“IMPORTANCE OF CROSS EXAMINATION IN EVIDENCE LAW”

TABLE OF CONTENTS

CHAPTER NO: 01
CROSS-EXAMINATION, IMPORTANCE AND OBJECT.

1.1 EVIDENCE MEANING.

The appearance "evidence" is definite in Article 2(c) of the 1984 Order but not exhaustively, it include

i. All declarations which the law court permit or needs to be made earlier it by witness, in relation to substances of facts under review, such declarations are called oral evidence.

ii. All documents provided for the court's scrutiny are referred to as documentary evidence.

As the term "evidence" is not defined comprehensively, it is necessary to see what its ordinary meaning is, according to Stephen.[1]

a). It can refer to the words spoken and items displayed by eyewitnesses in front of a court of appeal.

b). At some other times, it refers to the facts established by those terms or objects and used to draw inferences about additional facts not so established.

c). c). It can also indicate "to declare that a particular statement is pertinent to the subject under investigation."

According to in his classical work of "Principles and Digest of Law of Evidence" a commentary on the evidence Act of 1872, the word is used in the sense of denoted at (a) above.

Thus, proof is a broad term that encompasses the parties' declarations, eyewitnesses' testimonies, and documents provided in a court or judiciary platform to show or refute a case. 2

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[1] The Law of Cross Examination By Masud-Ul-Hassan Khan 2005.

[2] Jamil Ahmed V/s. Saifuddin (PLD 1994 Sc 504, 507).

1.2 CROSS-EXAMINATION:

The cross-examination is a powerful and effective tool for determining a defendant's credibility. It is seen as an offensive sword and a defence shield. Whoever masters the art of cross-examination also masters the skill of advocating, and will constantly be surrounded by a cloud of clients. Even if ones personal presentation is ordinary and unskilled, if he understands the art of cross-examination, he will stand out and achieve.

whole structure of one's legal reputation rests upon the way he conduct the cross- examination.2

Cross-examination is widely regarded as the most challenging of the lawmaker's many responsibilities. It allows for the most effective application of a skill of quick thinking, snappy humor, and dramatics.

If the cross-examination is a strong weapon, it is also a very hazardous one, and most of those who understand how to utilise it are prone to flinch. If the payment to which a victim talks really happened, the procedure of the organic censure of reality is so continuous that he is almost certain to recollect very sociological phenomena by which it was followed, and the more his recollection is investigated on the topic, the more of these situations will brought to fruition, thus substantiating rather than casting doubt on his evidence. A basic guideline is that a cross-examining attorney should ask more questions that, if the response is unfavourable, will be coercive towards them.

The basic goal of cross-examination is to discover the truth and uncover untruth in individual testimonies, as well as to devalue the value of opposing party experts' proof by deposing their credibility and obtaining admissions beneficial to one's own cause. The job of the cross- examiner is to help the Court in extracting the truth and lifting evil of falsehood, for which it becomes necessary for him to demolish impregnable for tresses, for which the witnesses speak. A good cross-examiner should know by instinct and by experience how to occasion.

He must know when to control his voice, to rise it, to lower it, to smile, to frown, to mold his face and his manner as the circumstance demands. In fact, cross-examination is double edged sword. While effective cross-examination will

win many doubtful cases, its unwise use always helps to strengthen the opponent's case. The cross-examination requires the natural gifts of cleverness, clearness of insight, power to read the mind spontaneously, to appreciate their motives, instinct to discover weak points in witness under examinations.

In short, these provisions give the court power to regulate and control in specific circumstances, the manner and form of putting question and where attempt is made to ask something, which is not strictly relevant to facts in issue or is couched in a needlessly offensive and indecent form, the court is with its right to disallow the question and to give warning to the counsel putting it and if necessary report the matter to the concerned authority. Cross-examination is rightly recognised as among the most effective methods for discovering truth established by the laws. The victim's position in relation to the party leaders and the topic of the court action, his involvement, intentions, willingness and biases, his personality, his cost of achieving a right but certain understanding of the situation with which he carries evidence, the method in something he has used such methods, his authority of knowledge, recollection, and summary are all investigated thoroughly during jews and christians examining his behaviour and judging the appropriateness of his argument It is difficult for a victim who has been put to this exam to inflict guilt on a Jury, no matter how deft the invention of lie may be.

2 (Rahimatullah's Art of Cross Examination pp. 29-30).

1.3 Test of truth or falsity:

The great object of examining witnesses is to bring about the fact from the observer; but the charisma, intellect, bravery, attention, prejudice, recollection. These other conditions of testimony are so diverse that they necessitate practically equal variation in the way of questioning and the severity with which it is conducted to achieve that goal. Cross-examination is the approach used to get these details about the testimony on the book. This type of cross-examination is often referred to as "the finest, most valuable, and most hard to achieve of the authority's skills."

1.4 Importance of the cross-examination in modern advocacy:

Referring to this subject, Mr. Cox in his work entitled "Advocate" says:

"Cross-examination is widely regarded as the toughest test of a lawmaker's abilities, and it may need more innovation than any other aspect of his job.

Conducting a cross-examination with excellent skill is quite tough. It is, without a doubt, a deep philosophical exertion; it is a clear confrontation of brain with brain; it necessitates not only a lot of knowledge of the human brain, its faculty / staff, and their modes of operation, which can be managed to learn only through having read, perception, and inference, but also a good deal of encounter of man and his intentions deduced from interactions with various courses and many people, and, above everything, from pragmatic experience in a variety of situations.

A cross-examination is more interesting to the audience because it is more in the character of a fight, with all the adrenaline that comes with a fight of any type, bodily or mental, man versus man, mind battling with brain. Although in cross-examination-in-chief, the proponent and his encounter have at least a semblance of becoming adversaries, and whichever abilities the the latter is needed to workout for attaining his item must be hidden, and is hardly visible to a simple observer, it may be recognised and appreciated by

those that are involved with him since the purpose and who understand with what sensitive restraint he has attributed judicature. concealed that which he wanted not to reveal.4

1.5 Object of cross- examination:

The goal of cross-examination is to elicit and emphasize relevant information that the person has delayed or concealed, and to also build one's own account and undermine the defendant's credibility. The side cross-examining the witness should present one's own argument in the form of recommendations in order to mock the opposing party's account. Cross-examination is used to skew the facts, undermine witnesses, and damage the opponent's case.

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[3] 6. Taylor on Evidence, 5th Ed., Vol. II, p.1238

[4] Cox's "Advocate" cited by Wrottesly in "Examination of Witness". P.105 [6] PLD 1995 SC 578.

Cross-examination is used to determine a witness's reliability and to draw truths or reveal falsehood. Its purpose is to aid the Judge in revealing the truth by revealing or explaining facts that a victim may try to hide or confound out of biases.

The purpose of cross-examination is to question about and emphasize desired truths that have been obscured or hidden by a person, to demonstrate one's own account, and to undermine the victim's credibility. The party bridge the expert should present its own argument as near to the victim's information as possible in the form of recommendations to undermine the opposing side's account.5

The core of bridge is the questioning of a person known as his adversary by a lawyer for one of the parties. The main goal of border is to determine the truth and discover lies in person evidence. It is intended to either demolish or reduce the strength of information that the person has previously provided in fact, or to infer from his past background and current behaviour that he is undeserving of trust.

Inter of eyewitnesses is without a doubt the most powerful legal tool ever devised for discovering the truth.8

Addressing the members of Ontario Bar Association Johnson, K.C. said:

"The object of cross-examination from a litigious standpoint, not from the high moral ground of getting at the real truth and exposing falsehood and all that, but from the purely litigious, professional standpoint, may be stated as follows:

First, it is to get something no matter how small, to help your own case. If you fear further examination is dangerous and absolutely fruitless, far better leave it alone, for better to stop the witness if you feel that what you are getting is not as a fact aiding or assisting your client in the litigation.

Another object is when you cannot get that which helps your client, try to get something to weaken 'your opponent,' but that is acquired by a totally

different process; and

The third point is that, although it is not the least by any means-is to endeavor, if you can, to separate the truth from the falsehood, more particularly if the truth told by your opposing witnesses would be of assistance to your case-for no cross-examination is a common prosecutor to discover wrong-doing.

Now, how should we best achieve this object; in what way are we going to further the interests of cross-examination? In order to give an answer to that it will be necessary to consider for moment, what evidence is or is not, in a legal or technical sense, but what I Want to point out for the purpose of cross-examination is that evidence is not facts, but is the impression of facts, and the result of certain facts or certain things which have happened. Now, the object of cross-examination is to reform these impression; to minimize them, to explain them, to question them if you desire, to doubt them if you desire. But, the facts themselves are something quite apart from the evidence. There are no facts in evidence at all because as I have said, evidence is merely and mainly a record of facts expressed through the witness-box. In law and in the trial of a case, facts are the result of evidence and are found independently of witnesses or anybody else; that is, the judge has the mental impressions given by the witness of what he saw or heard and given to the best of his ability. The court then finds the fact upon these impressions conveyed through the witness-box.

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[5] [P Cr LJ 1984 (AJ & K) 1039]. [8]
(PLD 1966 LAH 16).

Now, it is important that these impressions should be watched closely in the trial of every case, and the impression of every witness in regard to the way in which he records and expresses his facts. These impressions, taken together, enable the court to get at the facts and it is the duty of the crossexaminer, it is indeed the only object of the cross-examiner, to determine what the condition was and how it was affected by the surrounding circumstances. Now, I should say that the one great object is to avoid any complications with the positive facts. The way to do the work in that respect would be for a man to marshal his collaterals, to see what the bearings of these collaterals are, whether it is scientific, mechanical, or everyday occurrences. Let him study and work out the problem, let him prepare his hearings and methods carefully. In these days, of course, we all know pretty well what is coming on at a trial. We have our discovery; we have our witnesses; we all know what line the man is going to take. If a counsel will only devote himself to it, and will spend an hour or two, or a day, if necessary, to prepare his method of the cross-examination of that particular person, he will find that in every case he has accomplished substantially more than he could possibly do, no matter how crafty he may be, by trusting to the spur of the moment.

In preparing, one has to consider this. You have to think out the end of your method. It does not matter whether this will be clever way of putting it, or, that will be a good subject- matter of attack. The question is, where is it going to lead you to the case, and above all, we should consider the relation of the facts to each other. It has been seen where the cross- examiner has proved the facts to this satisfaction and proved another one to his satisfaction, and with these two facts, by reason of their relation to each other, he has absolutely destroyed the efficiency of his work; therefore, it is necessary always to consider what the relation of these facts is to each other, what is probable and what is improbable or unlikely. These are matters which every cross-examiner must keep in his mind."6

1.6 INVESTIGATION OF FACTS.

1.6.1 Facts.

The expression "facts" is denied in Article 2(d) of the 1984 order to include:-

Anything, national of clothes, or relative things accomplished of

existence apparent by the wisdoms.

any cerebral disorder of which any person is aware.

The following advice is given by Quintillion regarding the investigation of facts and preparation of a case, the next particular that occurs is the manner of studying a cause which is the advocate's ground work. There is hardly one of so slender a genius, who when he has taken pains to learn everything in a case but may be sufficient to inform the judge.

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[6] Canadian Law times.

The only way in which man can ever hope to be successful cross examiner is to prepare, and not wait until the movement expecting favorable circumstances which will arise occasionally. I look upon the preparation for cross-examination as being substantially more important, if there is serious despite about the facts, than the preparation of brief. You have seen men who have gone in to the witness box, you have seen them in the city and elsewhere who have told a story absolutely and apparently strength and frank, and obviously without any ambiguity or any feeling of any kind whatever, you have seen the man leave the box, a wholly discredited witness. Why? No cross examined by the man who takes his brief and modes his notes on the margin as the witness goes along, but cross examined by a man, whoever he might be who has devoted hours and hours of preparation top that particular witness, and who knows exactly his line of conduct and the way in which he should proceed with his art cross-examination.

1.7 Functions of cross-examination:

When a person has made a factual statement, either on a constitutional court or not, or whether he tells his wife irrationally but without being asked, or on proposal or through questions raised with him, it is almost certain that the storey is sometimes incompletely, or wrongly told; and when it is strongly suspected to be the reason and it is preferred to understand the precise truth, to evaluate what part of the storey he lied about, it is almost certain that the storey is sometimes incompletely, or untrue

"Cross-examination of experts during a hearing is frequently of the greatest priority and usefulness in determining the truth and the amount to whom the testimony may be trusted. In a court case, a decision in favour of the plaintiff may result in the claimant receiving a property, cash, and other goal of the litigation; a verdict in the defendant's favour may result in the defense losing what the plaintiff gets. In many circumstances, each side is fair and seeks only fairness; nevertheless, where this is not the matter, any or both sides may attempt to cast the facts of the matter in a light best beneficial to themselves, and to shape the judgement in their favour clothing, or obfuscate some aspects of the situation. When everyone and either of the

sides to a lawsuit is in this frame of mind, it's easy to see how it can affect the credibility of the testimony. Unwilling, predisposed, biassed, and false witnesses may emerge from such a origin. When a victim is cross-examined by his own side, or an evaluation in leader, as it is known, these factors may emerge in the opinion of the opposing party: the victim could have spoken the reality, and not the whole reality, or he may just spoke the reality, and not the whole facts, or he may also spoke the facts, if not the whole facts, and he may have spoken the facts, and not the whole truth, and he may just spoke the facts, and not the whole facts but something other than the facts: alternatively a few of the honesty may have not been revealed because he's not asked questions that might have elicited it. The victim may be misled in an issue that he has noted as a reality: he may well have misunderstood it; he will not spoke to another fact with more self belief than is warranted by his incomplete knowledge of it; his current storey may not have been accurate with his previous account of it; the complainant's persona may require investigation to determine how far his proof is to be trusted.

"1. To show that the witness did not see what he said he saw ; as, that the witness, who said he saw the prisoner at a particular place, did not see him there or, that the witness, who said he saw the prisoner coming from a particular place, was at the time of seeing him (as he said), unable, from the distinguish his features, to know him to be prisoner; or, that the witness, who said, he saw the prisoner fire a pistol at another man, was at the time of seeing him (as he said), unable from the distance of 220 yards of the prisoner from him to recognize the prisoner. "2.

To show that the witness did not hear what he said he hard; as, that the witness, who said he heard particular words spoken by the prisoner to a riotous mob, was at the time he heard the words, under some agitation of mind, was in a degree in a considerable anger of spirits; or that at the time when the witness (as he said) heard certain words spoken by a man at the head of a mob and addressed to witness and other the witness being nearest to the speaker, there was a good deal of noise and confusion, and that the witness was alarmed; and that considering the noise that prevailed at the time, and the witness's situation, and his alarm, the witness might not be able to hear positively to the precise words used.

"3. To show that the witness spoke from hearsay; as, that the witness,

who said a mob set fire to a chapel did not see them do it; that it was on fire when the witness first saw it, and who set tit on fire he did not know; nor did he know that it was a chapel, only somebody told him so.

"4. When the victim spoke out in broad terms of several people who were forced to do a specific crime against their own will, to inform the title of certain people, or perhaps even the name of one person involved, or pressured to do all the legislation noted; or when the victim has presented proof of phrases spoken by convict to a large group of people, to tell the title of certain people, or the title of even one person involved, or pressured to do the ordinance noted; and when the victim has presented proof of phrases being spoken by detainee.

"5. To demonstrate that a testimony who correctly identified an item did so due to a blunder in the method wherein the designation was given or left to them.; as, where the witness had identified a great-coat as the great-coat worn by the prisoner on a particular occasion, and the witness in his crossexamination was asked, whether the great-coat was not produced to him as the great-coat the prisoner had on; whether it was produced to the witness singly, or with any other great-coats?

"6. To procure an explanation of words used by the witness; as the witness, who said the prisoner was at home on particular days, did not mean that the prisoner did not go out on those days, but only that he was a home some part of each of those days.

"7. To demonstrate that the convict's behaviour was compatible with his purity, was incongruous with his guilty, and was open and unmasked. ; as, that, with regard to papers, which the witness found and seized at the prisoner's house, during the whole time the witness was employed in searching for them there was no any endeavor made by the prisoner or any of his family, to conceal or secrete any of them; or, that, with regard to any acquaintance, which the witness said subsisted between the prisoner and himself, the witness was not in confidence with the prisoner and with regard to a conversation which the witness said the prisoner introduced to him, the prisoner imposed no confidence on him, and acquainted him that he had mentioned the matter of the conversation to some other persons, and intended to mention it to more or, cited to him on the prisoner's accidentally meeting and stopping him in the street, the prisoner communicated it to him

in the open

street, and not with any secrecy; or, that the prisoner who sent on board a ship at Portsmouth about a week before it sailed, and who, on the part of the prosecution it was alleged, went on board to fly from the accusation against him, did when on board pass by his own name, and at Portsmouth came on shore several times, and went publicly about the streets: or, that at the time the prisoner was in custody no man could act with more openness in all his conduct than did the prisoner; that on his examination before the Magistrate at L., he was discharged on his own recognizance; that after he was charged he remained at L. for nine days until he was again taken into custody ; and the witness, clerk to the Magistrate at L. knew where the prisoner was the whole of that time, and frequently saw him.

"8. To persuade the testimony to restate that what he said in support of the defendant during his main examination, such as that, he could not identify the prisoner as being one among a body of men or as the man, who had used certain words; or that, although the prisoner was present when certain words were used, he was no near enough to hear them.

"9. To show that the evidence now given by the witness contains some addition to or contradiction of, or otherwise differs from, his evidence, statement or story given, made or told on some previous occasion." A cross-examination can be utilised on a variety of people depending on the context of the trial; its sole purpose is to extract facts. However, the legal goal of cross-examination is occasionally twisted to suit a harmful objective, such as alarming, misleading, or perplexing an honest person; when the aim is to conceal instead of just reveal facts.

1.8 IMPORTANCE OF CROSS-EXAMINATION:-

Cross-examination has also been compared to a double-edged blade, but it is far more deadly. It's much more akin to a certain horrible machine or equipment, such as a concrete mixer, through which an inexperienced and imprudent counsel is much more prone to toss his personal claim than his oppositions. The work of preparation is of inspiring importance. No pains should be spared. Small things should not be neglected, they often turn the scale. The maxim of Napoleon should be born in mind, "when you resolved to fight a battle, collect

your whole force. Dispense with nothing. A single battalion sometimes decides the day". It would be as unwise for a soldier to engage in battle

without arms or ammunitions, as for a lawyer to undertake to try a case without having first made plenty preparation. To be through in the preparation of the law and facts in every case, is one rule that the advocate cannot safely violate. He should be prepared to discuss every question which may arise during the trial of the case and should have every position which he takes well fortified with authorities.

1.9 Origin of the art of cross-examination.

The origins of border are buried in history, yet we see it used effectively in the Biblical account of Susanna and Elders,7 Soloman,8, and the Greek dialogues.

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[7] Cited in Wigmore on evidence

[8] Wrottesley on examination of witnesses, p.102, Edition-II

dialogues[9], the trial scenes of Mirchakatika, an ancient Hindu drama[10], defense of Roscius by Cicero[11], times of William

Rufus in England and in the city of Gaul in the Roman days.[12]

1.10 Value of tactics of cross-examination:

The values of the study of cross-examination are not only confined to the field of advocacy but in modern democracies it is as essential of learning as anything else. To start with, the study is essential for all government officers who are charged to a smaller or larger extent with the dispensation or determination of rights and liabilities or who are assigned factual inquiries; like the executives and officers of the mills, industries, associations and bodies who have to deal constantly with crowd of employees or workers. In fact the subtle employees of the art in even small daily or non-legal matters so much affects the day-to-day decisions that a great rescue is felt at times. The employment of cross-examination in the loudly told facts of the files of Court is easier to the employment of the art in non-forensic matters but the astonishing effects in the later are so frightening that day by day the method of judicial investigation is covering other fields of inquiries. In fact with the emergence of the judicial method of investigation as the best method for search of truth and with the ever growing inauguration of non-forensic matters to the judge, study of the art of advocacy has become one of the essential branches of human knowledge.

1.11. Cross-examination as a science:

Cross-examination from times long has come to be regarded as an art but the exponence of the art has been done so richly that there is a definitely demarcated field of science in it. For a correct learning of cross-examination, its studs may safely be divided in two facets: the first is the preparation of and for cross-examination, the second is the actual interrogation of the witness, the common object of both being the attainment of the desired theory of facts. The first part of cross-examination is science because it can be achieved and lost by following or not following certain rules which will have sure effects in particular circumstances and set of facts. The latter part so far as it is concerned with grasping of psychology of a witness and operating the knowledge of science of the first part on the man in the witness -box by the medium of interrogation is an art, for neither the two witnesses are alike nor the cross-examiners. Like the study of all science and arts, the

task of the advocate in cross-examination is thus twofold. He takes the use of the science of elections of facts by the art of interrogation. It is therefore said that the cross-examiner must be a

master of facts. However skilful and enamoring the art of the advocate's interrogation be, it will be of no practical utility if it is divorced from the science of facts. Thus the nature of the study of crossexamination may be stated as a method of elicitation of facts by interrogation directed towards the achievement of a desired theory of facts. Abstractly, there is therefore no distinction in the nature of chief or direct examination and cross-examination, but transposition of the task in relation to an opponent makes the latter difficult than the former.

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[9] Whewell's platonic dialuges, Vo.-I

[10] Indian Usage and Judge made law in Madras by J.H. Nelson, Chapter-IV.

