Law of Evidence-II
Unit-V
Leading questions

S. 141 LEADING QUESTIONS

Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

A leading question is a question that encourages a particular desired answer, often because of the way that the question is phrased.

The court explained that the real meaning of this definition is that a question which suggests only the answer **yes** is leading; a question which suggests only the answer **no** is leading; but a question which may be answered either yes or no, and suggests neither answer as the correct one, is not leading.

S. 142 WHEN THEY MUST NOT BE ASKED – Leading questions must not, if objected to by the adverse party, be asked in an *examination in chief* or in a *re-examination*, except with the permission of the court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have in its opinion, been already sufficiently proved.

NATURE AND EXTENT

Section 141 of Indian Evidence Act defines leading question. Section 142 of Evidence Act lays down that leading questions must not be put in examination in chief and re examination without the permission of the Court. It also lays down that the court should permit leading questions in examination in chief or re examination only as to the matters which are introductory, which are unchallenged or which are already been sufficiently proved in the opinion of the Court. Leading questions may be put in cross examination under Section 143 of Indian Evidence Act.

LEADING QUESTIONS

A question is leading one when it point to witness the real or obligated fact which the examiner expects and desires to be confirmed by the answer. The circumstances in which

the question arises determined whether a question is leading or not. Is the defendant your friend? Have you not lived for 5 years with him? Is this your residence for the last five years? Is not your name Abdul? Do you reside in Delhi? These are the example of leading questions. The person putting the question clearly suggests the answer to these questions which he really wants to receive from the witness. Do you live at such and such place? By this question the witness will pick up the hint and simply gave the answer 'yes'.

Generally, the answers of leading questions are given by yes or no. But it cannot be said that in order to stamp a question leading the answer to it must be as yes or no.

A leading question is that which signals to the witnesses the real or obligated fact which the prosecutor expects and desires to have confirmed by the answers leading to questions.

The Court may give the permission of leading questions to pull the attention of the witness which cannot otherwise be called to matter under inquiry, trial and investigation. The witness must report for what he himself had seen.

EXCEPTIONS TO THIS RULE

Section 142 of Indian Evidence Act provides exceptions to the general rule stated above. By the order of the Court, examiner may put leading questions in examination in chief or re examination.

1. As to matters which are introductory in nature;
2. Which are undisputed;
3. Matters which, in the opinion of the Court, have already been proved.

The Court can allow a party examining his own witness to put leading questions by way of cross examination.

If objected to

It should be kept in mind that if the adverse party makes any objection, leading questions may not be put in examination in chief or re examination but such questions may be put in examination in chief or re examination if the Court overrules the objection.

Matters of record

Leading questions may be asked in examination in chief about the matters of record.

With Permission of the Court

There is no legal hurdle in putting leading questions during the examination in chief, if there opposite side does not object without permission of the Court. Need to receive permission of the Court to put leading questions whould arise only in the eventuality where the opposite side takes objection. Even if the opposite side objects, the Court has a broad prudence in allowing leading questions to be put. The second para of Section 142 of Indian Evidence Act shows that the Court has no prudence to not allow a leading question if it relates to undisputed matters or introductory matter or matters which have already been proved. The prudence to allow or not allow a leading question can be exercised by the Court only when such leading question relates to matters other than those mentioned above.

S. 143 WHEN THEY MAY BE ASKED - Leading questions may be asked in cross examination.

The purpose of an examination in chief, that is questioning a witness by the party who had called him, is to enable the witness to tell to the court by his own mouth the relevant fact of the case. A question should be put to him about the relevant facts and then he should be given the fullest freedom to answer the question out of the knowledge that he possess. The witness should be left to tell the story in his own words. The answer should not be suggested. The question should not be so framed as to suggest the answer. If such questions were permitted in examination in chief, the lawyer questioning him would be able to construct from the mouth of the witness a story that suits his client.

Leading question can always be asked in cross examination.

The total effect of the provisions regarding the asking of leading question can be summarized as under-

a) Where they are not objected to by the adverse party;
b) Where the adverse party objects but the court overrules the objection;
c) Where they deal with matter of undisputed or introductory nature or the matter in question has already been satisfactorily proved; and
d) Lading question may always be asked in cross examination.