RAMA UNIVERSITY

www.ramauniversity.ac.in

FACULTY OF JURIDICAL SCIENCES

NAME OF FACULTY: Dr. Ravi Kant Gupta

COURSE: B.B.A.LL.B. VI Semester

SUBJECT: Law of Evidence

SUBJECT CODE: BBL 604

RAMA UNIVERSITY

Lecture-37

EXAMINATION OF WITNESS:

The examination of witnesses is an integral part of a trial. Witness testimonies are one of the most reliable evidence because the person giving the statements has personally witnessed the event happen. Section 135–165 of the Evidence Act, 1872 deals with examination and cross-examination of witnesses.

Examination in Chief

Examination in chief is defined under Section 137 of the Indian Evidence Act, when the party calls a witness in the examination of witnesses that is called examination in chief. Examination in chief is the first examination of witnesses after the oath. It is the state in which party called a witness for examining him in chief for the purpose of eliciting from the witness all the material facts within his knowledge which tend to prove the party's case. It is also known as Direct Examination.

The objective of Examination in Chief

1. It overcomes the burden of proof legally sufficient.
2. Remembered and understand.
3. Persuasive.
4. Hold the cross-examination.
5. Contradictory and anticipatory and of evidence that the opposition will present.

There is more objective of examination in chief are as follows:

A. Major objectives

1. All the evidence must be admissible.

2. The witness needs to present as intended and capable of being believed.
3. Each and everything related to the fact of evidence of the offence must be proven beyond a reasonable doubt through the witnesses oral evidence and exhibits.

B. Minor objectives

You also achieve some additional objectives which are less essential but still important:

1. Present a complete and logical, rational theory of the offence.
2. Witnesses present in the best possible light.
3. Mention all the facts in the evidence and attempt to explain the relation between propositions that cannot both be true at the same time.
4. Limiting the exposure of witnesses through the shut down of potential cross-examination.

Examination in chief questions

There would be general questions asked in the examination in chief which is related to the facts of the evidence no leading questions are asked in the examination in chief. Leading questions are asked only in cross examination and re examination, first of all, prosecutor ask the question in the examination in chief in the criminal trial.

Cross Examination

After finishing the examination in chief, cross-examination will start. In the cross-examination defendant lawyer asks the cross-question which was asked by the prosecutor. Defendant lawyer may ask the questions which are related to the facts and the defendant can also ask the leading question in the cross-examination which were not allowed in the examination in chief. Cross examination is very important in the examination of witnesses, due to the cross-examination many facts get clear because in the cross-examination defendant analyse all the statements of the witnesses then asks cross question related to the statement which was given by the witnesses in the examination in chief. The Defendant

can also ask the question which was not related to the examination in chief but related to the facts of evidence.

Cross Examination in civil cases in India

All the witnesses in civil cases which are produced or examined by the court on the wish of parties must be presented before the court within 15 days from the date on which issues are framed or within such other period as the court may fix. Then parties have to file a list of witnesses in the suit. After that court can ask the witnesses for examination by sending summons or parties may call the witnesses by themselves. If the court issued a summons for asking the witnesses for the examination then the expenses which arise due to the calling of witnesses by issuing summons has to be deposited by the parties. The money deposited by the parties in this condition is known as “Diet Money”. The date on which the parties wish to produce and examine the witnesses in the court that is hearing. Now the hearing will decide the court on the date of hearing. First thing is done by the plaintiff”s examination in chief in which he asked the question which was seen by the witness. After that defendant ask cross-questions which were asked by the plaintiff in the examination in chief. And after the cross-examination is over at this stage the court will fix a date for final hearing.

Cross Examination in criminal cases in India

There are different stages of cross-examination in criminal cases in the criminal trial in a warrant case instituted on the police report After the charges are framed, and the accused pleads guilty, then the court requires the prosecution to produce evidence to prove the guilt of the accused. The prosecution is required to support their evidence with statements from its witnesses. This process is called “examination in chief”. The magistrate has the power to issue summons to any person as a witness or orders him to produce any document. After the examination in chief, the adverse party asked the cross-questions to witnesses that is called cross examination.

Re examination

The party who attend the witness for the cross-examination shall be called re-examination. If the party not subjecting to cross-examination as per the court order then it is not safe to trust on examination in chief.