[11] Harris-Illustrations in advocacy, pp.136-140

[12] Professional Ethics by the late Mr. P.R. Sundaram Iyer

The nature of the study of cross-examination therefore demands that there should be a functional synthesis of the body of the rules governing the interaction of facts and skilful playing of human conversationalist.

The scope of cross-examination from the operator's angle is richly wide and varied. It

embodies the following other branches of sciences:

Rules of factual inquiries i.e. the science of facts.

Rules of Logic.

1. Principles of human psychology.
2. Principles of testimonial faith.
3. Science of administration of justice.
4. Art of winning people including art of influencing people.
5. Art of conversation.

1.12 Functions of Courts and lawyers:

These being objects and functions of the cross-examination in legal trials, they seek to achieve similar aims that a Court of justice seeks. While the former concentrates in putting their own theory about the right and liabilities in the cause arrived through the art of advocacy—the later concentrates in selecting and seeking justice in the two causes. The art of advocacy has therefore been termed to be the base of the triangle of justice. The main function of both the advocates and the Court is ascertainment of facts. It is out of the ascertained facts that all the three organs se to fulfill their respective functions by marshaling, constructing their proposition or theory palaces To begin, the cross-examiner must understand these rules of truth. Courts determine the truth based on proven facts. Realities are proven if there is a compelling cause to suppose that a statement is true. In practise, therefore, evidence is the establishing of the truths in question, established to the satisfaction of all Parties using suitable legal measures. This is accomplished by the creation of proof, the rule governing that is to all legal activity what reasoning is to all thinking, regardless of the subject. To put it another way, the concepts

"proof" and "evidence" In this sense, confirmation is the result or outcome of information, whereas proof is the method of evidence. The factors that give birth to the rights and obligations must be appropriately established. In a Court of Appeal, statistics that are in conflict are investigated and decided in

the very same way that unlikely or refuted facts are investigated and decided by people in general, except where legal system has intervened with rules to ensure objectivity and precision of choice or to avoid counterparty misfortune going to occur from the inquiry. Some parts of the Legal System, for example, Such questions as the relevance of truths are inextricably linked to the entire theories of social knowing as well as logic as comes to women behaviour. Other regulations are of a technical nature, meant to ensure the indicated aims, or are founded on broad policy concepts.

"Evidence" has been described in its formal and also most widespread acceptance to comprise all methods, excluding mere debate, whereby any alleged item of reality, the reality of these is under examination, appears to just be but would be proven or refuted to the satisfaction of all Parties. According to Wigmore, the term "evidence" represents "any knowable fact or group of facts, not a legal or logical principle, considered with a view to its being offered before a legal tribunal for the purpose of producing a persuasion, positive or negative on the part of the tribunal, as to the truth of a proposition not of law or logic on

which the determination of the tribunal is to be asked." According to the California Code, "Judicial Evidence" is "the methods, authorized by legislation, of discerning the facts regarding a matter of fact in a judicial proceeding."

1.13 Judicial evidence.—

Judiciary proof is a subspecies of the taxonomy "evidence," and is essentially spontaneous proof controlled or altered by legal force restrictions. A fully established standard of proof would be anything but an adaptation of the actual expertise gained in courtrooms to the challenge of determining the truth in substantiated factual issues:"

CHAPTER NO. 02
METHODS OF CROSS-EXAMINATION

In this chapter, various known methods of cross-examination practiced by lawyers will be discussed.

The two schools of cross-examination that have so far among various exponents which are: the savage and the pleasant style. Under the former style, the methods of bullying, badgering, severely cross-examining, misleading, fishing at-random appear prominent. In the later style sophisticated, pleasant, gentle, soft, dramatic styles figure most.

2.1 The bullying method:

This art of past century is utterly in conflict with modern psychological trends. With the common man rising in an era of democracy and growing contempt for the bullying methods of lawyers, this method cannot be adopted save under unpopularity, which an independent professional like lawyer cannot afford to incur. Human nature runs in sympathy with a witness handled at the hand of a man like a bullying lawyer. "Cox says:

Jurors are apt to sympathies with a witness who is unjustly attacked by counsel upon cross-examination, and in making up their verdict, are often unconsciously influenced by such improper conduct on the part of the advocate."

Archbishop Whately states: " I think that the kind of sill by which the cross-examiner succeeds in alarming, misleading, or bewildering an honest witness may be characterized as the most or one of the most, base and deprived of all possible employments of intellectual power."

"It is not a mark of ability to confuse the weak, it is an evidence of a want of sagacity." "The torture of such a bend is dreaded by even the most capable and experienced men. 'Don't ever shall I neglect the anxious enthusiasm within which he started working oneself, on that being awakened to show testimony well before Ireland Review panel in the British parliament, in 1839, as I saw him then selling his flooring big bag of records up or down the hallways, now strolling oneself out of exhale, now taking a moment to recoup it, now eyeballing the backpack o He declared with a great deal of trepidation.:

"The character of witness is new to me, Phillips....I need all my selfpossession, and yet I protest to you I have only one idea, and that is Lord

Brougham cross-examining me'."

What should the emotions of feeble youth and women who are unfamiliar with the notoriety attendant to the hearing of a case in one of our Judges be like if prominent men are scared of being cross-examined?.?

2.1.1 Psychologically unjustified.

Human behaviour has been that it reacts irrationally to the person who is in distress and unable to help themselves. The calm, polite investigator is the one who gets the information he needs for his case. By his politeness and consideration he wins from the witnesses on the other side damaging confessions whereas a man who approaches them with sighted guns only drivers them to cover.

"Courts applaud proponents' rare treat of emotion, but where it will become necessary to investigate into an accused's previous history, or to talk about both the death of a friend comparative or beloved man, or to reach some unity of despair in bridge, it is wise to use introduction gestures decrying the requirement of asking these questions, and trying to represent it as one of the uncomfortable bummers. "I deny that his teenage boy, one of the victims, was tainted," Cicero writes in his defence of Cluentius, who was accused of poisoning one of the witnesses. Whoever you claim died soon after taking from the glass didn't actually die that day. It is a colossal and defamatory lie. Examine the facts. I claim that he was ill when he arrived at the meal, and that, in his immaturity, he overindulged; that he was sick for a few days afterward, and that he died as a result. Who is the eyewitness who can testify to this? He who laments his death, his father, I mean, who, in his paternal anguish, would leap from his seat to testify against Cluentius if he had the slightest inkling of his crime; he implicates him by his evidence. But (trying to address the father) please rise up for a moment, I request, while you recall this vital evidence, whatever unpleasant it may be, during which I will not delay you much; you have performed most rightly in not allowing your sadness to favour a lie. An accusation it against man who is not guilty.

2.1.2 Use of bullying method as a first stinging blow:

It may be the sole successful means of cross-examining a certain type of testimony in some cases. A testimony in the stand was highly self-assured, and he recounted his testimony with a fluency and regularity that implied long

and thorough study. The seasoned cross-examination attorney detected perjury, and he also realised that if the only way to convince the court was to disrupt the defendant's personality in the some way. He noted the defendant's nose was inflamed and sore and asked him, "Mr. Jones, what happened?" "Do you consume a lot of alcohol?" The victim was concerned and perplexed by the surprise inquiry, but he bounced back and said appropriately, "That, sir, is my job." "I see, I see," says the narrator. "And do you have any further business?" asks the narrator. The victim's consciousness vanished, and everyone in Court saw that he'd been dishonest when he departed.

2.2 Severe cross-examination method:

Like bullying style, this method is equally a subject of general denunciation.

"Some less than scrupulous lobbyists have a habit of asking biased queries. Even Erskine, a renowned and usually fair lawyer, was warned to treat the victim fairly. Every person is due to common decency, and the lawyer who summons him should ensure that he receives it. It is not uncommon to think that a person has given a false declaration and then badger and mislead him based on this faulty premise. A victim, it should be recalled, is not generally self-assured under the pressure of a vigorous bridge, and may be perplexed by such an assertion stated with a hard and decided attitude, because it's most almost always the case Such expectations advice have no right to make.

"Judges not only take note of the statements of witnesses but also of their reputation, their demeanor in the box, and how they were treated by counsel in Court.13

By "severe cross-examination" The eyewitness is taken through the entire facts of the matter and answered detailed questions about his awareness of them. This method may be effective in the hands of a skilled attorney and a purposefully fraudulent witnesses, but eyewitnesses, on the whole, say the truth, are not idiots, and are not prone to be like clay in the fingers of the examination.

2.2.1 Disadvantages of severe cross-examination.

"Intense cross-examination" allows an able eyewitness to review his testimony in depth and bring to light matters that were missed during his initial examination. A quick cross-examination, but at the other hand, leaving well or terrible enough, relying on the evidence of other eyewitnesses to negate the unpleasant information rather than seeking to show the eyewitness a liars out about his own tongue.

2.1.1. Ballantine discloses his experiences about it as follows:

"When presented to a true testimony, a harsh bridge just highlights the truth, but if lawyer is able to reach a satisfactory conclusion inside his own opinion, it would be far best to ask nothing other than to fight with the prospect of drawing something out through a barrage of questions. A honest testimony usually sticks to the simple square and prevents distracting the court with unnecessary information; and I believe a comment I gave to a court on one event was fair. It was based on a prior investigation.

Erle, Chief Justice. I had asked an eyewitness what he's doing at a certain point in time because it was relevant to the investigation. He replied, "I was warming to the woman," continuing, "If you really like, I will tell you who she really was."

You're well acquainted with her.' I didn't make any observations at the moment, however when I addressed the court, I remarked that my experience has led me to the assumption that truthful eyewitnesses tried to stick to the facts they were called to prove, while lying eyewitnesses tried to divert attention away from the facts they were called to verify.

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[13] Elliot;s advocate cited in wrottesley, p.97

I believe this statement is worth considering since it highlights one of the grounds of truth or deception in an individual under investigation.14

There is widespread feeling of dissatisfaction with such methods usually prevalent in our courtrooms. The purpose of some process of extracting evidence seems to be to prevent a witness from telling "the truth, the whole truth, and nothing but the truth".: and is frighten, confuse, or irritate him into saying something that will be misunderstood by a Judge. Some lawyer have a practise of approaching the testimony stands wide shot, staring at them, waving their hands at them, and confronting them directly.

Simon Legree addresses his slaves in the very cheerful drama of Uncle Tom's Cabin. A good many audience at trials wonder under what law a lawyer is permitted to assume this attitude towards a person who is not a criminal nor a social outcast, but who is in the witness stand in the performance of a duty of great value to the community and State. The most unpleasant feature of this stale of proceedings is its absolute weakness. There are very few lawyers who would venture to address men in such as rude manner outside of a court-room, and without the protection of judge. When they address women so, they simply aggravate their offence.

2.3 Persuasive method:

The whole art of advocacy is based on the part of persuasion, that is persuading the bench. Equally effective is persuasion in the case of honest but mistaken witnesses. The lawyer in this method by systematic reasoning and logic persuades the witness to affirm his theory or statement. This can be very successfully used in the cases of expert or intelligent and honest witnesses. If the witness is shown to disagree with clear reasoning and logic of the inquirer, it will have a beneficial effect on the mind of bench and judge and the witness will be either considered biased or adamant. Persuasion grows in an atmosphere of high gentleness and pleasantness where the cross-examiner does not distrust the witness. Thus the art of persuasive style is wholly a psychological and intelligent affair and only those who can cope with the intelligence the subject demands should stumble upon it.

The framing of questions put to the witness is a very skillful game in this method. Usually they should be such as will bring "Yes" or "No" as the only answer.

The cross-examination of Dr. Stevenson by Clark in the famous Bartlett trial is a good example of this style. The relevant portions are reproduced here:

Dr. Thomas Stevenson had performed, at the Home Office's request, the analysis of Edwin Bartlett's remains. Professor of Medical Jurisprudence at Guy's Hospital, one of the leading consulting physicians of the day, a toxicologist of international repute, Dr. Stevenson was above all a though, shrewd witness; honest and fair enough in forming his opinion, but not easily moved to qualify his blunt expression of it. He could not be flustered and he would not be deceived.15

2.4. Suggestive method:

[14] 17 Ballantine's experiences, 126.

This method of cross-examination is very potential in demolishing the testimony of a very good number and classes of witnesses. If may be adopted in the following cases:

(1) False testimony arising out of mistakes of observation, recollection and reproduction. This style can be used both for having positive and negative facts e.g. reviving the memory of a witness as well as proving that the witness's memory is bad or unreliable.

(2) **Perjured witnesses.** In the case of these witnesses only indirect and presumed suggestions which are in conflict with the stated facts can be utilized. Direct suggestions are bound to fail as the witness by very reason of commission of perjury is prejudiced against the cross-examiner.

(3) **Illiterate villagers and women** witnesses can also be effectively tried for such a method. The simple way is of carrying the witnesses gradually by suggestions to such facts as would be in conflict with the adverse story without touching the central fact directly.

(4) Hostile witnesses.

The most important condition of the use of this method is that the witness must be unaware of the suggestion aimed at which can be created by winning his confidence or by making the witness feel that you know the facts sought to be cross-examined, better more brightly and in more details than the witness. This can be done by opening your cross- examination with a few introductory questions carrying such vividness and detailed picture though their use may be nothing except giving the witness impression of your knowledge. These introductory facts must be admitted facts otherwise the witness will think that you are laying a trap. Having done so the suggestions may be advanced gradually each being in logical sequence of the one put immediately prior to it.

2.4.1 Suggestive cross-examination for detecting mistaken testimony.

When cross-examining watches, we can often get more precise, comprehensive, or appropriate answers by asking solution interface rather than allowing them to respond irrationally. The human brain has a tendency to accept external recommendations, but if a concept or picture is strongly

recommended to the testimony and amused upon his opinion, he may be persuaded to implement this under extraordinary cases. Everyone is aware that we have seen, that is, that we see far more than our sensory receptors are capable of comprehending. We understand this to mean that we are always accomplishing reasonable tasks. emotions by escort of visual representations, and it's likely that we pick the ones that fascinate us the most out of all the possibilities. If the crossexaminer forces inquiries affirmatively indicative of the sensitive detection or image into the mind of the testimony, the crossexaminer aims to summon in the testimony the concept or vision of the happenings anticipated and brings them to his remembrance in their original or genuine form through a type of comment.

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[15] The excerpt is a good style of cross-examination as to probabilities satisfying the method of agreement in logic as stated by Prof. Mills.

It clears the fog of past dismal mental states from his memories, and the initial sensations are absorbed and depicted to his brain in their independent person or fullness. If you're asked a provocative question, put by The sensation that is immediately formed by the proposal can awaken the actual picture owing to the connection of thoughts, according to the pass to the witness (under bridge). The recommendation, idea, or portrait provided in a higher sense activates a mental affiliation that had previously existed in the witness's mind but had become hazy or befuddled due to his memory is a bit utter impossibility. Put your own recommendations to him about those situations (on which he is being questioned), but he may find it a lot easier to recognise your recommendations rather than relying on his fantasy to come up with a suitable response, as it is always common to send your consent Any idea that answers a purpose is preferable to inventing an innovative answer using your creative faculties. Furthermore, your recommendations may deprive him of the ability to review. It will occupy his concentration, and he won't be able to think of his own replies or see how they fit into the narrative he's previously given. However, you should continue to make such well crafted ideas as may appear to suit the situation and urge the witness to embrace them, even if they may be detrimental to his story and cause him additional difficulty."[16]

2.4.2 Harris's advice as to suggestive questions:

"If you are desirous of getting an answer to a particular question do not put it directly. The probability is that the witness will know your difficulty and avoid giving you exactly what you wish. If not altogether straightforward (and for such witnesses you should always be prepared) he will be on the alert, and unless you evade him, will evade your
question."

The work will be completed by a succession of inquiries, none of which are symptomatic of, but all of which lead gets to the actual. If the facts is there, you can bring it out, or if you don't accomplish, you can put the eyewitness in a situation where the interpretation will be evident from his quiet.

2.5 Method of forcing.

This method is employed when the testimony affords admitted or undoubted facts from which the facts desired certainly follow and which by their nature admit of no explanations or distortion.

2.5.1 Spotlighting method:

It is a device used to focus the attention of the judge on one important point which, above everything else, will remain in their minds when they go into the task of writing judgment. It is a familiar adaption from spotlighting on theatre. It is only a real artist of the style who can benefit from this.

Otherwise it backfires on the cross-examiner.

2.6 Bold Method:

In this method the cross-examiner puts sudden and unexpected questions boldly so that the witness is taken by surprise and impelled to vomit facts aimed at.

Brougham once attempted the technique of magnetising an opposition testimony by pronouncing a single phrase while practising at the bar. He takes a seat.

[16] Rahmat-Ullah's "Art of Cross-examination," pp.160-163.

He locked the eyewitness with his eye right in front of him until the poor fella reddened, paused, and ultimately fell in anxious uncertainty, most likely leaving his most significant evidence unanswered.A bold question put suddenly creates an effective impression. Wrottesley says:

"A bold question will sometimes lay a witness open, but the question must be sudden and unexpected, and the mind of the witness must be diverted from that part of his testimony where it is hoped to make him speak the truth, many time surprise a man and lay him open. Like to him that having changed his name, and walking in Paul's another came suddenly behind him, and called him his true name whereat straightway he looked back."[17]

2.7 Rapid method

A rapid fire of questions is very effective in handling liars and perjures.

Every lawyer must be prepared for "occasion sudden and the practice dangerous" as Lord Coke puts it. Rapid questioning arrests the thinking of the witness and he apt to reproduce what he wants to hide. Cox. In his work on

"Advocates" says:

"When you are satisfied that the witness is drawing upon his invention there is no more certain process than a rapid fire of questions. Give him no pause between them, no berating space, or point to rally. Few minds are sufficiently self-possessed as, under such catechizing, to maintain a consistent story. If there be a pause or hesitation in the answer, you thereby lay bare the falsehood. The witness is conscious that the dares not stop to think whether the answer he is about to give will be consistent with the answer already given, and he is betrayed by his on contradictions. In this process it is necessary to fix him to time, and place and names. You heard him say so? When? Where, who was present? Name them. Name one of them. Such a string of questions, following one upon the other as fast as the answer is given, will frequently confound the most audacious. Fit names, and times and places, are not readily invented, or if invented, not readily remembered. Nor does the

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[17] Harris' Hints on advocacy, Edition 12, p.254

objection apply to this that may undoubtedly be urged against some other of the arts by which an advocate detects falsehood, namely, that it is liable to perplex the innocent, as well as to confound the guilty, for if the tale be true, the answers to such questions present themselves instantaneously to the witness's lips. They are also associated in his mind with the main fact to which he is speaking, that it is impossible to recall the one without the other; collateral circumstances may be forgotten by the most truthful, or even be unobserved, but time, place and audience are a part of the transaction without which memory of the fact itself can scarcely exist."[18]

2.7.1 Secret of surprise.

When it comes to asking concerns of a testimony, there is a huge difference among one method and the other. If you do it poorly, the shock impact on the Judges may be gone, and in lobbying, surprising a testimony, a court, or an opposition with a remark is a terrifying foe. However, you may ask your question in such a way that it elicits compassion for the testimony rather than disdain; so although, if your issues are well tried to ask, you can not only display that he is not to be trusted because of his old game, but also that he is to not be trusted because of his current character but also on the pulverized that his manner of replying types him false witness."[19]

2.8 Quibbling method:

A quibble is a play on words or ambiguity. This method depends upon ambiguity of words. As it owes its dependence on artificial ambiguity created by the lawyer it is fragile and purely verbal argument. It is often misleading. Lawyers who confuse witnesses by these methods do not receive sympathy from Bench.

A man once said of an advocate, that he had "no more law than Mr. Crocker's bull." For this he was brought to Court, whereupon he endeavored to escape by saying that Mr. Crocker had no bull. "If that be so." Said the judge who tried the case, "then the scandal is the greater."

This reminds me of one of the school boys who, having been convicted of

some offence and sentenced to the usual punishment, requested as a favor that its execution be postponed until he had got his evening meal of bread and milk. This pleasure being formally granted, the youngster declared that he did not mean to eat any bread and milk that evening, and contended that consequently the promise made to him amounted to a pardon sine die. The boy deserved to escape for his cleverness, but it is recorded that old Dryasdust only whipped him the harder.

2.8.1Wesley's remarks:

"Clearness is necessary for you and me, because we are instruct people of the lowest understanding; therefore, we, above all, if we think with the wise must yet speak with vulgar, We should constantly use the most common, little, easy words (so they are pure and proper) which our language affords. When first I talked at Oxford to people in the castle or the town, I observed they gaped and stared. This quickly obliged me to alter my style, and adopt the language of these. I spoke to."[20]

When eyewitnesses are interrogated in this manner, they feel more at ease, and the justice, and also the Courts and defense counsel, will comprehend what is stated, as men rarely become so knowledgeable that they cannot grasp plain English greater than anybody else."[21]

"It is highly important, in cross-examination for the advocate to frame his questions in plain, simple language, adapted to the understanding of the witness. If often occurs, in the course of the examination of witnesses, that the witness does not understand the answers of the witness. A providence pronunciation of words is a source of mistakes of this kind."[22] **Unfair questions in cross-examination:**

[18] Wrottesley "Examination of witnesses" pg. 130-131

[19] Harris' Hints on Advocacy

"In the very same manner, if recognising the sincerity of an arbitrator, any one must ask me if he even sells fairness, I could not merely say 'no,' because the word 'no,' would denote that he won't sell it now, but it would abandon it to be deduced, at same time, that I permitted that he had previously sold it," the authors of the "Port Royal Logic" explain. Questions like "When did you stop becoming the defendant's enemy?" fall into this category. 'Can you tell me when you sold your stake in this assertion?' 'How long have you been out of the conspirators?'?'

