CROSS-EXAMINATION

**Evidence without cross-examination.** No evidence affecting a party is admissible against that party unless the latter had an opportunity of testing its truthfulness by cross-examination. It is certainly implied by section 138 of Evidence Act that a party must have had an opportunity to cross-examine and it does not mean that merely a right to cross-examine a witness without an opportunity being offered for cross-examination is sufficient compliance with requirements of law. 73 IC 339 AIR 1923 Pat. 53 24 Cr.LJ 595 Moti Singh Dhanukdhari.

Cross examination being greatest legal engine invented to discover the truthful latitude to be given to the counsel who conducts the case in the trial Court. PLD 1997 Lah. 26, Senator Lt. Gen. (Retd.) Saeed Qadir.

No opportunity to cross-examine. As a general rule evidence is not legally admissible against a party who at the time it was given had no opportunity to cross-examine the witness or of rebutting their testimony by other evidence AIR 1929 All. 236 Gurdial v. Suknandan.

Opportunity to cross-examine denied as the statement of the witness was recorded in absence of the accused. Case remanded by Supreme Court to afford opportunity to accused or his counsel to cross-examine the witnesses. 1986 SCMR 620 Muhammad Zahir-ud-Din.

Failure to afford full opportunity to the accused to cross-examine a witness, the proceedings are illegal and invalid. PLD 1963 Kar. 63 Hakeem.

Opportunity to cross-examine not recorded to have been given to each accused; counsel of accused engaged elsewhere. Prosecution witness not cross-examined. Accused advised to apply to the trial Court to recall the P.Ws. under section 540, Cr.P.C. and Magistrate directed to pass proper order keeping in view the absence of the counsel for the accused. 1971 P. Cr.LJ 1054 Fatta.

No opportunity given to cross-examine. The Deposition for which no opportunity to cross-examine had been given is no evidence at all. Reasonable opportunity to engage a counsel should be given by the Court.ÿPLD 1975 Kar. 90 State v. Ghulam Ali etc.

Cross Examination by accused himself is no substitute of cross examination by counsel. 1993 SCMR 550, Saeed Ahmed Shah.

Scanty cross-examination when accused not represented by a counsel, leaving testimonies uncontroverted, held, it is obligation of the Court to take into consideration all matters placed before it in the trial before arriving at conclusion whether a fact is proved or not. PLJ 1997 Cr.C. (Kar.) 577 (DB) Qalandro.

Statement under section 161, Cr.P.C. not supplied. When on a certain point statements of witness recorded under section 162, Cr.P.C. were the only material for cross-examination and they were not available to the accused on account of destruction, it was held that there was no opportunity to cross-examine and the evidence on the point was not admissible. AIR 1945 Nag. 1 Beliram v. Emp. Also AIR 1946 Nag. 173.

When the material for cross-examination not available it amounts to denial of opportunity of cross-examination and hence the evidence of such witness is not admissible. Section 137 and 138 of Evidence Act clearly show that cross-examination is as essential as examination-in-chief to constitute evidence (DB) 47 Cr.LJ 851 Magan Lal v. King Emp. 226 Ind. Cas. 245 AIR 1946 Nag. 173.

Document used by cross-examiner not necessarily to come from proper custody. The counsel should be allowed to cross-examine the witness. PLD 1960 Lah. 1189. Zahur Hussain Shah.

Adjournment of cross-examination not given. At a session trial, the defence counsel after the examination-in-Chief of the first witness, applied for the postponement of cross-examination of the witness till the next day, on the ground of his unpreparedness, and the result of the refusal was that four prosecution witnesses were not cross-examined and the rest were inefficiently cross-examined. Held, the accused were prejudiced and retrial by another judge was ordered. 41 Cal. 299 Sadasiv v. Emp.

Accused in custody unable to engage counsel and cross-examine witnesses. Accused being unrepresented, held, could not be said to have had opportunity to cross-examine witnesses. Request of the accused to resummon the witnesses for cross-examination not unjustified. 1972 P.Cr.LJ 215 Mohi.

Material case not put to witness. Opponent declining to avail of opportunity to put his essential and material case in cross-examination. Testimony given could not be disputed. PLD 1963 Kar. 465.

No cross-examination. When a witness is not cross-examined his statement is presumed to be admitted. PLD 1964 Pesh. 194 Said Munir.

Evidence not challenged in cross-examination on a certain point raised in  examination-in-chief, the same is to be accepted as true. PLJ 1988 Cr.C. (Kar.) 39. Malik Muhammad Iqbal.

