“Art of Cross Examination”

Prepared and Presented By:
Amarjit Singh
Managing Partner, Amarjit & Associates
INTRODUCTION

It is one of the greatest modern weapons of testing the veracity of a statement made by a person in examination-in-chief. It is a sword of attack and a shield of defence.

He who knows the art of cross examination, knows the Art of Advocacy.

The whole edifice of your legal reputation shall rest upon the way you conduct the cross examination. Even if you suffer from lack of experience, you will shine out; you will succeed if you know the art of cross examination.
Of all the accomplishments as an Advocate, it is most useful but at the same time most difficult to acquire.

Even men of standing in the profession, often find it difficult to employ this art to any useful purpose. The method which is often adopted fails to produce the desired results.

It is not always want of capacity and intelligence in the interrogator that creates this difficulty, but it often lies in determining the points to which it should be directed and the course of interrogation adopted in rendering the cross examination; effective and successful.
Aims & Objectives

❖ To find out the truth and detection of falsehood in human testimony. It is designed either to destroy or weaken the force of evidence, a witness has already given or to elicit something in your favour which he has not stated or;

❖ To discredit him by showing from his past history and present demeanor that he is unworthy of creating the object of cross examination from a litigant point of view:
Firstly, to get something, no matter how small, to help your own case. If you fear that further cross examination is dangerous or fruitless, it is far better to leave it there and divert the attention of the witness if you feel that what you are getting is not aiding or assisting your client;

If you cannot get something which helps your clients, try to get something to weaken your opponent;
In an examination in chief, the witness is trying to tell his own story in his own way. The aim and object of the cross examination is to bring out skillfully all that he aimed to say, all that he suppressed, all that he slurred over and all that he deliberately forgot to mention.

The first aim of the cross examination is extraction of the remaining circumstances of the testimony given by the witness in his examination-in-chief.

Unless you master the facts, you will never succeed in cross examination. The very art of winning a case consists in mastering the facts. Your whole aim and object should be to see that you see the picture as a whole.
Your clients present one side of the story. It is for you to see the other side too. Unless you do that you will never succeed. It is for you to pick the hole, to find out the lacunae and crack the case in your favour.

Before you begin to cross examine, your brief must be ready; your theory developed. Nothing is more unprofitable than an aimless cross examination.

Thus it is a Cardinal Rule of Advocacy that you should not embark upon the cross examination without having a clear formulated line of cross-examination. Secondly, the formulated plan must be in harmony with the circumstances of the case and the special nature of the testimony.
The aim and object of cross examination are usually the following:

- It may be used to prove your own case from the mouth of the witness on the opposite side or to show from their mouth that there is a story different to one which the witness originally intended to tell;
- To show from other attending circumstances that the evidence of the witness on the other side is inadmissible, incorrect, contradictory or untrustworthy.
- To show that the witness on the other side is deliberately distorting the facts
- To damage his own character as a witness in the matter, to show him to be unworthy of credit.
Please remember that your line of defence must fit in the circumstances of the case.

A lawyer should never get up to cross examination unless he has an absolute mastery of facts and unless he has developed the line or theory of defence or attack.

A given perusal and observance of the method by which a great cross examiner carries out his cross examination will go a long way to teach you the art of examination rather than mere study of books on evidence.
Key Points to Remember

After arranging the facts, you must draw inferences from them and then you must so manipulate them that they help your case to a great extent, bearing in mind that the strength of advocacy lies in the adaptation of your materials to the desired end.

You cannot succeed as a lawyer unless you master the details of your case and grapes of the favourable and unfavourable circumstances before the commencement of the cross examination of the opponent.
There is one more indication, which should be kept in mind. When a witness is lying and is making up the story as he goes or when he is repeating the story as learnt by tuitions, he invariably looks at his own lawyer at every important pause, as if trying to get some expression from his face or some assurance that all is going well.

After that if it happens more than once and is accompanied by other indications, then rest assured that your conviction that the witness is lying, is true. If the witness is honest, his language will always be such as consisting with his condition and cause.
The Advocate’s task is not complete when he has obtained all information of facts. He should then turn his attention to the means by which they are to be proved before the Court.

The facts are established by oral evidence, documentary evidence and circumstantial evidence. As regards to the oral evidence, the quality should be aimed at and not the quantity.

The evidence is weighed and not numbered. It is wrong to suppose that a point may be established if only a large number of witnesses can be called to prove it.
On the other hand, greater the number, more the risk that they would contradict each other by making inconsistent statements. The fact may be established by a small number of witnesses, if their testimony is consistent and reliable.