This unequal assessment tactic occasionally takes the shape of a topic that appears to be one topic alone, requiring only a definite response, but is actually a combination of numerous questions. This is an old deceptive belief that should be quite well as to be easily revealed, but it nonetheless causes a lot of harm. Many a testimony has been perplexed by being asked to respond "yes" or "no" to a question that appears to be solitary but is actually double. As a result, a witness is questioned: "You injured yourself by leaping off a train travelling at 40 kilometres per hour."?" Or he is asked:

"You were a joint venture partner with the defendant?" If the person to whom these inquiries are delivered was cool and calm, he would almost certainly not be mislead; nevertheless, few eyewitnesses can be cool under pressure under cross-examination, and they are frequently misled into mistake. A person who is requested to "say truthfully or no, sir" by an attorney is not in a position to recognise the injustice of the question posed of him.

The concerns that are normally asked of eyewitnesses aren't nearly as obvious as the ones we've supplied

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[20] Wrottesley "Examination of witnesses" pg. 71

[21] Cox's Advocate; "Wrottesley" p.72

[22] Ibid p.70

As an example, many are so deceptively structured as to confuse keen thinking. The cure for this ailment has been suggested by

Aristotle: "Several questions" he says, "Should be at once decomposed into their several parts. Only a single question admits of a single answer."

2.8.1. Prolonged method:

Prolonged cross-examinations have to be denounced in the strongest words. In modern days of time-shortness and economy, lengthy crossexamination, often made boring by lack of wit in the counsels crossexamining, are a drain on public time of Courts. The lawyers who resort to such interrogations are hardly justified to do so. It is definitely lack of intelligence on the part of lawyers who cannot achieve his objectives by such a method. In some quarters, lawyers take a pride in cross-examining for hours; in another they have the dishonest aim of confusing the witness or playing with his memory into unimportant details on irrelevant and insignificant points. Though the bench is adequately equipped in law in dealing with such cases, yet it is faced with a strong case when the same is reported by senior members from the Bar.

Prolixity in cross-examination arises out of repetition of questions and going into irrelevant or unimportant details or fishing inquiries. In the last analysis it is lack of knowledge of correct principles of cross-examination or the art of it that leads even senior ones to make their cross-examination lengthy.

In Mr. Justice Darling's Court, counsel in cross-examining a witness, was very disseminate, and wasted much time. He had begun by asking the witness how many children she (the witness) had, and relished in asking the same question over again and again. Before the witness could reply, Justice

Darling interposed with the suave remark, "When you began she had three."

Necessityof such a cross-examination:

Lengthy cross-examination, however, becomes necessary in dealing with liars and perjures who are skillful in telling lies, who are clever to give only evasive answers and, who are intelligent to escape the meshes of the cross-examiner's net. In such cases a lengthy cross-examination is imperative in the interest of justice and the right to such cross- examination must be asserted. Trial Courts having heavy work are supposed to be irritated by lengthy cross-examination and it is a familiar question from the Court as

to how long a lawyer would take in the cross-examination but the lawyer must indicate to the Court the absolute necessity for it.

In all notable trials, key witnesses have to be cross-examined at length. Similarly parties are ordinarily subjected to a certain amount of lengthy crossexamination as the occasion may demand.

The point, however irritating, is about the repetition of the same questions or same set of questions which must be avoided more than twice even in dealing with such witnesses.

Secondly, the length can be curtailed by proving one set of similar facts by eliminating cross- examination on other set of similar facts. Thus where the task is to prove that a witness is lying by reason of his bad memory, it would carry conviction of un reliance, if the cross- examiner were to prove 4 or 5 instances of bad memory.

2.9 Dramatic method:

Lawyer as an actor can make him a hero by designing drama in the trial. Drama is always full of life and action and it is helpful in catching attention. Dramatic cross- examination has the virtue of living long in memory.

2.9.1 The Advocate should be good actor.

A great actor should also be a good representative. The most cautious crosse xaminer will frequently come up with a damning response. Now is the time to exercise the most restraint. If he displays how much the answer hurts him with his expression, he may loss his case by that one score. How often does the cross-examiner appear to be hesitant in response to such a response? He paused, possibly flushed, and then recovers his ego, but rarely his command over the witnesses, after allowing the reply to take full impact. Will appear to come as a matter of routine and will fall absolutely flat with the purpose of surprising or alarming him. He'll ask the following inquiry as though nothing occurred, or he'll offer the eyewitness an astonished grin, as if to suggest, "What do you think anyone would believe for a moment?"?"[23]

The effectiveness of dramatic cross-examination is seen better and surer in jury trails than those conducted before judges who easily come out of sentiments. In the later cases when manifestation evidence is produced, a wave of life is infused in the whole cross-examination. Method of demonstration has of late been successfully used in many important trials and falsity brought out with awful demonstration. Hundreds of English and

American trials may be cited in this context where, by demonstration, certain important aspects of evidence were presented and changed completely.

2.10 Humorous cross-examination:

One or two sharp and humorous remarks or questions or answers can make the cross-examination otherwise boring interesting. It refreshes everybody. More than this if relevant to the case it has greatest effect on mind. Judicial humorist is common. Humor at the bar is comparatively rare, the reason being that a lawyer pleading a case is for obvious reasons cautious of scoring off the judges even though they could.

Humor is a sign of wit and intelligence. A little of humor is very necessary in the tense and serious atmosphere of Court.

2.11 Gentle and pleasant style:

Gentle and pleasant style, like everywhere in life has the same delightful effects in the field of interrogations. It puts the witness at ease and the cross-examiner ultimately gains confidence of the witness and obtains concessions, which are taken by judge at their full value. Witnesses caught in inconsistencies talk more fluently and their efforts to reconcile the same usually emphasize them. The slashing bulldozing type of cross-examination may add to the confusion of the witness. The later type of cross-examiner would put the question: "When you told so you were lying?" The soft style would be, "Mr., you told so and so previously and now you say so and so, which of them is correct." Answers to the soft style in such a position would result in victory for the cross- examiner.24 The effect of treating hostile witnesses kindly is fruitful except in rare cases.

[23] Wellman's day in court, 222

Wrottestley writes in

"Examination of Witnesses."

"Docility and friendliness of a witness are of the utmost consequence. And courtesy towards him is a probable means to obtain and keep him, courtesy in words, voice and manner. Rudeness and incivility toward him is very likely to put him out of temper, and to make him lay back his ears."

"Little peculiarities of his nature must be humored; his sense of personal dignity must not be offended ; if he be deaf or have an impediment in his speech, this infirmity must not be a subject or laughter; and if his voice be naturally or from timidity low he should be gently, not roughly, exhorted to speak up. So, if the witness exhibits any clownish or awkward habit or manner, it may be better to let it pass unnoticed than to attempt to correct it."[28]

2.11.1 Eminent jurists prefer Detection of falsity by gentle style:

Mr. Harris says: "It will be clear that to examine with anything like success the good temper should be preserved. A calm, imperturbable temper is the very triumph of self- command, and one of the very foremost qualities of a good advocate." This is good, but if there is genuine reason for hate, it will be organic, and biological is rarely harmful, therefore if there is genuine cause for frustration, it will do no damage to allow it to manifest. Actually, it may be beneficial, because the focus on anger is highly impressive; nonetheless, as enraged as the inspector may appear, he shouldn't ever lose his composure. That is something he must keep, or he will be humiliated. An enraged investigator is no answer for a calm witness, let alone a renegade who is ready for a fight. There will be no rejects or rejections

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When it has been written on, checks must move the inspector away from his duration."

It is said of Rufus Choate: *"His cross-examination was a model. He never physically assaulted a victim with the intent of browbeating him. He once expressed his disapproval to me over the cross-examination of a specific prominent lawyer at our Bar. 'This individual attacks a testimony in such a way that he invariably gets the court on the defendant's side,' he said. 'I don't believe that's a good idea,' he continued.*

[24] Law and tactics in jury trial by F.W. Busch, Bobbs Merill and Co. Indianapolis [28] Cox's advocate . Wrottesley "Examination of Witnesses", p.72-73.

'Wonderful strategy.' His own strategy was significantly more calculated and cautious. He had a deep understanding of human nature, the sources of human activity, and the innermost sentiments of peoples flesh."[25]

"The pleasant style of the cross-examination will usually produce far more beneficial results. By appearing friendly to an opposing witness you at once disarm him of the hostility and prejudice with which he has been regarding you during his direct examination. He has probably been expecting an assault upon his character, and is prepared to defend himself, but under the influence of good-humored questions he becomes softened, and is more easily led to tell the exact truth. The old adage that 'molasses catch more files than vinegar' applies with peculiar force to the cross-examination of a witness."[2]

2.12 Purpose of all the methods:

All the methods of cross-examination outlined in this chapter have their singular values in particular contexts and in dealing with particular witnesses and irrespective of the criticism leveled against any school of cross examination, the latter's use at occasions could only rescue the crossexaminer out of difficult situations. It is the judicious selection of the method in the case at hand that would help the art-employer. All the methods have been successfully employed by masters of the art in cross-examining witnesses of certain classes. It is only the general use of the method for all witnesses or at all occasions that brings failure for the cross-examiner. The ancient style of cross-examination should, however, be used only as a last resort and the endeavor of the cross-examiner should be to build up his own style of cross examination more on the lines of courteousness and pleasant conversationalist, than the severe and savage one.

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[25] Life of Rufus Choate cited in Wrottesley "Examination of Witnesses", p.99.

CHAPTER NO: 03

THE MANNER AND ART OF CROSS-EXAMINATION.

3.1 Style of starting cross-examination.

One way of starting cross-examination is to approach the observer cautiously and courteously with a view to create an atmosphere favorable to the elicitation of facts treatment to support the opponent's case. The other method is to go conventional at the point and attack the observer directly. It is acknowledged by many that the first method is by far the most successful. If from the attitude and expression of the cross-examiner, the witness as the start suspects that he is doubted, he will be at once put on his guard and will prepare himself fully for sticking to his story in examination in chief and embellishing it by subsequent answers.

3.1.1 Secret of the cross-examination.

Howkinis, J (afterward Lord Brampton), has answered this question in one word **(Patience).**

3.2 General rules of cross-examination.

It is generally established that failing to cross-examine a witness equates to accepting his testimony, subject to the possibility that it is fundamentally unlikely.

The resolution of cross-examination is to assist the court in bringing the fact to light by disclosing or clarifying matters which witness may conceal or confuse from motives of biasness.[26]

3.3. PAUL BROWN'S RULES.

"A" was written by David Paul Brown, a fellow of the Boston Bar.

1. In 1856, the "Forum" established nine Golden Rules for witness questioning, which are reprinted below.

2. Study the first information report carefully and find out the omission of names of accused or witnesses, the delay in making it, the improvement made in the story, the part assigned to each accused, favorable point in the FIR on which theory of right of private defense , provocation, accident, mistake of facts or any other defense can be developed.

[26] (PLD 1967 SC 167).

3. The study of challan or final report under section 173 Cr.P.C carefully, the majority of lawyers treat this important documents as merely a matter form or surplus-age. The "concise statement of facts" in entry No: 09 in the challan is the chief spin on which the whole prosecution revolves. If there is a defective in the challan, no amount of credible evidence can secure conviction against your client.

4. Analyze the medical certificate and postmortem report. Find whether injuries described therein could be caused by the weapons which your clients are alleged to be armed with.

5. Tabulate the interests of the PWs whether they are friends or relatives of complainant or enemies of your client. History of each witness must be traced.

6. Study the time and place of occurrence, whether there was sufficient light or opportunities for identification, whether the prosecution has shifted the scene of occurrence and with what object.

7. Always obtain the copies of the statement of witnesses to police under section 161, 162, 164 Cr.P.C. in advance and not the discrepancies in their statement inter se.

8. See, who for you can go with the prosecution and at what point you should bifurcate and prove you defense .

9. See, how far you Defense evidence will fit in with the circumstances alleged by the prosecution.

10. Study the chemical examiner's report thoroughly and fined out what advantage your can derive from it.[27]

3.4 Examination of Accused And Cross-Examination.

The objection of notable criminologist Dr. Hans Gross, are very informative for all cross-examination where the accused is to be examined.

He writes: *"the examination of an accused person is the most difficult of all takes for an investigator who appreciates its value. We can here given only a few hinds. He who knows men, who is gifted with a good memory and presence of mind, who takes pleasure in his work and zealously abandons himself to it, who is always scrupulously bond by the rules laid down in law, and who sees always in the accused fallen brother or one wrongfully suspected, he will question. But an officer who is wanting in a single one of their qualification will never do any good."*

3.5 Knowledge of Accused.

The basic technique of the evaluation necessitates a thorough comprehension of the individual with whom we are dealing. We should not anticipate any advantages to come to the complete investigation if the suspect's past history has been recorded only at the hand of the document to and he's been a party, because the researcher has not made the bother to do so.

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[27] Paul Brown's "A Forum" 1856

Before starting work, examine the defendant, and if he hasn't done so, he should have overlooked many crucial details. However, if he meticulously records the suspect's prior history at the start of the records, the entire investigation will be done at the very least attentively and wisely..[28]

3.6 Psychology of guilty.

It is cruel or rather mentally wrong to expect someone to openly and immediately admit his mistake, maybe a horrible one; everyone who has had a long relationship with the man of poor character knows how disgusting it is to use the right phrase, even after perfect confirmation. People of a better moral standing generally avoid to use the term "steal," whereas the amount of long expressions used to prevent using the small phrase "kill" is astounding. Now, if it's a pity,

It must be considerably more agonising for such persons to make an unceremonious admission of their wrongdoings in linked exposition than to say a single distinguishing phrase. We need to make their path easier for them. We must seem to have an excess of patient; we must progress; carefully; step by step, we must do arduous inquiries, if the wrongdoing is only partly confessed or if the defendant recognises just some of the information from a set of details. In such cases, we must frequently make decisions very precise differentiation Commonly, an alleged confesses only up to a certain amount, that is, and so far as he could go without jeopardising a companion, or until his behaviour will become felonious, or until a less major felony, such as theft in a housing complex, is converted into a more major felony, such as house training and stealing.[29]

3.7 Manner in Examination-In-Chief:

The method in which you conduct the inquiry in main should be substantially different from the method in which you conduct the cross-examination. Unless otherwise notified, you are interacting with our own witnesses, whom you should think is favorable to you. If he's anxious, you should reassure him and win his trust with a friendly look and speech. It is common for witness statements who are confused with law courts to be so taken aback by their new situation that they are unable to differentiate among pleasant and adversarial lawyer initially, ... they treat you as if you're an adversary to be kept at bay, with whom they will share as little knowledge as possible. Then it's up to you to make things right with your witness, which you can usually do with a friendly grin. Do not seem to perceive his discomfort, as

this would just add to it; instead, remove it softly and unobtrusively with nice looks, polite tones, and phrases that sound like a customary request from a friend to share a storey that the queerest is eager to hear and the other pleased to tell.

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[28] (The Law Of Cross Examination By Masud-Ul-Hassan Khan 2005).

[29] ibid

The most scared witness may thus be drawn almost unconsciously into a narrative which, when he entered the witness box, had escaped the memory in his terror.[30]

3.8 The Statement of Accused.

Carefully plain out the statement which the accused has to make. A number of good cases have been lost by making injudicious statement under section 342 Cr.P.C is not it outrageous for accused to plead alibi or ignorance about the incident, when he bears as many as half dozen injuries on his person and unimpeachable reliable evidence implicated him in the crime? It is for the lawyer to advise him to plead right of private defense and take full advantage of the injuries sustained by him in the fight. To say no to all questions put to him is only a unacceptable legacy of the advocacy in the past, and sooner it is done away with the better.[31]

CHAPTER NO: 04
ART OF ADVOCACY

4.1 ADVOCACY.

Advocacy has undergone complete change in modern times, words, however, still furnished the principal medium by which mind communicates with the mind but they are now used in Courts rather to convince than to thrill land to inform rather to impress. There was time in the old days when the lawyer decorated his address with high sounding Latin phrases which of course he used not to convey ideas but to impress his auditors. Happily this practice is fact declining.

A lawyer has got a very solemn task in the performance of his professional duties towards his client. There is no other ration in human affairs exactly comparable to that of a lawyer and client.

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[30] [After Cross Examination By Emman-ul-Zaffar]

[31] (The Law of Cross Examination By Masud-Ul-Hassan Khan 2005).

It is a relation that is its familiarity and responsibility is an example of the supreme trust and confidence. By it we ask another for the time and the occasion to be ourselves. It is as if for the time being we transfer our degree our conscience. To violate this sacred duty and be disloyal to client is deservedly inexcusable sin of an advocate. By this disloyalty he sinks lower than by any other act of dishonor.

4.2 The Lawyer as Detective.

A lawyer has sometimes to do the work of a detective to obtain for this cross- examination and emulate Sherlock Holmes. A young girl brought a suit for personal injuries alleged to have been caused out of an assault by the accused while he was drunk. In order to prove her resulting disability, she stated that she has been confined to her bed continuously for a month immediately preceding the trial. They reported her activities in minute details.

4.3 Qualification of Lawyer.

It is true that lawyers are born and not made, yet there are certain limitations to the rule. It has been seen that many lawyers of average intelligence and capabilities have risen to fame by impression of their hard labor and exercise of acute intelligence.

One who goes from court to court cannot but observe the changing quality of Perhaps more than any other career, law practise has a wide range of options. It spans from the subtle, masterful ability of the forensic painter to the works of the uneducated bullshitter who understands next to nothing about the facts or the law of the case he is attempting, and even less about human behaviour.A law suit in many Courts is not the scientific work of trained and skilful specialist but too often is the basic performance of the inexperienced and the unfitted.

4.4 SOME OTHER ADVANTAGEOUS POINT IN THE COURT ROOM:

4.4.1 Manner of addressing court.

4.4.1.1 Adopting the arguments.

The success of a case is largely determined by how it is presented to the court. It will be a waste of time and energy to dwell on details in a terrible person. "The statement must be tailored to the facts of the case and prepared with the sole objective of achieving the jury's decision in that issue. Anything that would help us achieve this goal should be done, and anything that will hinder us from doing so should be leave aside. The framing of the argument

should be determined by the one big aim, no matter how powerful the urge to stray into side issues that allow for the exhibition of argumentative and improvisatory skills.

We don't use the term "elegance" as we feel that there's no such such as genuine intellect when the words used in a speech don't tend to convince or persuade the listener.

His boldness is fake, starting to resemble the authentic only as the counterfeiter's most highly skilled work mimics the remotely approaching the authentic only as the counterfeiter's warrant of value; for no issue how lovely his characterizations of will shaped his durations are, his boldness is bogus, starting to resemble the authentic only as the counterfeiter's court order of value. The presentation and style of the statement must be appropriate for the occasion in order to be impressive.

4.4.1.2 Power of words.

Words have a lot of power. Statements without concepts are useless in terms of persuading and convincing. They're nothing more than husks with no kernels. But, as odd as it may appear, conventional concepts, even bad ones, have power; however, a truly strong thought can occasionally be so buried with words as to be robbed of its power, as a listener can sense.

4.4.1.3 Never under value/estimate your opponent

Do not underestimate your enemy hut give him acknowledgment for being able to take benefit of the fragile parts in your own case and be on your protector consequently.

Do not be discouraged if facts contradict your case, whether they come from your own eyewitnesses or those of your adversary. Every truth has two sides, one advantageous from the one who presents it, as well as the other favourable to you, if you've the vision to see it. Struggle to resolve it by your own facts as soon as it is confirmed in proof. Make an effort to gain control over your characteristics. When the most dire misfortune befalls you—when the iron is piercing your soul—remain calm and confident. The judge is watching you and is frequently swayed by such factors.

4.5 THREE QUICKAND EASY WAYS TO MINIMIZE NERVOUSNESS DURING TRIAL:

An evangelist is a trained communication whose job it is to speak up for his clients and make sure their views are heard. But then if he's too frightened to deliver his customers' issue directly? His client loses when a speaker neglects what he needs to say or if the phrases get stuck and don't flow out. Anxiousness can derail a providing the platform, but if an advocacy follows these simple guidelines, he can reduce the impact of anxiousness and deliver his case in court with confidence and enthusiasm.

4.5.1 Be prepared.

The most prevalent reason of anxiousness in the courthouse is an absence of preparedness. Nothing should make you feel more at ease in the court than realizing you've studied thoroughly for your case. The Boy Scouts still offer the finest advice for reducing fear in the courthouse: "Be Equipped." Are you ready for it? Have you brought any case law to back up your viewpoint on expected evidential issues? Do you even have a backup plan in case one of your eyewitnesses fails to show up for court? Do you have a backup presenting strategy in place in case your scientific equipment fails? Have you practised your case and presenting until you feel comfortable with it?? (Until you are fully prepared for trial, none of these other tips will be much help to you.)

4.5.2 Don't speak to "the Jude"—speak to one Judge at a time.

Another Nervousness is a common source of anxiety throughout a trial. The nervousness is consistently ranked first on lists of "Top Ten Phobias." Isn't it amazing that it even eliminates the dread of death and tarantulas??!?

