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 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 5

I. PREPARING A PERSUASIVE TRIAL STORY

Assume that you have decideduponthe storythat you want to tell. It is persuasive. It is about people who have reasons for the way they act. It accounts for all of the knownfacts. It is told by credible witnesses.It is supportedby details. It accordswith commonsense. It can be organized in a way that makes each succeeding fact more likely.

How do you put your story in the form of a trial?

A. Developing Your Theory and Your Theme

Your case must have both a theory and a theme.

1. Theory

Your theory is the adaptation of your story to the legal issues in the case. A theoryof the case should be expressed in a singleparagraphthat combinesall accountof the facts and the law in such a way as to lead to the conclusion that your client must win. A successful theory contains these elements:

-*It is logical*. A winningtheoryhas internallogical force. It is basedupona foundationof undisputedor otherwiseprovable facts, all of which lead in a single direction. The facts upon which your theory is based should reinforce (and never contradict) each other. Indeed, they should lead to each other, each fact or premise implying the next, in an orderly and inevitable fashion.

-*It speaks to the legal elements of your case*. All of your trial persuasion must be in aid of a "legal" conclusion.Your theorymust not only establish that your client is good or worthy (or that the other side is bad and unworthy), but also that the law entitles you to relief. Your theory thereforemust be directedto prove every legal element that is necessary both to justify a verdict on your behalf and to preserve it on appeal.•

-*It is simple*. A good theory makes maximum use of undisputed facts. It relies as little as possible on evidence that may be hotly controverted, implausible, inadmissible, or otherwise difficult to prove.

-*It is easy to believe.*Even "true"theories may be difficult to believe because they contradict everyday experience, or because they require harsh judgments. You must strive to eliminate all implausible elements from your theory. Similarly, you should attempt to avoid arguments that depend upon proof of deception, falsification,ill motive, or personal attack. An airtight theory is able to encompass the entirety of the other side's case, and still result in your victory by sheer logical force.

To develop and express your theory, ask these three questions: What happened? Why did it happen? Why does that mean that my client should win? If your answer is longer than one paragraph, your theory may be logical and true, but it is probably too complicated.

2. Theme

Just as your theory must appeal to logic, your theme must appeal to moral force. A logical theorytells the trier of fact the reason that your verdict must be entered.A

moral theme shows why it should be entered. In other words, your theme-best presentedin a single sentence-justifies the moralityof your theory and appeals to the justice of the case.

A theme is a rhetorical or forensic device. It has no independentlegal weight, but rather it gives persuasive force to your legal arguments. The most compelling themes appeal to shared values, civic virtues, or common motivations. They can be succinctly expressed and repeated at virtually every phase of the trial.

In a contracts case, for example, your theory will account for all of the facts surroundingthe formation and breach of the contract, as well as the relevant law, say, of specific performance.Your theorywill explainwhya particularverdictis compelled by the law. Your theme will strengthen your theory by underscoring why entering that verdict is the right thing to do. Perhaps your theme will be, "The defendant would rather try to make money than live up to a promise."Or you might try, "This defendant tried to sell some property, and keep it too." Whatever the theme, you will want to introduce it during your opening statement,reinforce it during direct and cross examinations,and drive it home during your final argument.

B. Planning Your Final Argument

Good trial preparation begins at the end. It makes great sense to plan your final argument first, because that aspect of the trial is the most similar to storytelling; it is the singleelementof the trial

where it is permissiblefor you to suggest conclusions, articulate inferences, and otherwise present your theory to the trier of fact as an uninterrupted whole.

In other words, during final argument you are most allowed to say exactly what you want to say, limitedonlyby the requirement that all argumentsbe supported by evidence contained in the trial record. Thus, by planning your final argument at the beginning of your preparation, you will then be able to plan the balance of your case so as to ensure that the record contains every fact that you will need for summation.

Ask yourself these two questions: What do Iwant to say at the end ofthe case? What evidence must I introduce or elicit in orderto be able to say it? The answers will give you the broad outline of your entire case.

C. Planning Your Case in Chief

Your goal during your case in chief is to persuadethe trier of fact as to the correctness of your theory, constantly invoking the moral leverage of your theme. To accomplishthis, you have four basic tools:(1) jury address, whichconsists of opening statementand final argument; (2) testimony on direct examination, and to a lesser extent on cross examination;(3) introduction of exhibits, including real and documentary evidence; and (4) absolutely everything else that you do in the courtroom, including the way you look, act, react, speak, move, stand, and sit. The skills involvedin each of these aspects of a trial will be discussedat lengthin later chapters. What follows here is an outline of the general steps to take in planning for trial.

1. Consider Your Potential Witnesses and Exhibits

Your first step is to list the legal elements of every claim or defense that you hope to establish. If you representthe plaintiff in a personal injury case, then you must offer evidenceon allofthe elementsof negligence:duty, foreseeability, cause-in-fact, proximate cause, and damages. Next, list the evidence that you have available to support each such element. Most likely the bulk of your evidence will be in the form of witnesstestimony, but someof it will consist of documents, tangible objects, and other real evidence. For each such exhibit, note the witness through whom you will seek its introduction.

You are now ready to make decisions concerning your potential witnesses, by inverting the informational list that you just created.

2. Evaluate Each Witness Individually

Imagine what you would like to say in final argument about each witness you might call to the stand: What does this witness contribute to my theory? What positive facts may I introduce through this witness? Are other witnesses available for the same facts? Is this witness an effective vehicle for my theme? What can I say about this witness that will be logically and morally persuasive?

