

LAA 3064
MOOT/MOCK AND
PLACEMENT



ART OF ADVOCACY



CONTENTS

- Introduction
- Examination in Chief
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Speaking In Court

- Qualities needed by a Peguam Syarie
- A good voice, Command of words, Confidence, Persistence, Knowledge of law, Experience.
- Appearance- must look neat and tidy.
- Speak clearly
- Punctual, do not rush

Preparation of Witness

First Interview- Witness must be interviewed as early as possible. During interview ask the witness to relate the story to the case.

Second Interview-To see whether there is any recollection that he has not disclose. To compare with the testimony of other witness.

Third Interview-Prepare written statement signed by the witness known as affidavit.

- Formulate the question to be asked in examination in chief.
- Formulate cross examination question.

QUESTIONING

- Types of Questions:
- Open and closed questions-length or short answer
- Hypothetical questions-to test the logical boundaries of an evidence.
- Leading questions-suggest the answer
- Probing questions-to discover something
- Insinuation questions-probabilities, alternative facts
- Confrontational questions-fact that cannot be denied

Examination-in-Chief

- It is the role EIC to present the evidence in a complete and convincing form. Evidence in chief is the pivot of the whole case.
- Purposes: 1) to lay before the judge all that witness knows which is relevant and material. 2) To elicit from the witness a complete orderly story with the minimum of prompting.
- 2 important points: I) the proofs-statement of the witness and ii) the rules of the law.-master the rules of evidence. Eg. Admissible evidence, Hearsay evidence.

Cont..

- The Technique
- Foundations
- i) grasp of the main lines of the evidence ii) skill in the use of words.
- Guiding without leading
- Must not be shown that the answer is expected from him.
- Retaining Control
- Able to to deflect the story in the right direction and away from irrelevancies

Cont...

- Orderliness and thoroughness - The order of time, chronological order.
- Refreshing the memory of a witness- should not press the witness, can refer to the note made at the time of the occurrence.
- Toning down weak points- not to conceal facts.
- Treating a hostile witness- we can cross examine our own witness, may ask leading question and can be contradicted by means of proof of his evidence.
- EIC relates to “w” question- Where, what, who, when, why, can. Able to avoid leading questions.

Cont...

Introducing real evidence during EIC.

- Request that exhibit be marked for identification, Lay the foundation for admitting exhibit.
- Allow opposing counsel to examine exhibit
- Offer exhibit into evidence
- Give the exhibit to the trial judge for inspection.
- Anticipating Cross examination- try to anticipate what the opposition is going to try and do to your witness.

Cont...

- General guidelines.
- Preparation for examination in chief with an appraisal of the contribution which the witness to be examined makes to the proof of the case or rebuttal of the other side.
- Treat the witness with courtesy and patient.
- When you have got what you want please stop questioning.
- Question should be short as possible and single. Easy questions.

Cont...

- Leading questions- question which suggest the answer.
- Forbidden during EIC.- Reason: I) potentially biased in favor of that party ii) may bring out only the evidence which is favorable to the questioner's client iii) witness may not express his full meaning in their own hands.
- Exception: personal details eg “Your name is Azizan? Yes. You live at Taman Seri Gombak? Yes.....”

Cont...

- Should never state anything in court which he is not able to justify.
- Listen carefully to the answer to the question
Don't use words which the witness may not understand.
- If your witness gives a damaging answer don't show your disappointment by gesture or anything else, please carry on questioning the case.
- Use very precise question if possible do a mock examination in chief.
- Tell the court if you have finished EIC. Eg "I have no further questions."

Cross-Examination

- Preparation for cross-examination is much more difficult because you are not in control of the process. Here, mental preparation is about all you can do.
- Purpose-i) to destroy the material parts of the evidence-in-chief ii) To weaken the evidence where it cannot be destroyed iii) to elicit the new evidence helpful to the party cross examining iv) to undermine the credibility of the witness

The main Techniques

- A Probing Question
- To elicit information and to tie the witness down to a definite account of event.
- Q- Who, what, why, when, where, how.
- Leading the witness to state positive facts.
- Try to show improbability or lack of knowledge.
- Never get embroiled in a personal argument with the witness.