Just because you're a trained communicator does not mean you are protected from a fear of public speaking. And don't make any mistake about it—regardless of whether you're talking to a full bench of the apex court ort a single Judge selected to try you case, what you're doing is "public speaking." It's not unusual for you to feel uncomfortable speaking to large groups. Yet you probably feel perfectly at ease speaking to just one person, don't you? If you would feel comfortable in presenting your opinion statement to just one Judge, then you're ready to present to full bench. Here's the secret" rather than speaking to the entire bench, speak to just one Judge at a time. Make eye contact with that Judge and talk one-o-one with him. Don't hold your eye contact so long that it becomes uncomfortable, but only long enough to establish a link Maintain eye contact with a different Judge and process is repeated. You'll be

having a series with one interactions rather than speaking to a group. You'll be able to carry on a discussion if you speak directly to every individual. This strategy will not only help you reduce your anxiety, but it will also help you form a more deep friendship with your assessors. When you use this easy strategy of speaking to one judges at a time, your speeches will become even more personalized (and unforgettable) to your audience.

4.5.3 Have a checklist:

I'm sure you've heard the phrase "the tiniest pencil mark is better than the sharpest recollection," right? This is particularly true throughout a trial. The stakes are great, the feelings are strong, and your mind is rushing at frenetic pace throughout a trial. If you're ever going to grow frightened and overlook anything, this is the time. Prepare a checklist of components in your claim and keep it on top of your evidence documents to guarantee that you will never lose a case since you forgot to include something important. For a straightforward D.U.I. case, here's how a prosecution can assemble the questionnaire:

1. Identity
2. Venue
3. Drove or actual physical control of a motor vehicle
4. Under influence of alcohol of drugs...
5. ... to the extent "normal faculties" are impaired.

You cross each component off the list as your eyewitnesses attest to it. You go over the list again before resting your case to make sure that each aspect has been demonstrated. The prosecution in this case would not like to rest his case just yet since he has not established that the court has geographical jurisdiction over the case. New graduates sometimes lose misdemeanour cases as they fail to establish venue. And they are apprehensive, they almost always ignore the venue aspect. A plan like this won't make you forget about your nerves, but it will keep them from ruining your case. Recognize that it's normal to be anxious. It's only normal that you'll be apprehensive because you want to perform a great job and care about your customers. With so

much on the line, it would be even more of a problem if you were not anxious. But don't let your nerves get the best of you or compromise your providing the platform.

CHAPTER NO: 05

LITERATURE REVIEW

5.1 PROVISIONS UNDER QANUN-E-SHAHADAT ORDER, 1984

5.1.1 Order of Production & Examination of Witness:

In the lack of any such legislation, the sequence in which eyewitnesses are brought and interrogated shall be governed by the current law and practise governing civil or criminal procedures, respectively, and in the lack of any such legislation, by the instruction of the tribunal.[32]

This section deal with the order in which witnesses are to be examined and not with the quantity or quality of the proof.

In civil proceedings the orders are to the regulated by the provisions civil procedure code, in criminal proceedings by those of criminal produce court. Filling the orders is to be determined by the court. In practice however it is left largely to the objection of party calling witness to examine them in any order he chooses.

5.1.2 Article 132 of Qanoon-e-Shahadat Order, 1984:

(1) The examination of a witness by the party who calls him shall be called his examination in chief.

(2) The examination of a witness by the adverse party shall be called his cross- examination.

(3) The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.[33]

5.1.3 Article 133 of Qanoon-e-Shahadat Order, 1984:

1. The witness shall be first examined in chief, then (if the adverse party so desire) cross examined, then (of party calling his so desire) re-examine.

   The interview and cross-examination must be focused on significant facts, but the bridge does not have to be limited to the facts covered by the defendant's questioning in chief.[34]

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[32] Article 130 Of Qanoon-E-Shahadat,1984

[33] Article 132 ibid

[34] Article 133 ibid

Direction of re-examination:

Re-examination shall be limited to the clarification of topics raised in border, and if new material is submitted in re-examination with the Court's consent, the opposing party may cross-examine it even further.

5.1.4. Leading questions

A valid question is one that suggests an answer that is already adequately proven. And, if the opposing party is present, misleading questions need to be asked only with the Judge's consent during the questioning in chief or m actually.[35]

The Court may ask leading questions about matters that are either preliminary or uncontested, or that have already been properly proved in its view.

5.1.5. General article applicable to cross-examination.

Article 141 to 149 provided for question that can or cannot be asked in cross- examination may be questioned, in additional to other inquiries, any inquiries aimed at determining his honesty, determining what he's all about his place in life is, or shaking his reputation, etc. If a question is asked about anything unrelated to the case or proceedings, the court will decide not if the witness must address it. The court must examine the considerations listed in Article 143 while applying its judgment in this case. Similarly, no inquiry undermining the defendant's reputation or harming his reputation should be answered unless such person who asked it has substantial grounds to believe that the impression conveyed is properly founded. If you have a problem, is asked deprived of sensible estates, Article 145 authorizes the court to bang

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the facts of the case to the Federal Court or any other institution to which the attorney who is asking these inquiries is committed in the course of his practice.

It is forbidden to ask obscene or indecent inquiries.[36]

5.2 EVIDENCE IN CIVIL PROCEEDINGS:

In civil suits, it is the plaintiff, who generally has the right to begin. The party has then to state his case. If the defendant admits the facts alleged by

the plaintiff and relies on a Defence , it is for him to establish that Defence . The plaintiff my then prove his case in rebuttal, if any. Where a part is taken by surprise by a point made against him at the bearing the judge may, if he thins right at any stages of the trial allow him to produce rebutting evidence. Such evidence must be that which goes to cut down the Defence without being in confirmation of the original case. In civil appeals, the appellant is beard first in support of his appeal. If the court does not dismiss the appeal at one the respondent is heard against, and in such the appellant is entitled to reply.

5.3 CIVIL PROCEDURE CODE 1908, ORDER XVIII.

The plaintiff has the right to begin unless the defendant admit the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the

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[35] Article 137 ibid

[36] Article 146 ibid

defendants the plaintiff is not entitled to any part of the relief, which he seeks, in which case the defendants has the rights to being.[37]

5.3.1 Statement and production of evidence:

1. On the day fixed for the hearing the suit on any other day to which the hearing is adjoined, the party having the right to begin shall state his case and produce in support of the issues which he is bound.

2. The other party shall then state his case and produce his evidence (if any) and may then address the court generally on the whole case. 3. The party beginning may then reply generally on the whole case.[42]

Nothing in this rule shall affects the jurisdiction of the Court, if its own accord or the application of any party, for reasons to be recorded in writing, to direct any part to examine a witness at any state.[38]

5.3.2 Evidence where several issues:

Where there are also several problems, some other group starting may, at his discretion, either generate his proof on those problems or backward it by way of reply to the evidence provided by the other group; during the latter particular instance, the party starting may present proof on those problems after another party has generated all of his proof, and another now may rep[39]

Participants to be questioned in open Court, the testimony of the witnesses in presence shall be provided orally in public Session in the face of the Court and under his particular control and supervision.[40]

5.3.3 Taking evidence in appealable cases.

If an argument is permitted, the proof of each testimony shall be considered things in detail, in the dialect of the Jury, by or in the existence or under the individual direction and supervision of the jury, not in the organizational sense of questionnaire, but in the type of a storey, and, when finished, shall be perused over in the existence of the grand jury and the watch, and the land court shall, if necessitated,[41]

5.3.4 When deposition to be interpreted:

it is taken down, the evidence as taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is give.[42]

5.3.5 Evidence under section 138, CPC, 1908:

Information taken down under section 138 must be written in the form provided by rule 5 and must be read through, signed, understood, and

corrected as if it were testimony removed under that regulation.43

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[37] Rule 01, ORDER XVIII, CPC,1908.

[42] Rule 01, ibid.

[38] High Court Amendment, Lahore, Rule 01, ORDER XVIII, CPC,1908.

[39] Rule 03, ORDER XVIII, CPC,1908.

[40] Rule 04, ibid.

[41] Rule 05, ibid.

When the evidence is take down in language different from that in which to is given, and the witness does not understand the language in which

5.3.6 Procedure when evidence not taken down by Judge.

When the testimony is not taken things in detail by the judge, he is obligated to write a notation of the content of what each person helps produce as the questioning of each witness advances, and such notation shall be written and certified by the prosecutor and shall constitute part of the book.[44]

Substances for rule 08.

Where the proof is not taken things in detail by the arbitrator, he will be found making a document of the material of what each observe helps produce, in his own hand or from his transcription in public session, and such memo will be agreed to sign by the arbitrator and will become part of the public record as the investigation of each witness funds raised. 45 Where English is not the court's vernacular, but all of the respondents to the action who attend in person, as well as the pleaders of those who present by britannica, do not object to having such testimony given in English torn offline in English, the court may do so.[51]

5.3.7 Taking down particular question and answer:

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[42] Rule 06, ibid.

[43] Rule 07, ibid.

[44] Rule 08, ibid.

[45] Lahore High Court Amendment to Rule 08, ORDER XVIII, CPC,1908. [51] Rule 09, ORDER XVIII, CPC,1908.

If there seems to be any exceptional reason, the Tribunal may hunt down any shall consider response, or any response to any issue, on its own initiative or on the motion of any party or his complainant.[46]

5.3.8 Question objected to and allowed by the court.

When a party or his existing industrial protest to a question presented to a witnesses, and the Court allows the issue to be thrown out, the court shall write down the conversation, the reply, the complaint, and the address of the person who made it, as well as the court's judgement.[47]

5.3.9 Remark on demeanor of witnesses.

The Court has the authority to record any remarks it deems relevant about a witness' behaviour while under questioning.[48]

5.3.10 Memorandum of evidence in unappealable cases.

If an appeal is denied, it will not be necessary to write down the defendant's testimony in detail; instead, the judge will make a written statement of the material of what each testimony helps produce as the testimony is examined, and this document will be written and agreed to sign by the arbitrator and will form part of the documentation.[49]

5.3.11 Recording reasons of the inability to make memorandum.

If the judge has been unable to make a document as requested by this order, he shall hold the cause for his incapacity and cause the memoranda to be written from his mouth in public session.[50]

5.3.12 Dealing with evidence taken before another judge.

If an adjudge is prohibited from ending the hearing of an action by illness, relocation, or other reason, his replacement may deal for any proof or memoranda shot down or created under the above regulations as though it had been torn offline or made for him or under his supervision.

command under the abovementioned regulations and may continue with his immediate predecessor litigation from where he left it.[51]

5.3.13 Immediate examination of witness:

If a person is about to depart the decision of the Court, or other substantial reason is proven to the satisfaction of all parties, why his testimony should be taken promptly, the jury may, upon the request of the witnesses, take his testimony promptly.

[46] Rule 10, ibid.

[47] Rule 11, ibid.

[48] Rule 12, ibid

[49] Rule 13, ibid

[50] Rule 14, ibid

[51] Rule 15, ibid

any part of or the witness, at any time after the institution of the suit, take the evidence of such witness in manner here before provided.[52]

5.3.14 Recalling and examination of witness by court:

The court may recollect any person who's been questioned at any moment throughout the course of the case and ask him any question it sees fit (according to the rules of arbitration in effect at the time).[53]

5.3.15 Power of court to inspect.

The court may at any stage of suit inspect any property or thing concerning, which any question may arise.[54]

5.3.16 Criminal proceedings.

In the criminal proceedings, the complainant or the prosecution, as the case may be has the right to begin, and if necessary the accused is asked to adduce his evidence in Defence . The trial before a Magistrate may be (a) in summons case (Criminal Procedure Code, section 224) or (b) in warrant case section 242, 254, 257) or (c) summary (section 262). A Magistrate may also inquire in to case tribal by the Court of Sessions or High Court (Section 280). Where trial place before section or High Court, the procedure as laid down in section 271, 276, 289, 290, 291) of the Criminal Procedure Code is followed.

5.4 MODE OF TAKING AND RECORDING EVIDENCE IS INQUIRIES AND TRIAL IN CRIMINAL CASES.

5.4.1 Evidence always taken in presence of accused:

All evidence taken under Chapter XX, XXI, and XXII and XXII-A of the Cr.P.C. are to be taken in presence of accused, or when personal attendance is dispensed with, in presence of his pleaders.[55]

5.4.2 Manner of recording evidence:

In inquiries and trial (other than summary trials) under the Cr.P.C. by or before a Magistrate or Section Judge, the evidence of the witness shall be recorded in the following manner.[56]

5.4.3 Recording Evidence in trial of certain cases by 1st & 2nd Class Magistrate:

In case of trial under Chapter XX or Chapter XXII OF Cr.P.C. by Magistrate of the 1st Class or 2nd Class and in all proceedings under section 514 (if not in the course of trial), the Magistrate makes a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.[57]

[52] Rule 16, ibid

[53] Rule 17, ibid

[54] Rule 18, ibid

[55] Section 353, Cr.P.C. 1898

[56] Section 354, ibid

[57] Section 355, ibid

5.4.4 Record evidence in other cases:

The testimony of each testimony shall be taken things in writing in the dialect of the Trial by the Prosecutor or Sample Consisted or in his existence and having to hear and are under his creative strategy and oversight in trials before Court system of Meetings and in investigations under Chapter XII of the Cr.P.C., and certificate issued by the Prosecutor or Sample Consisted.[58]

5.4.5 Option to Magistrate in cases under section 355: cr.p.c.

In situations such as those specified in section 355, the Prosecutor may, if he deems fit, decimate the proof of any testimony in the way provided under section 356, or if the province Government will make the action meant to refer to in section 357 in the manner specified in the segment inside the confines of such Judge's court.[59]

5.4.6 Mode of recording evidence under section 356 or 357 cr.p.c.:

Evidence taken The format of a storytelling, rather than a questions and response, shall be taken laid down in section 356 or 357.

Any query and response may be knocked down or caused to be taken down at the judgment of the Magister or Sessions Judge. [60]

5.4.7 Procedure on completion of evidence:

As the evidence of such witness taken under When section 357 is finished, it must be read to him and in the company of the defendant, if present, or his complainant, if he presents by prosecutor, and it must be revised if required.

(2) If an eyewitness challenges the validity of any portion of the testimony when it is presented to him, the Magistrate or Sessions Court may, rather than amending the proof, make a statement thereon of the defendant's objections and add such card draw as he considers necessary.

(3) If the testimony is knocked away in a language other than the one in which it was provided and the eyewitness does not recognize that languages, the proof shall be construed for him in the dialect in which it was given or in a vocabulary that he understands.[61]

5.4.8 Interpretation of evidence of accused or his pleader:

Whenever a proof is offered in a language that the suspect does not understand and he is available, it must be explained to him in public Session in a speech that he understands.

[58] Section 353, ibid

[59] Section 358, ibid

[60] Section 359, ibid

2 Section 360, ibid

(2) If he presents by prosecutor and the proof is provided in a court languages that the appellant does not understand, it will be translated for him in that languages.

(3) When documents are submitted for formal evidence, it is the Court's obligation to translate as much of them as seems required.[62]

5.4.9 Examination of accused:

(1)When the suspect is analysed by any Prosecutor or by any Trial besides the Federal Court, the entire inspection, along with every argument asked with him and every response provided by him, shall be monitored in full, in the vocabulary of the Court or in English, such as shall be shown or perused to him or, if he does not know the language in a vocabulary he recognises, in a dialect he acknowledges.

(2) When the suspect and the Prosecutor or Pass judgment of such Trial are satisfied that the document includes a fair and clear acct of the suspect's declaration, the documentation shall be accompanied by the suspect and the Prosecutor or Judge of such Court, and such Court official or Judge shall confirm on his own hand that the evaluation was taken in his existence and listening and also that the record includes a fair and clear account of the suspect's declaration.

(3) Nobody in this article shall be construed to applicable to an alleged individual's questioning under section 263.[63]

5.5. Cross-examination in criminal cases.

Cross-examination is indeed a suspect's most essential right, since it is the only way to determine whether a witness is telling the truth or lying.[64]

The great motor over developed for the finding of facts is cross-examination. The charged case could be gravely harmed if a trial attorney is not cross-examined. Cross-examination is a specialized job which could only be made by counsel. High Court, through had given direction in the case to conclude the trial and in exceptional circumstances the time could be extended in the interest of justice. Neither Court had put question to assertion nor the accused cross-examined the witnesses himself. High Court accepted the application and directed the trial Court re-summon prosecution witnesses for cross-examination.[71]

[62] Section 361, ibid

[63] Section 364, ibid

[64] PLD 2001 LAH 462.

[71] 2001 MLD 1957.

CHAPTER NO: 06.

GENERAL RULES AND PRINCIPLES OF CROSS-EXAMINATION.

It is well settled in civil cases that failure to cross-examination a witness tantamount to admitting his statement subject, of course to its being assailed as inherently improbable.

The purpose of cross-examination is to assist the court in bringing the truth of light by disclosing or clarifying matters which witnesses may whish to conceal or confuse from motives of bias.[65]

It has been said that to a great extent, cross-examination is natural like music and painting, and at the same time as the unskillful beginning his music or painting may not be very successful, yet he can achieve perfection by training, practice and experience.

There can be no hard and fast rule for the cross-examination of witness. Different kind of witnesses requires different treatment. A few types of witnesses have been dealt with separately in the following pages. Crossexamination is a mental contest between the counsel and the witness and therefore, a counsel has to adopt a number of strategy to extract truth for witness.

6.1 GENERAL RULES OF EVIDENCE.

The general rules of evidences are contained in the Qanun-e-Shahadat 1984, which came into force on 28-02-1984 and which revised, amended and consolidated the law of evidence as contained in the repealed Evidence Act.

1872 with a view to bring it "in conformity with the injunction of Islam as laid down in the Holy Quran and Sunnah" these words have reference to

Article 227 of the Constitution of 1973, which mandates that "All existing laws shall be brought in conformity with the Injunction of Islam".

6.2 Order of examination of witness.

Article 133 of the 1984 order provides for the order of inspection of observer. A spectator shall be first studied in chief, that is to say he will be

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Analyzed in chief by the party who summoned him, then cross examined if the

opposing party so chooses, then re-examined if the party summoning him so desires. A man who is ordered to provide a paper does not automatically become such a witness, and that he can be bridge until and unless he is asked to testify. (Article 134) Expert witnesses, that is, those that indicate the type of reply that the person asking it intends or needs to make (Article 136), should not be asked in questioning in chief or reconsideration unless the court permits it, however the Court may allow pertinent questions are preliminary or acknowledged or which, in its view, been already sufficiently proved. (Article
137) leading interrogations may be demanded in cross-examination.

6.2.1 Mode of taking and recording evidence.

The testimony of a witnesses must be given orally in public session, in the sight of the Judge, and under his or her personal control and supervision. The proof should be taken in the sight of the state Prosecutor and under his or her personal guidance and supervision. The word direction and superintendence are important. What they signify is that the evidence is taken under the watchful eye of the Judge it will be his duty to see that

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[65] (PLD 1967 SC 167)

the witness are treated which due respect and when under cross-examination, are not unnecessarily harassed or annoyed, and also that the parties and there counsel remain with in there limits of law and that irrelevant questions are not put.

6.3 Direct attack

The direct attack is quit another method. It succeeds only in the land of counsel of commanding personality, and even then it is not safer unless they are sure of their ground, otherwise the attack recoils.

In general, direct assault cross-examination is the least productive type of cross-examination. It is unquestionably the least enjoyable to hear, as well as the least informative. So if an observer is seeking to lie, it is more okay to bring him off stride, the creeping, half cordial, half private strategy is usually the much more effective.

Every guy has his own method of cross-examination, and what's most important is a calm demeanour and respect for both the Court and the witnesses. Bullying and bloviating, as well as beating the table, are inappropriate in a court of law and rarely succeed. A competent advocate must have a pleasant demeanour and a calm demeanour.

Cross-examination being art in which skill is attained, only by diligent application and intensive study during long period of blinking application of intellect and mind, accused persons not to be penalized not necessarily because of their being guilty of offence but because of their inability of crossexamination or interpret law.

6.4 Russell's maxim for cross-examination.

Sir Charles Russel, Lord Russell of Killowen, was overall the maximum effective cross examiner of contemporary periods. Lord Coleridge said of him that Russell was the biggest advocate of the century.

Russell's Maxim for cross-examination was "go straight at the witness and the point, throw your cards on the table, mere finesse English Juries do not appreciate."[66]

"Russell" said a associate of the North circuit. "Shaped the similar result on a observer that a cobra shaped, on a bunny rabbit.

A good activist should be a decent performer, the most careful crossexamination will often draw out a harmful response. He should observe the utmost self-discipline, while examining a witness. He should not allow

himself to be swayed by his feeling but remain unmoved whether he achieves a victory or commit an error. If he shows by his face that the unfavorable answer of the witness hurts him, he may lose his case by that on point alone.

Cross-examiners in our courts are often seen to lose calmness of mind by such an answer. They pause blush, and thus lose their Controlling the witnesses, with a skilled trend lawyer, quite a reply will look to occur as a matter of routine, and will fall precisely flat, rather than surprising or alarming him. He'll continue with

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[66] Russell's Maxim for cross-examination

the next question as if nothing had happened, or even perhaps give the witness on unconvinced smile, as if to say, "who do you suppose would believe that for a moment".

6.5 General principles of cross-examination.

After the witness has been interrogated in chief, the testimony may be cross-examined by lawyers for the opposing party. Alternatively, if the party summoning a witnesses believes it is not appropriate to question him after he has been summoned and sworn, the person may be cross-examined by the other party's representation.

When a witnesses is called to the stand, the first question on the opposing counsel's mind is that the testimony is capable, and if not, how the challenge to his fitness should be made. The next point of contention for opposing counsel during the investigation is whether probation proof is the strongest proof of the statistics which the observe abdicates; if not, as to if basis have been carried for its admittance as qualitative research; or whether the questions are appropriate and important to the matter at hand, and whether they should be project is to propose. If the defendant's testimony is unacceptable in any of these ways, lawyers should intervene promptly.

