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 25

fact relevant to this fact in issue is whether A had the knife in his possession, for if we find he had it in his possession, we may go on and find he used it. If T says he saw the knife in A's hand, he is giving direct evidence of a relevant fact (possession), but only circumstantial evidence of A's using the knife. If he says he saw the knife in A's possession it is a relevant fact and circumstantial evidence of A's using the knife is a fact in issue. Of course, all witnesses necessarily give direct evidence of whatever it was they perceived, and here Tis giving direct evidence of the possession of the knife, from which we may deduce A's possession of it, and the A's use of it.

Circumstantial evidence is also used, not in contrast to direct, i.e., not in describing the quality of the testimony given, but as a description of the fact proved, if they are not directly in issue, but only logically related to a fact in issue. Relevant facts constitute circumstantial evidence, e.g., 'Possession of recently stolen goods is circumstantial evidence of guilty knowledge'.

Direct and indirect evidence are sometimes equated with hearsay and non-hearsay evidence. The terminology is generally employed to distinguish these uses of prior statements even if confusing. Traditionally, prior statement tended as relevant for a purpose other than that of proving the truth of a fact stated have been described as 'direct evidence, and for this purpose 'direct' means only the opposite of 'circumstantial'. Admissible evidence of prior statements may either be 'direct' (non-circumstantial} or circumstantial evidence of a fact. For example, the making of a statement may be 'direct' evidence that the statement was in fact made, and may be admissible to prove both facts. To describe evidence as 'direct' in the sense of not being simply to describe the statement which are not hearsay as 'non-hearsay', adapting slightly the helpful usage of the American Federal Rules of Evidence.

The term 'direct evidence' has a second meaning in the usage of many writers. The alternative term 'percipient evidence' not only avoids any possibility of confusion, but it is also more appropriate to describe the opposite of hearsay evidence. Hearsay is a complex subject, occupying in its own right chapters of this book, and only a brief distinction can be made here. Percipient evidence is evidence of facts which a witness personally perceives using any of his senses. Hearsay evidence is given when a witness recounts a statement made (orally, in a document or otherwise) by another person and where the proponent of the evidence asserts that what the person, who made the statement said, was true. Thus, the evidence of W that he saw D rob the bank is percipient evidence, whereas the evidence of H (who was not present at the scene of the robbery) that W told H that D robbed the bank is hearsay, if tendered to prove that D robbed the bank. Hearsay is inadmissible unless it falls under an exception recognized by law.

1. FISHING QUESTIONS

Point blank questions by the cross-examiner intended to bring out some answer useful in any manner and for any purpose are fishing questions. They are tricky questions, the answers to which may provide material to develop theories during cross-examination. They may be prejudicial to the party or witness or the case, and even to the fairness in the proceeding and the 'result. Sometimes, fishing questions are worse than misleading questions which can be controlled by the courts.

A fishing question has no legal definition or meaning except as an art and a part of the interrogatory form of cross-examination. If we see fishing Concise Oxford Dictionary) as a noun is the activity of catching the fish for food or sport, and as a fishing line (Concise Oxford Dictionary), a long thread of silk with a boiled hook attached to a fishing rod, a fishing question

could be a question during cross-examination in the hands of the skilled cross-examiner (killer fisher person) with a tricky form of relevancy (as per the law of evidence) to act as a bait to get attracted and caught by obliging an answer upon which a theory can be developed to destroy the testimony or to strengthen the weak theories of the cross-examiner.

Like misleading questions are to be controlled or prevented by the courts akin to or more misleading (as a fishy-dubious question) fishing questions should be allowed as a matter of duty. Whether objected to or not the court shall record the fishing question and allow or disallow with a ruling supported by reasons. The judge can put questions under s 138 of the Indian Evidence Act or use his own power to control such cross-examination. The courts have full power to prevent an abuse of the right to cross-examine in any manner appropriate to the circumstance of the case. The cross-examiner can be kept within proper bounds in the examination and cross-examination of the witness and conduct their cases with due regard to their responsibility to the public and the court.

1. QUESTIONS TESTING CREDIT

Where interrogation is carried out only to test the memory or credit of the witness, it is a cross-examination testing credit. The phrase to discredit a witness does not necessarily convey the notion of discrediting by making him appear to be perjured. What is meant is that the cross-examiner must by that method, attempt to show that the witness' evidence is not to be implicitly believed; that it is mistaken in the whole or a part of it.

