#### **Index**

#### **ADMISSIONS**

Admissions, planning for, § 4:20 Admissions in documents, § 4:21 Admissions made on examination and their use at trial or arbitration, § 4:19

#### CONFRONTATION OF WITNESS

See CROSS-EXAMINATION AT TRIAL OR ARBITRATION HEARING

#### CONTROL OF WITNESS

See CROSS-EXAMINATION AT TRIAL OR ARBITRATION HEARING

#### CREDIBILITY OF WITNESS

See CROSS-EXAMINATION AT TRIAL OR ARBITRATION HEARING

### CROSS-EXAMINATION, EXAMINATION FOR DISCOVERY

Generally, § 4:25

#### CROSS-EXAMINATION AT TRIAL OR ARBITRATION HEARING

Confrontation

generally, § 6:2, § 6:38, § 6:39 discovery evidence, use of, § 6:41

excerpts from cross-examinations, § 6:41 to § 6:42, § 6:44

persistence, § 6:46 prior inconsistent statements, § 6:40

protocol, following, § 6:43

# CROSS-EXAMINATION AT TRIAL OR ARBITRATION HEARING—Cont'd

Confrontation—Cont'd style of cross-examination, § 6:45

use of witness' discovery evidence, § 6:41

Control

generally, § 6:2, § 6:11 to § 6:12 admissions and denials, working toward, § 6:28

arguing with witness, § 6:22 argument made through witness, § 6:23

building blocks of, § 6:25, § 6:27, § 6:28, § 6:31, § 6:32

control pieces, § 6:26 to § 6:28 cross-examination brief, § 6:13 to § 6:16

don't ask question if you don't know the answer, § 6:20 excerpts from cross-examinations, § 6:29 to § 6:30,

tions, § 6:29 to § 6:30, § 6:33, § 6:35, § 6:36 to § 6:37

leading questions, use of, § **6:17**, § **6:18** 

one question too many, § 6:21
provocative generalities, § 6:34
questioning off witness' last
answer, § 6:19
ctructure and foundation, § 6:24

structure and foundation, § 6:24 to § 6:27

Credibility

generally, § 6:2, § 6:10 assessing, § 6:8 impeachment, § 6:9, § 6:10

#### **CROSS-EXAMINATION AT CROSS-EXAMINATION AT** TRIAL OR ARBITRATION TRIAL OR ARBITRATION **HEARING—Cont'd HEARING—Cont'd** Credibility—Cont'd Effective cross-examination ultimate determination, § 6:8 —Cont'd questions for particular witness, Waxman v. Waxman, § 6:10 § 6:92 During examination in chief questions intended for judge or listen and take notes, § 6:49 to arbitrator, § 6:85 § 6:51 repeating same question, § 6:63 objections, § 6:53, § 6:54 restating or interpreting last watch, § 6:52 answer, § 6:70 Effective cross-examination transitioning, § 6:72 approaching witness, § 6:87 treatment of witness, § 6:86 backtracking, § 6:67 where witness answer is being unfair to witness, § 6:89 convoluted, § 6:83 breaking fourth wall, § 6:94 where witness called for narrow casual admissions, § 6:68 purpose, § 6:96 casual questioning to determine where witness does "not recall," whether to follow up, § 6:76 § 6:81 to § 6:78 where witness refuses to answer, civility and fairness, § 6:89 § 6:66 close questioning and pinning "yes" or "no" answers, § 6:62 witness down, § 6:61 Ending cross-examination commenting on witness' answer, effectively, § 6:103 to § 6:105 § 6:90 Foundational concepts: credibility, control and confrontation credibility issues, § 6:79 to § 6:80 Generally, § 6:1, § 6:3 distance from witness, § 6:88 Initial stages, considerations concentrating on easy admisemphasizing untenable position, § 6:84 sions, § 6:60 concentrating on what matters, excerpt from cross-examination, § 6:56 § 6:82 definitions, § 6:59 expanding last answer, § 6:71 observe judge or arbitrator, ignoring witness' answer, § 6:74 § 6:57 interrupting witness, § 6:64 to summarize witness' evidence, § 6:65 § 6:58 logic and implications, § 6:69 take time, § 6:55 non-party witnesses, § 6:95, Intervention by judge or arbitrator, § 6:97 to § 6:100 § 6:101 non-verbal cues, § 6:73 Objections by opposing counsel, not understanding answer, § 6:75 § 6:102 Objectives pace, § 6:91 generally, § 6:4 to § 6:6 pressing for desired answer, § 6:93 realizing, § 6:7

