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CROSS- EXAMINATION

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Today's Topics

- Style
- Basics
- Puttage
- Non-leading Questions
- Applying these principles in Bail Applications and Intervention Orders

Style

Richard Du Cann in *The Art of The Advocate* said this:

Style does not matter at all; what matters is effect.

...Style is not adaptable, and adaptability is everything for the advocate called upon to cross-examine people in every walk of life.

Cross-examination Basics

- Focus on what you want to establish...
- One issue per question...
- Use plain English...
- Do make comment...
- Be polite...
- Be brief...
- Finish on a strong point...

Browne v Dunn

The Rule:

Fairness ordinarily requires that if a challenge is to be made to the evidence of a witness, the ground of the challenge be put to the witness in cross-examination. (*MWJ* HCA)

If you are going to rely on a proposition you need to give the relevant witness the opportunity to dispute or explain it...

How is the rule to be applied?

Questions to avoid:

- I suggest to you that...
- I put it to you that...
- My client will say/instructs...

How much detail do I need to include in the puttage?

- Has the ground or foundation been laid?
- Is the inference open?

What is the danger of putting too much detail?

Must we always only ask non-leading questions?

- Don't know what the answer might be.
- Could be adverse to our case.

BUT SO WHAT?

- Answers to non-leading questions carry more weight...
- And, in some circumstances any possible damage can be limited by...
- In some cases you (might) require the information...

Bail Applications

The court may receive and take into account any evidence which it considers credible or trustworthy in the circumstances. (Bail Act s.8(1)(a)).

Therefore, the rules of evidence are relaxed not abrogated.

Intervention Orders

FVIOA

Subject to this Act, in a proceeding for a family violence intervention order the court may inform itself in any way it thinks fit, despite any rules of evidence to the contrary.
(s.65)

PSIOA

Subject to this Act, in a proceeding for a personal safety intervention order the court may inform itself in any way it thinks fit, despite any rules of evidence to the contrary.
(s.47)

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