Cox says:

> By adopting this manner of dealing, you not only act in strict accordance with justice, truth and charity, but you are far more likely to attain your object that by charging willful falsehood and perjury; by which course if you fail to impress the jury, you endanger your cause. It does not infrequently happen that a charge of perjury against the witness on the other side induces the jury to make the trial a question of the honour of the witnesses instead of the issue on the record'. They say, 'If we find for the defendant, after what had been said by this counsel against the plaintiff's witnesses, we shall be confirming his assertion that they are perjured, which we do not beli.e.ve' - and so to save the characters of their neighbours whom they beli.e.ve to be unjustly impugned they give a verdict against the assailant. Such a result of browbeating and of imputation, perjury and falsehood is by no means rare, and while it affords another instance of the truth of the remark we have already made more than once, that honesty is wisdom as well as virtue, it should be treasured in your wise memory as a warning against a style of cross-examination once popular, but now daily falling more and more into disrepute and which is really as bad in policy as it is discreditable in practice. In truth without imputing perjury you will find an ample field for trying the testimony of a witness by cross-examination and of showing to the jury its weakness or worthlessness by bringing into play all that knowledge of the physiology of mind and of the value of the evidence which it is presumed that you have acquired in your training for the office of an advocate.
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> Thus armed, you will experience no difficulty in applying the various tests by which the truth is tried with much more of a command over the witness and vastly more of influence with the jury who will always acknowledge the probability or mistake in a witness when they will not beli.e.ve him to be perjured.

A cross-examiner's questions testing the credit of a witness is lawful. The credit can be shaken

by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

The cross-examiner has wider power in doing it which exceeds its scope given under s 138 of the Indian Evidence Act. All that is permissible under Ss. 146 to 153 of the Indian Evidence Act cannot be made punishable under s 500 of the Indian Penal Code. Questions may be put to test the veracity and to impeach the credit of the witness.

The questions in cross-examination could adopt four modes of impeaching credit:

a) by cross-examination as to his knowledge of the facts deposed to, opportunities of observation, powers of memory and perception, disinterestedness (s 138); his character (s 140); his veracity, position in life, injury to character by criminating questions (ss 146, 147 and 132); his errors, omissions, antecedents, mode of life, etc. (ss 146 and 148);
b) by written (s 145) or oral (s 155 cl3) statements;
c) by evidence of persons showing that the witness bears a general bad reputation confronting him with his previous inconsistent statements, reputation for untruthfulness (s 155 ell), or by proof that the witness has been bribed, or has accepted the offer of a bribe (s 155 cl 2};
d) by calling witnesses or offering other evidence (e.g. under s 145 or s 155 cl 3) to contradict the witness on all relevant matters, but not on irrelevant matters.

When the questions put to a witness in cross-examination for discrediting him relate to facts directly relevant to the matters in issue, his answers may always be contradicted by any evidence. If the question in cross-examination is relevant only in so far as it affects the credit of a witness, but is otherwise irrelevant, the answer cannot be contradicted except in the case of (a) previous conviction, or (b) bias.

When the witness is not speaking the truth on a particular point, the attention should be drawn to the fact in the cross-examination for providing an opportunity to explain. This may be applicable to all the cases in which it is proposed to impeach the witness's credit. Former contradictory or inconsistent statement of a witness can be used under s 146 of the Indian Evidence Act to shake the credit or test the veracity of the witness.

2. DIGRESSIVE QUESTIONS

In order to use this method effectively, it is necessary to find out some collateral means tending to contradict the facts deposed to by the witness, not in an open manner by eliciting an inconsistent statement from the mouth of the witness, but by extracting something that in effect can be associated with the matter sought for.79 Digressive questions are not unlawful but may be lawful for several purposes permitted in law.

3. PROGRESSIVE AND CUMULATIVE QUESTIONS

When the circumstances of the case do not permit a point being made out by direct questions, it becomes necessary to lead the witness on and extract from him bit by bit that which you require as a whole.

This is always the safest course to adopt in dealing with unwilling witnesses, who, though not liars, are found inclined to avoid or suppress the truth, if possible. You must begin with some unimportant and remotely connected fact, with the fact that you are aiming at. The witness is

likely to relate to it, not realizing perhaps exactly its bearing, and not seeing the chain of connection and will answer question the uncautiously. Having admitted that much, you can lead him gradually nearer and nearer by successive approaches to the gist of the matter and having secured him thus far you can, if necessary, put the fact clearly to him.

Such questions are lawful so long as they conform to the rules of evidence under Ch. II, Ss. 5 to 55 of the Indian Evidence Act and other prohibitive provision and particularly s 146 of the Indian Evidence Act. However, it should not be misleading.

4. RETROGRESSIVE QUESTIONS

The retrogressive questions involve a process which is just the reverse of the progressive. When a witness has deposed to any fact in his examination-in-chief in a positive manner, naturally he would not like to realize from his position if asked directly in opposition to it. He will not, however, object to yield to slight and imperceptible modifications of his statement, if he is asked about surrounding facts tending to tone down or minimize his statement, but not intended to contradict it totally. There is nothing which witnesses of every grade or rank or intellect are so sensitive to as self-contradiction. The dread of being made to appear as lying often arms the resolution of the witness to adhere to his original statement without qualification. Get little answers to little questions, and you will find as a rule that answers are strung together like a row of beads within the man, and if you draw gently, so as not to break the thread, they will come with the utmost ease, and without causing the patient the slightest pain.

