RAMA UNIVERSITY

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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 tanning how the proceedings of the court takes 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 24

1. LEADING QUESTIONS - EXCEPTION

As, however, the rule is merely intended to prevent the examination from being conducted unfairly, the rule is subject to three specific exceptions mentioned in s 142 and in s 154 of the Indian Evidence Act. These exceptions are:

a) Introductory and undisputed or sufficiently established matter.
b) Adverse witness.
c) Leading questions may be asked with the permission of the court at the discretion of the judge.

(i) INTRODUCTORY AND UNDISPUTED OR SUFFICIENTLY ESTABLISHED MATTER

The rule must be enforced in a reasonable sense, and must, therefore, not be applied to that part of the examination which is introductory to that which is material. If indeed it were not allowed to approach the point at issue by leading questions, examinations would be most inconveniently protracted. To abridge the proceedings and bring the witness as soon as possible to the material point on which he is to speak, the examiner may lead him on to that point and may recapitulate to him the acknowledged facts of the case which have already been established.

(ii) ADVERSE WITNESS

A witness who proves to be adverse to the party calling him may in the discretion of the court be led, or rather cross-examined.

(iii) LEADING QUESTIONS MAY BE ASKED WITH PERMISSION OF COURT - DISCRETION OF JUDGE

The court has a wide discretion with reference to this, which is not controllable by the court of appeal, and the judge will always relax the rule whenever he considers it necessary in the interest of justice and it is always relaxed in the following cases:

(a) Identification

For this purpose a witness may be directed to look at a particular person and say whether he is the man. Indeed, whenever from the nature of the case the mind of the witness cannot be directed to the subject of enquiry without a particular specification of it, questions may be put in a leading form.36 Much, however, depends upon the circumstances of each particular case; and it is often advisable not to lead even where permissible. Thus, in a criminal trial, where the question turns to identity, although it would be perfectly regular to point to the accused and ask a witness if that is the person to whom his evidence relates, yet if the witness can unassisted single out the accused, his testimony will have more weight.

(b) Contradiction

Where one witness is called to contradict another as to expressions used by the latter, but which he denies having used, he may be asked directly:

'Did the other witness use such and such expressions?' The authorities are, however, stated to be not quite agreed as to the reason of this exception; and some contend that the memory of the second witness ought first to be exhausted by his being asked what

the other said on the occasion in question. Similarly, a leading question may be put when it is necessary to contradict a witness on the other side as to the contents of a paper which has been destroyed. The case last-cited was an action on a policy of insurance of goods on board a ship. The defence was that the goods were not lost, and that the plaintiff himself had written a letter to his son stating that he had disposed of all his goods at a profit of 30 per cent. The son was called and cross-examined as to the contents of the letter. He swore that it was lost, but that it contained no intimation of the kind supposed and only said that the plaintiff might have disposed of his goods at a greater profit as he had been offered 5s for a pair of cotton stockings he then wore. To contradict his testimony, several witnesses were produced to depose that the letter had been read when received in London. One of the witnesses, having stated all that he recollected of it, was asked 'if it contained anything about the plaintiff having been offered 5s, for a pair of cotton stockings.' This being objected to as a leading question, Lord Ellenborough ruled that after exhausting the witness's memory as to the contents of the letter, he might be asked if it contained a particular passage recited to him which has been sworn to on the other side; otherwise it would be impossible ever to come to a direct contradiction.

(c) Defective memory

The rule will be relaxed where the inability of a witness to answer questions put in the regular way obviously arises from defective memory. It is common practice, when a witness cannot recollect a circumstance, to refresh his recollection by a leading question, after the court is satisfied that his memory has been exhausted by questions framed in the ordinary manner.

Similarly when the witness state that he could not remember the names of the members of a firm so as to repeat them without suggestion, but thought that he might recognise them if they are read to him, this was allowed to be done. A question is not objectionable which merely directs the attention of the witness to a particular topic without suggesting the answer required. Thus, to prove a slander imputing that 'A was bankrupt whose name was in the bankruptcy list and would appear in the next Gazette', a witness who only proved the first two expressions was allowed to be asked, 'Was anything said about the Gazette?' Upon a similar principle the court will sometimes allow a pointed or leading question to be put to a witness of tender years whose attention cannot otherwise be called to the matter under investigation.

(d) Complicated matters

The rule will also be relaxed where the inability of a witness to answer questions put in the regular way arises from the complicated nature of the matter as to which he is interrogated.

