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it wishes or expects to receive or suggesting disputed facts or to which the witness is to testify, is called a leading question. When leading questions may not be asked 142. (1) Leading questions may not be asked 143. (1) Leading questions may be asked in cross-examination, subject to the following qualifications: (a) the question may not put into the mouth of the witness the very words which he is to echo back again; and (b) the question may not assume that facts have been proved which have not been proved, or that particular answers have been given contrary to the fact. (2) The court, in its discretion, may prohibit leading questions from being put to a witness who shows a strong interest or bias in favour of the cross-examining party. Evidence as to matters in writing 144. Any witness may be asked whilst under examination whether any contract, grant or other disposition of property as to which he is giving evidence was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document which in the opinion of the court ought to be produced, the adverse party may object to the evidence being given until the document is produced or until facts have been proved which entitle the party who called the witness to give secondary evidence of it. 056(special) je.fm Page 87 Friday, March 31, 2006 5:45 PM 88 Laws of Malaysia ACT 56 Explanation–A witness may give oral evidence of statements made by other persons about the contents of documents if the statements are in themselves relevant facts. ILLUSTRATION The question is whether A assaulted B. C deposes that he heard A say to D: "B wrote a letter accusing me of theft and I will be revenged on him." The statement is relevant as showing A's motive for the assault and evidence may be given of it though no other evidence is given about the letter. Cross-examination as to previous statements in writing 145. (1) A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question in the suit or proceeding in which he is cross-examined, without the writing being shown to him or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. (2) If a witness, upon cross-examination as to a previous oral statement made by him relevant to matters in question in the suit or proceeding in which he is cross-examined and inconsistent with his present testimony, does not distinctly admit that he made such statement, proof may be given that he did in fact make it; but before proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he made such statement. Questions lawful in cross-examination 146. When a witness may be cross-examined he may, in addition to the questions hereinbefore referred to, be asked any questions which tend– (a) to test his accuracy, veracity or credibility; (b) to discover who he is and what is his position in life; or (c) to shake his credit by injuring his character, although the answer to such questions might tend directly or 056(special) je.fm Page 88 Friday, March 31, 2006 5:45 PM Evidence 89 indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture. Restrictions on evidence at trials for rape 146A. Notwithstanding anything in this Act, in proceedings in respect of the offence of rape, no evidence and no question in cross-examination shall be adduced or asked, by or on behalf of the accused, concerning the sexual activity of the complainant with any person other than the accused unless– (a) it is evidence that rebuts, or a question which tends to rebut, evidence of the complainant's sexual activity or absence thereof that was previously adduced by the prosecution; (b) it is evidence of, or a question on, specific instances of the complainant's sexual activity tending to establish the identity of the person who had sexual contact with the complainant on the occasion set out in the charge; or (c) it is evidence of, or a question on, sexual activity that took place on the same occasion as the sexual activity that forms the subject matter of the charge, where that evidence or question relates to the consent that the accused alleges he believed was given by the complainant. When witness to be compelled to answer 147. If any such question relates to a matter relevant to the suit or proceeding, section 132 shall apply thereto. Court to decide when question shall be asked and when witness compelled to answer 148. (1) If any question relates to a matter not relevant to the suit or proceeding, except so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it does not think fit to compel him to answer the question, warn the witness that he is not obliged to answer it. 056(special) je.fm Page 89 Friday, March 31, 2006 5:45 PM 90 Laws of Malaysia ACT 56 (2) In exercising its discretion, the