

Kenya School of Law

ADVOCATES TRAINING PROGRAM

2015-16 ACADEMIC YEAR

Trial Advocacy

EXHIBITS, IMPEACHMENT AND RE-EXAM

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OUTLINE

Production of Exhibits
Process of Impeachment
Re examination
Exercise

Statutory basis

Evidence Act Cap.80

Sec.5-Evidence of existence or non existence of an issue

Sec.35-Admissibility of Documentary evidence

Sec.37-41-Books of account, public records, maps, gazette,law books

Part III-Documentary evidence

Sec.64-Proof of contents of Documents

Sec.78-Photographs

Part VII-Electronic records

Statutory basis-Civil Procedure rules

Order 14 Rule 3

Every document admitted in evidence
shall form part of the record of the suit.

Statutory basis-Criminal Procedure Code

Part VI-Procedure of Trials before subordinate courts

Part IX-Procedure of Trials before High court

208. (1) If the accused person does not admit the truth of the charge, the court shall proceed to hear the complainant and his witnesses and other evidence (if any).

300. The advocate for the prosecution shall open the case against the accused person, and shall call witnesses and adduce evidence in support of the charge.

Steps of admission of exhibits

- Foundation(You have earlier testified about...)
- Show judge, as it be marked for identification
(For civil, refer to page in bundle)
- Show opponent's counsel, ask if has any objection.
- Ask witness how they recognise/identify it
- Production/Tendering(Ask MFI be marked as Exhibit)
- Marking (done by court clerk)
- Use the exhibit(get the meat out of it).

Re-examination

- Principles like examination in chief.
- Open ended questions.
- Only on issues that arose in cross examination

Re-exam-Statutory basis

Criminal Procedure Code Sec. 150. A court may, at any stage of a trial or other proceeding under this Code, summon or call any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and re-examine a person already examined, and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case:

Statutory basis –High Court

CPC Sec. 302. *The witnesses called for the prosecution shall be subject to cross-examination by the accused person or his advocate, and to **re-examination** by the advocate for the prosecution.*

Sec 307. (1) *The accused person or his advocate may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution; the accused person may then give evidence on his own behalf and he or his advocate may examine his witnesses (if any), and after their cross-examination **and re-examination (if any)** may sum up his case.*

Like in Examination in Chief

- a) Witness must be legally competent to testify.
- b) Use non-leading questions(open ended).(Leading question-that which suggests the answer.)
- c) Not testify in narrative.
- d) Generally offer fact, not opinion.
- e) Can refresh memory.

Open ended questions-Ian Morely, QC, Devils Advocate

WHO

WHAT

WHY

WHEN

WHERE

HOW

EXPLAIN

TELL US; PLEASE DESCRIBE

Content

Ask: Why did I call this witness?

1. What single most important thing are they to say?

Look at theme; reasons for actions; explanations; credibility.

2. What to exclude

Clutter; unprovables; implausibles; impeachables; door openers.

Impeachment

Three “C”s

CONFIRM-What said in court

CREDIT-What do normally

CONFRONT-With contradiction

Don't add “E”.(Explain)

Other Important points- Presentation

(Prof. Goodno)

- Be organised
- Focus on relevant matters.
- Good delivery.
- Passion for the case

Communication techniques

(Adopted from NITA method).

Use appropriate communication techniques of

- language and vocabulary,
- demeanor,
- eye-contact,
- voice projection,
- pace, cadence and silence, (cadence-rhythmic flow of a sequence of sounds or words: a slight falling in pitch of the voice in speaking or reading, as at the end of a declarative sentence. the general modulation of the voice.)
- facial expressions,
- posture and
- avoidance of distracting gestures and verbal habits.

Q and A

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