Insinuation Question

- Question which reveal the account your witness will give.
- Alternative view of facts which give more favorable to the other side.
- To elicit favorable evidence and to weaken the evidence in chief.
- Suggesting other possibilities.
- Possibility of mistaken observation.
- Never asked unnecessary question.

Confrontation Question-

- Only if necessary. Should be used with strong material preferably facts which the witness cannot deny.
- The aim is to force the witness to admit the falsity of his story or to make him tongue-tied or to involve him in contradictions.

Hostile witness

- Witness whose evidence turns out to be unfavorable to the party calling the witness.
- The court may give leave to cross examine a hostile witness. The party must make an application to the court that the witness is hostile.
- He can be asked leading questions and can be contradicted by means of proof of his evidence.

Important Rules of Practice.

- 1) The witness must be cross examined on all material facts which are disputed.
- 2) must put the the witness the case he is going to set up so far as it lies within the witness's knowledge.
- What questions are allowed: I) relevant to the issues ii) tend to impeach the credit of the witness.
- Question which is tending to show that he has committed or convicted for any offence unless offence of similar facts.

Cont...

- Preferable to visit the scene of the incident and to scrutinize all the facts of the case.
- Construct a hypothesis based on the facts of the case.
- Short and precise question. Avoid unnecessary cross-examination.
- Deal with each point one by one. The foundation is to base your questions on the lines of an argument. To disguise the form of argument.
- Don't supply the answer if the witness can't answer it.
- Great pressure to the witness-ask question rapidly and in short and sharp as possible.

Re-Examination

- After cross examination it is desirable to correct any wrong construction which has been placed during cross examination by explaining or mitigating any point which has been made against the witness.
- Objectives: to explain or qualify admissions made by the witness during cross examination. Rehabilitate a witness. Ask the witness to correct something misleading.
- Re-examine the topic which is not admissible during cross examination. Advantage for re-examination.

Cont...

- Countering the effect of insinuation-to exclude the suggested facts during cross examinations.
- Counteracting the destructive techniques-gentle insinuation in re-examination.
 - Avoid re-examination is unnecessary.
 - Where fresh evidence is elicited in cross-examination the same technique of cross examination may be applicable.

Cross Examination of Experts

- 2 methods of cross-examining an expert.
- a) To discredit the expert
- b) To establish an alternative interpretation of the facts upon which the expert's opinion is based.
- Certain field of expertise is not capable of yielding certain results.

Cont...

- Additional preparation because an expert knows better than you about the subjects.
 - i) ascertain the witness' professional qualifications and relevant experience.
 - ii) Obtain a copy of the expert's reports.
 - iii) Read the literature pertaining to the subject matter.
 - iv) Review the witness' qualifications, opinion with your own expert.
 - v) Ascertain whether the expert has given any expert evidence before.

Cont...

- The Techniques
- Ascertain the frequency with which the expert gives evidence. To identify potential bias.
- Attempt to narrow the witness' expertise
- Highlight your own expertise or opinion of other experts in the area.
- Attempt to elicit evidence that corroborates the propositions which form the foundation of your expert's opinion.
- Ask the expert to explain the technical terms in lay terms.

Cont...

● TIPS

- Keep question simple and short
- Leading question mainly for cross examination
- Use probing questions to elicit witness's commitment to his story
- Use insinuating questions to put your own theory of the case to the other's side witness.
- Use confronting question only when can prove your points.
- Do not repeat answers

Required Reading

- Michael Hyam, Advocacy Skills, 1990, Blackstone Press Limited
- Jeffrey Pinsler, Evidence, Advocacy and The Litigation Process, 1982, Butterworth.
- John Munkman, The Technique of Advocacy, London, 1991, Butterworths.



**GOOD LUCK
FOR YOUR MOOTING.**