Once you have assembledall ofthe "positive"informationabout each witness, you must go on to consider all possible problems and weaknesses.

a. Factual Weaknesses

inconsistencies by re-evaluating your theory? Can anotherwitness fill the gaps? Can you defuse the potentially damaging facts by bringing them out on direct examination?

a. Evidentiary Problems

Each witness's testimony must be evaluatedfor possible evidentiaryproblems. Do not assume that any item of evidenceor testimony is automatically admissible. Instead, you must be able to state a positive theory of admissibility for everything that you intend to offer duringyour case in chief. To preparefor objections ask yourself, "How would I try to keep this information out of evidence?" Then plan your response. If you are not absolutely confident in your ability to counter any objections, you have to go back to the law library.

b. Credibility Problems

How is the witness likely to be attacked? Is the witness subject to challenge for bias or interest? Will perception be in issue? Is there potential for impeachment by prior inconsistent statements? Can you structure your direct examination so as to avoid or minimize these problems?

3. Decide Which Witness to Call

Having evaluated the contributions, strengths, and weaknesses of all of your potential witnesses, you are now in a position to decide which ones you will call to the stand. Your central concern will be to make sure that all of your necessary evidence is admitted. You must call any witness who is the sole source of a crucial piece of information.Except in rare or compelling circumstances, you will also want to call

any witness whose credibility or appearance is central to the internal logic or moral weight of your case.

All non-essential witnesses must be evaluated according to their strengths and weaknesses. You will wantto consider eliminating witnesses whose testimony will be cumulativeor repetitive of each other, since this will increase the likelihood of elicitinga damaging contradiction.You must also be willing to dispense with calling witnesses whose credibility is seriously suspect, or whose testimony has the potential to do you more harm than good.

Once you have arrived at your final list of witnesses,arrangethemin the order that will be most helpful to your case. While there are no hard and fast rules for determiningwitnessorder,the followingthree principles shouldhelp you decide:

*Retention***.**You want your evidence not only tobe heard,but alsotobe retained. Studies have consistently suggested that judges and juries tend to best remember the evidence that they hear at the beginning and the end of the trial. Following this principle,you will wantto call yourmost importantwitnessfirst, and your next most important witness last. Start fast and end strong.

*Progression***.** The "first and last" principle must occasionally give way to the need forlogicalprogression.Some witnessesprovidethe foundationforthe testimony of others. Thus, it may be necessary to call "predicate"witnesses early in the trial as a matterof both logical developmentand legal admissibility. To the extent possible, you may also wish to arrange your witnesses so 'that accountsof key events are given in chronological order.

Impact. You mayalso orderyour witnessesto maximizetheir dramatic impact. For example, you might wish to begin a wrongful death case by calling one of the grieving parents of the deceased child. Conversely, a necessary witness who is also somewhat unsavory or impeachable should probably be buried in the middle of yourcase in chief. A variant on the

impact principle is the near-universal practice of calling a criminal defendant as the last witness for the defense. This practice has arisen for two reasons. First, it postpones until the last possible moment that time that the lawyer must decide whetherto call the defendant to the stand for exposure to cross examination. Second, and far more cynically, calling defendants last allows them to hearall of the other testimonybefore testifying. [While all occurrence witnesses are routinely excluded from the courtroom, the defendant has a constitutional right to be present throughout the trial.)

D. Planning Your Cross Examinations

It is inherently more difficult to plan a cross examinationthan it is to prepare for direct.It isimpossibleto safeguardyourselfagainstall surprises,but the following four steps will help keep them to a minimum.

First, compilea list of everypotentialadversewitness. Imagine why the witnessis likely to be called. Ask yourself, "How can this witness most hurt my case?" Always prepare for the worst possible alternative.

Second, consider whether there is a basis for keeping the witness off the stand. Isthe witnesscompetentto testify? Is it possible to invokeaprivilege? Then consider whetherany part of the expected testimony might be excludable.For every statementthat the witness might make, imagine all reasonable evidentiary objections. Do the same thing concerning all exhibits that might be offered through the witness. For each objection plan your argument, and preparefor the likely counter-argument. You won't want to make every possible objection, but you will want to be prepared.

Third, consider the factual weaknesses of each opposing witness. Are there inconsistenciesthat can be exploitedor enhanced?Is the witness's character subject to attack? Can the witness be impeached from prior statements? How can the witness be used to amplify your own theme?

Finally, catalog all of the favorable informationthat you will be able to obtain from each opposing witness.

E. Re-evaluating Everything That You've Done

Now that you have planned your case in chief and cross examinations, it is imperative that you go back and re-evaluate every aspect of your case. Do your direct examinations fully support and establish your theory? Do they leave any logical gaps? Are you satisfied that all of your necessaryevidencewill be admissible? Will it be credible? Do the potential cross examinations raise issues with which you cannot cope? Will you be able to articulate your moral theme during most or all of the direct and cross examinations? If you are unable to answer these questions satisfactorily, you may need to readjust your theory or theme.

Assuming that you are satisfied with your theory, you should now have an excellent idea of what the evidence at trial will be. With this in mind, go back again and rework your final argument. Make sure that it is completely consistentwith the expected evidence, and that it makesmaximumuse of the uncontroverted facts. Considereliminatingany partsof the argument that rest too heavily on evidence that you anticipate will be severely contested. Be surethat you structure your argumentso that you can begin and end with your theme, and invoke it throughout.Finally, outline your opening statement,again beginning and ending with yourtheme,and raising each of the points to which you will return on finalargument.