If the observer only tells half the truth, the opposing party's lawyer will instantly continue to cross-examine him about it if the rest is favourable to his client; however, if the rest is unfavourable, counsel must either abstain from cross-examining him or limit his queries to the perform multiple, as stated earlier.

If, but at the other hand, the defendant's testimony is untrue, the cross-entire examination's energy should be directed at his reliability, and the reality may also be proven by other testimony.[67] **6.5. Opportunity of cross-examination must be given.**

The cross-examination is as essential as examination if chief for extracting from a witness material which is to constitute evidence.

6.6 Suggestion are not evidence.

Under cross-examination, the witnesses may be given suggestions, but these recommendations are not proof.

6.7 Importance of evidence when the witness not cross-examined on particular point.

It is well established that any aspect of a defendant's testimony which is not challenged in cross-examination is believed to be true and accurate. On

that point, the opposing team was brought to a halt to question the veracity of the assertion. 75 With a new judgement, however, this provision is limited to civil cases exclusively.

6.8 Right of cross-examination when several accused in one case.

In law, each defendant has the right to cross-examine key witnesses about the evidence presented against him, and the like cross-examination does not have to be restricted to what he said in his questioning in chief. Although Articles 132 and 133 of the QSO, 1984 do not expressly mention a second round of cross-examination, there is nothing in these Paragraphs, and everywhere else in the Order, 1984, that prevents the defendant from using his right to a second round anyway cross-examination

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[67] The law of Cross-examination by Masud-Ul-Hassan Page 90

[75] 1997 MLD 2013,1191 MLD 01. [76] AIR 1961 SC 175.

right of cross-examination anew, if and when the examination observer makes a additional declaration of truths harmful to him.[76]

6.9. Choosing the witnesses.

In a forensic contest, whereon of the parties engaged is necessarily completed to be humiliated by defeat, it is safe to say that there will be few stones left unturned in the search for everything which may aid in winning a victory. After the law has been carefully briefed, an abstract of the testimony should be made. The advocate should examine person each witness he intends to put upon the stand, separately from the other witness, and take down in writing the substance of what he says. He should caution the witnesses as to their demeanor in Court while testifying, especially those who are inclined to be different, alert, forward, or quick-tempered. The best witnesses should be chosen. That is the most intelligent and honest witnesses should be selected where the testimony of other witnesses, if introduced would be merely cumulative often the testimony or one dishonest or foolish witness. Called unnecessary witness will destroy the effect of the testimony of all other witnesses called on the same side. Too much stress cannot be laid upon this suggestion, avoid by all means possible, the necessity of calling a witness of bad character for greater damage may be done to the side for which he is called than can be remedied by many witnesses of good character.

6.10 Cross-examination of witness called by court:

A witness called and examined by the Court on it's own initiative under section 540 Cr.P.C. is a Court witness. He may be cross examined by both sides freely; the court cannot restrict the cross-examination of such witnesses by either party to the subject on which it had examined them, but a complainant who is recalled at his own instance cannot claim to cross examine himself.[68]

6.11 Principles of testimonial faith:

In the following pages the principles of testimonial faith are given. These include basic rules of faith in human testimony and principles by which such evidence is assessed truthful or unreliable. The assessment of testimony

is conducted by varying standards in judicial inquiries which are knows as standards of proof. With the variation of the standers of proof, variations are made in standards of assessment. Thus the whole range of testimonial faith is standardized with the common saying that the ultimate result of all factual inquiries carried on judicially invariably depend upon only such standards as are in consonance with truth and justice in the last analysis.

The fundamental rules of faith are invariably to be kept in mind by every cross-examiner and all supplementary rules of faith are subordinate to them. They will ever serve the need of tests for rules of faith.

[68] The law of Cross-examination by Masud-Ul-Hassan Page 91.

6.11.1 Qualities of a cross-examiner when dealing with oral evidence:

Impeachment is so common in civil courts that it's a sad statement on man honesty. Despite the swearing, it is likely that more lies are told in court than anyplace else. This deviation from the truth might range from mild embellishment to outright dishonesty. Much of this false testimony stems from human behaviour under normal stress, and it is not a true joy of truth-speaking in generally. Many individuals of the precious human race risk their lives to protect a friend, or to assist a friend in what they believe to be a just purpose, or out of compassion for a friend in distress family are inclined to violate the truth in a Courts of law as they will not do elsewhere. There are many persons who are not criminals, some of them women, who if asked whether it is not the duty of one to help a friend by testifying falsely, will promptly answer by their acts that it certainly is. Like cheating corporations, this is a performance not covered by all codes of ethics.

6.11.2 Cautions against perjury:

Two dangers from perjury overwhelmed the advocate's path: perjury by those against him, and perjury by his own witness. Opposing testimony may not be so damaging as stupid testimony by one's own witnesses that is shown to be untrue. It is often a most unfortunate act of friendship to commit unskillful perjury for a friend. The cross-examination in the practice of law is that of a lawyer's own witnesses before trial in the privacy of his own office.

6.11.3 Evidencing features of untruth:

Students of the subject know that one of the inherent evidences of lack of truth in a narrative is a wealth of detail regarding unimportant matters, and the careful advocate applies this, to test the testimony of every witness, favorable as well as adverse. One who remembers too much is immediately suspected. A witness should, of course, know the main facts, but when, for example, testimony is given regarding the execution of a document dated many years before, and it is related just what was said, who spoke first, where each party sat, how long the interview lasted, what was said before and after the writing, and who last, it is obvious that the witness is reporting from imagination, is confusing memory with inference, or is committing absolute perjury. In an important patent litigation a witness claimed to remember just what she ate at a restaurant twenty years before where it was stated an important document was signed and dated. The careful advocate severely applies the recollection test to the testimony of his own witnesses before

they get into Court and endeavors to sift out the improbabilities. An adverse witness who presumes to possess this faculty of "total recall" is effectively cross-examined until everyone is aware of the fact that the story is not true. Another common inherent evidence of lack of truth in testimony is too close harmony in detail between the stories of two or more witnesses regarding the same event. If they pretend to remember exactly the same things in detail, in exactly the same order of occurrence and of importance it is certain that one of the witnesses is furnishing the details which all the others have adopted, or that they all are lying.

In the scientific world one of the evidences of lack of agreement in minute measuring is a slight difference in results by two operators, due to the uncontrollable personal equation of each, and the same is true of the report of two observes who are called upon to describe in detail what they have seen.

Unskillful advocacy sometimes drill witnesses until testimony might almost be recited in concert and apparently without understanding that its credibility is thus impaired. In the process of sifting testimony the discreet discuss their testimony with each other.

6.12 GENERAL HINTS ON CROSS EXAMINATION.

1. Circumvent consolidation your enemy's case by provoking responses that were absent in

inspection in chief or which could not be requested in inspection in chief.

2. When a reluctant witness is drawn as near to the opinion as there is any confidence of existence haggard or ambitious, it is always hazardous to effort to impulse him additional.[69]

3. If a observer has a robust foundation, you must principal him on pending his foundation become obvious and overwhelming.

4. A robust attention deteriorates the said on which it dishonesties; it will be good to provoke this at the initial occasion and show initial in the cross examination.

5. Not ever ask a inquiry the response to which may be opposing to your customer.

6. If you are eager of receiving an response to a specific inquiry, do not put it. The likelihood is that the observer will know your trouble, and circumvent giving you precisely what, you wish and unless your avoid him, he will evade you inquiry.

7. Avoid placing a question which may make an inaugural for a deluge of queries of your adversary.

8. Do not irritated inspect for clarifications except the clarification is essential for your situation.

9. Do not put the similar query upon some significant piece of proof to every observer. If you have got the first inquiry reversed by the additional, let the substance respite, the next observer may make a deduction, and validate the main, which will substantially deteriorate the result of the illogicality. By cautiously following the like you may get all the observers to reverse one additional.

10. Whenever you have once justly wedged a observer, do not expense the benefit by showing him too blatantly. You need not give him a second run for the determination of successful over the same crushed over.

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[69] The law of Cross Examination by Masud-Ul-Hassan Khan 2005.

11. Manner a plays great part in advocacy. A inquiry in one tone will encourage an response while in additional it will not. An importance upon a specific word may harvest a completely dissimilar form from that which would cause it laid upon extra.

12. What is named a thoughtful cross inspection when functional to a honest observer, only makes the fact positions out more visibly, and unless advice is able to reach, in his own attention, at a acceptable view, it is far healthier to ask nonentity than to splash on with the chance of receiving out somewhat by a troop of queries.

13. If a observer determined to obligate a lying, it is infrequently valuable to media him upon the noticeable opinions of the circumstance, with which he perhaps has made himself methodically familiar, but to pursue for conditions for which he would not be probable to formulate himself.[70]

CHAPTER NO: 07.
MODE OF DEALING WITH DIFFERENT KIND OF WITNESSES

In this chapter an effort has been made to illustrate the basic tactics and cautions while dealing with different types of the witnesses appearing in the courts of law.

7.1 LYING WITNESSES:

One of the most common purposes of cross-examination is to expose lies and find out the truth. However, engaging with knowledgeable eyewitnesses who have come to endorse a major party viewpoint through willful deception is more challenging than it seems. The cross examiner first must determine whether the witnesses wants to perjure themselves. His behaviour should be closely observed, and his method of providing testimony should be thoroughly scrutinised. It's up to you to figure out what part of his statement is untrue. A somewhat false accusation is more hard to deal with than a completely false eyewitness. Refrain from testifying

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[70] Art of Cross Examination by Emmanuel Zaffar.

If the victim feels that you are doubting his authenticity, he is intended to be put on his guard and careful in his response.

"Asking him to repeat his storey is typically useful after your first question," Wellman explains. He usually repeats it virtually word for word. Of course, it's feasible (albeit unlikely) that he did it but is still speaking the truth. Try jumping him to the center of his storey, then to the starting, and from there to the end. He will certainly submit to this strategy if he is talking by repeating instead of remembering. He has no facts to correlate the words of his storey with; he can only recall it in its entirety, and not in groups. Draw his attention to information that aren't related to the main topic he's telling. He'll be completely unprepared for such new questions and will have to rely on his creativity to respond. Redirect his attention to new sections of his main storey, and then abruptly, when his thinking is just on another topic, revert to the factors to which you had initially drawn his focus, and repeat him the same questions anew. He'll use his creativity once more, and he'll most likely offer you a different response than the first, and you'll have him caught in the net. He can't invest replies as quickly as you can create questions while also remembering them. He will not maintain his responses all constant with others, despite his earlier replies being correct. He'll quickly get perplexed, and he'll be at your disposal from then on. Allow him to leave as soon as you've established that he's not wrong but cheating.[71]

7.1.1 EVERY WITNESS IS A MIXED PERSONALITY.

The second important point to remember in testimony study is the fact that ordinarily a witness is a mixed personality, that is a combination of psychological attributes and the cross-examiner should mould the style keeping in view the combined operation of these attributes.

The illustration quoted shows the combination for stupidity, perversity and cleverness. The other factor of the witness is his economic condition in the main.

7.2 FEMALE WITNESS.

As the chief motive for exaggeration bounce from an instinctive love of the splendid, and as this love, like all others, is mot remarkable in the softer sex, a prudent man will, in general, do well to weight with some caution the testimony of female witness. This is the more necessary, in consequence of the extensive and dangerous field of falsehood which is opened up by mere

exaggeration; for, as truth is made the groundwork of the picture and fiction gives but light and shade, it often requires much patience and depth than most men possess, or are willing to exercise, to distinguish, fact from fancy, and to renovate the narrative in his proper colors. In short, the intermixture of truth disarms the suspicion of the candid and sanctions the ready belief of the male violent. Having point out this mind-set to exaggerate as a feminine weakness, it is only just to add, that in other respects, the testimony of women is at least deserving of equal credit to that of men. In fact, they are, in general, closer observers, than men, next, their memories, being less loaded with matters of business, are usually more persistent; and lastly, they often possess unrivalled powers of simple and unaffected narration. In Pakistan female witnesses generally present peculiar difficulties, on account of their habits of seclusion and observance of strict prude.

Considerable caution should be made in their case, and the judge and the lawyer must first make sure that they have understood the questions thoroughly. As they do not appear earlier the community, their intelligence of disgrace and discomfiture stand in the way of giving clear responses.

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[71] 80 Wellman 52-53.

7.3 HOSTILE WITNESS.

A violent victim is someone who, by the way he lends credence, demonstrates that he's just not interested in speaking the truth to the Grand jury.

Article 150 relates with the possibility of a witnesses becoming hostile. The Court might be, at its judgment, allow the person calling a person to ask him any questions that the other side might ask during cross-examination. Article 151 QSO, 1984 enumerates the ways in which a defendant's credibility might be questioned, and articles 152 to 160 QSO, 1984 cover a variety of other topics.

7.4 CHILD WITNESS:

The cross-examination of a kid eyewitness is a sensitive and tough undertaking that necessitates the auditor's competence and creativity. Throughout cross-examination, the judges will almost always sympathise with the child; hence, the value of a meaningful cross-examination could be overstated.

7.4.1 To cross or not to cross

Cross-examination is indeed perilous, but it's especially so when the testimony is a youngster. As grownups, judges are cautious of children, and one incorrect inquiry, and too many questions, can completely derail your cause. If the court believes the counsel is exploiting the youngster, he will most likely react harshly.

The first consideration is that the child's definitive proof has harmed your case in any way. When a kid appoints the opposing party as supervising custodian, the child's testimony is tainted, and cross-examination is likely. In other instances, the kid's evidence may not be harmful, and lawyers may be able to merely grin and say "no q" just after direct questioning. In the vast majority of situations, must first listen to the instructions, define his or her cross-examination goals, and then determine how to achieve specific them.

7.4.2 Consider your objective

To begin, one should decide what he or she hopes to accomplish during cross-examination. The below are some options in particular:

(a) To bring on record favorable testimony to the theory of the crossexaminer's case.

(b) To show that the child witness is lying.

(c) To show that the child witness was tutored.

(d) To show that the child witness' testimony is improbable.

(e) To supplement the witness's direct testimony.

(f) To accuse with previous and reliable declarations.

(g) To throw doubt on someone's credibility.

The purpose of cross-examination differs from one youngster to the next. The following are some specific aims that occur in certain kid cross-examinations:

(a) Counsel may bind the kid to a particular interpretation of the truth such that the kid's credibility can be called into question by past contradictory statements and different angle.

(b) Discrepancies may suggest that the kid is puzzled, confused, extremely impressionable, or deficient in firsthand understanding of the situation, or that the testimony is incorrect or purposefully fabricated.

(c) The examiner may believe the youngster was coached and also that the direct evidence was memorised.

Whichever the goals are, they must be clearly defined and a strategy for achieving them must be devised well before the kid is subjected to cross-examination.

7.4.3 Suggestibility:

Much has been published about how young children will occasionally lie to satisfy or defend others, but does not lie about sex assault. By the age of 12, a student is able of logical reasoning and understands the benefits and drawbacks of distorting the facts in court. At a young age, the distinction among adults and children tends to blur, and some 12-year-olds may be as cognitively competent as the typical adult eyewitness. Cross-examination will not persuade the judge that a juvenile witness is dishonest. This is likely to irritate and/or offend the court. Instead, prepare to have a professional expert

speak on the credibility issues with a child's evidence as well as the behavioral factors that may alter a student's ability or capacity to speak the public in changing circumstances.

The cross-pre-trial examiner's inquiry may reveal extremely suggestive interviews with the youngster, which may have altered or even destroyed the facts in the some situations. In these circumstances, the cross-examiner should ask the youngster how many conversations he or she has had and what happened each time. The bridge may then bring those people as witnesses, evidencing the inappropriate use of provocative questions.

7.4.4 Put the witness at ease

After cross questioning, an eyewitness has the highest level of credibility. As a result, after developing knowledge, the initial inquiries will be those that generate positive data for your perspective of the issue. Cross-examination may come to an end at this stage in some circumstances.

When the new beneficial information emerge, weaknesses of the research may not be required. In this case, the cross-examiner is able to avoid the possibility of a negative response to a more traditional cross-examination.

There is no one-size-fits-all approach to creating empathy with a victim. In principle, the attorney should approach the young person with dignity and make him feel at ease during the interrogation. Some lawyers start their cross -examination with a grin and a series of harmless inquiries to reassure the kid. Other times, starting with a child and stating, "I realise you've been through a lot, and this isn't simple for you," is acceptable. I'll discuss tomorrow, and then you can go home after we're done." The child may feel more at ease and be more responsive to your questions if you lay out the strategy in front of them. Start with the positive facts and express approbation and delight with the responses, highlighting the child's possibility of agreeing to future inquiries. Lawyer may then proceed on to queries aimed to elicit positive information once the youngster is at ease. It's critical that the supporter maintains the same warm, upbeat way of speaking and gives the same nods of appreciation in response to positive responses. When this strategy is used successfully, the youngster may consent to a narrative or fact that is advantageous to the cross-examiner or contradicts the direct evidence.

This cross-examination strategy can also be utilised to get evidence on

tutoring. The attorney may ask the kid a series of questions regarding the people with whom he or she has addressed the situation.

Make sure to obtain evidence that the opposition attorney "assisted" them in preparing for their court appearance.

This method can also be used to persuade a child that a different interpretation of the truth is feasible. Counsel, for instance, can begin asking a question like: "Perhaps that is how you felt it occurred, but it could have occurred a bit differently, could it not?" after developing a favourable relationship and addressing a number of relevant inquiries.

When counsel finds that unlawful suggestions were made prior to trial, this becomes conceivable to criticize the opposing without harming a child. After all, it is not the responsibility of the kid that people abused their power to change the kid's memory of the event. When counsel can show that an adult inappropriately implanted notions in the mind of a youngster, the judge is less likely to be sympathetic to the parent, and attorney has more room for creative cross-examination. The cross-examiner persuades the court that the youngster and the auditor's client were tortured by criticising the interrogator.

7.4.5 Inconsistent prior behavior:

When a youngster testifies about behaviour that is out of character for him or her, the cross-examiner can emphasise on that discrepancy. Adults are more likely to try to explain away contradictions, whereas kids are more direct. The cross-examiner may now be able to have the youngster to admit that Dad was a boy scout, despite the fact that he said that he was never present on direct.

7.4.6 Tutored testimony:

As previously stated, the training of a kid testimony is required and appropriate. However, the kid defendant's advocate may cross the line from preparations to coaching, and it is the cross-responsibility auditor's to reply.

Training is a common occurrence in sex abuse charges, but it can also happen in other situations. While law enforcement personnel make every effort to prevent inappropriate influence, the passion for the game, which fuels the adversarial system, can sometimes drive otherwise moral people to over the line. By asking a youngster to recount each encounter that has occurred, cross-examiners can increase the likelihood of coaching. This will show the judge that the youngster received "assistance" from more than a adult in preparing his or her statement.

Teaching can be unconverted by asking children to tell us what happened in detail. The merge should keep an eye on the child to determine if he or she seeks support or explanations from an adult. If a grownup is helping with motions or eye gaze, the cross-examiner should alert the tribunal.

Counsel may ask, "Do you need Mr. Smith's help to respond to my comment; you appear to be looking at him a lot," even though the adult is not indicating to the youngster.

7.4.7 Memorized testimony:

The cross-examiner may receive the sense that the child's direct evidence is memorised rather than spontaneous at times. A common cross-examination approach for responding with memorised evidence is as follows.

While it's rarely typical, an eyewitness on cross questioning may give hints that his statement was memorised, at least in key portions, and that it's so similar in certain ways to some other witness' evidence that it shows they gathered together again and prepared similar tales. The clues could be unusual phrases used by the witness. It's possible that the eyewitness has attested to facts that would ordinarily be forgotten, or that information have been concealed. Normally, this would be returned. The meticulousness of the statement or some other unique finding could be a clue. The method is just the same regardless of the clue. These respondents may be urged to break one of the most basic norms of cross-examination, which is that the direct questioning should never be repeated. Eyewitness who have memorised parts of their story, especially children who've been schooled, will almost always repeat it precisely, and use the same words, ideas, and specifics like before. These eyewitnesses's flexibility to recall facts that they would otherwise forget. They will occasionally employ vocabulary that is unfamiliar to them. The judge will generally notice startling similarities between the two stories, or a strange memory of the eyewitnesses, or an unusual wording. Once this has been established, you should investigate as to who the witness spoke with prior to testifying in order to discover the source of the recollection.72

Demonstrating that the child memorised all or parts of his or her evidence raises the potential that the child has no current remembrance of the events or that the child was unfairly tutored.

[72] T. Mauet. Fundamentals of Trial Techniques Section 6.8, at 285 86 (1980).

7.4.8 Trickery:

Many children are trained to be wary of the cross-examiner, who may try to "trick" children with misleading questioning. In these situations, the child will respond to questions in the reverse way of what the lawyer expects to hear. The cross-examiner can take full advantage of the circumstance by posing questions that are intended to elicit a positive response from the witness.

The youngster believes the support wants one answer, when in fact the supporter desires the exact opposite.

7.4.9 Inconsistences:

Allowing the youngster to consent to asking inquiries that introduce direct changes to the contents of the storey can help you draw conflicting statements. When counsel affects the chronology of activities, the chances of success improve. When the topics are offered out of sequence, a youngster who has been coached may not be able to memorize the proper answers. Holding more than one line of enquiry running simultaneously will throw the child off, raising the chances of inconsistency.

