

CROSS-EXAMINATION IN CRIMINAL CASES Part 1

When does cross-examination take place?

When a witness or defendant has been called to testify in court they will give their evidence 'in chief'. The opposing side then has the right to cross-examine them on their evidence.

Cross-examination takes place after examination-in-chief, or when a witness is 'tendered' for cross-examination. This happens when the party calling the witness does not wish to ask that witness any question themselves, but calls the witness so that he/she can be sworn in and cross-examined by the other party if it wishes. This will be an issue for discussion between counsels before the trial starts.

Who can cross-examine?

A witness can be cross-examined by the 'other side', i.e. the opponent of the party calling the witness, and any other party to the proceedings, e.g. any co-defendants. You cannot cross-examine your own witness unless he/she has been declared hostile by the judge. Cross-examination can be conducted by counsel, or the opposing party if they are not legally represented.

There are three exceptions to the right to cross examine under the Youth Justice and Criminal Evidence Act 1999:

- Complainants in proceedings for sexual offences (section 34);
- Child complainants and other child witnesses (section 35);
- Any other witnesses at the discretion of the court (section 36).

Who may be cross-examined?

All witnesses can be cross-examined except:

- A witness called by a witness summons merely to produce a document;
- A witness called and sworn by mistake because it is discovered before he/she begins examination-in-chief, or where the questioning has barely begun, that they are unable to give evidence on the matter in question;
- A witness called by the judge.

If a witness becomes ill before or during cross-examination, the trial may be allowed to continue on the basis of the evidence already given. The judge should direct the jury carefully in these circumstances. Similarly, the trial may be allowed to continue if the witness becomes too distressed to go on. If the witness dies before cross-examination, the evidence-in-chief is admissible although little weight may be given to it. However, all these situations are subject to the judge's discretion to discharge the jury if the inability of the witness to complete their evidence would result in overall unfairness to the defendant.

What's the purpose of cross-examination?

The purpose of cross-examination is three-fold:

- to elicit evidence in support of your case;
- to cast doubt on, or undermine the witness's evidence and credibility to weaken your opponent's case;
- to challenge disputed evidence.

Bibliography:

IN BRIEF [online], [dostęp 30.01.2018] dostępne w Internecie: <http://www.inbrief.co.uk/court-proceedings/cross-examination/>; <http://legal-dictionary.thefreedictionary.com>

I. Match the given terms with the definitions:

1 examination-in-chief	A the quality, capability or power to elicit belief
2 cross-examination	B generally contrary to justice or fairness
3 allegation	C to cause someone or something to be viewed with scepticism, uncertainty
4 the opponent of a party	D to release, dismiss, as from duty
5 complainant	E triple, consisting of three parts
6 the discretion of the court	F direct examination, the first questioning of a witness during the trial
7 to summon	G to weaken, impair
8 circumstances	H the questioning of a witness during the trial by the opposing party
9 three-fold purpose	J factors, surrounding facts, situations
10 to elicit	K a proof, the means by which an allegation may be proved
11 to undermine	L the power or right to make official decisions, or judgements based on the rule of law
12 to discharge	M call for the presence, to appear in court
13 evidence-in-chief	N to obtain information from someone
14 to cast doubt	O a person who commences a civil lawsuit
15 overall unfairness	P an assertion that someone has engaged into an unlawful act
16 credibility	R the other party, opposing litigant

II. Complete the gaps with the given words:

discharge, undermined, admissible,, challenge, distressed, cross-examined, cast doubt, litigant, cross-examine, complainants, summoned, circumstances

- The witness can be by the opposing party.
- A party who commences a civil action is called a
- One of the objectives of cross-examination is to undermine or on the witness's testimony.
- The judge canthe jury if the witness is unable to complete the evidence.
- The judge may allow to continue the trial, if the witness is too to testify
- One of the purposes of cross-examination is tothe disputed evidence.
- A defendant was to appear in court.
- A counsel cannot his/her own witness.
- There are some exceptions to the right to cross-examine child
- The evidence-in-chief is even when the witness dies before cross-examination.
- There are some when the trial can be continued if a witness becomes ill before or during cross-examination.
- Credibility of the witness may be during cross-examination.

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Mgr Anita Krok