5. DEVELOPING QUESTIONS

The process of developing questions often improves into a very successful one in dealing with witnesses who do not depose to facts from their own perception, but testify to them in an indirect manner. They are mostly experts who make assertions from their professional experience or special study of any subject upon which their aid is sought in the way of testimony. As they do not speak about any direct perception, they cannot be led to state any fact forming a component part of the transaction itself. However, they would yield to suggestions tending to disaffirm their opinion based upon their experience, if the modifications suggested may not tend to upset their views or contradict their opinion. Cross-examination of expert witnesses and witnesses for opinion may be adopted to them (Ss. 45 to 51 of the Indian Evidence Act).

6. CONDUCIVE QUESTIONS

The greatest difficulty often felt is with regard to negative testimony, i.e., when the witness' statement consists of a simple denial of something which is asserted on your side to have taken place. A pure negative of some occurrence, or a simple quotation of some statement made by others to the witness himself or which forms parts of a conversation that took place within the hearing of the witness, admits of very little scope for cross-examination. The witness ought to be first made to assume some affirmative form with regard to any of the elements laid down in those rules (that is, rules showing connection of cause and effect), and then proceed with regard to which the relation of cause and effect are quite apparent. If one is established or admitted, the other could be inferred as a matter of course and if questions are addressed relating to such facts, they may induce certain answers which may obviously lead to certain irresistible conclusions You may pick certain facts from the affirmative made which forms a link of the facts or events in question, and ask the witness about it. If he happens to affirm it, then proceed with other facts affirmative of such facts in the sequence of cause and effect. When you find the witness sufficiently advanced, throw round him some other facts, observing their chain of causal relation. If you succeed in laying round him a chain of facts, press the facts all round by eliciting facts,

adding fresh links to the chain till you compel him to give some answer which either throws him away from his negative position and draws him into some answer which will compel him to admit what you desire or render his denial of the fact highly improbable and not worthy of credence. When you are satisfied that you have extracted sufficient proof for causes from the witness to justify you in assuming that the court will presume the effect you desire, it is better to leave the matter and proceed to another. For if you only proceed far enough, you will enable the witness to understand how you have been approaching him on all sides, and he may by one single answer recover all his lost ground, by giving some explanation made upon the spur of the moment, or by alleging that he misunderstood his questions or by putting an artistic test to all your fine questions and his answers, by adding a point-blank denial to what you have been trying to establish.

1. SEARCHING QUESTIONS

Questions tending to show that the cross-examiner is in possession of certain facts which, if divulged, will put the witness to disgrace or humble him before the public, are known as searching questions. The cross-examiner may, by putting a few questions, give the witness to understand that the examiner knows the weakness of the witness, and if the witness will not proceed in a proper mariner, his disgrace is certain.

2. SUGGESTIVE QUESTIONS

In cross-examining witnesses, we may sometimes obtain answers more accurate and extensive, or suitable to our purpose, by putting suggestive questions that if we leave them free to answer spontaneously. There is a tendency in the human mind to yield to outward suggestions, and, if an idea or image is positively suggested to the witness and impressed upon his mind, he may under special circumstances be induced to adopt it. Everybody is aware that we perceive, that is, we really see much more than is really taken cognizance of by our organs of sense. In such cases if the cross-examiner presses upon the mind of the witness questions positively suggestive of the true idea or image, it tends to evolve in the witness, the idea or image of the events foreseen and calls them to his recollection in their true or original form by a sort of reaction. It dispels the gloom crowding upon his recollection from other morbid states of mind; and the original impressions are revived, and represented to his mind in their original light or vividness. In case of a suggestive question put by the cross-examiner to the witness (under cross-examination) the impression which is directly produced by the suggestion can arouse "the original image, owing to the association of ideas. The suggestion of an idea or image offered in a positive form, sets in action a mental association previously existing in the witness's mind, which had become vague or confused on account of the morbid state of his memory. Put to him your own suggestions as to those circumstances (on which he is being cross-examined) and he may find relief in accepting your suggestions instead of straining his imagination to invent a suitable answer. It is always easier to give your assent to any suggestion answering a purpose than to invent an ingenious answer by exerting your imaginative faculty. Besides, your suggestions may prevent him from getting an opportunity to reflect. It will engage his attention and he will not have the leisure to conduct his answers, or to see how they share with the story he has already told. However, then

your skill ought to be to throw out such designed suggestions as may apparently suit the occasion, and, tempt the witness to adopt it though in reality it may prove destructive of his narration and involve him into further difficulties.