7.5 UNINTELLIGENT WITNESS.

It sometimes happens that a person, although he has understanding enough to make him competent to be a witness, yet is of so weak a mind, that for this reason it is necessary to receive his evident with caution.

Such a one may not be likely of his own accord artfully, maliciously, or otherwise designedly, to forswear himself; yet it is plain he may have failed to perceive aright what he thinks he saw or heard; or his memory, not very tenacious, may lead him into error, he is probably, too, more open to basis or prejudice, than persons of strong mind are and he is certainly a fit and likely object for designing people to tamper with influence and mislead.

7.6 THE STUPID WITNESS.

There are numerous types of foolish witnesses, but one in especially stands out: the pleasant and pleasant individual who accepts with everyone out of dread of disagreement. You can mould his evidence to any shape you like. You easily alter the appearance and tendency of his evidence.

(1) The stupid witness cannot understand your questions or he answers them so imperfectly that he had better left them unanswered. With such ones the only resource is patience and good temper.

(2) A method of eliciting facts from a stupid witness. With unintelligent witnesses, it is often better to allow them to narrate the fact in their own way it may be peculiarities of a witness not like to be stopped in a story he is telling.

7.7 CONFUSED WITNESS.

Rambling and confused statements are unsatisfactory in probative force. Incoherence may possibly arise from poverty of language of the witness or his imperfect knowledge of English, or because the examination is conducted under an erroneous assumption of facts.

7.7.1 SOURCE OF CONFUSION.

A perfectly honest witness ordinary intelligent sometimes becomes confused and puzzled by the surroundings of the trial, and despite his self contradictions, the court, by patient effort, may be able to derive a net benefit from him testimony. An aged person's testimony would not be described by reasons of some contradictions in the course of an extremely long and tiresome cross-examination. Even the most competent eyewitnesses can make the wrong decision about a truth and then realise and fix it; and therefore a mistake does not always and always imply an imputation that affects their credibility, sanctioning, or contempt of their evidence.

7.8 TIMID AND NERVOUS WITNESSES.

1. Harris's suggestions for dealing with such witnesses are:- His responses either do not occur at all, or arrive two or four at a time, and they frequently occur in close proximity; a "eyes" and a "no" simultaneously, with "I don't know" close thereafter. This eyewitness, like the lying eyewitness and the deceitful witness, frequently responds with "I suppose so" or "I may not agree so." You must treat this strange example of humankind with care. He should be congratulated. It's pointless to bray him in a brick; you should treat such a testimony as tenderly like you would a shying horse.

7.9 EXPERT WITNESSES.

In speaking, the counter examination should avoid dealing with an expert in his or her own field of inquiry. Long cross-examinations based on the professional's concept are also harmful and should be avoided at all costs. Amy courts take on a clinical or writing specialist on his own turf to deal with surgery, definitive diagnosis, or the nuances of calligraphy. This type of cross-questioning solves problems in some rare

cases (most notably with less trained physicians). Most of the time, although, it's only a chance for the physician to expand on his previous evidence and clarify what might have been missed elsewhere The jury may have misinterpreted or missed anything. A doctor must only be inter with his own specialisation if the case's significance warrants such close examination by lawyer of the specific subject under discussion as to justify research; but only when the lawyer's investigations of the health doctors, which he might have with him in grand jury. Persuades him that he might reveal the doctor's incorrect conclusions not just to oneself, but also to a court that will struggle to understand the theoretical physiological ideas that the medical establishment is conflicted on.

"On the other hand, some thoughtful and reasonable questioning, aimed at eliciting independent facts and arguments from the academic's skill and knowledge, that will happen to favor the activist's own side of the case concept, frequently yield positive outcomes. In other terms, the cross examiner's technique should be oriented toward extracting scientific truths from the professional's information that will aid his own case, so tending to demolish the weight of the authoritative source versus him."

"A further recommendation that really should be kept in mind is that no question has to be asked of a specialist that this is in any way so broad as to allow the specialist to expound off of his own views, and thus manage him an incentive in his response to give his justification, in his own words, for his viewpoint, which prosecutor trying to call him as a specialist may not have even completely helped bring out in his investigation.[73]

[73] (Wellman pp 74-75). [83]
(Wellman p 104).

"When cross-examination has failing to sway an able and genuine professional's evidence, he should be weary of seeking to undermine him by uttering references to his overall excellence, because there is always the risk of providing the expert a strong opportunity for rebuttal."[83]

7.9.1 The permissible scope of cross-examination of expert medical witnesses:

In medical negligence lawsuits, the court's evaluation of professional medical evidence may ultimately determine the judgment and the sum of punitive damages.

Since, unlike with a fact witnesses, a professional's evidence consists entirely of opinions and findings, an expert's evidence is difficult to refute.

By showing the natural bias of the lay witness, whether it be by relationship, friendship, employment or other factor, the cross-examiner brings into perspective for the court the tendency of the witness. In contrast, a witness appearing as a physician with strong professional qualifications has no readily discernable predisposition. The physician is a person who, it is understood, has been specially trained in clinical objectivity and scientific accuracy. The physician has been shoaled in the ethics of the Hippocratic oath and its commitment to the highest principles of idealism and virtue. The physician is seen, by virtue of his calling, as impartial. A physician is also perceived as a busy, important, intelligent individual The surgeon is alluded to as a "specialist" by all sides. By the way, this "specialist" is the only type of testimony that the government has officially authorised to "penetrate" the court's ruling by expressing an opinion on a final question to be determined by the tübingen of facts.

7.9.2 Effective cross-examination is essential to win the battle of medical experts.

Medical explanation must be supported by scientific or scientific evidence "displaying the correlation and causation and connection between both the complaint of illness and the stated reason" in a personal injury claim. The ultimate problems of medial causality and the amount of the plaintiff's losses are usually addressed by an actual legal testimony.

Because it involves an eventual matter to be determined by the tübingen of facts, the evidence about such an independent expert in the shape of a judgment or conclusion, which is otherwise acceptable, is not problematic.

The purpose of a good cross-examination is to erode the professional's reputation and undercut his or her views. As a rule of thumb, the trial judge

has authority over the degree and breadth of cross-examination of an independent expert, and the trials court's decision will not be overturned unless there is a clear indication of abuse of authority. "Wide flexibility is permitted to examine a professional's credentials, trustworthiness, ability or expertise, as well as the value and reliability of the specialist." His opinion is correct. Essentially, the court has a right to know facts that could influence the witness's reliability, the importance he should give his evidence, and any relationships he may have had with interested parties in the current case result.

While a trial judge has considerable flexibility in assessing the admission of drugs testimony and the type and extent of cross-examination, this authority is limited.

On a valid topic, the trial judge has no authority to prevent any cross-examination at all. Because it will be based on cross-examination, a trial judge does not have the authority to "exclude significant and significant" concrete proof, Furthermore, evidence obtained during cross-examination shall not be dismissed as communal when it pertains to the core of the dispute or is relevant to the fundamental issue, the outcome of which is determined by the strength of the evidence presented by the sides. Similarly, the judgment judge's authority in eyewitness accusation is restricted." At this point, we'll go through five key areas that the cross-examiner should look into in order to undermine the medical professional's validity and perspective. Partiality and monetary interest, earlier conduct, prior conflicting assertions, theoretical issues, and erudite discourses are all examples of these.

7.9.2.1 Bias and Pecuniary interest.

On interrogation, it is customary to prove that a specialist is biassed in favour of one party, predisposed against another, and that the witnesses has a monetary stake. Furthermore, a defendant's monetary incentive, partiality, or partiality is not ancillary, and it could be shown at any time, according to the restrictions imposed by the judge in the case in his good judgment.

The trial court will determine the scope of the investigation into the specifics of the economic interest, bias, or prejudice.

Courts may also enable a specialist to be cross-examined on the payment he or she got while appearing in the case at hand. When bridge concerns

payment from earlier instances, courts normally do not accept it unless it has a meaningful bearing on the defendant's interest in the matter in dispute. The trial judge may, nevertheless, authorise an investigation into the health professional's credentials to appear as an independent expert depending on his putative identify as a certified testifier under extraordinary circumstances. The court in Clark decided, in part, as continues to follow: When a party has made a factual claim by affidavits, It is not improper for the judge to hold a hearing on the question of medical impartiality if there is evidence of a lack of impartiality on the side of the property examination physicians. Discovery relevant to the inquiry may, of necessity, be granted.[84]

The sum of funds obtained by the specialist for appearing as an independent auditor was discovered in Clarke. The Court also found that perhaps the court of appeals had authority to allow evidence at the extraordinary hearing about the amount of monthly compensation earned as an independent expert.

Cross-examination of the professional's implicit weaknesses is permitted in additional to financial motivation. In Lambert V. Wells85, for example, cross-examination of the plaintiff's medical professional over a track record of working with "appellants" advocates was deemed allowed as affecting the professional's impartiality.

7.9.2.2 Prior Conduct

Just the judge in the case has the authority to inquire into the experts defendant's previous conduct. Cross-examination is used to demonstrate that the specialist is a competent witness.

When enquiring about particular earlier incidents of evidence, it is usually permissible. In contrast, if a specialist constantly appears for one side, tribunals usually accept questions. The court concluded in Computed tomography v. Miskle86 that it was permissible for the district court to allow mailings being sent by a physician soliciting medical negligence employment into record.

The court determined that the evidence presented was pertinent to the defendant's financial interest, that can always be demonstrated. The government argued that a jury trial has the right to know anything that could influence a witness's reliability and the importance to be given to their

testimony.

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84 Lichtor, 845 S.W. 2d at 63,

85 13 S.W.2d 547 (Mo. 1928)

86 655 S.W.2d at 844

In the Miskle case, the chiropractic had sent letters to "2,081 barristers" soliciting business.

Chiropractic care should be explored in vehicle accident and employment damage cases, according to the former, as well as the lawyer must call to investigate "how Pharmacological intervention could successfully cure concerns surrounding comment care." Damage to the soft tissues and "other"

"Collision-related issues." According to the court, the chiropractor's letter indicated that he was prepared to appear as an independent expert in personal injury claims.

7.9.2.3 Prior Inconsistent Statements

For the purposes of indictment, cross–examination based on the expert's earlier conflicting remarks is appropriate. Furthermore, in a civil trial, a previous conflicting testimony of a person who is accessible for cross-examination can be presented as substantiated evidence.

While a "district court has wide flexibility in making the constitutionality of credible evidence as well as the magnitude and context of cross-examination, such as the removal from office of a testimony through the use of a leading up inaccurate declaration," a "trial judge has wide influence in deciding the constitutionality of substantial proof and in exploring the scope and context of cross-examination, such as the recusal of a witness by the use of a leading up unreliable declaration." There are some limitations to this.

prudence. Likewise, the trial judge's "authority on the indictment of a person" is restricted. The district court does not have the authority to bar any cross-examination on a legitimate matter. When a witness's earlier contradictory testimony pertains to a key issue at the time, the trial judge cannot prevent the witness from being impeached by relying on it.

The plaintiff in Reno v. Wakeman claimed the trial court made reversible mistake by declining to let her cross-examine a defending physician concerning his evidence. The physician's testimony, according to the plaintiff, contradicted his court testimony. The defending doctor acknowledged throughout his examination that the start investing by the treatment team worsened the plaintiff's condition. During the trial, though, the defendant physician claimed that the plaintiff's disability was worse by the following doctor's inaction.

The court decided that cross-examination of the physician's past testimony statement should also have been permitted both as the proof of the dispute and as proof of the physician's prior deposed statements evidence for conviction The court ruled that the preceding contradictory comment's denial was incorrect since it got to the heart of the matter in the disagreement regarding causality. Leaving aside the previous inconsistency,

It was also a mistake so because comment put the clinical professional's accuracy and reliability to the strain.

External rewards evidence showing earlier conflicting statements on ancillary topics, from the other hand, may be prohibited by the trial court in its discretion. As a result, it is frequently stated that attorney is bound by the defendant's reply on peripheral issues.

The court concluded in Lineberry v. Shull that the accused's counsel was legally banned from representing him impugning the integrity of the plaintiff's IME physician with an apparently prior conflicting declaration suggesting the expert "performed" three to four times more evaluations for prisoners than petitioners." On inter, the doctor was asked to admit that he solely did physical exams for criminals. In answer to cross-examination, the psychiatrist claimed he couldn't remember and then didn't keep a record. The

court ruled that the prior inconsistency statement could not be used, as shown in:

The purportedly prior contradictory argument is factually ancillary in this case. The plaintiff was attempting to undermine the physician's credence by demonstrating that he had gave testimony 3 years ago that he performed three times as many evaluations for accused persons as for plaintiffs, but that he rejected doing so in his witness statements at the this court hearing and claimed that he did not maintain record. The numbers of tests performed by the doctor for accused 3 years ago was not a factor in the study.

Lastly, the court determined that prohibiting accused's lawyers from questioning "the expert if he always stated in findings for plaintiffs that he discovered no proof of the accused of illness" would not be an error. The court determined that this would be a peripheral issue, and that the supreme court did not err by omitting extrinsic evidence including some of the doctor's prior reports.

7.9.2.4 Hypothetical Questions:

In the cross-examination of medical professionals, hypothetical inquiries can be a very effective tactic. The bridge might test the defendant's expertise and the worth and correctness of their judgment by presenting a set of data and allowing the specialist to speculate on the various outcomes.

The thought experiment does not have to provide all specific information in proof, but it should fairly envision the material information that are substantially important to the respondent's theory of the matter and rightly portray it. As long as the truths aren't contradictory to the proof but there is no risk of deceiving the judge, Most justices will let you address the theoretical question. Furthermore, if the cross-examiner is using rhetorical questions to evaluate the professional's skill and reliability, the experts may be cross-examined on solely theoretical and another unless.

In Stafford v. Lyon, the plaintiff alleged that the district court wrong by permitting defence lawyers to utilise a reasonable question to cross-examine a neurology neurosurgeon who excised a purported disc from the plaintiff's fifth and sixth vertebrae. The Court stated that the defendant commission's cross-examination "was challenging the plaintiff's understanding." medical expert on the origin of disc ruptures, as well as the worth and correctness of

his view

in relation to the injury suffered by the claimant." The Court went on to say that the trial court had broad discretion in permitting such questions because "great freedom is permitted when cross-examining an expert testimony to evaluate his credentials, reliability, ability or expertise, and the worth and validity of his opinon." Besides from prospective cross-examination inquiries meant just to evaluate the professional's ability and reliability, hypothetically cross-examination inquiries may not be too wide.

The professional's judgment must be based on all of the necessary data, which must be included in the query.

7.9.2.5 Learned Treatises

The employment of erudite discourses is yet another powerful strategy in the cross-examination of medical professionals. Discourses are sometimes used for indictment or to elicit evidence from a qualified doctor who disagrees with both the treatise's premises. The treatise's text does not stand alone as evidence of the argument it promotes, and thus should only be used to contradict a person. Nevertheless, if the eyewitness agreed with the texts, his evidence constitutes evidence of that thesis on its own.

Before employing a scholarly compendium to convict a specialist, the cross-examiner must establish that the literature is legitimate. To the official, the content of the handbook must have some proof of widespread understanding and certification inside the professional. This can all be proven through the professional's own admission, evidence from other "professionals in the field," or "regulatory notification."

Gridley v. Johnson decided that it is not required to determine if the witnesses agreed with the writer prior asking a question on cross-examination based on a scholarly treatise. The following logic was presented.

We reject the idea that the cross-examined arbitrator first must acknowledge that perhaps the book is conventional or trustworthy. Such cross-examination would have the actual effect of giving the witnesses entire control over the cross-examination. He simply needs to state that he is unfamiliar with the book or its writer to avoid it from being used to

assess his credentials, regardless of how prominent or well-known the author is. The less publications and authority the witnesses is aware of or willing to admit, as well as his awareness of what was being published in the area, the more challenging it would be to cross-examine him somewhere along line. It provides him complete control over the crossexamination.

As previously stated, the testimony does not have to agree that the work is conventional or acceptable, but if the eyewitness does, this is sufficient justification to utilise the text in cross-examination. The side wishing to utilise the books in cross-examination can also demonstrate his or her footing by conducting a competent over-the-counter investigation of his or her own experts from outside the courtroom, creating the groundwork for their use in cross-examination at the appropriate moment.

The mere fact that a witness is acquainted with a publication or periodical does not make it authoritative. Where no prior authority has opined on the legitimacy of a subsequent, The cross-examiner may not utilise the text to indict the expert if the specialist does not demonstrate that he is aware of it because there is no other indication of its acceptability in the professional to merit action in respect.

All of the tools listed above can be utilised in cross-examination. A well-crafted cross-examination can significantly damage a qualified healthcare expert' credibility and even determine the case's result.

7.10 FOREIGN WITNESSES:

You can't tell a person's mental state, intention, candour, or psychological response just by listening to what people say or how they say it. 74 When working with a foreigner testimony, this is particularly true. In such circumstances, the practitioner must consider the client's ethnic heritage, socioeconomic status, gender, race, and nation of origin.

When preparation for cross-examination, solicitors often include delicacy in their questions in order to elicit a certain reaction. Therefore, Even if a person generally has an excellent grasp of the English language, such nuances can elicit a completely interesting reaction. Secretary Carter's visit to Poland, where he said, "I admire the Polish people," was an amusing example of this

blunder. This remark meant a lot to people of Polish origin. “I have a physical desire to Poles.” Except for those who might be turned on by Jimmie, the Polish audience did not appreciate such "cleverness."

The architecture of phrases in cross-examiners' local languages frequently differs from the sequence of words and expressions in a language other than english. This can contribute to the foreignspeaking witness misinterpreting the question actually intent, resulting in an incorrect answer from the eyewitness.

Some British nomenclature can be unwittingly inflammatory and provocative in other ways (especially among Japan, Chinese, Koreans, and Vietnamese) since a term may only be suitable for speaking to people of a lower social status, or puzzling because it is only suitable for old people, strong ranging from business officials, or royal family. For example, based on the circumstances, the same statement in Japanese can be structured in at least 12 different ways. set of the communal position and eternities of the individual talking and the being articulated to.

Hand movements, facial features, and body posture used by a foreign citizen can have a completely different meaning than they do in our civilization. In a Pakistani courthouse, this can distort a defendant's genuine manner and believability. As a result, it's critical to look into these details about the defendant before presenting him as an opposition testimony at trial. On a t trial, knowing ahead of time that the witnesses will not engage in conversation, looks to be irritable, or makes rude physical movements might be used. Similarly, a cross-body auditor's gestures can send the wrong message to an international witnesses and could be excessively inflammatory. The frequent movement of extending the middle fingers to prove a statement or describe an item is one illustration. This can irritate someone else from Italian society, especially from the south. Some other example is a Middle Eastern Arab's extreme unfavourable response if the bottoms of their shoes are exposed. There are a number of publications on the marketplace that detail the different contradictory meanings of gestures and body language

[74] "You Don't Understand" by Professor Deborah Tannen of Georgetown University.

Diverse civilizations have various nonverbal cues. If this is a crucial testimony for you, do your research on the regulations concerned.

The geographical space between the two people communicating with others varies widely between civilizations. Middle Eastern Arab males, for example, chat practically face to face and get upset if the distance among them expands. If the spacing is smaller than 12 feet, Americans feel uneasy. As a result, the way the distance between both the cross-examiner and the witnesses is used can cause challenges and, as a result, the environment of the answer.

Understanding these cultural distinctions, the attorney should use them to his or her advantage. cross-examination grounds Study literature that describe a language persons personal use of speech, gesture, and movement patterns in preparing for their cross-examination of an international testimony.

If the evidence is crucial to the case, consult with a competent, informed "specialist" from that country who is also proficient in your mother tongue or at least British to discuss your requirements as well as how to best address them at trial. If at all feasible, bring the "expert" into the courthouse to offer advise during in the accused's cross-examination. Convey to the court, if needed, that the professional's attendance is required for later evidence about the witnesses' demeanour, gestures, and such.

Furthermore, before a testimony or prosecution, it may be beneficial to speak with a foreign citizen on a relaxed, casual basis to assess how that man talks and movements while not being officially interrogated. Lastly, record the testimony of a key foreign witnesses so that both you and the experts can study her behaviors and movements in a formal context before the trial.

7.11 POLICE WITNESSES.

When it comes to police officers, constables, and others involved in the prevention and detection of crime, their evidence should be scrutinised with caution; because they're not trying to hide the truth, but also because their expert passion, fueled by a regular encounter with the ferocity and common thoughts of human behaviour in its most heinous form, almost always leads them to lie. The police, understandably, believe that “all men are guilty until proven innocent.” ; nevertheless, it is thought that has no legal backing in a court of law. 75 In Pakistan, where the police may be more corrupt than in

other nations, care is even more vital.

According to the Law Committee's findings, "the material that has been brought to our knowledge clearly shows that the police powers are frequently exploited for the purposes of blackmail and tyranny." Things haven't changed much since then, and the police's behaviour is periodically the target of harsh criticism and unfavourable decisions.

The following extracts from Harris Hinds on Advocacy 14th Ed. will prove helpful:

They are dangerous individuals. They are experienced eyewitnesses in a way that no other type of witnesses can claim to be. Their responses are, in generally, formulaic. Don't think you're going to wind him up on the route where his heart and have been for a long time. He'll see you approaching from a long way away and will almost certainly run out to meet you. Maybe you were born, he said in response to your enquiry

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[75] 88 (Try. S 57).

