PGS NATIONAL COLLEGE OF LAW

EVIDENCE ACT UNIT-5

1. Write shot notes on any two of the following:-

(a) Leading Questions

(b) Dumb witness

(c) Hostile witness

Ans-(a) Leading questions

The purpose of an examination-in-chief, that is, questioning of the witness by the party who has called him, is to enable the witness to tell to the court by his own mouth the relevant facts of the case. A question should be put to him about the relevant facts and then he should be given the fullest freedom to answer the question out of the knowledge that he possesses. The witness should be left to tell the story in his own words. The answer should not be suggested. The question should not be so framed as to suggest the answer. also. The question should not carry an inbuilt answer in it. Any such question which suggests to the witness the answer which he is expected to make is known as a "leading question". If such questions were permitted in examination-in-chief, the lawyer questioning him would be able to construct through the mouth of the witness a story that suits his client. A fair trial of the accused is not possible if the prosecution can ask leading questions to a witness on a material part of his evidence against the accused. This would offend the right of the accused to a fair trial as enshrined in Article 21 of the Constitution.

The expression "leading question" is defined in section 141. It says that any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

Where, for example, it is relevant to tell to the court as to where a witness lives, the question to be asked to him should be "where do you live"? and then he may tell where he lives. If the question is framed like this "do you live in such and such place", the witness will pick up the hint and simply answer "Yes". This is a leading question. It puts the answer in the mouth of the witness and all that he has to do is to throw it back.

Section 142 enjoins that leading questions should not be asked in examination-in-chief or in re-examination if they are objected to by the opposite party. In case the opposite party objects, the court can decide the matter and may in its discretion either permit a leading question or disallow it. The section also enjoins the court that it shall permit leading questions as to matters which are introductory or undisputed, or which have, in the opinion of the court, been already sufficiently proved.

Leading questions can always be asked in cross-examination.[SEC 143]

The total effect of the provisions is that leading questions may be asked in the following cases:

(1) where they are not objected to by the opposite party;

(2) where the opposite party objects but the court overrules the objection;

(3) where they deal with matter of undisputed or introductory nature or

(4)leading questions may always be asked in cross – examinations.

(b)Sec. 119. Dumb witnesses.-A witness who is unable to speak may give evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Dumb witnesses

A person who by reasons of dumbness or otherwise is unable to speak, may give evidence by any means by which he can make himself intelligible, such as, by writing or by signs. Evidence so recorded shall be regarded as oral evidence.

(c)Hostile Witness: Cross-examinaton with court permission

Where a witness makes statements against the interest of the party who has called him, he is known as a hostile witness. This makes it necessary that he should be cross-examined by the very party who has called him so as to demolish his stand. This can only be done with the permission of the Court. Section 154 declares that the court may in its discretion permit the party who has called a witness to put him such questions as could have been asked in cross-examination.

It has been held by the Punjab and Haryana High Court that the parties arrayed as defendants in a suit, having taken contradictory stands on a relevant and material issue, shall be adversary to each other and entitled to exercise their right of cross-examination against each other.

The concept of hostile witness has been explained by the Supreme Court in **Sat Paul v. Delhi Administration.** The court said that "a hostile witness is described as one who is not desirous of telling the truth at the instance of the party calling him and an unfavorable witness is one called by a party to prove a particular fact, who fails to prove such fact or proves an opposite fact. The court noted that because these expressions have been a source of uncertainty, the authors of the Indian Evidence Act avoided them and did not make it necessary that the court can grant the permission to a party to cross-examine his own witness only when he became adverse or hostile. The granting of permission under Sec. 142 for asking leading questions and under S. 154 for cross-examining a party's own witness, have been left wholly to the discretion of the Court.

No person can be declared to be a hostile witness when he has not been produced out of the fear that he might disfavor the party who has to produce him. Even where a witness appears, he cannot be regarded as hostile only because he gives inconsistent or contradictory answers.

Reliance upon testimony of hostile witness [Sub-section (2)]

This sub-section has been added by the Criminal Law (Amendment) Act, 2005, when a party cross-examines with permission of the court his own witness, it naturally means that the witness has gone against the interest of the party who called him. If the answers given in the cross-examination do not help the interest of such party, the question arose whether such party could rely upon the earlier evidence of the witness. The present amendment has the effect of allowing such party to rely upon the earlier statement of the So far as the testimony is concerned, the courts have always held that the testimony prior to the cross-examination is not washed off and that the court can use it as evidence. It is not necessary that the testimony of a hostile witness should be rejected in its entirety. The admissible parts of such testimony can be used by the prosecution on defence.

2. Define the examination of witness. When a leading question can be asked and when it cannot be asked.

Ans-Examination-in-chief, Cross-examination, Re-examination

The testimony of a witness is recorded in the form of answers to questions put to him. Witnesses are not permitted to deliver a speech to the Court, but are supposed only to answer questions. This way, the testimony of the witnesses, can be confined to the facts relevant to the issue. Such questioning of the witness is called his examination.

Every witness is first examined by the party who has called him and this is known as examination-in-chief.The witness is then questioned by the opposite party and this is known as cross-examination. If the party who has called a witness seeks to question him again after the cross-examination thats known as re-examination.

The order of examination is laid down in section 138. According to the first para every witness shall first be examined by the party who has called him, then by the opposite party and then, if the party calling him so desires, be re-examined.