# CROSS-EXAMINATION AT TRIAL OR ARBITRATION HEARING—Cont'd

Persistence, § 6:46
Preparation, generally
plan, § 6:47
structure, § 6:48
Preparation of witness, § 6:109
Re-examination, § 6:106 to § 6:108
Style of cross-examination, § 6:45
Testing evidence through close
questioning, § 6:5

### CROSS-EXAMINATION OF DEPONENT OF AFFIDAVIT OR WITNESS STATEMENT

Generally, § 7:1, § 7:2

Cross-examination on filed
affidavits or witness statements
at hearing, § 7:11
Examination room, § 7:5
Example cross-examination on
motion, § 7:8 to § 7:10
Interference by opposing counsel,
§ 7:6
Opportunity inherent in affidavits
and statements, § 7:3
Re-examination on out-of-court
cross-examination, § 7:7
Transcript, § 7:4

#### **DOCUMENTS**

Admissions in, § 4:21
Agreements on authenticity and proof of, § 4:22
Production, § 4:7 to § 4:9
Time bombs in documents, dealing with, § 4:23

#### **E-DISCOVERY**

Generally, § 4:8

# EXAMINATION FOR DISCOVERY

Generally, § 4:1, § 4:15 Conduct of examination counsel, role of, § 4:31

# EXAMINATION FOR DISCOVERY—Cont'd

Conduct of examination—Cont'd cross-examination, § 4:25 damaging evidence, dealing with, § 4:26 excerpt from written answers to undertakings, § 4:30 necessary inquiries, § 4:27 preparation of client, § 4:33 re-examination, § 4:32 techniques, § 4:24 undertakings and advisements, § 4:28, § 4:29

Conduct of examination, preparing for

admissions, planning for, § 4:20 admissions in documents, § 4:21 admissions made on examination, use at trial or arbitration, § 4:19

authenticity and proof of documents, agreements on, § 4:22

discovering opponent's evidence, § 4:16

documents, agreements on authenticity and proof of, § 4:22

pinning down witness' story, § 4:17

recall, use of word, § 4:18 time bombs in documents, dealing with, § 4:23

Demonstration of questioning generally, § 4:34 excerpts from examinations, § 4:35, § 4:36

Oral examination, objectives of, § 4:3

Preparation for effective examination

generally, § 4:4 e-discovery, § 4:8 expert, input from, § 4:13

#### **EXAMINATION FOR** DISCOVERY—Cont'd

Preparation for effective examination—Cont'd initial document production meeting, § **4:8** meeting with client to obtain input, § 4:11 plans and planning, § 4:5 pleadings, review of, § 4:6 prior affidavits and examinations, reviewing, § 4:10 production of documents, § 4:9 productions and documentary record, reviewing, § 4:7 questions, preparing and organizing, § 4:14 social media and online research, § 4:12

Three phases of discovery, § 4:2

#### **EXAMINATION IN CHIEF**

Generally, § 3:1, § 5:1 Arbitration proceedings, in, § 5:1, § 6:1

Leading questions, rule against generally, § 5:2, § 5:3 exception, § 5:19 statement of rule, § 5:3

Non-leading questions, framing of generally, § 5:10

asking a question one step removed, § 5:13

asking a question two steps removed, § 5:14

eliciting a denial, § 5:17 exception, § 5:19

giving witness a range of possibilities, § 5:16

indicating line of inquiry, § 5:11

"what...if any", § 5:15

where improper leading question asked and damage is done, § 5:18

"yes" or "no" is not the test, § 5:12

### **EXAMINATION IN CHIEF**

## -Cont'd

Preparing witnesses generally, § 5:20 experts, § 5:22 party-witness who was examined for discovery, § 5:21 performance of witnesses, § 5:1 Technique for conducting examples, § 5:4 to § 5:7 excerpts from examinations, § 5:5, § 5:7, § 5:9 limits of proceeding bit by bit, § 5:8

