

## NY CLS CPLR § 4513

Current through 2025 released Chapters 1-207

*New York*

*Consolidated Laws Service* >  
*Civil Practice Law And Rules (Arts. 1 — 100)* >  
*Article 45 Evidence (§§ 4501 — 4551)*

### **§ 4513. Competency of person convicted of crime**

---

A person who has been convicted of a crime is a competent witness; but the conviction may be proved, for the purpose of affecting the weight of his testimony, either by cross-examination, upon which he shall be required to answer any relevant question, or by the record. The party cross-examining is not concluded by such person's answer.

### **History**

---

Add, L 1962, ch 308, eff Sept 1, 1963.

Annotations

### **Notes**

---

#### **Prior Law:**

Earlier statutes: CPA § 350; CCP § 832.

#### **Advisory Committee Notes:**

This section is the same as former § 350 with minor language changes.

### **Notes to Decisions**

---

**I.Under CPLR**

**1.Generally**

**II.Under Former Civil Practice Laws**

**2.Generally**

**3.Conviction within scope of section**

**4.Competency of witness**

**5.Cross examination; permissible scope**

**6.Credibility as question for jury**

**7.Mode of proof of conviction**

**I. Under CPLR**

**1. Generally**

A court-martial conviction and dishonorable discharge from the United States Army may be used to impeach a defendant's credibility in the same manner as a prior state conviction. *People v Lee*, 35 A.D.2d 542, 313 N.Y.S.2d 139, 1970 N.Y. App. Div. LEXIS 4144 (N.Y. App. Div. 2d Dep't 1970).

Prior illegal and immoral acts underlying an adjudication of juvenile delinquency may properly be used for impeachment purposes. *Watson v State*, 53 A.D.2d 798, 385 N.Y.S.2d 170, 1976 N.Y. App. Div. LEXIS 13598 (N.Y. App. Div. 3d Dep't 1976).

Although conviction for a crime ordinarily may be used to impeach the credibility of a witness (CPLR 4513), conviction for a traffic infraction may not be used for impeachment purposes, since a traffic infraction is not a crime. *Augustine v Interlaken*, 68 A.D.2d 705, 418 N.Y.S.2d 683, 1979 N.Y. App. Div. LEXIS 11308 (N.Y. App. Div. 4th Dep't), app. dismissed, 48 N.Y.2d 608,

424 N.Y.S.2d 1025, 399 N.E.2d 1205 (N.Y. 1979), app. dismissed, 48 N.Y.2d 881, 1979 N.Y. LEXIS 7850 (N.Y. 1979).

In an action to collect insurance proceeds allegedly due under a business insurance policy following the destruction of the insured premises by fire, the trial court did not err in permitting the testimony of a witness for plaintiff to be impeached by the introduction of evidence that the witness had been previously convicted of grand theft for insurance fraud in another jurisdiction, notwithstanding that the prior conviction could not have been used for impeachment purposes in that jurisdiction, since the admissibility of impeachment evidence is an evidentiary question governed by the law of the forum and, pursuant to CPLR § 4513, any conviction of a crime may be introduced to impeach the credibility of a witness at a civil trial. *Able Cycle Engines, Inc. v Allstate Ins. Co.*, 84 A.D.2d 140, 445 N.Y.S.2d 469, 1981 N.Y. App. Div. LEXIS 15830 (N.Y. App. Div. 2d Dep't 1981), app. denied, 57 N.Y.2d 607, 1982 N.Y. LEXIS 7225 (N.Y. 1982).

In an action for personal injuries sustained as a result of an automobile accident, in which an important witness for the plaintiff was improperly cross examined in that he was subjected to repeated questioning concerning arrest warrants and criminal charges, despite the fact that conviction of a crime or underlying immoral conduct was not shown, judgment in favor of the defendant would be reversed, where the method by which the witness was impeached was clearly prejudicial and was an error grave enough to have affected the verdict. *Dance v Southampton*, 95 A.D.2d 442, 467 N.Y.S.2d 203, 1983 N.Y. App. Div. LEXIS 19637 (N.Y. App. Div. 2d Dep't 1983).