Difference between examination in chief, cross examination, re examination

Examination in chief	Cross Examination	Re Examination
1.Examination-in-chief is an examination of a witness which is done by the party who filed the suit or case in the court.	1.Cross-examination is an examination of a witness which is done by the adverse party after the examination-in-chief.	1. Re-examination is an examination of a witness which is done by the parties to remove incompatibility which arises during the examination-in-chief and cross-examination.
2. It is the first order.	2. It is the second order.	2. It is the last order.
3. The purpose of examination-in-chief is to make a statement under oath of a witness in the court.	3. The purpose of cross-examinations is to test the truth of witness by challenging the honesty of his respect.	3. The purpose of re-examination is the examination of a witness which is done by the parties to remove incompatibility which arises during the examination-in-chief and cross-examination.
4. No leading questions may be asked without permission of the court in examination-in-chief.	4. Freely asked leading questions in the cross-examination.	4. No leading questions may be asked in the examination and can not introduce new matter without permission of the court.

5. It is a part and package of a judicial proceeding.	5. It is essential to pull out the truth and also an essential part of a judicial proceeding.	5. It is not necessary in the examination of witnesses and it is not an essential part of a judicial proceeding.

Section 137 of Evidence Act and Section 145 of the Negotiable Instruments Act

Section 137 to 143 0f Negotiable Instruments Act laid down the procedure for the trial of discredited cheque cases in a very simple manner with the main aim that trial of those cases should follow a course in a very simple manner as compared to summary trial. Sometimes a special procedure fails to effectively and efficiently deal with the large multitude of cases coming to the Court. The argument that the complainant or any of his witnesses whose proof is given on affidavit must be made to force out in examination-in-chief all over again seem to be a request urgently for unimportant, duplication seemingly aimed at holding the trial.

As per Section 145(2) of the negotiable Instruments Act, the court may, at its prudence, call a person giving his proof on affidavit and examine him as to the fact controlled therein. But if an application either made by the accused or by the prosecution, the Court has the power to call the person giving his proof on affidavit again to be examined as to the facts controlled therein.

The point and nature of examination in each case different matter to be sensibly controlled in the light of Section 145(1) and having considered the aim and purpose of the entire scheme under Sections 143 to 146, Negotiable Instrument Act. In these Sections judge’s power is not affected in any way under Section 165 of the Evidence Act.

Section 145(2) of the Negotiable Instruments Act under which the affidavit of the person summoned which is already on record is obviously in the nature of examination in chief.

Hence, on being summoned on the application made by the accused, a person who testifies or gives a deposition of the affidavit can only cause to experience or suffer or make liable to cross-examination as to the facts stated in the affidavit.

Section 138 of the Indian Evidence Act

Order of examination

First of all, witnesses shall be examined in the examination in chief afterword cross-examination by the opposite party if the opposite party desires, at last re examination by the first party if the first party calling the witnesses for the re examination. All the examinations of witnesses must relate to relevant facts, but the cross examination no need to be controlled to the facts to which the witness examine on his examination in chief.

Direction of re examination

The explanation of matters referred to in cross examination shall be directed by the re examination, and if new matter introduced in the re examination with the permission of the court the opposite party may further cross-examine upon that matter.

Examination of a witness

Section 137 and 138 are so related to each other that it would be suitable to deal with them together. There are three stages in which witnesses are examined, these are examination in chief, cross examination, re examination under Section137 of Evidence Act. While Section 138 of Evidence Act gives an order of examination in chief, cross examination, re examination. It also gives the extent to which examination in chief, cross-examination and re-examination may go. This Section does not deal with the admissibility of proof, but simply establish that a witness shall first be examined in chief, then cross examined and lastly re examined.

No examination in chief and cross examination

If witness on particular facts and issues not examined in the examination in chief and he has not been cross-examined on the said aspect of the matter by the defence.

Admissibility of evidence of a person with unfinished cross examination

At the point when evidence of the defendant was recorded on commission. If there was a death of defendant and cross-examination was only partly held. Now his evidence will be admissible as there was no provision under law that if the witness was not cross-examined either in full or part his evidence would be absolutely rendered inadmissible. It is further held that the provision of Section 33 will not be applicable in such a case and how much weight shall be attached should be decided considering other facts and circumstances surrounding it.

Cross examination : A wide scope

Section 138 of the Indian Evidence Act provides a wide scope for cross examination. What is spoken to in examination in chief is not to be controlled. Section 138 of the Act clearly provides that examination in chief and cross examination must relate to relevant facts in the opening part of the second half of the Section. But the facts to which the witness had stated in his examination in chief need not be controlled in cross examination. Therefore, the question must be relevant to the fact in cross examination which was necessary to be proved by that witness. If there is any difference in respect of the relevancy of the facts was acceptable only to the dependability, character and such other things concerning the witness.

