

A woman is prosecuted for embezzling her employer's funds. As part of its case-in-chief, the prosecution calls the woman's former supervisor to testify. The prosecution asks the supervisor, "Isn't it true that you are the defendant's former supervisor?" The woman's attorney objects to the form of the question.

Is the court likely to sustain the objection?

- A. No, because the question relates to a preliminary matter that is not in dispute.
- B. No, because the supervisor is a hostile witness.
- C. Yes, because leading questions are only permitted on cross-examination.
- D. Yes, because the supervisor is not a child.

Explanation:

Leading questions

(FRE 611)

Direct examination	Leading questions <i>prohibited</i> unless: necessary to develop testimony child witness or adult with communication difficulty witness aligned with adverse party
Cross-examination	Leading questions <i>permitted</i> unless: question goes beyond scope of direct examination

FRE = Federal Rule of Evidence.

A **leading question** is one that suggests the desired response within the question. Under FRE 611, leading questions are **prohibited on direct examination unless:**

the witness is a **child** or an **adult with difficulty communicating**

the question is necessary to develop the witness's testimony (eg, to establish a **preliminary matter**—like a **witness's identity or occupation**—that is **not in dispute**) *or*

the witness is **aligned** with an **adverse party** (eg, an adverse or hostile witness).

Here, the prosecution asked the woman's former supervisor on direct examination, "Isn't it true that you are the defendant's former supervisor?" This was a leading question because it suggested the desired response within the question. But since the question relates to a preliminary matter that is not in dispute—the supervisor's identity and occupation—it is permissible. Therefore, the court is *not* likely to sustain the objection to the question.

(Choice B) The supervisor is *not* a hostile witness for the prosecution because there is no indication that the supervisor is aligned with the woman—the adverse party. However, the prosecution's leading question is still permissible because it relates to a preliminary matter that is not in dispute.

(Choice C) Leading questions are permitted on cross-examination unless the question exceeds the scope of direct examination. But such questions are *also* permitted on direct examination to establish preliminary matters such as a witness's identity or occupation (as seen here).

(Choice D) Although the supervisor is not a child, the leading question is still permissible to establish the supervisor's identity and occupation.

Educational objective:

Leading questions—ie, questions that suggest the desired response—are barred on direct examination unless (1) the witness is a child or an adult with difficulty communicating, (2) the question is needed to develop the witness's testimony (eg, to establish an undisputed preliminary matter), or (3) the witness is aligned with an adverse party.

References

Fed. R. Evid. 611 (defining leading questions).

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