In wrongful death action, in which sister of plaintiff had originally misrepresented decedent's health to coroner in order to avoid autopsy for religious reasons, there was no impropriety in trial court's refusal to charge jury that plaintiff's sister had committed possible misdemeanor in misrepresenting status of decedent's health. *Stein v Lebowitz-Pine View Hotel, Inc.*, 111 A.D.2d 572, 489 N.Y.S.2d 635, 1985 N.Y. App. Div. LEXIS 51612 (N.Y. App. Div. 3d Dep't), app. denied, 65 N.Y.2d 611, 494 N.Y.S.2d 1026, 484 N.E.2d 1053, 1985 N.Y. LEXIS 16088 (N.Y. 1985).

In medical malpractice action, where credibility of plaintiffs' mother was at issue, court properly permitted defense counsel to cross-examine mother as to facts underlying 2 specific acts of misconduct, as witness in civil trial may be cross-examined with respect to any immoral, vicious or criminal act which may affect her character and show her to be unworthy of belief. *Gedrin v Long Island Jewish-Hillside Medical Center*, 119 A.D.2d 799, 501 N.Y.S.2d 426, 1986 N.Y. App. Div. LEXIS 55742 (N.Y. App. Div. 2d Dep't 1986).

In action to recover on loan acknowledged by defendant attorney in letter that defendant claimed was forged, it was not reversible error to allow plaintiff to impeach defendant by eliciting on cross examination that disciplinary proceedings had been brought against him. *R.J. Cornelius, Inc. v Cally*, 158 A.D.2d 331, 551 N.Y.S.2d 20 (N.Y. App. Div. 1st Dep't 1990).

In personal injury action, court properly allowed defense counsel to cross-examine plaintiff with regard to her arrest for possession of weapon and possession of controlled substance where plaintiff had pleaded guilty to attempted criminal possession of weapon in fourth degree in full satisfaction of criminal complaint; pursuant to CLS CPLR § 4513, conviction of crime and underlying facts of criminal acts may be introduced to impeach credibility of witness in civil trial. *Murphy v Estate of Vece*, 173 A.D.2d 445, 570 N.Y.S.2d 71, 1991 N.Y. App. Div. LEXIS 7045 (N.Y. App. Div. 2d Dep't 1991).

It was reversible error to refuse to allow defendant to impeach credibility of plaintiff's claimed eyewitness to hit-and-run accident with evidence of prior criminal convictions where (1) witness' credibility was central issue, (2) his conviction for violent felony occurred after deposition, (3) he was not produced at trial because he was in prison, and (4) by refusing to allow jury to know of witness' extensive history of criminal convictions, or that he was deposed at penitentiary, jury was permitted to believe that there was no reason to doubt his veracity. *Sansevere v United Parcel Service, Inc.*, 181 A.D.2d 521, 581 N.Y.S.2d 315, 1992 N.Y. App. Div. LEXIS 3618 (N.Y. App. Div. 1st Dep't 1992).

Court properly allowed defendants to use evidence of plaintiff's misdemeanor and felony convictions for driving while under influence of alcohol for impeachment purposes,

notwithstanding existence of issue as to his sobriety at time of accident which gave rise to instant action. *Scotto v Daddario*, 235 A.D.2d 470, 652 N.Y.S.2d 311, 1997 N.Y. App. Div. LEXIS 400 (N.Y. App. Div. 2d Dep't 1997).

A witness, whether he be a party or otherwise, may not be impeached or discredited by showing on cross-examination or otherwise that he has been indicted. *Zara Contracting Co. v State*, 42 Misc. 2d 737, 249 N.Y.S.2d 337, 1964 N.Y. Misc. LEXIS 1800 (N.Y. Ct. Cl. 1964).

