

Expert testimony and its procedure

Examination in chief, cross examination and re-examination

By: Mr. Anurag Sahu

Assistant Professor

Department of forensic science

Govt. Institute of forensic science

Aurangabad, Maharashtra

Expert testimony : Background

- Expert evidence, Expert witness, Expert opinion
- Expert evidence is by definition an opinion only, based on facts which have been provided by first-hand examination by the expert.
- Expert witnesses play a large and increasingly important role in the trial of actions.
- Majority in all civil and criminal cases.

Purpose of Expert testimony

- Expert witness is called not to testify with respect to the factual background of an action but rather to provide an opinion with respect to those facts which will help the judge reach the conclusion.
- Expert have first-hand knowledge of the facts of a case. but this knowledge is only incidental to the purpose for which the expert is allowed to testify.

Preparation of Expert testimony

- Pre-trial preparation
- Test run of questions before courtroom
- Preparation for courtroom (Rules and guidelines)

Expert and Opinion of expert

- Selection of expert: qualification of expert
- Sec 39(1) of BSA, 2023/Sec 45 of IEA: Opinion of expert
 - When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts.

Expert and Opinion of expert

- Sec 39(2) of Bharatiya Shakshya Adhiniyam, 2023
 - When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000, is a relevant fact.

Expert testimony at the trial

- Examination of witnesses (Sec 142 BSA, 2023/ Sec 137 IEA)
 - Cross examination
 - Re-examination
 - Examination-in-chief
- Orders of examination (Sec 143 BSA, 2023)
 - (1) *Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.*
 - (2) *The examination-in-chief and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified of his examination-in-chief.*
 - (3) *The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.*

Examination in chief

- Direct examination
- The examination of a witness by the party who calls him shall be called his examination-in-chief.
- After taking oath the witness has to give answers the questions asked by the party who has called him before the court.
- In this process all material facts within the knowledge of the witness are recorded to prove his case.
- In examination-in-chief the testimony is strictly confined to the facts relevant to the issues only, and not to the law.
- No leading questions are permitted to ask.(Sec 146 (1) BSA,2023)

Cross examination

- The examination of a witness by the adverse party shall be called his cross-examination.
- After the examination-in-chief the opposite party shall be called to examine the witness.
- It is the right of the opposite party to cross-examine the witness to expose all relevant facts which are either left or not disclosed in the examination-in-chief.
- The range of cross-examination is unlimited.
- Leading questions are allowed. (Sec 146 BSA(4),2023)

Re-examination

- The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.
- If the party finds inconsistencies or discrepancies arising out of cross-examination he has the right to re-examine his own witnesses.
- In case of re-examination no new question or fact shall be permitted to be asked without the court's consent. Similarly, no leading question can be asked.

Thank you