Cross-examination of own witness. Permission to cross-examine a party's own witnesses does not tantamount to expression of opinion by Court that the witness is not truthful. Object is to test veracity. Testimony of such witness depends on the result of cross-examination. (DB) PLD 1962 Dacca 613 Daud Ali etc.

Cross-examination not completed. A witness otherwise cross-examined fully on four occasions on all aspects of case and disabled from appearing for rest of cross-examination, held, statement of such a witness should be read in evidence. PLD 1974 lah. 100 Tikka Khan.

Death illness etc, between examination-in-chief and cross-examination. When a  witness after examination-in-chief before cross-examination dies or cannot attend the Court, the evidence is admissible, but its probative value may be very small and may even be disregarded. AIR, 1925 Mad. 497 Maharaja of Kalhapur v. Sundram. AIR 1929 Lah. 840 Mangal Sen v. Emp. AIR 1944 All. 188 Ahmad v. Jyoti.

Death preventing cross-examination. If the examination of witness is substantially complete and witness is prevented by death, sickness or other cause (mentioned in section 33 of Evidence Act), from finishing his testimony, it ought not to be rejected entirely. But if not so far advanced, substantially to be complete, it must be rejected. AIR 1933 lah. 361 Diwan v. Emp. AIR see AIR 1936 pat. 34 Horil v. Rajab.

When witness is not cross-examined his statement is presumed to be admitted. (DB) PLD 1964 (Pesh.) 194 Said Munir. 1974 P.Cr.LJ 537 Kala.

When witness is not cross-examined his evidence cannot be rejected. 1969 SCMR 189 Waqar v. Faqir Ali.

When only some cross-examination is done, the unfinished testimony of the witness can be taken into account. PLD 1974 Cr.C. (Lah.) 57 Tikka Khan.

Tendering identifying witness. It is illegal to rely on test identification when the identifying witnesses are merely tendered for cross-examination. AIR 1942 Pat. 319 Pesh. Muhammad v.ÿEmperor.

Tendering a witness for cross-examination is not a practice which should be encouraged especially in murder cases as it would be very unfair to the accused. AIR 1929 Mad. 906 Veera Koravan v. Emperor. AIR 1942 Bom. 71 (FB) Emperor v. Kasamali.

Tendering for cross-examination. There is no obligation for the prosecution to tender witnesses for cross-examination by defence, when not produced as P.Ws. It is, however, consistent with the discretion of counsel for the prosecution that it should be general practice of prosecuting counsel if they find to sufficient reason to the contrary to tender such witnesses for cross-examination by the defence. (PC) 46 Cr.LJ 394 Adel Muhammad v. A.G. Palestine 217 Ind. Cas. 381.

Cross examination only in presence of the accused while examination in chief was done in his absence. Held, trial was improper. Case remanded for retrial. (D.B.) PLJ 1997 Cr.C (Q) 102, Sher Muhammad.

Tendering for cross-examination and Court witness. Prosecution giving up a witness and not cross-examination him in chief, question of affording an opportunity to cross-examine such witness, held does not arise. Allowing such witness to be cross-examined is illegal. Court not putting any question to a witness and straightaway allowing accused to cross-examine him. Such witnesses could not be called a Court witness nor a defence witness. (DB) 1975 P.Cr.LJ 400 (Lah.) Nisar Ahmad.

Cross-examination by a Judge-when duty. It frequently happens that the person actually appointed to conduct defence at Crown's expense do their work very badly and conspicuous opportunities for cross-examination and obvious arguments are entirely ignored. In such circumstances the Judge should remember that he has the duty not only to the prosecution but to the defence, and he should use his greater experience to cross-examine the witnesses when he sees that the defence lawyer is incompetent. AIR 1942 pat. 90 Dikson v. Emperor.

Examination of the witnesses by the Court is its duty when the accused is not represented by a counsel. One witness examined not a single question put to the witnesses; case remanded for retrial to the Court of another Magistrate. PLJ 1986 Cr.C. (Lah.) 120 Nazir Hussain.

Cross-examination by a Judge. Although a judge could not be acting strictly according to the rules of judicial practice if he were to take the word of examination and cross-examining witnesses in his own hand, yet certainly it is his duty and privilege to put questions to witnesses in order to get at the truth. AIR 1936 Lah. 887 Khadija v. Nisar.

