RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

MOOT COURT EXERCISE AND INTERNSHIP

(CLINICAL)

Course : BBALLB , 3rd Semester

Subject code : BBL 903

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 3

CASE ANALYSIS, PERSUASION, AND STORYTELLING

from Steven Lubet, MODERN TRIAL ADVOCACY ANALYSES AND PRACTICE (1993)

I. THE IDEA OF A PERSUASIVE STORY

A. Trials as Stories

The function of a trial is to resolve factual disputes. In order to hold a trial it is necessary that the parties be in disagreement concerning historical facts. These disagreements commonly involve the existence or occurrence of events or actions, but they may also turn upon questions of sequence, interpretation, characterization, or intent. Thus, trials may be held to answer questions such as these: What happened? What happened first? Why did it happen? Who made it happen?

Did it happen on purpose? Was it justified or fair? All of these questions are resolved by accumulating information about past events; if there is no dispute about past events the case should be resolved on summary judgment.

Trials, then, are held in order to allow the parties to persuade the judge or jury by recounting their versions of the historical facts. Another name for this process is storytelling. Each party to a trial has the opportunity to tell a story, albeit through the fairly stilted devices of jury address, direct and cross examination, and introduction of evidence. The framework for the stories-or their grammar -is set by the rules of procedure and evidence. The conclusion of the stories – the end to which they are directed -is controlled by the elements of the applicable substantive law. The content of the stories -their plot and *mise-en-scene*- is governed, of course, by the truth, or at least by so much of the truth as is available to the advocate. Thereafter, the party who succeeds in telling the most persuasive story should win.

But what is persuasive story telling in the context of a trial? A persuasive story can establish an affirmative case if it has all, or most, of these characteristics: (1) it is told about people who have reasons for the way they act; (2) it accounts for or explains all of the known or undeniable facts;
(3) It is told by credible witnesses ;(4) it is supported by details; (5) it accords with commonsense and contains no implausible elements; and (6) it is organized in a way that makes each succeeding fact increasingly more likely. On the other hand, defense lawyers must often tell" counter-stories" that negate the above aspects of the other side's case.

In addition to persuasiveness, a story presented at trial must consist of admissible evidence, and it must contain all of the elements of a legally cognizable claim or defense.

An advocate's task when preparing for trial is to conceive of and structure a true story, comprising only admissible evidence and containing all of the elements of a claim or defense, that is most likely to be believed or adopted by the Trier of fact. This is a creative process, since seldom will the facts be undisputed or susceptible of

but a single interpretation. To carry through this process the lawyer must"imagine"a series of alternative scenarios, assessing each for its clarity, simplicity, and believability, as well as for its legal consequences.

B. Planning a Sample Story

Assume, for example, that you represent a plaintiff who was injured in an automobile accident.You know from your law school torts class that in order to recover damages you will have to tell a story proving, at a minimum, that the defendant was negligent. You also know from your evidence class that the story will have to be built on admissible evidence, and you know

from your ethics class that the story cannot be based on false or perjured testimony.

2 Your client knows only that when traffic slowed down to allow a fire truck to pass, she was hit from behind by the driver of the other automobile.

How can these basic facts be assembled into a persuasive trial story? First, we know that the story must be about people who act for reasons. Your client slowed down for a fire truck which explains her actions. But why didn't the defendant slow downas well? Your story will be more persuasive if you can establish his reason.

True, a reason is not absolutely essential. Perhaps the defendant was such a poor driver that he simply drove about banging into other automobiles. On the other hand, consider what the absence of a reason implies. The plaintiff claims that traffic slowed for a fire truck, but the defendant - also part of traffic - did not slow down. Could it be that there was no fire truck? Perhaps there was a fire truck, but it was not sounding its siren or alerting traffic to stop. Is it possible that the plaintiff didn't slow down, but rather slammed on her brakes? In other word,the very absence of a reason for the defendant's actions may make the plaintiff's own testimony less believable.

The skilledadvocatewillthereforelookforareasonor causeforthe defendant's actions. Was the defendant drunk? In a hurry?Homicidal? Distracted? You can choose from among these potential reasons by "imagining" each' one in the context of your story. Imagine how the story will be told if you claim that the defendant was drunk. Could such a story account for all of the known facts? If the police came to the scene, was the defendant arrested? Did any credible, disinterested witnesses see the defendant drinking or smell liquor on his breath? If not, drunkenness does not provide a persuasive reason for the defendant's actions.

Next, imagine telling your story about a homicidal defendant. Perhaps this wasn't an accident, but a murder attempt.Envision your impassioned plea for punitive damages. But wait, this story is too implausible. How would a murderer know that the plaintiff would be driving on that particular road? How would he know that a fire truck would be attempting to bypass traffic? How could he predict that the plaintiff would slow down enough, or that there would be no other cars in the way? Barring the discovery of additional facts that supportsuch a theory, this story is unpersuasive.

Finally, imagine the story as told about a defendantwho was in a hurry. This story accounts for the known facts, since it explains why traffic might slow while the defendant did not. Perhaps the defendant saw the fire truck but was d riving just a

little too fast to stopin time;or he migt-.t have been so preoccupied with the importance of getting somewhereon time that he simply failed to notice the fire truck until it was too late. Moreover, there is nothing implausible or unbelievable about this theory. It is in complete harmony with everyone's everyday observations. Furthermore details that support the story should not be hard to come by. Was the defendant going to work in the morning? Did he have an important meeting to attend? Was he headedhome after a long day? The trial lawyer can find details in virtually any destination that will supportthe theory of the hurried defend a nt. Note, however, that while such additionalevidenceof the defendant'shaste will be helpful, the story does not rest upon any externalwitness'scredibility. All of the major elements of the story may be inferred from the defendant's own actions.

How can this last story best be organized? Let us assume that the occurrence of the collisionitself is not in issue, and recall that it is importantthat each fact make every succeedingelementincreasingly more likely. Whichaspect should come first: the presence of the fire truck, or the fact that the defendantwas in a hurry? Since the presence of the fire truck does not make it more likely thatthe defendant was in a hurry, that probably is not the most effective starting point. On the other hand, the defendant's haste does make it more likely that he wouldfail to notice the fire truck.

Thus, a skeletalversionof our story,with some easily obtaineddetails supplied, might go like this: we know there was a collision, but why did it happen? The defendantwas driving south on Sheridan Road at 8:35 in the morning. It was the end ofrush hour, and he had to be at work downtown. In fact, he had an important meeting that was to begin at 9:00 a.m. sharp. The defendant's parking lot is two blocks from his office. As traffic slowedfor a passing fire truck, the defendant didn't notice it. Failing to stop in time, the defendant ran into the plaintiff's car.

Other details might also be available to support this story. Perhaps, immediately following the collision, the defendant ran to a phone booth to call his office. Similarly, there might be "counter-details" for the plaintiff to rebut. The point, however, is to organize your story on the principle of successive supporting detail.