

LAW SCHOOL NOTES

SUBJECT TITLE:

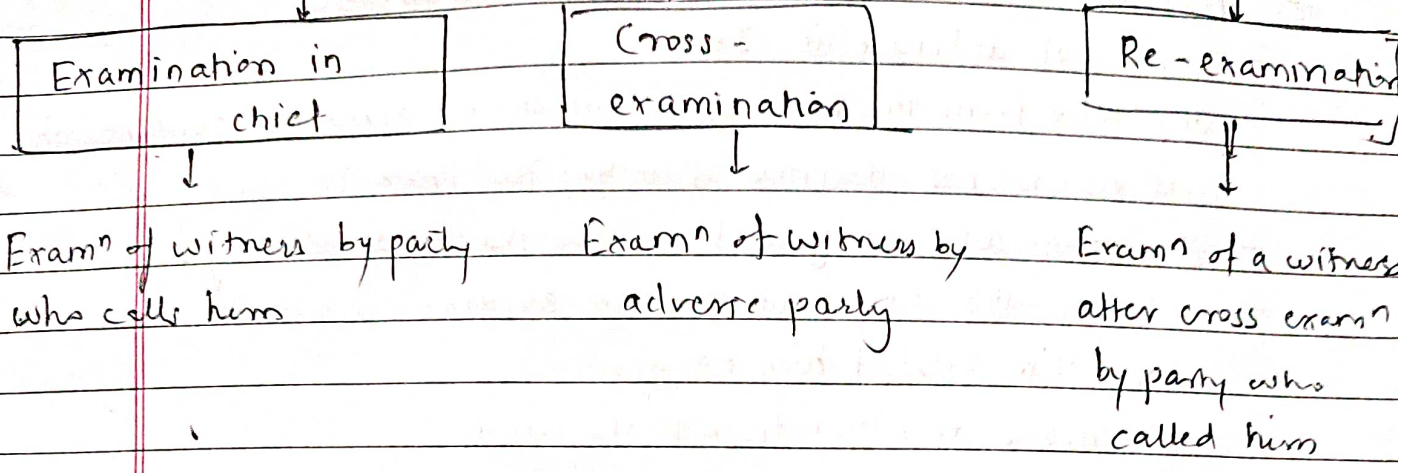
EXAMINATION OF WITNESSES

PRINCIPLES AND PRACTICE

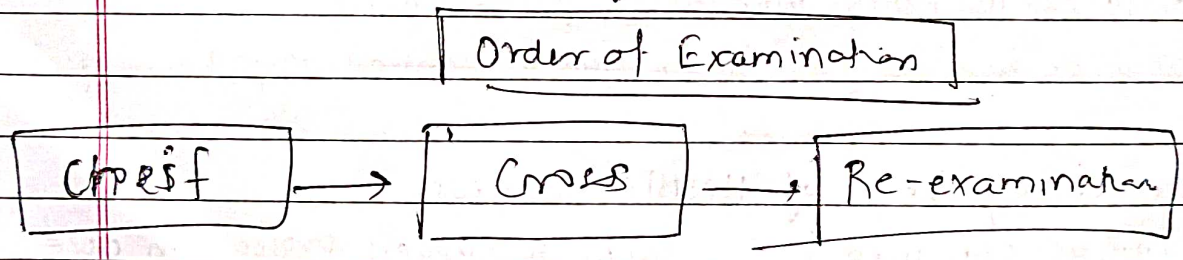


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S.137



S.138



* Cross Examination [s.137, s.138]

- S.138 → at the desire of adverse party.
- S.138 → must relate to relevant facts, need not be confined to the facts to which witness testified in chief.
- S.139 → Cross examⁿ of person called to produce document not allowed.
- S. 143 → Leading questions can be asked.
- S.145 → Witness may in cross-examination be contradicted by his previous statement in writing.
- S.146 → Questions lawful in cross examination
 - ↳ i) to test his veracity
 - ↳ ii) to discover who he is & what is his position in life
 - ↳ iii) to shake his credit, by injuring his character

