



## FACULTY OF JURIDICAL SCIENCES

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# Lecture-38



## **Leading questions:**

### **Section 141 of Indian Evidence Act**

Any question which make a proposal to the answer which the person putting it wishes to receive, is called a leading question.

### **Scope**

Section 141 of Indian Evidence Act defines “leading question”. Section 142 of Evidence Act lays down that leading questions must not be put in examination in chief and re examination without the permission of the Court. It also lays down that the court should permit leading questions in examination in chief or re examination only as to the matters which are begin, which are unchallenged or which are already been sufficiently proved in the opinion of the Court. Leading questions may be put in cross examination under Section 143 of Indian Evidence Act.

### **Leading questions**

A question is leading one when it point to witness the real or obligated fact which the examiner expects and desires to be confirmed by the answer. The circumstances in which the question arises determined whether a question is leading or not. Is the plaintiff your father? Have you not lived for 8 years with him? Is this man 55 years of age? Is not your name Hemant? Do you reside at Gwalior? Are you not in service of Hemant? Have you not lived for nine years with Hemant? Are the example of leading questions. The examiner clearly suggests the answer to these questions. In such questions the examiner putting the questions is really giving answer rather of receiving it from the witness. In leading questions while the examiner believe the lack of knowledge and is asking for information but he really gives the answer himself rather of receiving it.

Generally, the answers of leading questions are given by yes or no. But it cannot be said that in order to stamp a question leading the answer to it must be as yes or no.

A leading question is that which signals to the witnesses the real or obligated fact which the prosecutor expects and desires to have confirmed by the answers leading to questions.

## **Section 142 of Indian Evidence Act**

### **When they must not be asked**

If objected by the opposite party leading questions must not be asked in examination in chief, or in a re examination without the permission of the Court.

The Court shall permit leading questions as to matters which are begin or unchallenged or which have in its opinion been already sufficiently proved.

### **Scope**

Section 142 of Indian Evidence Act stated that leading questions should not be asked in examination in chief or re examination of they are objected to.

The Court may give the permission of leading questions to pull the attention of the witness which cannot otherwise be called to matter under inquiry, trial and investigation. The witness must report for what he himself had seen.

## **Exceptions to this rule:**

Section 142 of Indian Evidence Act provides exceptions to the general rule stated above. By the order of the Court, examiner may put leading questions in examination in chief or re examination.

1. As to matters which are begin.
2. Which are unchallenged.
3. Matters in which the opinion of the Court have already been proved.

The Court can allow a party examining his own witness to put leading questions by way of cross examination. These are exceptions under Section 154 of Indian Evidence Act.

### **If objected to**

It should be kept in mind that if the adverse party makes any objection, leading questions may not be put in examination in chief or re examination but such questions may be put in examination in chief or re examination if the Court overrules objection.

### **Matters of record**

Leading questions may be asked in examination in chief about the matters of record.

### **Permission of the Court**

There is no legal hurdle in putting leading questions during the examination in chief, if there opposite side does not object without permission of the Court. Need to receive permission of the Court to put leading questions would arise only in the eventuality where the opposite side takes objection. Even if the opposite side objects, the Court has a broad prudence in allowing leading questions to be put. The second para of Section 142 of Indian Evidence Act shows that the Court has no prudence to not allow a leading question if it relates to unchallenged matters or introductory matter or matters already proved. The prudence to allow or not allow a leading question can be exercised by the Court only when such leading question relates to matters other than those recited above.

## **Section 143 of Indian Evidence Act**

**When they may be asked Leading questions may be asked in cross examination.**

**No misleading question in cross examination**

A counsel cannot ask a question in cross examination forward that some facts have been proved or admitted. Imagine a witness appears for the plaintiff, the defendant tries to show that the witness is a driver of the plaintiff so he is a curious witness. The proper question to be asked by the defendant in cross examination would be "Are you a driver of the plaintiff?" A question "How long have you been in the service of the plaintiff?" is not proper as it takes for granted that the fact the witness is a driver of the plaintiff has either been proved or it has been admitted by the witness.

Imagine, the case of a wife against her husband is that he misbehaves and beats her but the husband did not accept the allegation. The husband appears in court for not accepting the allegation. The cross examiner cannot ask a question "May I ask if you have left off beating your wife?", this type of questions are misleading.