General rule regarding impeachment of defendant is that one who takes witness stand, including defendant testifying in own behalf waives right against self-incrimination and may be questioned like any ordinary witness with regard to prior convictions regarding his credibility as a witness. Defendant who maintained that he had critical evidence to offer in his own behalf and that by taking witness stand he would expose his prior criminal record and not only nullify value of testimony but also prejudice his case seriously and who accordingly sought to limit possible impeachment of his testimony, was granted hearing for purpose of determining whether proof of defendant's prior convictions would violate any rights granted by state and/or guaranteed by Federal Constitution with factors to be enumerated to include the nature of the prior crimes, length of criminal record, age and circumstances of defendant, potential prejudice such crimes would have on jury and any other pertinent matters which counsel felt should be brought to court's attention. *People v Wilson*, 75 Misc. 2d 471, 347 N.Y.S.2d 336, 1973 N.Y. Misc. LEXIS 1653 (N.Y. Sup. Ct. 1973).

Subpoena duces tecum was issued for discovery of any criminal records of defendant, his codefendants, and potential prosecution witnesses, providing for delivery to court clerk of either (1) the records requested in a sealed envelope inscribed with a notice that the envelope could be opened only by court order, or (2) a stipulation by the police commissioner, district attorney, or their representative, that the witnesses' records would be produced at the appropriate time during cross-examination. *People v McArthur*, 75 Misc. 2d 979, 350 N.Y.S.2d 307, 1973 N.Y. Misc. LEXIS 1393 (N.Y. County Ct. 1973).

In civil action wherein plaintiff sought damages for injuries sustained as result of alleged assault and alleged scheme by defendants to defraud him of his money and property, plaintiff would be required to answer questions posed during examination before trial as to whether plaintiff was ever convicted of a crime, whether he was known by any other name or names within the last 5 years and what were his addresses during the same period. If plaintiff in civil case testifies during trial, his credibility is subject to impeachment in the same manner as any other witness and he may be questioned as to whether he has been convicted of a crime. *Goberman v McNamara*, 76 Misc. 2d 791, 352 N.Y.S.2d 369, 1974 N.Y. Misc. LEXIS 2016 (N.Y. Sup. Ct. 1974).

Plaintiff in civil action was required to answer on deposition questions concerning any convictions of a crime. Despite trial court's general discretionary power to exclude evidence which is more prejudicial than probative, this power in a civil action is limited by statute making person who has been convicted of crime a competent witness by allowing proof of such conviction for purpose of affecting weight of his testimony. Sandoval principle admitting evidence of only those prior convictions of witness as bear logically and reasonably on the issue of credibility is not applicable to civil actions. Rule of evidence encompassed by rule making person convicted of crime a competent witness and allowing proof of such conviction for proof of affecting weight of his testimony is not applicable to criminal proceeding which is governed by the judicially established rule of evidence in Sandoval case admitting evidence of only such prior convictions as bear logically and reasonably on issue of credibility. *Guarisco v E. J. Milk Farms*, 90 Misc. 2d 81, 393 N.Y.S.2d 883, 1977 N.Y. Misc. LEXIS 1994 (N.Y. Civ. Ct. 1977).

A respondent in a child abuse proceeding (Family Ct Act, art 10) may be impeached on cross-examination, pursuant to CPLR 4513, by proof of a prior conviction; the discretion afforded to a Trial Judge in a criminal proceeding by *People v Sandoval*, 34 N.Y.2d 371, 357 N.Y.S.2d 849, 314 N.E.2d 413, 1974 N.Y. LEXIS 1478 (N.Y. 1974) is not available. The holding in *People v Sandoval*, 34 N.Y.2d 371, 357 N.Y.S.2d 849, 314 N.E.2d 413, 1974 N.Y. LEXIS 1478 (N.Y. 1974), providing for a prospective ruling as to the permissible scope of cross-examination

concerning prior criminal and immoral acts in a criminal prosecution, is inapplicable to proceedings brought pursuant to article 10 of the Family Court Act, which proceedings are civil in nature. *In re O.*, 95 Misc. 2d 744, 408 N.Y.S.2d 308, 1978 N.Y. Misc. LEXIS 2498 (N.Y. Fam. Ct. 1978).

