avoid verbosity which verges on the ludicrous. While conducting a cross-examination do not put your questions with eyes fixed on the ceiling. You may feel that that it is a very stylish thing to do, possibly because you have seen some senior advocate effecting that pose. However, what may be posed as stylish for a senior may be childish for a junior.

18. TRY TO ELICIT 'YES' REPLIES

Arrange your questions in such a way that the witness cannot but answer 'yes'. This is not so simple as it seems and is practically the sum and substance of all the rules given above and to follow later for the conduct of an effective cross-examination. I should prefer to call this technique of cross-examination the Socratic approach to cross-examination.

19. ART OF PUTTING ILLUSTRATED QUESTIONS

Mrs. Bartlett was tried for the murder of her husband by poisoning. Rev Dyson was also suspected to be *particeps criminis* and the cross-examination of Dyson by Clarke ranks as a forensic feat. The cross-examination is reproduced here to give an idea of the forms of questions which may safely be termed as insured.

The following is the cross-examination of Dyson:

Clarke began his questioning in a quiet, even tone. The spectators and perhaps the Rev Dyson too waited for the storm that never was to break.

'Whatever your relations were with regard to Mrs. Bartlett, they were relations that were known to her husband.'

'Oh yes.'

'And did you down to the last day of his life endeavour to reciprocate his friendship and to deserve his confidence.'

'I did.'

'Were you sincerely solicitous for his welfare?'

'I was.'

'And do you believe that every day of that illness you and his wife were both anxious for his welfare and tried to save him?'

'I do.'

'You became aware -at a very early period of your acquaintance that Mr. Bartlett had peculiar views on the subject of marriage?'

'Yes.'

'Did he ask you whether you thought the teaching of the Bible was distinctly in favour of having one wife?'

'He did.'

'Did he suggest you that his idea was that there might be a wife for companionship and a wife for household duties?'

'He did.'

'He suggested to you that a man should have two wives?'

'Yes.'

'That would have struck you as a most outrageous suggestion, would it not?'

'A very remarkable suggestion.'

The scandalized judge could not restrain himself.

'Did it not strike you', he asked 'as an unwholesome sort of talk in the family circle?'

'Not coming from him, my lord', the Reverend Dyson answered. 'He was a man who has some strange ideas.'

This answer to the Bench was of immense value to Clarke. It furnished the support for the extraordinary story which Mrs. Bartlett has told to Dr. Leach. Before anyone could make his mind, he would have to be independently and thoroughly convinced that Edwin Bartlett had some very strange ideas indeed.

'Did he ever make reference,' Clarke asked the Reverend Dyson, 'to marriage between you and Mrs. Bartlett after he should be dead?'

'He made statements which left no doubt in my mind but that he contemplated Mrs.

Bartlett and myself being ultimately married.'

In strict accordance with his policy of steering clear of any head on dash, Clarke made a studiously indirect approach to a dangerous part of the Reverend Dyson's evidence - his assertion that he had been told by Mrs. Bartlett of an internal ailment which caused her husband spasms and was shortening his life. Clarke neither contested nor admitted his assertion. He simply took steps to demonstrate that such statements might have been made innocently.

'You told my learned friend that you have seen Mr. Bartlett put his hand to his side and complain of some convulsive pain?'

'Yes.'

'One more than one occasion?'

'Yes.'

'When his wife has been there?'

'Yes.'

The first point was made. Clarke moved swiftly on.

'Did he ever mention the possible duration of his life?'

'I think he did.'

'When?'

'I cannot say.'

'Was it not when you were on holiday at Dover?'

'I cannot swear that.'

On matters which did not implicate him personally, the Reverend Dyson was scrupulous to a fault.

'At Dover did he mention something about his condition?'

'I think so.'

'What was it?'

'He said he was not the strong man he once was.'

'Did he say what was the cause? '

'He attributed it,' the Reverend Dyson said, 'to over work.'

The second point was made. If the prisoner had indeed talked of an internal disease, there has been signs that might excuse such a conclusion; if she had indeed talked of it shortening his life, he himself had been disturbed about his health.

Her remarks if ever made no longer seemed so damning.

Clarke now struck the preliminary notes of what has been previously catalogued among his major themes. He began to set the stage for his theory of suicide.

'You were with Mr. Bartlett, were you not, at the very beginning of his illness?'

'I was.'

'Before this time, had he appeared to you to be getting into an ailing and low condition?'

'He seemed very much worn out at night when he returned.'

'Very weary, very depressed, complaining of sleeplessness?'

'During the actual sickness?'

'Yes.'

As that sickness were on, did he become more depressed?'

'He varied', the Reverend Dyson said.

'You have seen him crying, have you not?'

'Once.'

'When was that?'

'The Monday in Christmas week.'

At that time was he talking about not recovering?'

'He spoke very little.' I

Clarke tried another way round.

'Is it not the impression on your mind that at that time he thought he would not recover?'

'Yes, I have that impression.'

'When you went on the following Sunday, was he not even worse?' The Reverend Dyson demurred.

'No, I thought he was brighter. But...'

'But?'

'He contradicted himself.'

'How?'

Then it came out: the perfect answer for Clarke's purpose.

'Well, he asked me whether anyone could be lower than he was without passing away altogether.'

In print, the author can italicise or underline. In court, counsel must use other means for emphasis.

'He asked you whether it was possible for a man to be lower than that without passing away altogether?'

'Yes.'

'According to that expression, he was thinking of himself as one actually on the edge between life and death?'

'Yes.'

Thrice had the Reverend Dyson said it: threefold had been its impact on the jury.

Very grave, very firm, but still without heat or rancour, Clarke now drew the witness to the

central point of all. His questions on his subject were deliberately few and heavily insured against an unexpected answer.

'Did you mention to Mr. Bartlett that you had got the chloroform?'

'Mr. Bartlett? No.'

'You understood that Mrs. Bartlett did not desire it to be mentioned to him?'

'Not specifically the chloroform', replied the Reverend Dyson, 'But the affliction for which she wanted it.'

The opening was no larger than a crack, but the able cross-examiner needs no more.

'Then she never asked you not to mention you had got the chloroform?'

'No, But I think', the minister characteristically added, 'I ought to state, in justice to myself, that there was a visitor there and I could not give it to her in his presence.'

The Reverend Dyson urge to clear himself and intervened again. Now the trick was on the table for the taking.

At all events, she had not asked you to keep it secret?'

'No.'

Although he would have hardly dared to hope so at the time, the Reverend Dyson's ordeal was drawing to a close. On further matters Edward Clarke was done.

'You said, did you not, that you threw away the bottles you had bought from the chemists' shops on Tooting Common as you were going to church on January 3rd?'

'I did.'

'Were you then in great anxiety and distress about your position?'

'I was.'

'You were afraid the effect of your having bought the bottles might get you into trouble?'

'Precisely.'

'You had in your mind what might happen to yourself?'

'What might have been the cause of Mr. Bartlett's death?'

'What might happen to yourself?' Clarke quietly insisted.

'The thought was in my mind, 'the Reverend Dyson said, 'that possibly the chloroform I had bought had been the cause of Mr. Bartlett's death.

'And you thought you would be ruined if the matter came out.'

'I thought I would be ruined if my fears were true.'

'That is, if you were associated with the matter?' 'Yes 'said the Reverend Dyson, 'I saw that danger.' Here was another solid gain for the defense