That was the reason why the scope of cross examination of the witness is wider, in order to present the quality of being believable of the witness or otherwise. The defendant can not use to establish the case in which he was required to independently establish by producing relevant documentary or oral proof to discharge the burden which was cost on him with the presence of such a wider scope of cross examination which is conferred for purposes of

cross examination. If by mistake any party comes to the witness-box and take an oath and deposes about a document, he becomes a witness and must be liable to be cross examined by his defendant. Cross examination of his maybe about the whole case. If cannot be controlled to only the facts declared by him in examination in chief. If any witness proving a document may be defendant can be cross examined on another point.

All the questions are permissible which are asked to challenge the evidence in examination in chief. There is no provision regarding cross examination should be controlled and what is agreed by a witness and cannot clarify the answers to challenge in cross examination. Every accused against him a prosecution witness gives evidence is entitled to cross examine the prosecution's lawyer. Such a statement may be made in the cross examination of another witness or in the examination in chief. An accused is entitled to put an additional question to a prosecution witness by way of cross examination in respect of what he had declared in answer to questions put to him in cross examination by the other co accused.

If the evidence relevant which is given by one defendant against a co defendant, he is entitled to cross examine the deposing defendant. The defendant may cross examine the witness which is produced by the other defendant, even if they have a common defence. If the one defendant is refused permission to cross examine the witness then the evidence produced by the other defendant not admissible.

The important part of the case to be put in cross examination

It is a rule of justice which plays an important and crucial role, that a party must put in the cross examination of a witness in a case. It is a strong rule of evidence that party should use to each of his opponent's witnesses so much his case as care that particular witness. The courts assume that the witness's account has been accepted if no questions are put. Witness attention must first be directed to the fact by cross examination, if it is intended to suggest that a witness was not speaking the truth upon a particular point so that he may have an opportunity of giving an explanation.

The examination in chief cannot rely upon if a witness after being examined up to the phase of examination does not subject to cross examination in spite of the order of the court.

If the witness had testified on his examination in chief need not be controlled to facts in the cross examination of a witness, order refusing to grant permission to put questions beyond the contents of punchnama could not be sustained.

Effect of not cross examining

When there is no cross examination on such point which fact is stated in examination in chief, that point naturally leads to making a logical judgement on the basis of circumstantial evidence and prior conclusions rather than on the basis of direct observation that the other party accepts the truth of the statement.

When the evidence given by a witness is as such unreliable and on the face of it is not acceptable his non cross examination cannot gather believability.

Failure to cross examine will not always amount to an acceptance of the witness's testimony, when the story incredible with the romantic character which tells by the witness during the cross examination.

The specific fact that the witnesses examined by the opposite party have not been effectively cross examined, does not mean that the Court is not liable to accept their evidence. Courts are not prevented from assessing the truth of witnesses in the absence of any cross examination.

No opportunity is given to cross examine a witness.

If there is no such opportunity is given to cross examine a witness his proof must omit from consideration. The evidence of witness is not produced for cross examination but examined before the charge is framed is not admissible.

In **Union of India v. T.R Verma,** it was held that if in the deposition of the witnesses, there was no cross examination because there was no record made, it can be said that, in fact, the party entitled to cross examine did not cross examine and not that the opportunity to cross examine was not admitted. But there are five exceptions in this rule:

1. Where the witness had noticed early.
2. Where the story itself is of unbelievable or romantic characters.
3. Where the non cross examination is from the motive of fineness.
4. Where the counsel indicates that the witness is not cross examined to save time.
5. When some witnesses are examined on the same point, there is no need to cross examined all the witnesses.

Misleading questions

Any kind of misleading questions cannot be allowed during the cross examination of witnesses.

Effect of witnesses not presenting for cross examination.

If any witness examined in the examination in chief but does not appear in the cross examination then his evidence becomes valueless and cannot be examined further.

In **Harpal Singh v. Devinder Singh,** it was held by the Supreme Court that prosecution has prudence not to examine certain witness so that proliferation of proof is avoided. Opposite illation cannot be drawn from non examination of material evidence.

Tendering a witness for cross examination

Offering a witness for practice cross examination only is illegal, bad and invalid. This amounts to a failure of the prosecution to examine the particular witness at the trial.

There is no provision in that Act for permitting a witness to be offered for cross examination without his being examined in chief and this practice is against the Section 138 of the Act. The material witness should be examined and then he may be cross examined.