I just finished putting. But, as an exercise, try him to something a little off the beaten path. You see, he stares at you as if the sun is shining in his eyes. He can't help but notice what you're up to. And if you want to create anything of him, you must keep him with the sun in his eyes. Without implying that he has no respect for the integrity of an oath, I must emphasise that if he understands the gist of your query, the odds are stacked against you getting answers you need, or in the manner where you'd like them.

He considers it his responsibility to perplex you, and if you don't receive the answer you desire, it's most likely so because cop is just as naive and immature as you. To be effective with the cop, your question must be asked quickly. Although he has educated his mind for the witness stand, it has only been schooled in a very narrow passage; it travels as he does, quietly and meticulously along its own rhythm; it travels gradually and for its training, and is in no way capable of keeping up with yours, or should not be. When you don't want him to, don't let him trace the link from one inquiry and the next.[76]

ever ask a cop The highest character he can bestow on a reputable individual is that he "knows nothing against him," therefore it is risky to ask this class witnesses a "final" inquiry.[77]

In general, the police sergeant does not offend human behaviour. Many of his flaws arise from the fact that his junior judges, on the whole, believe he has to be shielded by an indelicate conviction in his veracity. As a result, he falls prey to the fallacy of trusting in his own invincibility.[78]

CHAPTER 08

CROSS-EXAMINATION TO THE "FALLACIES OF TESTIMONY"

8.1 Fallacy meaning:

"a deceptive, misleading, or false notion, belief, etc.:

This chapter will look at some of the aspects of human nature and understanding that work together to keep the facts about any particular issue hidden. investigation in which the eyewitnesses are truthful and unaware of any prejudice, partiality, or incentive for making false statements.

"In going into the sight of your Honor, I sense the same sensations as the Hindu when he bends below his hero," Rufus Choate once started one of his most enigmatic speeches before Chief Justice Shaw. I recognise that you are unattractive, but I think you are fantastic!'

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[76] Harris Hinds on Advocacy 14th Ed, (pp 104-105)

[77] p 106, ibid

[78] p. 107.

As I begin to address the following topic, I am aware of a similar sensation. I recognise the topic is dry, but I believe it is critical for all serious advocates to understand.

No one who has spent any time in our judicial proceedings can fail to be astounded by the regular display of presumably honest and bright males and females who stand on opposing sides of a case and lie under oath to what appear to be completely contradicting declarations of truth.

In what follows, I will attempt to approach this topic from a psychological perspective and, to the extent possible, identify some of the origins of these subconscious eyewitness errors. The question is most pertinent to what has come before it Because unless the lawyer has some understanding of the roots of the fallacies in evidence, it will be futile for him to try to expose them through cross-examination.

"Knowledge is merely the perception of one's brain, not the truth themselves, that might present itself to numerous minds in many various aspects," as it has been aptly stated. The subconscious sense perceptions of sight, hearing, or touch would have been the same to each and every human brain; nevertheless, once the mind is brought to awareness, the original experience takes on the colour of the individuals personal motive, previous experiences, and personality It is the mind that receives it. The sensation itself will still be the same. When an individual interprets awareness and turns it into a view about his own thinking, there is a difference.

When a man observes the exquisite coolness of a rushing stream on a hot day, he is actually contributing something of himself that he has acquired from previous experience to the sensory impression that his eye provides him.

Based on his own personal experiences, a separate person would get the feeling of halfhearted dullness instead of "sweet coolness." The mind acts on the sense material, which is then dressed up with the individual 's perceptions.

For example, Helmholtz defines distances sensing as an intuitive conclusion, a physically conducted act of judgement.

As a result, the perception of a feeling is a personal act, and various people naturally perceive the very same experience differently depending on their

prior experiences and cognitive qualities. This is a very fast, reflexive, and subconscious procedure. "In which other eyes see a nebulous or muddled mass, the painter sees intricacies; the biologist sees a creature where the usual eye merely sees a form." 15 An adult observes a vast array of things that have no significance for a child.

Likewise the same impression may be differently interpreted by the same individual at different times, due in part to variations in his state of attention at the moment, and in the degree of the mind's readiness to look at the impression in the required way. A shy man will more readily fall into the illusion of ghost-seeing than a cool-headed man, because he is less attentive to the actual impression of the moment.

Every mind is attentive to what it sees or hears, more or less, according to circumstances. It is in the region of obscure impressions that the imagination does not in its most dangerous work. Whenever the brain is either inactivated or totally involved by another subject of idea, the feeling may not be regarded, construed, or memorised, even if there is proof, deduced from the complainant's body language, that it has already been felt; for instance, an individual in an incomplete phase of rest may begin at a loud noise or look away from it. The impact of feeling on a complete absence of attention is as follows. It seems that this difference in attention intensity is partly responsible for various persons' contradicting perceptions of the same event or conversation. When we combine this variation in attention with the variation in subjective perception or colouring of the physical sense, we have still another explanation for why men often disagree about what they believe they have seen and understood.

Desire frequently leads to more deception. Desire encourages the will to focus attention on a specific point, causing that point or proposal to be emphasised to the detriment of others.. The will has the authority of possession some thoughts out of view, and thus reduces their power, Sir John Romilly, in an view described in Beavan, 105, says:

"It's important to remember that people are incredibly prone to believing whatever they want. It is a common observation that people who linger for a lot longer on facts they suppose must have occurred, and then try and remember whether they did or not, eventually convince oneself that they do recall the happenings of events that they merely begin by assuming must have transpired. What began as a consequence of vision eventually becomes

the result of remembering.

Without impugning eyewitnesses of this type with anything resembling intentional and dishonest lying, they frequently assume that they have overheard and recalled conversations. observations which in truth never existed, but are the mere offspring of their imaginations."[79]

Memory is yet another key aspect, and it is the basis of a large number of "testimony fallacies." We commonly talk about recollection as if it were a precise replication of previous experiences of awareness, but experience shows us that this replication is frequently inaccurate. Through the changes that the "trace" has gone through over time. Sometimes when the trace has been largely destroyed, and what is left can provide a very inaccurate (because to its imperfection) picture of the event. When it comes to our own feelings, we are prone to lose track of what goes opposing them, causing the situation to spiral out of control Memory's depiction is completely one-sided. This is constantly proven by the vast disparity in versions of the same incident or discussion given by two or more parties involved in it, even while the topic is still fresh in their memories and they are telling the truth.

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[79] Sir John Romilly, in an opinion reported in Beavan, 105,

a desire to speak the truth With the passage of time, this variety will generally become even more prominent, the trace being progressively but unthinkingly altered by the routine duration of thought and emotion, so when it is acted on further again after a longer interval, the wistfulness symbolises, not the initial incidence, but the customised detect of it.

Mr. Sully says: *"Just as when distant objects are seen unclearly our imaginations come into play, leading us to imagination that we see something completely and distinctly, so when the images of memory become dim, our present imagination helps to restore them, putting a new patch into the old garment. If only there is some remains even of the past preserved, a bare suggestion of the way in which it may have happened will often suffice to produce the conviction that it actually did happen in this way. The suggestions that naturally rise in our minds at such times will bear the stamp of our present modes of experience and habits of thought. Hence, in trying to reconstruct the remote past we are constantly in danger of importing our present selves into our past selves."*

Senator George F. Hoar, in his recently published "Autobiography of Seventy Years," says:

"The recollections of the actors in important political transactions are doubtless of great historic value. But I ought to say frankly that my experience has taught me that the memory of men, even of good and true men, as to matters in which they have been personal actors, is frequently most dangerous and misleading. I could recount many curious stories which have been told me by friends who have been writers of history and biography, of the contradictory statements they have received from the best men in regard to scenes in which they have been present."

It is clearly the cross-responsibility examiner's to determine the nature of any clear boundary that might be introduced into a witness's people's memories of an event or money transfer to which he gave testimony, and if necessary, to determine the cause of the attack; whether recollection has been distorted by urge or emotion, or even if the error was also one of initial interpretation, and if so, whenever it arose, as to if fr

Not only does the degradation and elimination of fundamental aspects make our perception of the past inaccurate; it also gets affirmatively erroneous

when components that do not belong to it are gradually incorporated. Sometimes it is easy to observe how these unrelated thoughts find their way into our mental image of a former event.

Consider the case of a man who has misplaced a precious scarf-pin. His wife speculates that it was stolen by a certain servant with a shady reputation. When he later remembers the loss, he is likely to mix the reality with the hypothesis tied to it, and claim that he recalls this specific servant stealing the pin. As a result, prior imaginative activity works to distort and partially fabricate memories with a genuine basis in reality.

The prosecution of a man named Twichell, who was justly condemned in Chicago some decades previously, despite erroneous evidence, provided a very vivid example of the impact of habit on recollection, especially in regard to events occurring in moments of extreme excitement.

Twichell, in desperate need of money, killed his wife by striking her in the skull with a bullet shot in order to gain ownership of some of her goods, which she always hid in her clothes. He then carried her corpse to the yard of their home, bent a rod, and smeared it in his wife's brains, so that it would be regarded as the weapon of the blow, and partially disassembled the door going to the street, leaving it ajar, and went back to bed. Whenever the servant awoke the next morning, she tripped over her girlfriend's body, and in fright, she raced through the gates, into the road, and called the cops The attendant had always unbolted this gate fist thing every morning, and she swore on the stand during the trial which she had done so on the night of the murder. There's no other way to get into the home save thru this gate. As a result of the slave's evidence, it was clear that the killing was done by anyone from inside house, and Twichell was really the only person present.

Twichell admitted his culpability to his lawyers after his arrest, explaining how cautious he had been to draw back the lock and leave the door ajar to deflect suspicions away from oneself. In her enthusiasm, the maid had neglected to notice neither that the bolt was pulled or that the gates was open, and when she subsequently recalled the situation, she had allowed her current reality and habit of drawing back the bolt becoming absorbed into her memories of that specific occasion. It was this false testimony that ultimately led to the inmate's conviction.

Twichell grumbled to the jail officials as the sentencing date

approached that the print in the prison Bible was too small for him to see, and asked that his buddy, a pharmacist, be permitted to provide him with a Bible in larger type. This friend sprayed caustic sneeze on parts of the Bible's pages. Twichell rolled the papers into spheres and drank them with the help of water. Death was almost immediate.

A writer in the Quarterly Review speaking of this same occurrence, says: "An erroneous account of Boswell's first introduction to Dr. Johnson was published by Arthur Murphy, who asserted that he witnessed it.

Boswell's appeal to his own strong recollection of so memorable an occasion and to the narrative he entered in his Journal at the time show that Murphy's account was quite inaccurate, and that he was not present at the scene. This, Murphy did not later endeavor to contradict. As Boswell suggested, he had doubtless heard the circumstances repeated till at the end of thirty years he had come to fancy that he was an actor in them. His good faith was unquestionable, and that he should have been so deluded is a memorable example of the fallibility of testimony and of the extreme difficulty of arriving at the truth."

Implicit prejudice is perhaps the most sensitive and fruitful of all the "falsehoods of witness." It's rare to find a pro se litigant who is so forthright and honest that he will speak as fully and favourably for one side as each other.

It's remarkable to see how, once we've identified with a "side" or cause, we all have a tendency to adopt all of its claims as our own. When a police officer or military dons the costume, he or she becomes a defender of peace and justice, even if he or she is dishonest.

8.2 Biasness of witness:

Testimony in trial are nearly always biassed in favour of the party who summons them, and this bias leads them to suppress some truths and colour others that, in their view, would be detrimental to the side for which they testify. When we combine the partiality of the witness with the comparable leanings of the attorney performing the question, it is possible to obtain testimony that differs greatly from the actual reality. Overaggressive practitioners frequently do this by asking leading questions or combining two inquiries into one, the second being an easy one, deceiving the victim into

giving a false answer. “yes “for both, and thus making a completely incorrect hollow.

What is it about men's makeup that causes them to always pick sides when they go to trial? First and foremost, witnesses are frequently flattered by the trust put for them by the party summoning them to show a certain set of facts, and it is human nature to attempt to justify this trust. This emotion is unaware on the accused's portion, and while it is rarely strong enough just to lead to full-fledged official misconduct, it is necessary to explain why the victim will almost instinctually destroy or colour the proof to suit an intended function, possibly adding a bit here and there, or suppressing one there. but this bit will make all the difference in the meaning.

Many males in the witness stand feel and relish the ability to sway the result in their favour, and they can't resist the temptation to enjoy it and be considered a "good witness" for their side. I say their side because the side for which they testify immediately become their side the minute they take the witness stand, and they have an inherent desire to have seen this side win, even if they have no other interest in the matter.

It is a human trait to be particularly responsible for the success of one party in a competition, whether this is a battle, a regatta, or a sports event or a legal action. This drive to win frequently colours a witness's evidence and leads to errors and conclusions determined by the witness's emotions rather than his intelligence or objective observational skills.

Many witness accounts face a trial with no clear idea of what they'll testify about, but when they realise they're getting led into declarations that are unfavourable to the side on which they've been named, they feel a rapid dread of being seen as treasonous, or "heading back on" the club who chose them, but they become incapacitated partisans, allowing this thinking to colour or warp their testimony. There is a third group of people who just wouldn't become eyewitnesses on either side except they believe one of the participants has been wronged or treated unfairly, in which case being a witness for the wounded party appears to them to be justification of the rights. Witnesses like these are able to testify in court.

emotions to become recruited in what they think to be a just cause,

which in turn enrols their compassion and emotions and drives them to colour their evidence as those impacted by the other factors already mentioned.

The most egregious examples of bias can be seen in admiralty disputes arising from an elastic collision ships. Almost always, the entire crew is on one ship ship will depose against both the opposite crew in tandem, and, more importantly, any visitors who chance to be on board will nearly always be found verifying the stories of their individual sailors.

It's similar, albeit to a lesser extent, in a typical personal injury case involving a ground railroad. Casual passengers aboard a city car are more likely to side with the car's drivers, but the wounded claimant as well as any friends or family who happen to be around him at the moment will almost always be spotted on the witness list swearing it against railway corporation.

8.3. Every case is distinguished and there is need to study each case:

It's difficult to pinpoint the procedures that a cross-examiner should employ in order to demonstrate to a judges the specific source of the error that has twisted the defendant's judgement, strangled his morality, or blinded his knowledge. It must inevitably be determined by the conditions that arise in each situation. All I've done is point out the common roots of these errors, and I'll have to leave it up to the trial lawyer's imagination to come up with his own answer when the need arises. He'd never be able to pull this off properly, Even if he had given this aspect of his decent equipment serious study and consideration. The matter is important, but it is seldom, if ever, explored by law writers, who normally pass it over with the basic indication that it is a subject deserving of further examination at a later date. I hope that my few recommendations will inspire some intellectual legal mind to develop and illuminate the causes for the presence of this imperfection in the natural machinery, which seems to be the main stumbling block in our efforts to reach reality in the judicial proceedings.

CHAPTER NO: 09

MODEL QUESTIONS

9.1 MODEL QUESTIONS IN GENERAL CRIMINAL TRIALS.

1. What is distance between police station and the place of occurrence?
2. What is the general available mode of conveyance for going from police station to the place of occurrence?
3. What amount of delay is in filing FIR?
4. What the FIR mentions the names of witnesses?
5. Whether the FIR mentions the names of accused?
6. Reasons for the absence of names?
7. To whom the FIR was given?
8. Is there any discrepancy between the version in FIR and in subsequent evidence?
9. If the FIR is orally whether it is taken down on dictation or after the narration of the story the scribe has written own the facts?
10. Whether the witness has bad antecedents to his credit?
11. Whether the witness speaks in direct conflict of medical evidence?
12. Whether the witness speaks something improbable?
13. Whether the witness is inimical to the accused?
14. Whether the witness is influenced by the inured?
15. What is the motive for implication?
16. What may be motive for crime?
17. Whether the witness has defect in his eyesight?
18. What is status of the witness; can he be influenced by the police?
19. Whether the statement buy the police is recorded? If after considerable delay, reasons.

20. What did eye witness do when the crime was being committed?
21. Whether the witness not mentally so developed to understand the affairs?
22. Whether the witness has been tutored?
23. What was the distance of witness from the place of occurrence?
24. What made the witness to come to Court and depose at the state of his daily business?
25. Whether the injuries may be self inflicted?
26. Does he make any explanation for injuries of the accused party?
27. Did the investigation officer make papers not at the spot but on some other concurrent place?
28. What was the role of the accused in the crime?
29. What was the role of the accused in the crime?
30. Whether the complaint was the aggressor?
31. Who gave the FIR? His relation with the occurrence?
32. If the FIR is lodged in two different police stations different times?
33. Who are those who accompanied the informant at the time of report?
34. When their statements were recorded i.e. before lodging the report or after its lodging?
35. What is the manner of occurrence?
36. If witness is omits anything material from his previous statements?
37. Did the witness identify the accused in Court?
38. Did the witness identify the accused at the time of occurrence?
39. What was the source of light at the time of and place of occurrence?
40. Whether the light was sufficient to enable a man to identify anybody, say as to with was the time and then find out when the sun sets so as to know the correct position of the light?

41. Whether witness has defect in his eyesight?

42. Whether the witness not mentally so developed to understand the affairs?

9.2 FOR THE CASES OF ABDUCTION (SECTION 361 PPC).

43. What is the age of girl?

44. Whether she consented to the crime?

45. Whether the consented was free from vices?

46. Whether she had any love affair?

47. Whether the girl was active abettor?

48. If the FIR is lodged in two different police stations at different times?

49. Whether the writer and the informant of the FIR are examined? If not, reasons?

50. Whether all particulars of the accused and the property stolen have been furnished to the police during the investigations?

51. Whether the report is lodged by a person who is not possessed of first hand information?

52. Who are those who accompanied the informant at the time of report?

53. When their statements were recorded i.e. before lodging the report or after its lodging?

54. After what time the report was sent to Superintendent of police the Magistrate concerned?

55. Whether the police used under control over the witnesses before their evidence in Court?

56. What is the manner of occurrence?

57. Did injured also play something unpleasing to the accused at the time of occurrence?

9.3 For cases of abduction (Section 362 PPC).

1. What is the age of girl?

2. Whether she consented to the crime?
3. Whether the consented was free from vices?
4. Whether she had any love affair?
5. Whether the girl was active abettor?
6. Whether the complaints of abduction were made by the girl in the way to any official of police or passerby?
7. What was the attitude at the time of abduction?
8. Did she resist?
9. Did the girl make complaint to any body when left alone?
10. What were the circumstances when she was recovered?
11. What did the accused intend by abduction?
12. What was the version of the girls at the time of arrest
13. It there any conflict between her first and subsequent versions?
14. Whether the girl was contended while living at her parents hose before abduction?
15. Whether at the time of abduction the girl was compelled by fore or deceit?
16. Whether the intention of the accused in abduction was compel the girl for immoral purpose?
17. Whether the girl was chaste before abduction?
18. Did she loose her chastity during abduction?
19. How long the girl remained abducted?
20. What efforts the girl did to reach or send message to her parents?

9.4 In cases of Cheating (Section 415 PPC).

1. If the accused told anything false to the person so cheated?
2. Whether the accused had chances to now the truth?

3. Whether did the accused intended by giving the information?
4. Whether some promises were made by way of inducement?
5. Whether the promises were impossible on its face?
6. Whether the consent given was after ample time to consider the matter?
7. Whether the circumstances, in which the particular act was done, were in appearance fit for the act?
8. If the fact of deception was concealment whether the fact was known to the accused?
9. If the fact had general instructions to keep the facts in secret?
10. If the act so done by the person deceived was due to act of deception accompanied with other circumstances?
11. What was the subsequent conduct of the accused?
12. Whether it was a preplanned cheating?
13. Did the accused make the representation on footing though not reasonable but in existence?
14. Whether the accused had means to know the falsity of the representation?
15. Did the accused try to know the truth of the fact?
16. Was the accused not able to detect the truth?
17. Whether the transaction was started bonafide but there was subsequent change?
18. Whether it was the case of issue of cheques without funds?
19. Was there an account in the bank?
20. If the cheque was postdated due to some other circumstances?
21. If the accused knew his bank balance?
22. If the accused had the knowledge that the funds would not be sufficient to meet the cheque?

23. Whether the cheque was not encashed for the encashment of a cheque issued much earlier to this cheque?

24. Whether other dealings of the accused were proper?

25. If there was any harm of damage by such misrepresentation?

9.5 Criminal Intimidation and insults to provoke breach of peace (Sections 503, 507 PPC).

1. What are the real words of threats?

2. Are these words to show an intention to cause severe harm in particular circumstances?

3. Are these threats with no intention?

4. What is the intention behind the threats?

5. It is not to deter anybody from doing an act which he is legally entitled to omit to do?

6. It is not to cause anybody do some act which he is legally entitled to omit to do?

7. Whether these threats were only vulgar abuses?

8. Whether these abuses were intended not to prove breach of peace?

9. Whether these were only by way of scolding, by a superior to his inferior relation?

10. Whether was only by way of a joke?

11. Whether it was only by way of a habit of the accused made with no bad intention?

12. Whether any insult was not caused by these words?

13. Whether there words not insultive?

14. What was the intention behind these words?

15. What it a purely academic opinion about something expressed in the discourse of discussions?

9.6 Criminal Trespass (Sections 441, 447 PPC).

1. What rights complainant has in the property which is alleged to be encroached?

2. It the complainant only in formal possession?
3. It the title of the complainant in dispute?
4. Who is in the actual physical possession?
5. Prior to entry whether the property was lying vacant?
6. Whether anybody of the family accorded permission to the accused to enter upon the property?
7. Whether the accused has a claim over the property?
8. Whether the claim is of ownership?
9. Whether the entry is under the bonafide exercise of some rights of ownership?
10. Whether the accused claim himself to be the lessee of the property?
11. Whether the accused entered the property with the knowledge that the entry would cause annoyance?
12. Whether the entry was effected with the intention to cause such annoyance?
13. Whether permission may be inferred by the circumstances of the entry?
14. Whether the entry was forceful?
15. Whether the entry was with precautions to cancel the presence?
16. Whether the entry was with a view to have sexual intercourse with a member of family?
17. What is the age of the member?
18. Is that member unmarried or widow?
19. This intimacy is within the knowledge of the complainant?
20. Whether the apartment of that member is separate?
21. Whether the member is of such character?

