

CROSS EXAMINATION - A GUIDE

OBJECT:

- **Favourable Evidence.** To elicit evidence from the witness which is favourable to or supports your case – evidence which supports your version of the facts in issue. Get admissions where you can.
- **To discredit.** Cast doubt on unfavourable evidence given by the witness. Test the reliability of the adverse evidence. Show evidence to be unreliable.



PREPARATION

- 1. Closing arguments to serve as guide.** Only adduce evidence which you intend to use in your closing. Prepare your closing before your xxmn.
- 2. Prepare the xxmn of each witness separately.** Know thoroughly the evidence-in-chief that each witness is to give. Delineate the unfavourable portions. See where you can get admissions/favourable evidence.
- 3. Establish subjects/topics/focal points.** Organise xxmn in topics which you can further sub-divide.

PRACTICAL RULES

- ❑ **Xxmn only when/where necessary.** If the witness does not hurt your case or you can get no favourable evidence then shut up. *'No questions for this witness mi lord'*.
- ❑ **Select appropriate topics.** If the witness has already given favourable evidence on a topic (sub) then shut up on that topic (sub). No need to stick slavishly to your preparation.
- ❑ **Use short leading questions.** This builds control. One line of transcript rule. Question not to exceed a line of transcript (rule of thumb).

PRACTICAL RULES

- ❑ **Ask one question at a time.** Double-barreled questions leads to lack of clarity and weakens the evidence.
- ❑ **Organise questions effectively.** Unlike evidence-in-chief you do not need to build block by block. Hit and move. Topics need not follow sequentially.
- ❑ **Alter or abandon line of questioning as appropriate.** Do not continue a line of questioning which is not reaping dividend. Do so with care. *‘Thank you Mr. Biggs, lets move on to...’*

PRACTICAL RULES

- ❑ **Remain calm and relaxed in the face of unfavourable answers.** Do not flinch and look hurt. Move on with ease. Control your body language.
- ❑ **Avoid 'why' and 'how' questions.** These questions are great in examination-in-chief but should not be used in xmn. You lose control with these questions.
- ❑ **Listen carefully to the answers given by witness.** Record the evidence faithfully.
- ❑ **Pace yourself.** Remember the tribunal of fact needs to hear and note the evidence. Do not rush nor lumber.

PRACTICAL RULES

- ❑ **Use simple precise language.** Language will vary depending on the level exposure/education of witness but must remain simple and precise.

- ❑ **Be courteous to witness and tribunal.** There is no need to be cross.

- ❑ **Control the witness.**

- ❑ **Protect the transcript.** Conduct the trial with an eye on an appeal. In the Appeal courts there will be only the transcript. The body language and demonstrations of witnesses (though important) will not be seen.

PRACTICAL RULES

- ❑ **Do not argue with the witness.** Save arguments for your closing.
- ❑ **Put your case.** In our tradition you are required to put your version of the facts to the witnesses for the other side. You must give them an opportunity to answer the evidence you intend to call.
- ❑ **Traverse the case for the other side.** You are to join issue with the evidence-in-chief.
- ❑ **Start and end your xxmn on a strong note.**

PRACTICAL RULES

1. **Do not ask questions which allow witness to simply repeat the evidence in chief.**
2. **Do not repeat evidence in chief** unless the witness is being set up for a previous inconsistent statement. use headliners to focus witness as required.
3. **Do not ask questions which allow the witness to explain.** Control is lost when this is done.
4. **Know when to stop.** Do not make a question of the ultimate point you wish to make in closing. Get sufficient evidence to make the point and stop.

PERIMETER OF UNCERTAINTY

1. **Do not ask questions the answer to which you are not reasonably sure the witness will give.**

2. **Except:**
 - Where the answers can do no damage to your case but may be favourable. In such an instance the gamble is worth it. Your case analysis and theory should provide a useful guide. Be extremely careful.

EVIDENCE & RELIABILITY

REASONS FOR UNRELIABILITY – GENERALLY:

- **Witness is mistaken.** This focuses on the witnesses' perception at the material time.
- **Witness has forgotten.** The events are no longer fresh in witnesses' mind and consequently witness is not sure. 'Not sure' answers weakens the evidence.
- **Witness is dishonest.**

Always good to try and determine category.

DISHONEST WITNESS

1. **Witness is biased.**
2. **Witness has an interest to serve.**
3. **Witness is malicious.**
4. **Witness does not think that the truth will lead to a just result.**

Always good to try and determine category.