Statement under section 164, Cr.P.C. not substantive evidence of truth of the facts stated therein. It can be used to cross-examine the witness who made the statement (PC) 47 Cr.LJ 336 Birij Bhushan Singh v. King Emperor, 222 Ind. Cas. 529.

Affidavit. Party against whom affidavit is produced is entitled in absence of special circumstances, to have the deponent put in witness-box and to cross-examine him. (SC) PLD 1964 SC 236 Atta Ullah Malik v. Custodian Evacuee Property.

Not to split up into intervals as it exposes the witnesses to the risk of being tempered with and may promote fabrication of false evidence. The cross-examination should not be unduly prolonged. (PC) 43 IA 212.

Power u/S. 540 Cr.P.C. for recalling a witness for cross-examination can be exercised at any stage of the case if it is needed for just decision of the case. PLD 1992 Kar. 91. Altaf Hussain Shamim.

Summons to P.Ws. under section 257, Cr.P.C. for cross-examination. Application under-section 257 can only be made when accused enters on defence. Magistrate rejected the application for summoning witnesses on the ground that the accused were afforded opportunity of cross-examination which they declined. Such application can only be rejected if made for purposes of vexation or delay or for defeating the ends of justice. Held, Magistrate bound to summon witnesses. PLD 1976 Lah. 1025 Allah Bakhsh. PLJ  1976 Lah. 794. Note sec. 257, Cr.P.C. has now been deleted from the Cr.P.C.

Concession in cross-examination but supporting prosecution case in examination-in-chief. Defence of the accused inconsistent before trial Court, with his statement made before raiding magistrate. Examination-in-chief relied on 1975 P.Cr.LJ 906 Muhammad Ashiq. PLD 1956 FC 171 ref.

Court witness. A witness called by the Court is liable to be cross-examined by any of the parties. 5 Cal. 614 Emperor v. Girish 24 Ca. 228 Gopal Lal v. Manick Lal.

Length of cross-examination and Court's Control. Abuse in the matter of cross-examination which enormously increases the costs of litigation without any corresponding benefits to the parties should be checked and it would appear to be clearly within the powers of the High Court to direct an inquiry with a view to disciplinary action against the lawyers in flagrant cases. (PC) 136 IC 102 Raj Kumar v. Ramsundar. While it is duty of the Court to keep cross-examination within legitimate bounds it must be careful in the discharge of that duty, not to exercise too effectively a controls as to unduly curtail legitimate cross-examination Undue interference has more often than not, the result of robbing the cross-examination of its efficacy. AIR 1937 All. 171 Saligram v. Emp.

Prolonged cross-examination practice for the purpose of leading a witness into error is deprecated. Court is duly-bound to check such practice and also give protection to the party against irrelevant scandalous questions put in cross-examination, following the law laid down under Article 146 Qanun-e-Shahadat Order 1984, PLD 1967 S.C. 167 Muhammad Shafi referred. 1996 SCMR 3 Muddasar.

Arbitrary limit of time. An order of a Magistrate fixing arbitrary limit of time i.e. three minutes or five minutes for the cross-examination of a witness is illegal AIR 1937 All. 171 Saligram v. Emperor 62 IC 412 AIR 1921 Cal. 118 22 Cr. LJ 524 Emperor v. Asir-ud-Din. It is wrong for a Magistrate not to allow more than such cross-examination as the thought to be necessary 1936 Allahabad Weekly Notes 295 Rawhe v. Emperor.

Object of cross-examination is not to exhaust a witness and in his state of helplessness to not something which a counsel, who is an expert on the subject, intends to get. PLD 1967 S.C. 167 relied upon. PLJ 1996 S.C. 228, Sher Muhammad.

Power of Court. Courts have full powers to prevent any abuse of the rights of cross-examination in any manner appropriate to the circumstances of the case. AIR 1922 Qud. 134 Banke v. Kanhiya.

Indecent questions the Court cannot forbid indecent or scandalous questions if they relate to the facts in issue. ILR 18 Bom. 468 Rozerio v. Ingles 20 Cr. LJ 566 52 IC 54 Muhammad Mian v. Emperor.

Cross-examination terminated. When owing to refractory attitude of a witness who obstinately refused to answer questions the Court was constrained to terminate cross-examination, held the evidence of such witness was not legal testimony. AIR 1937 Qud. 168 Ram Kumar v. Emperor.

Matter not known to the witness. When a witness is asked a question about a matter which he had no opportunity to know, or on which he is not competent to speak, it may be properly disallowed. AIR 1946 Bom. 216 Tan Bug v. Collector.