The above instances are mentioned as those in which the rule is generally and commonly relaxed, but it will be remembered that the court has a wide discretion to allow leading questions, not only in these but in other cases in which justice or convenience requires that they should be put. As already observed, unfounded objections are constantly taken on this ground. In the under mentioned case, in which it was held that prima facie evidence of a partnership having been given, the declaration of one partner is evidence against another partner; a witness, called to

prove that A and B were partners was asked whether A had interfered in the business of B and it was held not to be a leading question. Lord Ellenborough observed as follows:

> I wish that objections to questions as leading might be a little better considered before they are made. It is necessary to a certain extent to lead the mind of the witness to the subject of inquiry. In general no objections are more frivolous than those which are made to questions as leading ones.

As soon as the witness has been conducted to the material portion of his examination, as soon as the time and place of the scene of action has been fixed, it is generally the easi.e.st course to desire the witness to give his own account of the matter, making him omit, as he goes along, an account of what he had heard from others, which he always supposes to be quite as material as that which he himself has seen. If a vulgar, ignorant witness is not allowed to tell his story in his own way, he becomes embarrassed and confused, and mixes up distinct branches of his testimony. He always takes it for granted that the court and the jury know as much of the matter as he himself does, because it has been the common topic of conversation in his own neighborhood; and, therefore, his attention cannot easily be drawn to answer particular questions, without putting them in the most direct form. It is difficult, therefore, to extract the important parts of his evidence piecemeal. However, if his attention is first drawn to the transaction by asking him when and where it happened, and he is told to describe it from the beginning, he will generally proceed in his own way to detail all the facts in the order of time. Similarly, Alison says:

> It is often a convenient way of examining to ask a witness whether such a thing was said or done, because a thing mentioned aids his recollection, and brings him to that state of proceedings on which it is desired that he should dilate. However, this is not always fair; and when any subject is approached on which his evidence is expected to be really important, he proper course is to ask him what was done, or what was said, or to tell his own story. In this way, also if the witness is at all intelligent, a more consistent and intelligible statement will generally be got than by putting separate questions, for the witnesses generally think over the subject on which they are to be examined in criminal cases so often, or they have narrated them so frequently to others, that they go on much more fluently and distinctly, when allowed to follow the current of their own ideas, than when they are at every moment interrupted or diverted by the examining counsel.

2. MISLEADING QUESTIONS

Misleading questions are those improper questions which are in reality sever questions combined or in which some assumption is covertly made which the questioner would not dare to put openly or such questions as unfair and perplexing.

Questions which assume facts to have been proved which have not been proved, or that particular answers have been given contrary to the fact are not allowed as a misleading question. A question which assumes a fact that may be in controversy is leading, when put on direct examination, because it affords the willing witness a suggestion of a fact which he might otherwise not have stated to the same effect.

Conversely, such a question may become improper on cross-examination, because it may by implication put into the mouth of an unwilling witness, a statement of fact which he never intended to make and thus incorrectly attribute to his testimony, which is not his.

Another inveterate abuse is the grouping of several questions admitting of different answers into one long composite question and a demand of a categorical answer-'Yes' or 'No'. Even a cool

witness is puzzled and misled. Such composite or ensnaring questions should never be allowed. The remedy for the trick as proposed by Aristotle is that 'several questions should be at once decomposed into their several parts. Only a single question admits of a single answer'. The following anecdote illustrates the evil:

> Sir Frank Lockwood was once engaged in a case in which Sir Charles Russell (the late Chief Justice of England) was the opposing counsel. Sir Charles was trying to browbeat a witness into giving a direct answer, 'Yes' or 'No'. You can answer any question Yes or No', declared Sir Charles. 'Oh, can you?' retorted Lockwood: 'May I ask if you have left off beating your wife?' To such a composite question: 'Did you throw the born child into the well as the result of which he died of drowning?' - a direct answer for which 'Yes' or 'No' is impossible. From the accused girl's answer 'Yes', it cannot be inferred that she admitted that the child was born alive.

Every witness must be allowed fair play. It is unworthy of an advocate to attempt to corner a witness by putting a question which involves an assumption that he or another witness had made a statement that has not been made. Very often, witnesses are puzzled by questions in which assumptions of facts are covertly made, lest the trick be detected when questions are direct. Under this head come questions like these: 'When did you cease beating your wife?', 'When did you cease to be an enemy of the plaintiff?', 'When did you stop communicating with him?', 'Do you go there still?', 'Does he bear ill feeling even now?', 'When did you sell your interest in the claim?', 'When did you retire from the conspiracy?' The authors of Port Royal Logic give this example:

> In the same way, if, knowing probity of a judge, any' one should seek me if he sold justice still, I could not reply simply by saying 'no', since the 'no' would signify that he did not sell it now, but leave to be inferred, at the same time, that I allowed that he had formally sold it.

