RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

MOOT COURT EXERCISE AND INTERNSHIP

(CLINICAL)

Course : BBALLB , 3rd Semester

Subject code : BBL903

Faculty Name : Ms Taruna Reni Singh

MOOT COURT

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 26

Leading, suggestive, progressive, cumulative and developing questions are illustrated by the following:

From the cross-examination of WA Cadbury by Sir Edward Carson KC:

1. Is it a fact that San Thomecocoa has been a slave grown to your knowledge for eight years- Yes.
2. Was it slavery of a very atrocious character?-Yes.
3. Men, women and children taken forcibly from their homes against their will?-Yes.
4. & (5) Were they marched like cattle? ...I cannot answer that, quite.
6. Were they labeled when they went on board the ship?-Yes.
7. How far had they to march?-Various distances. Some carne from more than a thousand miles, some from quite near the coast.
8. Never to return again?- Never to return.
9. From the information which you procured did they go down in shackles?- It is the usual custom, I believe, to shackle them at night on the march.
10. Those who could not keep up with the march were murdered?-I have seen a statement to that effect.
11. You do not doubt it?-1 do not doubt that it has been so in some cases.
12. The men, women, and children are freely bought and sold?- I do not believe, so far as I knew, that there has been anything that corresponded to the open slave market of fifty years ago. It is done now more by subtle trickery and arrangements of that kind.
13. You do not suggest that it is better because done by subtle trickery?- No.
14. The children born to the women who are taken out as slaves become the property of the owners of the slaves?- I believe that the children born on the estate do.
15. Was it not the most cruel and atrocious form of slavery that ever existed?- I cannot distinguish between slavery and slavery. All slavery is atrocious.
16. Knowing it was atrocious; you took the main portion of your supply of cocoa for the profit of your business from the islands conducted under this system?- Yes, for a period of some years.
17. You do not look upon that as anything unusual?-Not under the circumstances.
18. (Sir E Carson quoted from a report of the board of Messrs. Cadbury: 'There seems little doubt that public opinion would condemn the existing conditions of labour if the facts could be made known.')
19. Does that represent your view?-Yes.
20. Would there be difficulty about making the facts known?- There would be no difficulty.
21. If you had made public the facts, public opinion would have condemned the conditions of labour and you would not have gone on?- I think so.

Comments- Question Nos 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 etc., are leading questions.

Question Nos 3, 9, 12, 14 are suggestive questions.

All questions adopt the manner of progressive and developing interrogation.

15. CROSS-INTERROGATIONS

16. When a witness refuses to admit a certain point, or denies it, or as is so common in this country, takes refuge in a general evasive reply, the only remedy is to take him in the opposite way, and this is a plan which rarely fails in the end. The matter can be best explained with an illustration. A, on being asked if a certain signature is his, and being unwilling to admit it, says ' 'It looks like mine,' he is then asked: 'Is it your signature?' He replies, 'I don't know,' or 'it looks something like mine.' It would be very unsatisfactory if one could not carry the matter any further for the witness attempts to hedge himself within these evasions. He should then be asked questions as to the points wherein he draws the distinction between the signature shown to him, and his own, as to the formation of the letters, the curves and the style. Should no satisfactory result be obtained from these replies, he should be asked: 'Are you prepared to swear that this signature is not yours?' It will be found that, as a rule, he will refuse to swear it is his. One's object will be obtained for one can then satisfactorily urge that he was not prepared to swear it was not his signature. When the question of signature is important, it will also be found very effectual to submit to the witness, several of his signatures, both those which are admitted to be genuine and those which you wish to prove is his in such a way that he cannot gain the least inkling as to the document to which they are subscribed, and one may even get the signature, one wishes to prove, admitted to be genuine.

17. A. 'I cannot swear it, but I do not recollect ever saying it,'

18. Q. 'Or representing it?'

19. A. 'I do not recollect it.

20. Q. 'Will you swear that you have not?'

21. A. 'I will not swear it, but I do not recollect it.'

22. Q. 'You were applied to by some person or other, very soon after you were discharged from the princess, were you not?'

23. A. 'Not very soon after'.

24. Q. 'For example, within half a year?'

25. A. 'Not six months; it was more than six months. It was nearly one year after I had left her service.'

26. Q. 'You are understood to say, you were applied to, to know what you had to say with respect to the Princess, is not that so?'

27. A. 'One year after I had left her service.'

28. Q. 'Did or did not somebody apply to you in order to know what you had to say with respect to the Princess, about a year after you left the service of her Royal Highness or at whatever period?'