An offer of a witness for cross examination amounts to giving up the witness by the prosecution as it does not choose to examine him in chief. Non examination of witness in chief examination seriously affects the believability of the prosecution case.

Examination and cross examination must relate to relevant facts

It need not be troubled that the cross examination and examination in chief must relate to relevant facts. The irrelevant fact cannot be allowed to be brought on record either by cross examination or by examination in chief.

Mode of recalling and cross examining of witness

If defence thinks for recalling the witness then the defence can request for recalling of witness, after getting a sanction of Court provided the cross-examination is for challenging the honesty on strength of alleged former statement which came on record at a later stage.

Power of the Court to control the examination of a witness

An examination of witnesses which are relatively long in duration putting irrelevant questions only to increase the size of the record is to be made less hopeful. It is an action that an abuse of this kind, which hugely increases the costs of litigation without any corresponding benefit to the parties should be checked.

Cross examination is one of the most important processes for the interpretation of facts of a case and reasonable parallel should be allowed, but the judge has to act freely as far it may go or how long it may continue. A fair and reasonable exercise of this discretion by the judge will not generally be questioned by an appellate Court.

Court proceeding must always be controlled by the judge of the Court. On the one hand the right of cross examination must be carefully restrained, and it must be remembered that it

may be essential as how for an advocate to approach exquisitely and with caution the point upon which he is seeking to obtain admission. It may be important that a witness whom he does not regard honest should not be put on his guard by immediate demonstration of the case set up by the opposite party. If questions are framed in too pointless a form he may easily deny them. Hence, the large latitude is attractive since the admission sought to be induced only be forthcoming when the witness, if he is revealing something thrown off his guard and there are cases in which it is essential to drop a particular issue in the course of cross examination and to unturn to it again with discretion at a later stage. Lengthy irrelevant cross examination has to be stopped on the other hand.

A Court should take a firm stand that the witness should know and comprehend the nature or meaning of the question put before an answer has to be recorded. A Court would not work in a limited time period during the cross examination.

Re examination

The party re examine the witness who called the witness may if he likes and if it be essential. The re examination must be confined to the explanation of matters grow in cross examination. The proper intention for re examination is by asking questions as may be proper to pull forward and explanation or meaning of expression used by the witness in cross examination, if they are questionable. New matters may be introduced only by the permission of the court, and if that is done, the opposite party has a right to cross examine the witness on that point.

In re examination of witness examination in chief cannot be added to the very end by starting totally new facts for the first time. The intention of re examination is only to get the clarification of some questions created in the cross examination.

Any number of questions

There is no limitation that re examination should be limited to one or two questions and if the urgent situation requires any number of questions can be asked in re examination.

Hypothetical questions should be disallowed.

Hypothetical questions may be put to an expert as per Section 45 of the Act. But hypothetical questions cannot be put to ordinary witness during the examination of witnesses. Courts cannot allow hypothetical questions to the ordinary witness.

Section 139 of the Indian Evidence Act

Cross examination of person called to produce documents

"A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross examined unless and until he is called as a witness."

If a person has the document in his possession then person is summoned only to produce a document, he may appear in Court and produce the documents. He may inform the Court by an application stating that he has no possession of the document if the document summoned is not in his possession. Summon has been issued to a person even if a person produces the document to that summon. Section 139 of Indian Evidence Act clearly provides that he does not become a witness by the simple fact that he produces it and he cannot cross examined unless he is called as a witness. If the person has not produced the documents then the Court cannot record the statement of such person on oath to satisfy itself regarding the whereabout of the document.

Section 140 of Indian Evidence Act

Witnesses to character may be cross examined and re examined.

Scope

The character of a party to a civil suit cannot be relevant to decide an issue in that suit under Section 52 of Indian Evidence Act. The good character of the accused is relevant in criminal cases under Section 53 of Evidence Act. Under Section 54 in criminal cases the bad character of the accused is irrelevant but when the evidence of his good character is given, the evidence of bad character becomes relevant. Under Section 55 of the Evidence Act where the character of a person is such as to affect the amount of damages which he should receive it is relevant. The person who gives the testimony regarding the character of a person may be cross-examined and re examined, the act of causing something to move up and down with quick movements his credit. The character evidence helps the Court to estimate the value of evidence given against the accused in criminal cases.

In **Haagen Swendress Holt C.J** stated that a man is not born a jack, there must be time to make him so, nor is he shortly discovered after he becomes one. A man may be regarded as an able man this year, and yet be a beggar the next, it is unfortunate that happens to many men and this former reputation will signify nothing to him upon this event.