Leading questions

The purpose of an examination-in-chief, that is, questioning of the witness by the party who has called him, is to enable the witness to tell to the court by his own mouth the relevant facts of the case. A question should be put to him about the relevant facts and then he should be given the fullest freedom to answer the question out of the knowledge that he possesses. The witness should be left to tell the story in his own words. The answer should not be suggested. The question should not be so framed as to

suggest the answer also. The question should not carry an inbuilt answer in it. Any such question which suggests to the witness the answer which he is expected to make is known as a "leading question". If such questions were permitted in examination-in-chief, the lawyer questioning him would be able to construct through the mouth of the witness a story that suits his client. A fair trial of the accused is not possible if the prosecution can ask leading questions to a witness on a material part of his evidence against the accused. This would offend the right of the accused to a fair trial as enshrined in Article 21 of the Constitution.

The expression "leading question" is defined in section 141. It says that any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

Where, for example, it is relevant to tell to the court as to where a witness lives, the question to be asked to him should be "where do you live"? and then he may tell where he lives. If the question is framed like this "do you live in such and such place", the witness will pick up the hint and simply answer "Yes". This is a leading question. It puts the answer in the mouth of the witness and all that he has to do is to throw it back.

Section 142 enjoins that leading questions should not be asked in examination-in-chief or in re-examination if they are objected to by the opposite party. In case the opposite party objects, the court can decide the matter and may in its discretion either permit a leading question or disallow it. The section also enjoins the court that it shall permit leading questions as to matters which are introductory or undisputed, or which have, in the opinion of the court, been already sufficiently proved. Leading questions can always be asked in cross-examination.

The total effect of the provisions is that leading questions may be asked in the following cases:

(1) where they are not objected to by the opposite party;

(2) where the opposite party objects but the court overrules the objection;

(3) where they deal with matter of undisputed or introductory nature or the matter in question has already been satisfactorily proved; and

(4) leading questions may always be asked in cross-examination.

3. Who is an Accomplice? Explain the statement that “the evidence of an accomplice must be corroborated in material particulars and the evidence of one accomplice cannot be Corroborate the evidence of another accomplice”

Ans- An accomplice means a person who has taken part in the commission of a crime. When an offence is committed by more than one person in concert, every one participating in its commission is an accomplice. Conspirators lay their plot in secret, they execute it ruthlessly and do not leave much evidence behind. Often, therefore, the police has to select one of them for the purpose of being converted into a witness. He is pardoned subject to the condition that he will give evidence against his former partners in the crime. He is then known as an accomplice, turned witness or an approver. He appears as a witness for the prosecution against the accused person with whom he acted together in the commission of the crime.

The question is, to what extent his evidence or testimony can be relied upon to convict his former associates and to deprive them of their life or liberty? What is the value of the evidence of a former criminal turned witness?

Two provisions in the Act touch this problem. Section 133 categorically declares that an accomplice is a compete witness and the Court may convict on the basis of such evidence and the conviction will not be illegal simply because it proceeds upon the uncorroborated testimony of an accomplice. The other dealing with the matter is in the illustration (b) to section 114, which says that the court may presume that an accomplice is unworthy of credit unless corroborated in material particulars. These provisions should first be reproduced.

In reference to the requirement of corroboration, the word used is "may" and not "must", and no decision of a Court can make it "must". It ultimately depends upon the court's view as to the credibility of the evidence tendered by an accomplice. If it is found credible and cogent, the Court can record a conviction on its basis even if uncorroborated. Corroboration in material particulars means that there should be some additional or independent evidence (i) rendering it probable that the story revealed by the accomplice is true and that it is reasonably safe to act upon it; (ii) identifying the accused as one of those, or among those, who committed the offence; (iii) showing the circumstantial evidence of his connection with the crime, though it may not be direct evidence; and (iv) ordinarily the testimony of one accomplice should not be sufficient to corroborate that of the other.

The apparent contradiction between these two declarations should first be resolved. Section 133 is a clear authorisation to the courts to convict on the uncorroborated testimony of an accomplice, but since such a witness, being criminal himself, may not always be trustworthy, the courts are guided by the illustration appended to section 114 that, if it is necessary the court should presume that he is unreliable unless his statements are supported or verified by some independent evidence.

Corroboration as Rule of Caution

The reasons why corroboration has been considered necessary are that :

(1) he has been criminal himself, and, therefore, his testimony should not carry the same respect as that of a law-abiding citizen,

(2) he has been faithless to his companions and may be faithless to the court because he has motive to shift the guilt from himself to his former companions, and

(3) if he is an approver, he has been favoured by the State and is therefore, likely to favour the State.

These reasons dictate the necessity for corroboration. The principles to be followed were summed up by the House of **Lords in Davies v. Director of Public Prosecutions**

"First Proposition. In a criminal trial where a person who is an accomplice gives evidence on behalf of the prosecution, it is the duty of thejudge to warn the jury that, although they may convict upon his evidence, it is dangerous to do so unless it is corroborated.

Second Proposition. This rule, although a rule of practice, now has the force of a rule of law.

Third Proposition. Where the judge fails to warn the jury in accordance with this rule, the conviction shall be quashed, even if in fact there be ample corroboration of the evidence of the accomplice." Nature and extent of corroborations

As to the nature and extent of corroboration required, LORD READING, C.J., cited the opinion of PARKE B, in **R. v. Stubbs**, namely, that the evidence of an accomplice must be confirmed not only as the circumstances of the crime, but also as to the identity of the prisoner. The corroboration need be direct evidence that the accused committed the crime; it is sufficient if it merely circumstantial evidence of his connection with the crime."

Corroboration in Rape Cases

The above case was not directly on the subject of "accomplice", but was on the point of corroboration. Corroboration is a common point between the victim of rape and an accomplice because though the woman who has been raped is not an accomplice, her evidence has been treated by the courts on somewhat similar lines. Her evidence requires corroboration the same way as that of an accomplice.