29. A. 'One year after.'

30. This manner of cross-interrogation continued for days. Here is an example of

what later followed relating to the proper introduction, or cross-questioning upon an instrument written by the witness:

31. From the cross-examination of Louisa Demont, in Queen Caroline's trial-

Q. 'Is that your writing?' (A letter being shown to witness, folded so that she might see the last line and a half).

A. 'It is not exactly like my writing.'

Q. 'Do not believe it to be your writing or not?'

A. 'It is not exactly like my handwriting?'

Q. 'Do you believe it to be your handwriting?'

A. 'I do not recollect having written it, nor do I think that it is exactly like my character.'

Q. 'Do you believe it to be your handwriting, yes or no?'

A. 'I Do not think it is exactly my handwriting : I do not recollect having written it.'

Q. 'Do you believe it to be your handwriting, yes or no?'

A. 'I cannot decide whether it is my handwriting; it is not quite like it; and I do not recollect having written it.' Q. 'Do you believe it to be your writing?'

A. 'It is not exactly like my handwriting?'

Q. 'Do you believe it to be your writing?'

A. 'I cannot tell what else to answer; I cannot answer a thing of which I am not sure.'

The witness, while within her rights, was not asserting something when she was not sure of it, nevertheless Demont has resorted too frequently to the tune of the damaging answer, 'I do not recollect.'

The manner of questioning, however, was somewhat improper as will be shown.

By a Lord: 'You are not asked whether you know it to be yours, but whether you believe it to be yours?'

A. 'I cannot say positively that it is not my handwriting, but I do not believe it is.'

Mr. Williams: 'How much of that paper that has been before you so long, was submitted to your eye during the time you have given the answers you have given?'

A. 'A line and a half.'

Q. 'Before it was folded down, as it now is, did you not see higher up in the paper several lines more than that line and a half?'

A. 'When they presented it to me, there I saw something more, but I do not recollect how many lines, nor what it was.'

Q. 'Do you mean to say, that when the counsel showed you the paper, before it was in the hands of the Interpreter, it was not near enough for you to see the writing?' -…

32. INTIMIDATING QUESTIONS

Questions which cause shame or anger in the witness and are put by coercive and confusing manner are intimidating questions.

33. INCRIMINATING QUESTIONS

The questions, the tendency of which expose the witness or the wife or the husband of the witness, to any criminal charge, penalty or forfeiture, I are incriminating questions.

34. METHODS OF NARRATION AND THEIR ADVANTAGES AND DISADVANTAGES

A witness may be examined either by allowing him to narrate the facts in this own way or by making him answer questions one by one. A witness about to narrate facts may be left to tell his story in his own way; or it may be drawn from him by questions put to him. The former method of telling the story is open to these objections where the witness may not think enough to call to mind all he can relate; from carelessness or oversight he may omit to mention some circumstances; he may think or fancy the circumstances he withholds is not material to a proper understanding of the story; indeed, he may think or fancy that his story will be best understood if it is not headed with matters which he vi.e.ws as redundant but which nevertheless is essential to see the facts in their proportions and color.

(a) MERITS AND DEFECTS OF THE FORMER METHOD

Another danger is that the witness will confine himself to things, which he himself saw, heard, or did, but will diverge into hearsay that which he has heard someone else say, were seen, heard or done. Supposing, besides, the witness does not wish to speak the whole truth, it is obvious his wish will be promoted, by leaving him to tell his tale in his own way.

(b) MERITS AND DEFECTS OF THE TTER METHOD

In the other method of obtaining a relation of facts, the one by question and answer, the object of the interrogator is to get from the witness all he, himself saw, heard, said and did, excluding hearsay, and other irrelevant matter. And the questions being framed with a view to this excision, if the witness confines himself strictly to the questions addressed to him, his answers will contain hearsay or their irrelevant matter. However, according to this method, the witness' narrative consists solely of his answers to the questions put to him, the obvious inconvenience is that if all the questions required to bring out the witness's whole story are not put to him, may in this evidence leave out circumstances important to be known.

35. DO NOT ASK A QUESTION TOO BROADLY

Carefully avoid asking for much at the time. 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. In fact, till he hears you sum up his evidence, he will have no idea of what he has been delivered.