In the context of justice and fair play and a constitutional safeguard under art 21 of the Constitution of India which is inherent in the concept of reasonableness, misleading questions are prohibited.

The rule is equally applicable during the examination-in-chief, cross-examination and re- examination and to all persons including the counsel and authorities in all sorts of proceedings. Whether objected or not to such questions, it is the duty of the court to disallow misleading and improper questions. The sessions court allowing such .questions and not being more watchful was deprecated by the Supreme Court.

In an unfair misleading question and the court's duty to illustrate, the question put to

a witness Rani Bala, in all probability, was, 'Can you deny that Ram Prasad was beaten for an illicit connection with you?' She is reported to have said, 'I cannot say if Ram Prasad was beaten for illicit connection with me.' It cannot be inferred from this answer that she admitted having an illicit connection with Ram Prasad. In such cases the court should take down the question in cross-examination and then the answer as enjoined in O VXIII, r 10 of the Code of Civil Procedure.

Questions may be termed direct or indirect only in relation to the particular fact to be elicited. A question may be called direct which, if answered, will either confirm or disprove the fact interrogated; on the other hand, it may be styled indirectly when its answer will neither confirm

nor prove the fact directly, but will tend to establish it only inferentially, either by itself or when taken along with other facts.

In direct questioning it is necessary to put the questions in such a form as to answer which either in the affirmative or negative, may either suggest the fact aimed at only inferentially or tend to cast a partial reflection upon it, without doing any harm to the cause.

A cross-examiner in general ought not to ask questions, the answers to which, if unfavorable, will be conclusive against him.

The plain direct questions which best elicit the truth from the witness desiro.us of telling the whole truth and nothing but the truth, would, to a witness who desires to suppress some of the truth, operate as a signal for silence. The surest course is, by almost imperceptible degrees, to conduct him to the end. Elicit one small fact which is remotely connected with the main object of your enquiry. He may not see the chain of connection, and will answer that question freely, or deem it not worth evading. A very small admission usually requires another to confirm or explain it. Having said so much, the witness cannot stop there; he must go on in self-defense, and thus by judicious approach, you bring him to the main point. Even if then he should turn upon you and say no more, you have done enough to satisfy the judge or jury that his silence is as significant as would have been his confession.

3. DIRECT AND INDIRECT QUESTIONS

There are several divisions of evidence which, although in some degree are arbitrary, will be found useful to bear in mind. In the first place, evidence is either direct or indirect accordingly as the principle fact follows from the evidentiary-the *factum probandum* from the *factum probans*- immediately or by inference. In jurisprudence, however, direct evidence is commonly used in a secondary sense, viz. as limited to cases where the principle fact, or *factum probandum*, is attested directly by witnesses, things or documents.

Indirect evidence known in forensic procedure by the name of circumstantial evidence, is either conclusive or presumptive. It is conclusive, where the connection between the principle and evidentiary facts i.e. the *factum probandum*, and the *factum probans* are a necessary consequence of the laws of nature. It is presumptive, where it is only on a greater or lesser degree of probability.

Direct evidence is to be contrasted with 'indirect' evidence in the sense of either

hearsay (i.e., that which the witness heard from another) or circumstantial evidence (i.e., evidence from which inferences may be drawn). Indirect evidence is as much evidence as direct evidence. Direct evidence may, however, have more or less weight according to the judgment of the tribunal on fact. Its only virtue may be that there is only an area of possible doubt about it, namely, the truth and accuracy of the witness; whereas, in the case of indirect evidence the problems of judging the weight of hearsay or deciding on proper inference arise.

Direct evidence is contrasted with circumstantial evidence. Direct evidence consists either of the testimony of a witness who perceived the act to be proved or the production of a document or thing which constitutes the fact to be proved. Circumstantial evidence of a fact to be proved is the testimony of a witness who perceived the fact to be proved, by another fact from which the existence or non-existence of the fact can be deduced, or the production of a document or thing from which the fact to be proved can be deduced. The fact to be proved can be either a fact in issue or a fact relevant to the issue. Suppose a fact in issue is whether A used a certain knife. A