

CROSS-EXAMINATION

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Introduction

- Important part of advocacy.
- Read as many books on advocacy and cross-examination as you like.
- Watch as many video presentations / seminars as you like.
- Can't beat experience.
- Never over look the importance of Examination-in-chief.

The paramount rule

- Maintain your ethical standards, professionally and personally
- As officers of the Court we have our paramount duty to the Court.
- Clients and cases are only in our lives for a short time.
- We are going to be practicing for many years to come.
- Your reputation is paramount.

Where to start

- We start at the end.
- Where do we want to end up?
- Look at the law.
- Know the essential elements of the case.
- This will guide your cross-examination.

The rules of Cross-examination

- Stick to the rules.
- Know when to bend the rules.
- Know the legislation.
- Know the case law.
- Keep up to date with any changes.
- Know the dangers. Raising Character evidence.

Goals

- What do you want to get out of the witness?
- Getting evidence favourable to your case.
- Getting evidence that damage your opponent's case.
- Discrediting a witness.

Theory of the case

- What really happened.
- Concentrate on the facts.
- What are the facts in issue?

Common mistakes

- Not cross-examining on what you need to cross-examine.
- Not done so under instructions.
- Not done so on what's available on the evidence.
- Cross-examining without a purpose.
- Making closing submissions not supported by the evidence.

10 Commandments – Prof. Younger

1. Brief, short and succinct.
2. Use short questions and plain words.
3. Ask only leading questions. *
4. Only ask questions you know the answer to. *
5. Listen to the witness's answers.
6. Do not quarrel with the witness.
7. Do not repeat evidence-in-chief.
8. Never let the witness explain anything. *
9. Avoid the one answer too many.
10. Save the ultimate point to last. *

Localise your questions

- Federal or State? Which State?
- What does the law say?
- What do the cases say?
- Browne v Dunn

10 commandments *

- Things may not be that clear.
- Be variable and fluid in your approach.
- Know your bench, opponent and witnesses.
- No 3
- No 4
- No 8
- No 10

Books to read

- Plenty out there to read.
- My books I recommend.
- Sherlock Holmes.
- The Art of War.
- 50 lessons lawyers can learn from poker players.

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