court shall have regard to the following considerations: (a) the questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies; (b) the questions are improper if the imputation which they convey relates to matters so remote in time or of such a character that the truth of the imputation would not affect or would affect in a slight degree the opinion of the court as to the credibility of the witness on the matter to which he testifies; (c) the questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence; (d) the court may, if it sees fit, draw from the witness's refusal to answer, the inference that the answer, if given, would be unfavourable. Question not to be asked without reasonable grounds 149. No such question as is referred to in section 148 shall be asked unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded. ILLUSTRATIONS (a) An advocate is instructed by another advocate or reliable source that an important witness is a professional gambler. This is a reasonable ground for asking the witness whether he is a professional gambler. (b) An advocate is informed by a person in court that an important witness is a professional gambler. The informant, on being questioned by the advocate, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a professional gambler. (c) A witness of whom nothing whatever is known is asked at random whether he is a professional gambler. There are here no reasonable grounds for the question. 056(special) je.fm Page 90 Friday, March 31, 2006 5:45 PM Evidence 91 (d) A witness of whom nothing whatever is known, being questioned as to his mode of life and means of living gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a professional gambler. Procedure of court in case of question being asked without reasonable grounds 150. If the court is of opinion that any such question as is referred to in section 148 was asked without reasonable grounds, it may, if it was asked by an advocate, report the circumstances of the case to the High Court or other authority to which the advocate is subject in the exercise of his profession. Indecent and scandalous questions 151. The court may forbid any questions or inquiries which it regards as indecent or scandalous, although they may have some bearing on the questions before the court, unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed. Questions intended to insult or annoy 152. The court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form. Exclusion of evidence to contradict answers to questions testing veracity 153. When a witness has been asked and has answered any question which is relevant to the inquiry only so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely he may afterwards be charged with giving false evidence. Exception 1–If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction. Exception 2–If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted. 056(special) je.fm Page 91 Friday, March 31, 2006 5:45 PM 92 Laws of Malaysia ACT 56 ILLUSTRATIONS (a) A claim against an underwriter is resisted on the ground of fraud. The claimant is asked whether in a former transaction he had not made a fraudulent claim. He denies it. Evidence is offered to show that he did make such a claim. The evidence is inadmissible. (b) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it. Evidence is offered to show that he was dismissed for dishonesty. The evidence is not admissible. (c) A affirms that on a certain day he saw B at Malacca. A is asked whether he himself was not on that day at Penang. He denies it. Evidence is offered to show that A was on that day at Penang. The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Malacca. (d) A is tried for a rape on B. B is asked in cross-examination whether she has not had illicit intercourse with C and D. She denies it. Evidence is offered to show that she has had such intercourse with C and D. The evidence is not admissible. In each of the cases in illustrations (c) and (d) the witness might, if the denial was false, be charged with giving false evidence. (e) A is asked whether he has not said that he would be revenged on B, against whom he gives evidence. He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality. Question by party to his own witness 154. The court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross- examination by the adverse party. 