#### **EXPERT WITNESS**

Generally, § 8:1, § 8:23 Admissibility of opinion evidence, § 8:6 to § 8:9

Applicable rules of civil procedure or arbitration rules, § 8:12

Assumptions and incomplete information, § 8:26 to § 8:27

Communicating with trier of fact through cross-examination, § 8:20

Credibility and reliability, § 8:24 Cross-examination

cementing expert into applicable principle or analysis, § 8:21 communicating with trier of fact, § 8:20

examples, § 8:31 to § 8:35 objective, § 8:22

preparation for, § 8:16, § 8:17 Examination for discovery, input from, § 4:13

Expertise, extent of, § 8:18 Expert report, § 8:2 to § 8:4, § 8:11, § 8:14

Expert's working file, § 8:14, § 8:19

Fairness vs "torquing," § 8:28 Hypotheticals, § 8:29 to § 8:30 Lay witness vs expert witness, § 8:5 Mandate, § 8:13

#### EXPERT WITNESS—Cont'd

Meeting with own expert to prepare § 8:17

Preparing for examination in chief, § 5:22

Qualifications, § 8:15, § 8:18 Ouestioning work done to reach opinion, § 8:25

Threshold admissibility vs weight, § 8:10

# **GOLDEN RULE - BE READY TO QUESTION OFF WITNESS' LAST ANSWER**

Generally, § 3:1, § 4:14, § 4:36, § 6:13, § 6:19

# LAVENEER INC. V. SVENGALI LTD. (FICTITIOUS CASE)

Generally, § 2:1

Claim is commenced and proceeding is expedited, § 2:4

Defendants, § 2:3

Excerpt from cross-examination of Anthony Watson, § 6:30. § 6:35, § 6:42, § 6:104

Excerpt from cross-examination of Anthony Watson on affidavit, § 7:8 to § 7:10

Excerpt from cross-examination of experts, § 8:31 to § 8:35

Excerpt from cross-examination of Harold Burns, § 6:100

Excerpt from cross-examination of Ingrid Sherlock, § 6:82

Excerpt from cross-examination of Steven Svengali, § 6:33, § 6:37, § 6:105

Excerpt from examination for discovery of Anthony Watson, § 4:29

Excerpt from examination for discovery of Anthony Watson on behalf of Laveneer, § 4:35

Excerpt from examination for discovery of Gerald McGrady on behalf of Svengali, § 4:36

### LAVENEER INC. V. SVENGALI LTD. (FICTITIOUS CASE) —Cont'd

Excerpt from examination in chief of Ingrid Sherlock, § 5:5, § 5:7

Excerpt from examination in chief of Steven Svengali, § 5:9

Excerpt from re-examination of Harold Burns, § 6:107

Excerpt from re-examination of Ingrid Sherlock, § 6:108

Excerpt from written answers to undertakings on behalf of Laveneer, § 4:30

Expert reports, § 8:2 to § 8:4

Initial document production meeting with Laveneer representatives, § 4:8

Plaintiff, § 2:2

Production of documents with Svengali representatives, § 4:9

Substantive law underlying claim, § 2:5

Surprise at trial, § 9:1 to § 9:2

# LEADING QUESTIONS

Generally, § 5:2

Exception to rule against, § 5:19 One question too many

Use in cross-examination, § 6:17 to § 6:18

#### NON-LEADING QUESTIONS

See EXAMINATION IN CHIEF

#### **RE-EXAMINATION**

Cross-examination at trial or arbitration, following, § 6:106 to § 6:108

Examination for discovery, § 4:32 Out-of-court cross-examination, on, § 7:7

# **SURPRISE AT TRIAL**

Generally, § 9:1 to § 9:2

#### UNDERTAKINGS AND ADVISEMENTS

Generally, § 4:28

SKILLFUL WITNESS EXAMINATIONS IN CIVIL AND ARBITRATION CASES

UNDERTAKINGS AND
ADVISEMENTS—Cont'd
Excerpt from examination for
discovery, § 4:29

WITNESS' LAST ANSWER, BE READY TO QUESTION OFF

Generally, § 3:1