In civil suit for damages occurring as result of hit-and-run accident, where chief issue was identity of defendant as driver of car in question, “Sandoval compromise” typical to criminal cases would be applied, and plaintiff would be allowed to ask defendant if he had been previously convicted on misdemeanor charges without mentioning nature of those charges, thereby allowing jury to consider his prior criminal record without being improperly influenced by any parallel between his prior drunk driving conviction and current allegations. *Evans v Willson*, 133 Misc. 2d 1079, 509 N.Y.S.2d 296, 1986 N.Y. Misc. LEXIS 3032 (N.Y. Civ. Ct. 1986).

In an action arising from injuries sustained by the collapse of a masonry wall dividing two parcels of real property, evidence of the property owner’s prior sex crime convictions under Penal Law §§ 130.40 and 130.45 was not admissible for impeachment purposes under N.Y. C.P.L.R. 4513 because the prior convictions were unduly prejudicial, highly inflammatory, and extremely remote in time. *Tripp v Williams*, 959 N.Y.S.2d 412, 39 Misc. 3d 318, 2013 N.Y. Misc. LEXIS 464 (N.Y. Sup. Ct. 2013).

In a medical malpractice action, a doctor could be cross-examined with respect to his conviction for attempted unauthorized practice of medicine and the underlying facts thereof because his conviction and the facts thereunder were highly relevant on the issue of his credibility, and they sufficiently demonstrated the doctor’s willingness to deliberately further his self-interest at the expense of society. *Torres v Ashmawy*, 875 N.Y.S.2d 781, 24 Misc. 3d 506, 241 N.Y.L.J. 65, 2009 N.Y. Misc. LEXIS 677 (N.Y. Sup. Ct. 2009).

## **II. Under Former Civil Practice Laws**

### **2. Generally**

Conviction of driver of defendant motorist, see *Gassman v R. & W. Trucking Co.*, 297 N.Y. 786, 77 N.E.2d 797, 297 N.Y. (N.Y.S.) 786, 1948 N.Y. LEXIS 912 (N.Y. 1948).

Where there was no evidence that a plaintiff was convicted of crime, it was prejudicial error to instruct the jury concerning the effect of conviction on credibility of the witness. *De Gregoria v Queensboro Farm Products, Inc.*, 2 A.D.2d 980, 157 N.Y.S.2d 528, 1956 N.Y. App. Div. LEXIS 3652 (N.Y. App. Div. 2d Dep't 1956).

In view of CPA § 350, and Penal Law § 2444, the affidavit of a convicted felon, filed in support of a motion for summary judgment in an action in which he had no interest, where not inherently improbable, and not disputed, was to be tested by the same rules applicable to those of other witnesses. *William J. Conners Car Co. v Manufacturers' & Traders' Nat'l Bank*, 209 N.Y.S. 406, 124 Misc. 584, 1925 N.Y. Misc. LEXIS 767 (N.Y. Sup. Ct.), *aff'd*, 214 A.D. 811, 210 N.Y.S. 939, 1925 N.Y. App. Div. LEXIS 7941 (N.Y. App. Div. 1925).

### **3. Conviction within scope of section**

In proceedings before police commissioners, their conclusion, which in terms imposes a fine, cannot be considered a “conviction.” *People v Sullivan*, 34 A.D. 544, 54 N.Y.S. 538, 1898 N.Y. App. Div. LEXIS 2316 (N.Y. App. Div. 1898).

In action for personal injuries to plaintiff while boarding bus, asking plaintiff on cross-examination if he had ever been convicted of “intoxication, drunk and disorderly” was improper and prejudicial, where it was not first shown that such “intoxication” was crime. *McQuage v New York*, 285 A.D. 249, 136 N.Y.S.2d 111, 1954 N.Y. App. Div. LEXIS 3315 (N.Y. App. Div. 1954).

A judgment in a civil action against a party for a penalty for keeping a house of ill fame, was not a conviction of a crime or misdemeanor within the meaning of CPA § 350, and the record of such a judgment was not admissible for the purpose of affecting the weight of his testimony, etc. *Arhart v Stark*, 27 N.Y.S. 301, 6 Misc. 579, 1894 N.Y. Misc. LEXIS 56 (N.Y. Super. Ct. 1894).