056(special) je.fm Page 92 Friday, March 31, 2006 5:45 PM Evidence 93 Impeaching credit of witness 155. The credit of a witness may be impeached in the following ways by the adverse party or, with the consent of the court, by the party who calls him: (a) by the evidence of persons who testify that they from their knowledge of the witness believe him to be unworthy of credit; (b) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence; (c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted; (d) (Deleted by Act A729). Explanation–A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives shall not be contradicted, though, if they are false, he may afterwards be charged with giving false evidence. ILLUSTRATIONS (a) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B. Evidence is offered to show that on a previous occasion he said that he had not delivered the goods to B. The evidence is admissible. (b) A is indicted for the murder of B. C says that B, when dying, declared that A had given B the wound of which he died. Evidence is offered to show that on a previous occasion C said that the wound was not given by A or in his presence. The evidence is admissible. Questions tending to corroborate evidence of relevant fact admissible 156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other 056(special) je.fm Page 93 Friday, March 31, 2006 5:45 PM 94 Laws of Malaysia ACT 56 circumstances which he observed at or near to the time or place at which the relevant fact occurred, if the court is of opinion that the circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact to which he testifies. ILLUSTRATION A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents, unconnected with the robbery, which occurred on his way to and from the place where it was committed. Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself. Former statements of witness may be proved to corroborate later testimony as to same fact 157. In order to corroborate the testimony of a witness, any former statement made by him whether written or verbal, on oath, or in ordinary conversation, relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved. What matters may be proved in connection with proved statement relevant under section 32 or 33 158. Whenever any statement relevant under section 32 or 33 is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested. Refreshing memory 159. (1) A witness may while under examination refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court considers it likely that the transaction was at that time fresh in his memory. (2) The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct. 056(special) je.fm Page 94 Friday, March 31, 2006 5:45 PM Evidence 95 (3) Whenever the witness may refresh his memory by reference to any document, he may, with the permission of the court, refer to a copy of that document. Provided the court is satisfied that there is sufficient reason for the non-production of the original. (4) An expert may refresh his memory by reference to professional treatises. Testimony to facts stated in document mentioned in section 159 160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159 although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document. ILLUSTRATION A book-keeper may testify to facts recorded by him in books regularly kept in the course of business if he knows that the books were correctly kept, although he has forgotten the particular transactions entered. Right of adverse party as to writing used to refresh memory 161. Any writing referred to under section 159 or 160 must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon. Production of documents and their translation 162. (1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to court notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court. (2) The court, if it sees fit, may inspect the document unless it refers to affairs of State, or take other evidence to enable it to determine on its admissibility. 056(special) je.fm Page 95 Friday, March 31, 2006 5:45 PM 96 Laws of Malaysia ACT 56 (3) If for such a purpose it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret unless the document is to be given in evidence, and if the translator disobeys the direction, he shall be held to have committed an offence under section 166 of the Penal Code. Giving as evidence of document called for and produced on notice 163. When a party calls for a document which he has given the other party notice to produce, and the document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so and if it is relevant. Using as evidence of document production of which was refused on notice 164. When a party refuses to produce a document which he has had notice to produce, he may not afterwards use the document as evidence without the consent of the other party or the order of the court. ILLUSTRATION A sues B on an agreement, and gives B notice to produce it. At the trial A calls for the document, and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He may not do so. Judge's power to put questions or order production 165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form