

CROSS-EXAMINATION IN CRIMINAL CASES Part 2

Types of questioning in cross-examination

Whilst conducting cross-examination:

- Leading questions are permitted and encouraged;
- Counsel has a duty not to waste the court's time and money on irrelevant matters;
- The judge has the discretion to prevent cross-examination which is unnecessary, improper or oppressive;
- You must also be aware of the relevant provisions in the various codes of conduct.

Cross-examination on credibility

One of the aims of cross-examination is to cast doubt on, and undermine the evidence given by the witness. Questions can therefore be put in cross-examination with a view to attacking the credibility of the witness. The credibility of a witness depends upon the witness's:

- Knowledge of the facts to which they testify;
- Disinterest;
- Integrity;
- Veracity (i.e. truthfulness), and;
- Duty to speak the truth by virtue of the oath.

There are limits on the extent to which counsel are entitled to cross-examine a witness, and the manner in which they can cross-examine.

The limits on cross-examination of complainants in sex cases

A complainant in sex offences cases must not be cross-examined by the accused in person. In addition, counsel are restricted as to the types of questions that are permitted.

There is also a general prohibition on evidence adduced, or questions asked on behalf of the accused about any sexual behaviour of the complainant, without leave of the court. The court may give leave if it is satisfied that the evidence or questions relates to specified instances of sexual behaviour that is relevant to an issue in the case, and where refusal of leave may lead to a miscarriage of justice.

Limits on cross-examination in the case of children

Counsels are not permitted to cross-examine in person child witnesses in certain sexual offence cases, and cases of kidnapping, false imprisonment and abduction. A child is a minor when aged 17 years and under for the purposes of sexual offences cases, and 14 years and under in other cases.

Common pitfalls in cross-examination technique and style

Judges have criticised counsel on various aspects of cross examination, including:

- Making comments rather than asking questions;
- Not asking a proper question but rather making a statement;
- Not giving the witness a proper opportunity to answer the question;
- Asking questions that are irrelevant;
- Not putting their client's case clearly.

If cross-examination results in matters that did not arise in the course the examination-in-chief, the party that originally called the witness can question the witness again. This is re-examination.

Bibliography:

IN BRIEF [online], [dostęp 24 .02.2018] dostępne w Internecie <http://www.inbrief.co.uk/court-proceedings/cross-examination/>; <http://legal-dictionary.thefreedictionary.com>

I. Complete with the correct verb form of Passive Voice:

1. Counsels (criticise) for not asking proper questions in court.
(Present Perfect)
2. The witness can (question) again during re-examination.
3. Improper and oppressive cross-examination (prevent) by the judge yesterday.
4. Court's time must (not waste)
5. Credibility of the evidence often (undermine)
6. The types of questions in sex cases (restrict)
7. Evidence which will (adduce), must have leave of the court.
8. Cross-examination of child witnesses by counsels in case of kidnapping must not (permit) ...

II. Match the terms with the definitions:

1. leading	A the criminal taking away a person by persuasion, particularly a minor or a woman
2 oppressive	B someone under legal age
3 relevant provisions	C to restrain freedom of movement of an individual
4 integrity	D problems, risks, obstacles
5 veracity	E that suggests to the witness how it is to be answer
6 to adduce	F distressing, difficult to bear
7 leave of the court	G consent of the judges
8 miscarriage of justice	H to mention, testify
9 false imprisonment	I credibility, truthfulness
10 abduction	J important, material regulations
11 minor	K failure of fairness
12 pitfalls	L high character, trustworthiness

III. Complete the sentences with the given words: leading, miscarriage, veracity, re-examination, credibility, abduction, irrelevant

1. Judges criticise counsels for making comments or askingquestions.
2. Child witnesses must not be cross-examined in case of kidnapping or
3. Questioning of the witnesses again after cross-examination is called.....
4. Nor giving a witness opportunity to answer the question may lead to of justice.
5. The of a witness depends on his disinterest and
6.questions are permitted in cross-examination.

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