Let him see that your questions are of the simplest possible kind, even so simple and so easily answered, that it seems almost stupid to ask or answer them. 'Of course', he will say to one; 'Certainly', to another; 'no doubt about that', to a third and so on. Presently you slip one in, that is neither 'of course' nor 'certainly', and get your answer. Look upon him as a lump of human nature in the witness-box, out of which you may by ingenuity and skill extract something, be it even so small, which you can find nowhere else in the case.

36. DO NOT PLACE WHOLE POINT BEFORE WITNESS IN ONE QUESTION

Whenever your question is too large, the answer will be worthless.

> Q. 'Were you present at the meeting of the trustees when an agreement was entered into between them and the plaintiff?'
>
> A. 'Yes.'
>
> Q. 'Will you be kind enough to tell us what took place between the parties with reference to the agreement that was then entered into between them?'
>
> A. This is instance of verbosity, which shows that in putting questions, long drawn sentences should be avoided. The more neatly a question is put the better, as it has to be understood not only by the witness but also by the jury. All that was necessary to be asked might have been put in the following words:
>
> Q. 'Was an agreement entered into between the trustees and the plaintiff?'
>
> A. 'What was it?'

37. DO NOT PUT QUESTION TOO DIRECTLY

The probability is that the witness will know your difficulty and avoid giving you exactly what you wish. If not altogether straightforward (and for such witnesses you should always be prepared) he will be on the alert, and unless you circumvent him, will evade your question.

Rule explained-On this point Harris in his work 'Hints on Advocacy' says:

> A series of questions, not one of them indicative of, but each leading up to the point, will accomplish the work. If the fact be there, you can draw it out, or if you do not so far succeed, you can put the witness in such a position that from his very silence the inference will be obvious.

One of the greatest cross-examiners of our day advised a pupil while cross-examining a hostile witness upon a point that was material, to put ten unimportant questions to one that was important, and when he put the important one he put it as though it were the most unimportant of all. And when you have once got the answer you want leave it. Divert the mind of the witness by some other question of no relevancy at all.

There is no occasion to emphasize an answer while the witness is in the box, if the question is properly put. The time for that will come when you sum up or reply. If the witness sees from your manner that he has said something which is detrimental to the party for whom he gives evidence, unless he is an honest witness he will endeavor to qualify it, and, perhaps, succeed in neutralizing its effect. If you leave it alone, it may

be that your opponent may not perceive its full effect until it has passed into the region of comment.

In a case of murder, to which the defense of insanity was set up, a medical witness was called on the part of the accused who swore that in his judgment the accused at the time he killed the deceased was affected with homicidal mania, and was urged to the act by an irresistible impulse. The judge then asked him, 'Do you think accused would have acted as he did, if a policeman had been present?' to which the witness at once answered in the negative on which the judge remarked, 'Your definition of irresistible impulse then must be an impulse irresistible at all times except when a policeman is present'.

No doubt there is some degree of fascination in solving a mystery but when you find that the explanation of it is immensely to your disadvantage, you will not really enjoy the qui.e.t smile of your opponent when he finds that you have cleared up something which he could not, and which

had been purposely left for the exercise of your ingenuity and inquiry. 'If you don't know whether the ice will bear, you had better not venture on it.'

The following was the cross-examination of an intelligent police constable: That was the straightforward way of putting it. The judge liked straightforwardness. Jury admits the young counsel's jaunty manner, and the police constable likes to be dealt with without any attempt to circumvent him. However, that is a very dangerous question for the accused. It would cost him his liberty.

Q. 'Why did you suspect him?' asked counsel.

A. 'I know he was one of the worst thieves we got.'

Mark the impression that the question and the answer would have made upon the jury. How any answer to such 'a question would benefit the accused, it is impossible to know.

The following is an alibi which was set up in a charge of murder:

It was alleged that the prisoner had slept on the night of the murder, in a cottage a great many miles away from the scene, and that he was in bed by a certain hour. The tenant of the cottage with whom the prisoner was lodged was called by the Crown and said that the prisoner was not at home on the particular night. It was considered advisable to break her down during cross- examination, which was to this effect:

Q. 'How do you say he did not come home that night?'

A. 'Because I sat up.'

Q. 'But might he not have come in and you not have heard him?'

A. 'He could not.'

Q. 'You might have been asleep?' A. 'I was not asleep.'

Q. 'How long did you sit up without going to sleep?'

A. 'Until four o'clock in the morning.'

Q. 'How do you know he did not come in while you were asleep?'

A. 'Because I looked in his bedroom to see if he had been in and his bed had not been slept in.'