22. Whether the entry was with the consent and connivance of the husband of such member?
23. Whether the entry was at the time the complainant was absent?
24. If the entry was in execution of any decree of the Court?
25. Whether entry was lawful but afterwards it become unlawful?
26. How the remaining in the property would be unlawful?
27. If any notice was given to the accused that further remaining in the property would be unlawful?
28. If the notice was lawful?
29. If the notice was duly served?
30. Has the time given in notice expired at the time of complaint?
31. Is the entry to affect some easementary rights?
32. Has the entry at all given any annoyance or insult to the owner?
33. Is the case being cooked up out of enmity to harass the accused?
34. Is the case only for compelling the accused to submit to the wisher of the complainant?
35. Is the case only for maintaining the same reputation in the society which was prior to the entry and not to let the fact of intimacy with some member of family came to light?

9.7 For the cases of Dacoity (Section 391, 395, 396 PPC):

1. What is the time of occurrence?
2. When was the FIR lodged?
3. Did it mention the names of the dacoits?
4. Did it mention the full particulars of the property looted?
5. How many persons were involved in the crime?
6. What is the distance of the police station from the place of occurrence?
7. How long after the occurrence the accused persons were arrested?

8. Whether anything incriminating was recovered from their possession or on their pointing out?
9. Whether there is only identification as the sole basis of the light?
10. If the crime was committed at night what was the source of light?
11. If the light sufficient enough to enable the witness to identify the dacoits?
12. What is the distance between the place of occurrence and the residence of the accused persons?
13. While going to the main market or police station or hospital from the place of occurrence whether the village of accused passes in between?
14. Whether the complainant or any of witnesses have some relationship in the village of the accused?
15. Whether the accused or any of his family have some relationship in the village of occurrence?
16. Whether the accused very often pays visit to the village of occurrence?
17. Whether the accused is well known to the witness?
18. Whether there is previous enmity between accused and the witnesses?
19. Whether the witnesses had full opportunity to identify the witnesses on the spot?
20. If the witnesses have seen the accused after the occurrence before the identification parade is held?
21. How long after the occurrence the arrest was made?
22. How long after the arrest the identification was carried out?
23. In this period was beyond two months?
24. Whether the witness took part in identification?
25. Was he told some of the distinguishing features of the accused?

26. Had he an opportunity to talk with some witnesses after they had gone to identify before his going to identification?
27. How many chips were pasted on the face of the accused?
28. Whether the number of the chips was beyond ten?
29. Whether the sizes of the chips were large enough to disfigure the face?
30. Whether the number of the persons mixed with the accused was less than five?
31. Whether these other persons were of different age, color and nationalities?
32. Whether these persons can easily be separated from the accused?
33. If anybody from the police was present in the identification?
34. How many round the witness took to identify the accused?
35. Did he pick up a wrong person in the identification of any witness?
36. How many mistakes did the witness commit?
37. If the Magistrate conducting the identification had taken all precautions?
38. If the persons mixed in the identification parade were known to the witnesses?
39. Did the witnesses identify the accused in police station before the identification parade?
40. When the accused was put up for the first time before Magistrate for remand?
41. After arrest how long the accused remained in police custody?
42. When the accused was asked to cover his face?
43. Before that was there any possibility of seeing the accused?
44. Whether the accused was escorted to the Courts and to jail*baparda?*
45. Whether the remand order there appears instruments to keep the accused

baparda?

46. Whether the witness correctly identified the accused in the Court?
47. Whether there was a mistake in Court identification of other accused by the witnesses?
48. Did the witness commit mistakes in previous other identification of other accused?
49. What is the ratio of correct identification and wrong identification of the particular witness?
50. Whether the accused at the time of occurrence had covered his face?
51. Whether there was a motive for false implication?
52. Whether the property was jointly owned by the complainant and the accused?
53. Whether the accused claims any right over the property?
54. Whether the real owner of the property is the accused?
55. Whether anything incriminating was found at the instance of the accused.
56. Whether this property has a description different from that of FIR?
57. Whether any identification was properly held about the property?
58. Whether the ownership of the property is proved by the accused?

9.8 Cross-examination of Doctor.

1. When did you examine the injured?
2. Who did identify the injured?
3. Have you noted the identification marks?
4. Which of the injuries are simple?
5. Which of the injuries are grievous?
6. Which injuries are from blunt weapon?

7. Whether any injury from pointed weapon?
8. Whether there is any injury from pointed weapon?
9. Whether the injuries are on sided?
10. Whether the injuries can be result of fall on the edged place?
11. Whether the injuries can be inflicted by a single blow?
12. Whether the injuries can be self inflicted?
13. What may be the possible direction of assault?
14. From the injuries whether the distance of the assault be determined?
15. Was any foreign matter found in the wound?
16. How long the injury was old at the time of examination?
17. Did you find any pellet or wad in the wound?
18. Was there any scorching, blackening or tattooing?
19. Which of the injury is wound of exist and which one is wound of entry?
20. Whether the margins of wounds of exist are inverted?
21. What may be the possible direction of the bullet?
22. When you were informed of the insanity?
23. When did you first examine the man?
24. For what period the man was kept under observation?
25. On what intervals medical examination was being conducted?
26. When was the last medical examination carried out?
27. Whether the man was found sane?
28. Whether he is capable to understand the gravity of the serious matters?
29. Whether he can usefully answer the question?
30. Whether there is any difference between medical insanity and legal insanity?

31. What are the causes of insanity?
32. Whether he sleeps soundly?
33. Whether he takes his food normally?
34. Can he be harmful to the society?
35. Whether you conducted the medical examination with the consent of the presecutrix?
36. Did you find presence of public hair?
37. Whether the breasts were fully developed?
38. Have you taken the X-ray of the knee joints?
39. What may be her age according to your opinion?
40. Did you find any mark of violence of her body?
41. Whether the marks can be attributed to passion?
42. Whether the hymen was torn recently or it was found intact?
43. Whether the girl is habituated to intercourse?
44. How many fingers enter easily in the vagina?
45. Whether the injury to vagina can be by impact with some other material?
46. Whether the clothes of the girl were found stained with blood or semen?
47. Whether the accused also was examined?
48. Whether the man was capable of doing intercourse?
49. Whether the signs of the struggle were found on the body of the accused?
50. Whether any of the two was suffering from old disease of gonorrhea or syphilis?
51. Whether the germs of one were found contracted by the other?
52. When you were shown the deceased?

53. At the time of death whether her was living?

54. Did you find any injury or sign or injury on the body of the deceased?

55. Whether the deceased was in a position to speak?

56. Whether the deceased was mentally fit to give correct descriptions?

57. Whether the deceased had the idea of death in his mind while making the statement?

58. Whether the deceased was feeling great pain while deposing?

59. Whether at times while deposing the deceased's attention was diverted towards his injuries?

60. Who were present at the time of record of dying declaration?

61. If the recording was made in the presence of the accused?

62. Who did record the dying declaration?

63. Whether the person recording the dying declaration was competent to do so?

64. Did the person making the declaration made it in narrative?

65. Did the decelerating ascribe the motive for the offence?

66. Whether the dying declaration is in the form of question and answer?

67. Whether questions are leading in nature?

68. Whether anybody associated the person making the declaration in making his replies?

69. Did the declarant sign the dying declaration?

70. Whether any questions were put to him to see if the declarant is in his senses?

71. Whether the manner of assault in the dying declaration is supported by the evidence of other witnesses?

72. Can there be any possibility of the occurrence to take place in the

manner stated in the dying declaration?

73. Does the dying declaration given an explanation of the injuries of the accused?

74. Had the deceased consulted somebody before making his during declaration?

75. Whether police was present at the time of dying declaration?

76. If the FIR was recorded before the dying declaration was recorded?

77. Did the deceased get the FIR lodged?

78. Is there a contradiction in the FIR and dying declaration?

79. Did the declarant survive, if not, when did he die?

9.9 For cases of enticing away married woman (Section 498 PPC).

1. Whether there exists a valid marriage?
2. How the marriage was gone through?
3. The name of the Qazi who got the marriage performed?
4. Names of the persons who were present at the time of the marriage?
5. Is there any invitation card of the marriage?
6. Whether the marriage was legal?
7. Whether there is a divorce between the spouses?
8. Whether there was a separation of the spouses?
9. Whether the woman was living with her husband under his control before the occurrence?
10. Whether the woman had left the protection of her lawful guardian before seduction?
11. Whether she could move there freely and lived out of her own free will for immoral purposes?
12. Whether any complaint was made to police if so when?
13. Whether the complaint is made by the husband or anybody else?

14. Whether the accused committed this offence with the knowledge of the fact that there subsists a legal valid marriage?

15. Is there any relationship of the accused with the husband of the woman or with the woman?

16. Whether the accused resides at a place near to that of the husband?

17. What is the character of the woman?

18. Is the kidnapping a frequent affair with the woman?

19. Whether the jurisdiction of the particular Court extends to the place of detection?

20. Whether the Court is competent to try the case?

9.10 For cases of firing.

1. How long after the occurrence the spot was inspected by the investigation officer?

2. Did he recover any empty cartridge or wads, etc. on the spot?

3. He has made recovery of the arm?

4. Did ballistic expert examine the arm?

5. Does the report show recent fire from the arm?

6. Did the medical officer find any wads, etc, in the wound?

7. Did he find any bullet or pellet in the wound?

8. Was any firearm discharged from a short distance?

9. What is the oral evidence in this regard?

10. Does the oral evidence support the range given by the position of the wound?

11. When was the medical examination of the victim conducted?

12. What was the color of the wound at the time of medical examination?

13. Does the duration of the wound fix the different time of occurrence?

14. What has the medical officer noted about the direction of the wound?

15. Is it a direction which is not possible in the manner of the assault alleged?

16. Can this wound be made by the person himself?

17. Whether the wound is straight or slanting?

18. What is the direction of the firearm?

19. Can the discharge be accidental?

20. How many shots were fired?

21. How many of them have inflicted wounds?

22. Did any of the shots produce any marks on the cloths?

23. Is so, whether they confirm the injury?

24. Is the wound dangerous to life?

25. Has it cause the death?

26. Was the death instantaneous?

27. Was there some swelling, etc. near the wound?

28. Has the bullet passed thorough the wound?

29. What is the size of wound of entry?

30. What is the size of wound of exit?

31. In what direction the bullet has come?

32. Whether the testimony of the witnesses also is of the same direction?

33. Could the bullet cause two injuries?

34. Is it a case of suicide, accident or homicide?

9.11 As to First Information Report.

1. When the first information report was lodged?

2. Whether it was oral or written FIR?

3. If it is written by whom and at what place was it written?
4. Whether the FIR was written with the aid of somebody from the public or police?
5. If the FIR was oral whether it was recorded on the dictation of the informant?
6. Whether the FIR was recorded after the whole story was told by the informant?
7. Whether the FIR was tendered by telegram or telephone?
8. When was this FIR confirmed?
9. When did the occurrence taken place?
10. How much is the delay in the FIR?
11. How long is the place of occurrence from the police station?
12. What is the usual means of transport?

13. Whether the FIR mentions the names of the accused persons?
14. Whether the FIR omits some names of the accused persons though they are known to the informant from before?
15. Whether the FIR contains the features of the accused persons if the names are not known?
16. Whether the FIR given out the names of the witnesses?
17. Whether these witnesses are the eye witnesses?
18. Is the FIR gives the full particulars of the property?
19. Has the informant been interrogated by the investigation officer?
20. Has the informant not been produced in the Court?
21. Is the informant an eye witness of the occurrence?
22. Has the scribe been produced in the Court?
23. Whether he had written the FIR after hearing the full narration?
24. Whether there is a change from the FIR version is the subsequent evidence?
25. When the FIR was sent to the Superintendent of police?
26. When the copy of the FIR was forwarded to the Magistrate concerned?
27. When the informant was interrogated?

9.12 Grievous Hurt (Section 332,333, 335, 337, 337-C, 337-F PPC) questions that may be put to a medical witness.

1. Describe carefully the mark of violence which you observed?
2. Do you believe the injuries inflicted may have been caused by the weapon now in your possession (Article No in evidence)?
3. What was the direction of the wound, and can you speculate on the location of the person who inflicted it in relation to the person who received it?
4. Is it feasible that someone may have inflicted such a harm on himself? What are your justifications?

5. Do you believe the injuries inflicted are one of the terrible harms listed in Sections 333,335,337, and 337-C of the PPC, and if yes, which one? Give your justification. (The Magistrate who asks these questions will show the witness the Pakistan Penal Code, or the Magistrate may change the form of the question to obtain the required information without bringing up the Pakistan Penal Code.)
6. Do you believe the individual who was hurt is no longer in danger?
7. The injuries were allegedly caused by, but could they have been induced in the manner described?
8. Have you inspected the marks (on the weapon, clothing, etc.) in front of you (Article No: in evidence) chemically and otherwise?
9. Did you think the stains were from human blood?

9.13 Investigation Officer.

1. When was the report handed over to you for investigation of the case?
2. When did you proceed for the scene of occurrence?
3. Did you meet that informant before you reached the place of occurrence?
4. Did you record his statement, if not, why?
5. When you recorded the statement?
6. Who did point out the place of occurrence?
7. Whether the place of occurrence remained untouched?
8. Did you make the site plan to the scale?
9. Did you make recovery of blood stained and plain earth?
10. When did you make the recovery of memo?
11. Did you seal the blood stained and plain earth?
12. When the earth sent to chemical examiner for analysis?
13. Did you make search for the weapon?

14. When did you come to know of the assailants?
15. When did you try to make the arrest of the assailants?
16. What steps towards arrests were taken?
17. In case of failure to arrest did you take steps for action under section 87 or 55 of the Criminal Procedure Code?
18. Did you take steps for the issue of warrants of arrest?
19. Did you try to meet the witnesses? 20. When did the witnesses meet you?
21. When did you record their statements?
22. When did you make the search?
23. Whether any copy of the search list was supplied to the accused?
24. Did you obtain the signature of the accused or the occupant of the house on the search list?
25. Wherefrom witnesses were taken?
26. Did the witnesses sign the search list?
27. Did you taken the clothing containing blood stain, etc?
28. Whether the clothing were sent for chemical analysis?
29. Whether the report of serologist was obtained?
30. Did you examine the body of the victim?
31. Have you obtained the medical report?
32. When did you submit the charge sheet in the Court?
33. When the weapon was recovered did you examine it?
34. Was it serviceable?
35. Did you try to find out finger prints on the weapon?
36. Was it touched by anybody at the time of recovery?
37. Was the report of finger prints expert obtained?

38. If it was a firearm was it seen to the ballistic expert?

39. What is his report.

9.14 For cases of kidnapping (Section 359, 361).

1. Whether kidnapping is affected from the custody of lawful guardian?

2. Whether the girl is only a road-roamer?

3. Whether the girl has no guardian?

4. Whether the girl has been taken from an abductor?

5. Did she leave the house of her parents of her own accord?

6. Whether the guardians of the girl had refused her to live with them?

7. Whether the girl had accorded her consent to this act of kidnapping?

8. Whether the consent, was free from vices?

9. What was the age of the girl at the time of kidnapping?

10. Whether the mother of the girls was a consenting party?

11. Whether the girl had any love affair with the kidnapper?

12. What was the attitude of the girls at the time of kidnapping?

13. Did the girl resist at the time of kidnapping?

14. Did the girl make efforts to return or send information to her parents when left alone?

15. Did the girl make any complaints to any body when she got a chance to do so?

16. Whether the girl was betrothed to the person who kidnapped her?

CHAPTER NO. 10
CONCLUSION

The cross-examination is a powerful and effective tool for determining a witness's credibility. That is used as an offensive swords and a defence shield.

The basic goal of cross-examination is to discover the truth and uncover untruth in person evidence, as well as to devalue the value of opposing party eyewitnesses' testimony by deposing their credibility and obtaining admission beneficial to one's own cause. The cross-task examiner's is to assist the Court in recovering the truth and removing the evil of lies, for which he must dismantle impenetrable strongholds that the witnesses utter. A good cross-examiner should know by instinct and by experience how to occasion. He must know when to control his voice, to rise it, to lower it, to smile, to frown, to mold his face and his manner as the circumstance demands. In fact, cross-examination is double edged sword. While effective cross-examination will win many doubtful cases, its unwise use always helps to strengthen the opponent's case. The cross-examination requires the natural gifts of cleverness, clearness of insight, power to read the mind spontaneously, to appreciate their motives, instinct to discover weak points in witness under examinations.

Cross-examination is widely regarded as the toughest test of a lawmaker's abilities, and it may need more innovation than any other aspect of his job.

The goal of cross-examination is to elicit and emphasize relevant information that the witnesses has withheld or concealed, as well as to build one's own narrative and destroy the accused's credibility. The side cross-examining the evidence should present its own case in the form of ideas in order to weaken the opposing party's account. Cross-examination is used to skew the facts, impeach witnesses, and damage the coalition's case.

The basis of cross-examination is the questioning of a witness known as his adversary by a lawyer for one of the parties. The main goal of cross-examination is to determine the truth and discover lies in human witness. It's either designed to harm or assist. Pick anything from his prior experience and

current manner that shows he is unfit of credit based on the weight of proof and witness has indeed delivered in reality.

Several methods of cross-examination help the advocate to design and formulate his notes for conducting cross-examination each distinct witness in the courts of law.

One way of starting cross-examination is to approach the witness cautiously and courteously with a view to create an atmosphere favorable to the elicitation of facts tending to support the opponent's case. The other method is to go straight at the point and attack the witness directly. It is acknowledged by many that the first method is by far the most successful. If from the attitude and expression of the cross-examiner, the witness as the start suspects that he is doubted, he will be at once put on his guard and will prepare himself fully for sticking to his story in examination in chief and embellishing it by subsequent answers.

A lawyer has got a very solemn task in the performance of his professional duties towards his client. There is no other ration in human affairs exactly comparable to that of a lawyer and client.

Advocacy is a relation that its familiarity and responsibility is an example of the supreme trust and confidence. By it we ask another for the time and the occasion to be ourselves. It is as if for the time being we transfer our degree our conscience. To violate this sacred duty and be disloyal to client is deservedly inexcusable sin of an advocate. By this disloyalty he sinks lower than by any other act of dishonor.

It has been said that to a great extent, cross-examination is natural like music and painting, and at the same time as the unskillful beginning his music or painting may not be very successful, yet he can achieve perfection by training, practice and experience.

On the basis of my study on the topic I have reached to the conclusion that the significance of the cross-examination is to assist the Court in bringing the truth to light by disclosing or clarifying matters which witness may wish to conceal or confuse from motive of partisanship. Object of cross examination is to sift the evidence, to impeach the testimony and to weaken the adversary's case.

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APPENDIX—C ABBREVIATIONS

CLC:	Civil Law Cases
Cr.P.C.	The Code of Criminal Procedure, 1898.
Cross:	Cross-Examination.
C.P.C.	The Code of Civil Procedure, 1908.
FSC:	Federal Shari'at Court
PLD:	Pakistan Law Digest
P.Cr.L.J.	Pakistan Criminal Law Journal.
Q.S.O.	The Qanun-e-Shahadat Order, 1984.
SC:	Supreme Court
SCMR:	Supreme Court Monthly Report
u/s:	Under Section.
u/a:	Under Article.

APPENDIX—D GLOSSARY

Cross-examination: the question of an advocate from the witness of opposite party.

Charge:	Statement of the accusation against an accused.
Complaint:	Allegation made to the court with a view of taking action that some person has committed an offence.
Cognizance:	Application of mind by the court on the facts and circumstances of a case.
Deposition --	Evidence of a witness.
Damages:	Compensation awarded by the court for the loss sustained by party.
Evidence:	Documents produced or statements made before a court of law to prove a fact.
Expert --	Professional who has gained knowledge and abilities in a certain field or subject over time by study and practise, to the point where his or her opinion may be useful in fact-finding, problem-solving, or comprehension of a situation.
Exhibit--	To submit (something, such as a document) to a court or officer in course of proceedings.
Forensic--	Refers to or denotes the use of scientific methodologies and techniques in criminal investigations.

Hostile:	A witness who turns over and gives evidence against the party who calls him in court for evidence.
Hearsay:	Evidence of a witness who did not see or hear the incident in question but hears about it from someone else.
Impeachment:	The process of calling a witness's testimony into doubt.
Methods --	A systematic approach to the conduct of an operation or process. It includes steps of procedure, application of techniques, systems of reasoning or analysis, and the modes of inquiry employed by a discipline.
Offence:	Act or omission punishable under the law.
Policy --	Governing principles that serve as guidelines or rules for decision making and action in a given area.
Perjury:	Intentionally giving false evidence before a court of law.
Testimony:	A formal written or spoken statement, especially one given in a court of law.
Verdict:	Formal decision by the court on the facts of a case.

APPENDIX--E LIST OF CASE LAWS

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