* Hostile Witness (Adverse / unfavourable)

- term not defined in IEA
- One who from the manner in which he gives the evidence shows that he is not desirous of telling the truth to the court.
- A witness who is gained over by the opposite party.
- Witness who does not give in evidence what the party calling him wished him to give.
- not desirous of telling truth to the court

following witnesses cannot be called Hostile

- 1) His testimony is such that it does not support the case of the party calling him or is not in accordance with evidence of other witnesses.
- 2) When he has not been produced out of the fear that he might disfavour the party who has to produce him.
- 3) Only because he gives inconsistent & contradictory answers

* Evidentiary Value of Hostile witness

- can be examined to the extent it support prosecution case
- Court to act with greater degree of care & caution
- Evidence should unequivocally point towards guilt of accused
- Whole testimony is not rejected & not wholly reliable
- Only used for corroboration

Case Law :- Balu Simba shinde v. State of Maha

- S.C. held evidence of hostile witness need not be rejected ipso facto. Party may take advantage of position. Court has to be cautious.

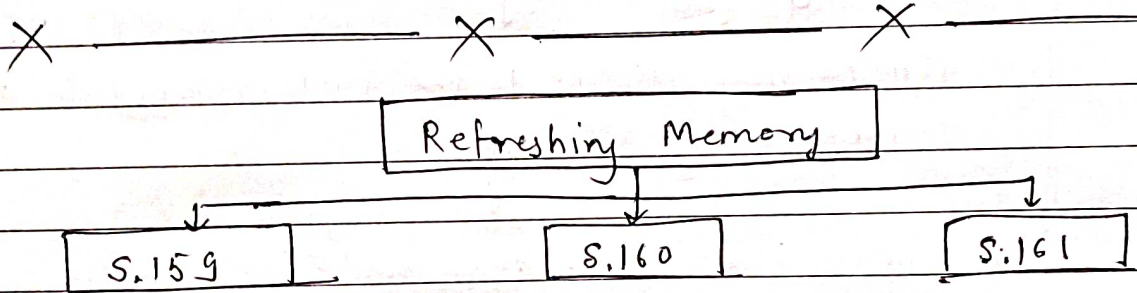
Bholanath Kusthwal v. State of MP

S.C. held an independent witness turning hostile is not ground for acquittal

S.155

Impeaching credit of witness (destroying)

- * It could be destroyed by adverse party or party who calls him evidence of person that the witness is unworthy of credit.
- By proof that witness has been
 - bribed
 - accepted the offer of bribe
 - has received any other corrupt inducement.
 - former statements inconsistent with present evidence.



* Refreshing Memory

- Witness can refresh his memory while under examination.
- He may do so by referring to
 - any writing made by himself.
 - at the time of transaction or soon afterwards
 - writing made by other person.
 - copy or photocopy of document with permission of court
 - ~~prob~~ An expert may refresh his memory by ~~prob~~ reference to professional treatise.

Example - i) Reports, Diaries, Certificates, Account books, Dying declaration, notes of speech, Panchanama, Deposition, notes of police officer, even horoscope

→ Such writing need not be admissible in evidence

It also include

S. 160

- 1) Newspaper - Ram Chandra v. Emperor (1930)
- 2) Tape Recorded - not included statement
- 3) horoscope - Banwari Lal v. Mahesh (1912)
- 4) Account book - Jivani Lal v. Nitmani (1928)
- 5) Records of investigation - State of Karnataka v. Yarappa Reddy AIR (2000)

S. 160 → Even after perusal of document, it does not refresh his memory

↓

then he may testify to the facts referred in document as mentioned in s. 159.

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Unlike s. 159, here document in itself is evidence

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He must be sure about writing, signature or content of documents.

* S. 161 :- Right of adverse party as to writing used to refresh memory

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Cross-examination of witness could be done.