

WITNESSES IN CRIMINAL TRIALS Part 1

What is a witness?

A witness is an individual who has perceived a crime being committed (by seeing, hearing, smelling or other sensory perception) and can, as a result, give evidence in court if the accused is prosecuted.

Who is considered able to give evidence?

Under the Youth Justice and Criminal Evidence Act 1999, all persons are competent to give evidence at any stage of the trial unless:

- they don't understand the questions put to them; and
- they can't give answers to those questions which can be understood.

The above exceptions apply to all witnesses but most commonly affect children and persons of unsound mind. Children and individuals of unsound mind are tested to ascertain their competence if their testimony is necessary.

A person charged in criminal proceedings is also not competent to give evidence in the proceedings for the prosecution.

Can a person be forced to give evidence?

A person can be compelled (forced) to attend court and give evidence if they have been deemed competent to do so. The exceptions to this rule are the accused themselves, the accused's spouse or civil partner and those not deemed competent to give evidence.

The accused's spouse or civil partner can only be compelled to give evidence against them on the prosecution's behalf if the offence the accused is being tried for:

- involves an assault or threat of injury to the spouse;
- involves an assault on or threat of injury to an individual under the age of 16;
- is a sexual offence on an individual under the age of 16;
- involves attempting or conspiring to commit or of assisting, instructing, appropriating or encouraging the commission of any of the aforementioned offences.

If the accused is not being charged in relation to any of the above circumstances, the accused's spouse or civil partner is only compellable to give evidence on behalf of the accused and not against them. Cohabitees and former spouses are compellable if they are competent as the rules in relation to spouses do not apply.

What happens if a compellable witness refuses to give evidence?

Where either party to the proceedings believes a witness may not attend court voluntarily, they can apply for a witness summons to be issued (an order issued to a person outlining the specific date for their appearance in court).

A witness summons can take two forms:

- a witness summons requiring a person to give evidence; and
- a witness summons requiring a person to produce documents that are needed as evidence.

If a witness fails to attend court or give evidence or produce the required documents, they can be punished for contempt of court with a fine and/or a prison sentence.

In Brief [online], [dostęp 30.04.2018] dostępne w Internecie: <http://www.inbrief.co.uk/court-proceedings/witness-at-criminal-trials/>; <http://legal-dictionary.thefreedictionary.com>

I. Match the expressions in English with the Polish expressions:

1 to commit a crime	A konkubent/ka
2 sensory perception	B zachęcać do popełnienia przestępstwa
3 to give evidence	C osoby uznane za niezdolne
4 exceptions apply	D widzieć przestępstwo
5 a person charged	E być zmuszonym do stawienia się w sądzie
6 persons of unsound mind	F przywłaszczyć
7 to perceive a crime	G wezwanie dla świadka
8 to ascertain competence	H ukarany za obrazę sądu
9 persons not deemed competent	I postrzeganie zmysłowe
10 to be compelled to attend court	J popełnić przestępstwo
11 to appropriate	K zeznawać
12 a cohabitee	L osoba oskarżona
13 a witness summons	M osoby chore (upośledzone) umysłowo
14 punished for contempt	N wyjątki stosuje się
15 encourage the commission of an offence	O ustalić zdolność

II. Complete the sentences with the given words: summons, evidence, assault, unsound mind, charged, witness, spouse, contempt, conspiring, cohabitees, compelled, sensory

- A person who saw a crime being committed is called a
- perceiving is by hearing, seeing, smelling.
- Persons are competent to give when they understand the questions put to them.
- Persons considered unable to testify are persons of
- Persons competent to testify can be to attend court.
- The accused, his/her or civil partner are exceptions to this rule.
- A person in criminal proceedings cannot give evidence for the prosecution.
- or former spouses who are competent, can be compelled to testify.
- Where a witness may not attend court voluntarily, the parties can apply for a witness
- If a witness fails to attend court, he can be punished for of court.
- The accused's spouse can be compelled to testify against him/her in case of
- The accused is tried for to commit and assisting in committing assault.

III. Change the sentences into Passive Voice:

- The prosecution charged the accused with attempting to commit the assault.
- Court will compel the cohabitee to testify.
- The spouse has encouraged the commission of injury.
- Court is trying the accused for injury.
- If necessary, the court can issue a witness summons.
- Court is to summon a witness who has not attended court.
- A witness often produces documents in court as evidence.

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