at any time, of any witness or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question: 056(special) je.fm Page 96 Friday, March 31, 2006 5:45 PM Evidence 97 Provided that– (i) the judgment must be based upon facts declared by this Act to be relevant and duly proved; (ii) this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which the witness would be entitled to refuse to answer or produce under sections 121 to 131 if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with the primary evidence of any document, except in the cases hereinbefore excepted. Power of jury or assessors to put questions 166. In cases tried by jury or with assessors the jury or assessors may put any questions to the witnesses through or by leave of the Judge, which the Judge himself might put and which he considers proper. CHAPTER XI IMPROPER ADMISSION AND REJECTION OF EVIDENCE No new trial for improper admission or rejection of evidence 167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case if it appears to the court before which the objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision. 056(special) je.fm Page 97 Friday, March 31, 2006 5:45 PM 98 LAWS OF MALAYSIA Act 56 EVIDENCE ACT 1950 LIST OF AMENDMENTS Amending law Short title In force from L.N. 332/58 Federal Constitution (Modification of Laws) (Ordinances and Proclamations) Order 1958 13-11-1958 P.U.(A) 261/1971 Evidence Ordinance (Extension) Order 1971 01-11-1971 P.U.(A) 280/1971 Corrigendum to P.U.(A) 261/1971 01-11-1971 P.U.(A) 239/1974 Revision of Laws (Evidence Act) Order 1974 01-11-1971 Act A324 Criminal Procedure Code (Amendment and Extension) Act 1976 01-01-1976 Act A354 Constitution (Amendment) Act 1976 27-08-1976 P.U.(A) 357/1980 Subordinate Courts Act (Extension) Order 1980 01-06-1981 Act A729 Evidence (Amendment) Act 1989 05-05-1989 Act A851 Evidence (Amendment) Act 1993 16-07-1993 Act A978 Evidence (Amendment) Act 1997 31-01-1997 056(special) je.fm Page 98 Friday, March 31, 2006 5:45 PM 99 LAWS OF MALAYSIA Act 56 EVIDENCE ACT 1950 LIST OF SECTIONS AMENDED Section Amending authority In force from Long title P.U.(A) 261/1971 01-11-1971 2 P.U.(A) 261/1971 01-11-1971 Act A851 16-07-1993 3 P.U.(A) 261/1971 01-11-1971 6 P.U.(A) 261/1971 01-11-1971 10 P.U.(A) 261/1971 01-11-1971 17 P.U.(A) 261/1971 01-11-1971 23 P.U.(A) 261/1971 01-11-1971 25 P.U.(A) 261/1971 01-11-1971 26 P.U.(A) 261/1971 01-11-1971 Act A324 01-01-1976 27 P.U.(A) 261/1971 01-11-1971 Act A324 01-01-1976 28 P.U.(A) 261/1971 01-11-1971 Act A324 01-01-1976 29 P.U.(A) 261/1971 01-11-1971 056(special) je.fm Page 99 Friday, March 31, 2006 5:45 PM 100 Laws of Malaysia ACT 56 Act A324 01-01-1976 30 P.U.(A) 261/1971 01-11-1971 Act A324 01-01-1976 31A Act A851 16-07-1993 Act A978 31-01-1997 32 P.U.(A) 261/1971 01-11-1971 Act A851 16-07-1993 36 P.U.(A) 261/1971 01-11-1971 37 P.U.(A) 261/1971 01-11-1971 50 P.U.(A) 261/1971 01-11-1971 54 P.U.(A) 261/1971 01-11-1971 57 L.N. 332/1958 13-11-1958 P.U.(A) 261/1971 01-11-1971 60 Act A851 16-07-1993 62 Act A851 16-07-1993 63 Act A851 16-07-1993 65 P.U.(A) 261/1971 01-11-1971 66 P.U.(A) 261/1971 01-11-1971 73A P.U.(A) 261/1971 01-11-1971 P.U.(A) 239/1974 01-11-1971 74 L.N. 332/1958 13-11-1958 P.U.(A) 261/1971 01-11-1971 78 L.N. 332/1958 13-11-1958 P.U.(A) 261/1971 01-11-1971 Section Amending authority In force from 056(special) je.fm Page 100 Friday, March 31, 2006 5:45 PM Evidence 101 78A Act A851 16-07-1993 79 L.N. 332/1958 13-11-1958 P.U.(A) 261/1971 01-11-1971 81 P.U.(A) 261/1971 01-11-1971 P.U.(A) 280/1971 01-11-1971 83 L.N. 332/1958 13-11-1958 P.U.(A) 261/1971 01-11-1971 85 P.U.(A) 261/1971 01-11-1971 86 P.U.(A) 261/1971 01-11-1971 90 P.U.(A) 261/1971 01-11-1971 90A Act A851 16-07-1993 90B Act A851 16-07-1993 90C Act A851 16-07-1993 91 P.U.(A) 261/1971 01-11-1971 100 P.U.(A) 261/1971 01-11-1971 105 P.U.(A) 261/1971 01-11-1971 123 L.N. 332/1958 13-11-1958 P.U.(A) 261/1971 01-11-1971 124 P.U.(A) 261/1971 01-11-1971 125 P.U.(A) 261/1971 01-11-1971 126 P.U.(A) 261/1971 01-11-1971 127 P.U.(A) 261/1971 01-11-1971 128 P.U.(A) 261/1971 01-11-1971 130 P.U.(A) 261/1971 01-11-1971 Section Amending authority In force from 056(special) je.fm Page 101 Friday, March 31, 2006 5:45 PM 102 Laws of Malaysia ACT 56 132 P.U.(A) 261/1971 01-11-1971 133A P.U.(A) 261/1971 01-11-1971 146A Act A729 05-05-1989 149 P.U.(A) 261/1971 01-11-1971 150 P.U.(A) 261/1971 01-11-1971 155 Act A729 05-05-1989 162 P.U.(A) 261/1971 01-11-1971 Section Amending authority In force from 056(special) je.fm Page 102 Friday, March 31, 2006 5:45 PM CommonLII: Copyright Policy | Disclaimers | Privacy Policy | Feedback URL: Act 56 contains 3 Parts, 11 Chapters and 167 sections. 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