

A plaintiff sued a defendant for embezzling company funds. At trial, the defendant's first witness was his brother, who testified that he embezzled the company funds without the defendant's knowledge or assistance. The plaintiff now seeks to cross-examine the witness.

Which one of the following questions is most likely to be permitted on cross-examination?

- A. "Didn't you have limited access to the company's financial accounts, or did your position provide you with unrestricted access to those accounts?"
- B. "How did your brother feel after he was demoted during the embezzlement investigation?"
- C. "Isn't it true that you cofounded several offshore shell corporations with your brother three months before the embezzlement investigation began?"
- D. "You must have gotten the account information to access the company funds from the defendant, so he had to know, didn't he?"

Explanation:

Improper questions

Type	Definition
Argumentative	Intended to present argument, rather than elicit factual response
Assumes facts	Assumes or insinuates facts that have not been proven
Calls for conclusion / opinion	Requires witness to draw conclusion or state opinion that he/she is not qualified to give
Compound	Requires answers to multiple questions
Leading	Suggests the desired response in question asked on direct examination
Repetitive	Repeats or rephrases previously asked & answered questions*

*A question asked on direct may be repeated on cross-examination or redirect examination to clarify confusion.

A question should be permitted only if it is within the proper scope and in the proper form. The [scope of cross-examination](#) is generally limited to matters that were raised on direct examination (eg, embezzling funds) or concern the witness's credibility (ie, [impeachment](#) evidence). Therefore, all of the questions here fall within the proper scope.

However, a question that is within the proper scope may still be prohibited if it is asked in an **improper form**. A question is always improper and **never permitted** if it is in any of the following forms:

argumentative – intended to present an argument rather than elicit a factual response

assumes facts – assumes or insinuates facts that have not been proven **(Choice D)**

calls for a conclusion or opinion – requires the witness to draw a conclusion or state an opinion that he/she is not qualified to give **(Choice B)***

compound – requires answers to multiple questions (eg, "Didn't you leave the house, get in your car, and drive away?") **(Choice A)**

repetitive – repeats or rephrases a previously asked and answered question

In contrast, [leading questions](#)—ie, questions that suggest the desired response—are generally **prohibited on direct examination** but **allowed on cross-examination**. Therefore, the question asking "*Isn't it true* that you cofounded several

offshore shell corporations with your brother three months before the embezzlement investigation began?" is most likely to be permitted on cross-examination.

*Since the brother is not qualified to give an opinion as to the defendant's feelings, a more proper question would be to ask about the defendant's actions or statements.

Educational objective:

A question is always improper if the form is argumentative, assumes facts, calls for a conclusion or opinion, is compound, or is repetitive. In contrast, a leading question is generally improper on direct examination but allowed on cross-examination.

References

Fed. R. Evid. 611(b) (scope of cross-examination).

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