

## ORDER X

### EXAMINATION OF PARTIES BY THE COURT

**1. Ascertainment whether allegations in pleadings are admitted or denied.**--At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

**2. Oral examination of the party or companion of party.**--At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material question relating to the suit by whom such party or his pleader is accompanied, <sup>1</sup>[shall] be examined orally by the Court; and the Court may, if it think fit, put in the course of such examination questions suggested by either party.

#### COMMENTS

**Competent to examine a party.** Civil Court did not exceed its jurisdiction, while summoning the plaintiff and recording his statement for purpose of ascertaining the fact as if he was a person of un-sound mind or healthy one for filing the suit. [PLJ 2011 Lahore 829]

**3. Substance of examination to be written.** The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

**4. Consequence of refusal or inability of pleader to answer.** (1) Where the pleader of any party, who appears by a pleader or any such person accompanying a pleader as is referred to in Rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him or make such order in-relation to the suit as it thinks fit.

## ORDER XI

### DISCOVERY AND INSPECTION

**1. Discovery by interrogatories.**--In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such person is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination if a witness.

**2. Particular interrogatories to be submitted.**--On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

**3. Costs of interrogatories.**--In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without any application for inquiry, that such interrogatories have been exhibited unreasonably, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

**4. Form of interrogatories.**--Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

**5. Corporation.**--Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite-party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

Rule 5 intends to cover the juristic persons whether incorporated or not empowered by law to sue or to be sued independently or through someone. It applies to corporation, partnership firm, limited companies, autonomous bodies etc.

**6. Objection to interrogatories by answer.**--Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

**7. Setting aside and striking out interrogatories.**--Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

**8. Affidavit in answer, filing.**--Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

**9. Form of affidavit in answer.**--An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require.

**10. No exception to be taken.**--No exception shall be taken to any affidavit in answer but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

**11. Order to answer or answer further.**--Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer or answer further, either by affidavit or by *viva voce* examination, as the Court may direct.

**12. Application for discovery of documents.**--Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

## COMMENTS

I.C.A. Application under O. XI, R. 12 moved, High Court not passing an order on such application, not enough for invoking the provision of O. XI, R. 21, C.P.C., I.C.A. not competent. [1988 SCMR 82].

**13. Affidavit of documents.**--The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, should specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

#### COMMENTS

Parliament and Provincial Assemblies (Disqualification for Membership) Order, 1977. Where on inspection of record, relevant document is found missing from the record, provisions of O. XI, Rr. 13 to 21 of the code can be pressed into service. [1992 SCMR 140].

**14. Production of documents.**--It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

**15. Inspection of documents referred to in pleadings or affidavits.**--Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

**16. Notice to produce.**--Notice to any part to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

**17. Time for inspection when notice given.**--The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variation as circumstance may require.

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**18. Order for inspection.**--(1) Where the party served with notice under Rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents, inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

**19. Verified copies.**--(1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alternations:

Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

**20. Premature discovery.**--Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

**21. Non-compliance with order for discovery.**--Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

**22. Using answers to interrogatories at trial.**--Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always that in such cases the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

**23. Order to apply to minors.**--This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

## ORDER XII

### ADMISSIONS

**1. Notice of admission of case.**--Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

### COMMENTS

**Notice to admit.** Either party may call upon the other party to admit any document or a fact saving all just exceptions. A notice to admit a document is in Form No. 9 in Appendix C with such variations as circumstances may require, while notice to

admit facts is in Form No. 10 in Appendix C. Form No. 11 of the same Appendix pertains to admission of facts pursuant to notice. [1997 CLC 1957].

**Rule of admission.** Mere non denial of fact in written statement by defendant, which fact was not specifically pleaded in plaint, by stretch of any legal principle can be construed to be admission in terms of law, on account of which defendant must be punished for not denying a fact, which plaintiff of the case was bound to allege in order to constitute a cause of action and then to prove it for decree in his favour. [PLJ 2012 SC 192]

**2. Notice to admit documents.** Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in opinion of the Court, a saving of expense.

### COMMENTS

**Production of document for cross-examination.** Evidence yet to be recorded, making of application for comparison of thumb impression by an expert not proper. [2009 MLD 216].

**3. Form of notice.**--A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

**4. Notice to admit facts.**--Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs for proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

**4-A. Power of Court to record of admission of documents and facts.**--Notwithstanding that no notice to admit documents or facts has been given under Rules 2 and 4 respectively, the Court may at any time of the proceedings before it, of its own motion, call upon any party to admit any document or fact and shall in such a case record

whether the party admits or refuses or neglects to admit such document or fact.<sup>1</sup>

**5. Form of admissions.**--A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

#### COMMENTS

**Admission attributed to defendant.** Admission attributed to defendants in the written statement are not of the nature as to show that they are confessing the claim of the plaintiff. Trial Court cannot pass judgment on the basis of such admission within the purview of O. XII, R. 6. Incumbent upon the Court to frame issue and then decide the case in accordance with the procedure provided in the Court. [1996 SCMR 699].

**6. Judgment on admissions.**--Any party may, at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court may upon such application make such order, or give such judgment, as the Court may think just.

#### COMMENTS

**Judgment on admission.** Trial Court is competent under O. XII, R. 6 C.P.C., to pass judgment on the basis of admission made by parties in their pleadings or otherwise at any stage of proceedings without waiting for determination of any other question that may arise between them. [PLD 2007 Lah. 93]. In order to attract this Rule the admission should be unequivocal, clear, unconditional and unambiguous. [2009 MLD 397].

**Erroneous admission.** Erroneous admission on point of law is not binding on the party making it. Court should ascertain correct legal position. [PLD 1958 Lah. 169]. An application under O. VI, R. 17 for amendment to rectify inadvertent and clerical mistake is competent. [1988 SCMR 322] Mistake of Court should not be allowed to continue causing prejudice to one. [PLJ 2014 Kar. 279]

**Ex-parte decree.** Once proceedings in suit were finalized then provision of Order XII, Rule 6, CPC would lose significance. Plea agitated and arguments adopted by plaintiffs were not sustainable at that stage. [PLJ 2013 Isl. 56]

**Unconditional conceding statement.** If any party made an unconditional conceding statement after being satisfied with situation or terms and conditions of a compromise, Court was bound to pass a decree but in the instant case, facts were otherwise. [PLJ 2012 Lahore 89]

1. Added by Notification No. 300 Rules XI-Y-26 dated 2.10.2001 issued by the Lahore High Court, Lahore. PLD 2002 Punj. St. 122.

**7. Affidavit of signature.**--An affidavit of the pleader or his clerk of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

**8. Notice to produce documents.**--Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

**9. Costs.** If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

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