Very great discretion is necessary in selecting the witnesses. Here also the Advocate should not rely entirely on his clients assertions as to the nature and particulars of the evidence expected from them. If he calls any witness to please his client, he is assured to find soon to his utter surprise that the witness would say many things entirely different from what he has assured he would say.
It is, therefore, essential that the practitioner before he decides to bring his witness to the box, should have some idea of the evidence he would give.

A Lawyer can cross-examine his own witness in chamber in order to find out what he has got to say. Presence of mind, a given sense of humor, the ability to adapt oneself in any critical situation are also the most requisite qualities for a successful interrogator.
Cross-examination cannot be reduced to a single formula or a mass of formulas. There is no particular magnetic key to become successful cross-examiner. It is not something to be learned, it is something to be acquired.

You may practice for forty years and yet you will remain a poor cross-examiner. You may have practiced for forty days and yet you may be a good cross-examiner. The ability to cross-examine a witness is like a sixth sense, the natural intuitive art, which requires careful cultivation backed up by experience and fed by observation of human nature.
Golden Rules

- Rule 1: Never divert your eyes from that of the witness as this is a channel of communication from mind to mind.

- Rule 2: Be not regardless of the voice of the witness as this is perhaps the best interpretation of his mind.

- Rule 3: Be mild;

- Rule 4: Like a skillful chess player, in every move fix your mind upon the combination and relations of the game.

- Rule 5: Never under value your adversaries.
• **Rule 6:** If the witness decides to be witty, let him have an opportunity of satisfying himself that he has mistaken your power of cross-examination or his own.

• **Rule 7:** Try to elicit “Yes” or “It Is Correct” replies to your questions. Arrange your questions in such a way that the witness cannot but answer “Yes” or “It Is Correct”

• **Rule 8:** Be respectful to the Court

• **Rule 9:** Before you begin your cross examination be a Master of the facts on record and also of all facts, which are still to come on record. If a technical point is involved become master on that subject.
• **Rule 10:** Start your cross examination by a gentle smile and in a polite manner.

• **Rule 11:** Determine the order in which the witness is to be cross examined which you carry him through the narratives given in his examination-in-chief or begin at the end of it and go backward and forward to dodge him.

→ Witness usually comes prepared with the sequence of events narrated in his examination-in-chief. In order to dodge him and to take him by surprise, the cross examiner should not illicit the responses in the same narration of facts.
• Rule 12: The art of cross examination is to put questions to the witness in such a way that you steal from him the real objectives behind your cross examination.

► As far as possible, you are trying to fix the mind of the witness far away from the main topic at which your questions are directed. 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 an answer exactly what you wish.

► A series of questions each leading up to the point will accomplish the work. Once you get an answer you want, leave it there and divert the mind of the witness by some other question of no relevancy at all.
Rule 13: Let your joy at getting a favourable answer or your annoyance at damaging reply be not reflected on your face. Your emotions must be firm when you are conducting a difficult cross-examination. A cross-examiner, who loses his temper is sowing the seeds of disaster of his case.

Rule 14: Do not cross-examine on minor points, which leads you nowhere.

Rule 15: Never put an important question in a form that is objectionable.

Rule 16: Go to the root of the matter in the initial stages. Risk your important questions at the beginning and not at the end as by that time, the witness gets used to your technique.
There are no better rules of cross-examination than five:

- **Know** what you need and stop when you get it;
- **Risk** no case on the hazard of an answer that may destroy it;
- **Hold** your temper;
- **Do** not expect too much from your adversaries witnesses;
- **Do not** rush through cross-examination.
Question of Admissibility and Relevancy of the documentary evidence is governed by the Evidence Act.

- The evidence, which is tendered, must be admissible and relevant.
- The relevancy, admissibility and proof are different aspects, which should exist before a document can be taken in evidence.
- The mode of proof and competency of the witness is another aspect.
The whole discussion can be summarized in the form of two following prepositions:

If you want to be a successful cross-examiner, you must have a flair for which, it is something inside you and which cannot be arrived at by reading a textbook on this subject, but if you have a flair for it then even the desire to be a good cross-examiner cannot help you unless you master the principles of cross-examination thoroughly.

Years of study and long experience may be able to arm you with weapons, which may be as effective as the flair for cross examination, if you have not got it already in you.
ANY QUESTIONS
AMARJIT SINGH
ADVOCATE
AMARJIT & ASSOCIATES
PATENT, TRADE MARKS, COPYRIGHT,
INDUSTRIAL DESIGNS & CYBER LAWS
SUITE 404, LAW ARCADE, 18, PUSA ROAD, NEW DELHI–110005 INDIA
PH.: +91-011-28756797, 28753141,
28755155, 28758805, FAX: 28754798
E-MAIL:
INFO@AMARJITASSOCIATES.COM
WEB: WWW.IPRFIRM.TEL