In civil action, it was error to exclude evidence of convictions of plaintiff and his principal witness for crime of bookmaking. *Diodato v Rosetti*, 19 Misc. 2d 780, 195 N.Y.S.2d 865, 1959 N.Y. Misc. LEXIS 2929 (N.Y. App. Term 1959).

Party may inquire, by proposed interrogatories, whether witness has been convicted of crime, and if so nature of crime, but questions, which seek information as to whether witness was ever arrested or threatened to be arrested, are not pertinent or relevant. *In re Horn's Estate*, 137 N.Y.S.2d 165, 1954 N.Y. Misc. LEXIS 3602 (N.Y. Sur. Ct. 1954).

The meaning of the word "convicted" denotes the final judgment of the court in passing sentence. *Sacia v Decker* (N.Y.C.P. Apr. 4, 1881).

#### **4. Competency of witness**

Under the amendment of 1879, a person convicted and sentenced, as well as one convicted only, was a competent witness. *People v McGloin*, 91 N.Y. 241, 91 N.Y. (N.Y.S.) 241, 1883 N.Y. LEXIS 31 (N.Y. 1883); *Lindeman v New York Cent. & H. R. R. Co.*, 11 N.Y. St. 837.

Fact that witness is professional bookmaker, an unlawful occupation, does not render his testimony incompetent, but goes only to its weight. *In re Jacobs' Will*, 137 N.Y.S. 155, 76 Misc. 394, 1912 N.Y. Misc. LEXIS 832 (N.Y. Sur. Ct. 1912).

#### **5. Cross examination; permissible scope**

The district attorney, on cross-examination of a defendant in a criminal case, may not in fairness multiply questions as to acts of collateral misconduct when no purpose is served except to prejudice the jurors. *People v Slover*, 232 N.Y. 264, 133 N.E. 633, 232 N.Y. (N.Y.S.) 264, 1921 N.Y. LEXIS 504 (N.Y. 1921).

A party who first calls a witness cannot be allowed to show that he is unworthy of credit by impeaching his general credibility when he is afterwards called by the other side. *Hanrahan v*

New York Edison Co., 238 N.Y. 194, 144 N.E. 499, 238 N.Y. (N.Y.S.) 194, 1924 N.Y. LEXIS 667 (N.Y. 1924).

Nature of crime is proper subject of cross-examination where sharp issue of fact is developed. Moore v Leventhal, 303 N.Y. 534, 104 N.E.2d 892, 303 N.Y. (N.Y.S.) 534, 1952 N.Y. LEXIS 797 (N.Y. 1952).

It is proper to ask a witness, on cross-examination, whether he is not serving a sentence for having been convicted of a crime or misdemeanor. Cooke v Glassheim, 207 A.D. 592, 202 N.Y.S. 599, 1924 N.Y. App. Div. LEXIS 9826 (N.Y. App. Div. 1924).

Upon cross-examination a witness may be asked if he was ever convicted of a crime, but cannot be impeached by asking him if he has ever been indicted or put under bonds. McWharf v Webber, 222 A.D. 347, 225 N.Y.S. 761, 1927 N.Y. App. Div. LEXIS 7859 (N.Y. App. Div. 1927).

CPA § 350 permitted cross-examination of witness as to his prior conviction of crime for purpose of affecting weight of his testimony, and cross-examiner was concluded from further showing conviction, though it was admitted by witness. McQuage v New York, 285 A.D. 249, 136 N.Y.S.2d 111, 1954 N.Y. App. Div. LEXIS 3315 (N.Y. App. Div. 1954).

A witness examined in his own behalf was asked on cross-examination whether he had been convicted of selling liquor without a license. Held, competent under CPA § 350. Doud v Donnelly, 12 N.Y.S. 396, 59 Hun 615, 1891 N.Y. Misc. LEXIS 1771 (N.Y. Sup. Ct. 1891).

## **6. Credibility as question for jury**

All questions as to the credibility of witness are for the jury. People v Chapleau, 121 N.Y. 266, 24 N.E. 469, 121 N.Y. (N.Y.S.) 266, 1890 N.Y. LEXIS 1403 (N.Y. 1890).

Where a party as a witness gives material testimony in his own behalf, the record of a former conviction may be received in evidence against him as bearing upon his credibility. People ex rel. Stewart v Paschal, 22 N.Y.S. 881, 68 Hun 344 (1893).

## **7. Mode of proof of conviction**

The only method of proving conviction of crime to affect credibility of a witness is by the record or by his cross-examination, and it was error to allow evidence of an admission. *People v Cardillo*, 207 N.Y. 70, 100 N.E. 715, 207 N.Y. (N.Y.S.) 70, 1912 N.Y. LEXIS 1413 (N.Y. 1912).

Prior conviction of a person must be proved by the record and not by parole testimony of probation officer. *People v Stein*, 161 N.Y.S. 1107, 96 Misc. 507, 1916 N.Y. Misc. LEXIS 1099 (N.Y. Gen. Sess. 1916).

Conviction of infraction or offense must be shown by original record, not copy of record in another department. *Saltzman v New York*, 78 N.Y.S.2d 407, 191 Misc. 724, 1948 N.Y. Misc. LEXIS 2255 (N.Y. App. Term 1948).

## **Research References & Practice Aids**

---

### **Federal Aspects:**

General rule of competency in United States courts, USCS Court Rules, Federal Rules of Evidence, Rule 601.

Impeachment of witness by evidence of conviction of crime in United States courts, USCS Court Rules, Federal Rules of Evidence, Rule 609.

### **Law Reviews:**

Use of bad character and prior convictions to impeach a defendant-witness. 34 *Fordham L. Rev.* 107.

### **Treatises**

**Matthew Bender's New York Civil Practice:**

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4513, Competency of Person Convicted of Crime.

2 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 31.05.

**Matthew Bender's New York Evidence:**

2 Bender's New York Evidence § 129.01. Competency of Witnesses: In General.

2 Bender's New York Evidence § 132.03. Limitations on Cross-Examination.

2 Bender's New York Evidence § 134.01. Impeachment.

2 Bender's New York Evidence § 134.03. Use of a Conviction for Impeachment.

**Annotations:**

Conviction in another jurisdiction as disqualifying witness. 2 ALR2d 579.

Waiver of privilege against self-incrimination in exchange for immunity from prosecution as barring reassertion of privilege on account of prosecution in another jurisdiction. 2 ALR2d 631.

Propriety, on impeaching credibility of witness in civil case by showing former conviction, of questions relating to nature and extent of punishment. 67 ALR3d 761.

Use of unrelated traffic offense conviction to impeach general credibility of witness in state civil case. 88 ALR3d 74.

Use of unrelated misdemeanor conviction (other than for traffic offense) to impeach general credibility of witness in a state civil case. 97 ALR3d 1150.

Conviction by court-martial as proper subject of cross-examination for impeachment purposes. 7 ALR4th 468.

Propriety of jury instruction regarding credibility of witness who has been convicted of a crime. 9 ALR4th 897.

Admissibility of testimony regarding spontaneous declarations made by one incompetent to testify at trial. 15 ALR4th 1043.

Right to impeach witness in criminal case by inquiry or evidence as to witness' criminal activity not having resulted in arrest or charge—modern state cases. 24 ALR4th 333.

Permissibility of impeaching credibility of witness by showing verdict of guilty without judgment of sentence thereon. 28 ALR4th 647.

Review on appeal, where accused does not testify, of trial court's preliminary ruling that evidence of prior convictions will be admissible under Rule 609 of the Federal Rules of Evidence if accused does testify. 54 ALR Fed 694.

**Texts:**

1-5 New York Evidentiary Foundations § I.

2-22 New York Trial Guide § 22.30; 3-40 New York Trial Guide § 40.61; 3-50 New York Trial Guide § 50.01; 3-50 New York Trial Guide § 50.10; 4-70 New York Trial Guide 70.syn; 4-70 New York Trial Guide § 70.21.

**Hierarchy Notes:**

NY CLS CPLR, Art. 45

New York Consolidated Laws Service

Copyright © 2025 All rights reserved.