

EXPERT EVIDENCE

Learning Objectives

- To increase students' understanding of the law on expert evidence, including what expert evidence is, what makes someone an expert and what factors are used to determine the admissibility of expert evidence.
- To develop knowledge of the legal test for determining whether an expert opinion should be admitted into evidence and learn how to apply it to case studies.

Materials

- Copies of the newspaper article, *Expert Witnesses Disagree on Truck Crash* (one per person)
- Copies of the student handout, *Introduction to Expert Evidence* (one per person)
- Copies of the scenarios on *Admissibility of Expert Evidence* (one per person)
- Copies of the postcard template (optional; one per person)

Teaching and Learning Strategies

1. Have students read the newspaper article, *Expert Witnesses Disagree on Truck Crash*, and discuss the related questions in small groups or as a class.
2. Ask students to brainstorm a definition of 'expert evidence'. Create a web diagram that illustrates all of the possible definitions. As a point of comparison, provide students with the following definition of expert evidence that has been accepted by the courts: *Expert evidence consists of knowledge or guidance from a qualified expert that*

is likely to be outside the experience and knowledge of a judge or jury.

Optionally, have students brainstorm examples of expert witnesses. Some possible examples include medical pathologists, auditors, forensic crime lab investigators, ballistics experts, accident reconstruction experts, medical experts, psychologists, and criminologists. Remind students that expert witnesses can go beyond law enforcement agencies. Depending on the issue, members of nearly any specialized scientific and social scientific research field can be an expert witness, as can members of any profession, or a specialist in any field that could provide information that is beyond the judge's or jury's experience and knowledge and would be helpful for resolving or explaining an issue in the case.

3. Introduce the law on expert evidence using the handout, *Introduction to Expert Evidence*. Clarify concepts after each section and have students complete the *Check for Understanding* exercise on fact versus opinion. Remind students that the distinction between fact and opinion can become tricky because many of our everyday actions and perceptions could be based on inferences that are uncertain to some degree. Courts have found that it is very difficult to distinguish strictly between fact and opinion.
4. Review the *Mohan* factors with students and have them apply the *Mohan* test to one or more of the scenarios in the handout, *Admissibility of Expert Evidence*. Students can record their answers in the chart provided. Debrief as a class.



Teacher's Key - Admissibility of Expert Evidence Scenarios

Remind students that there are no absolute answers, but that a court might analyze the factors in this way.

Scenario 1	
Necessary?	Probably. Not all of us have been through traumatic events such as child abuse, or known or worked with people who have. A specialist could likely give insights, based on their experience, that go beyond the experience and knowledge of ordinary people. An argument could be made, however, that expert evidence is not necessary, and that how we remember events is a basic part of human experience which we all know at least something about.
Relevant? 1. Helps resolve important issue?	Yes. The defence is likely to raise the fact that the child took several years to report the abuse as a way of attacking the child's story. Explaining the delay will be a crucial part of the Crown's case.
2. Benefits outweigh risks?	It depends. The evidence may not be reliable since although it is based on the expert's extensive experience, it doesn't appear to be based on any formal studies conducted by the social worker. On the other hand, the evidence doesn't appear too likely to confuse the jury. It also will not likely consume too much time since it sounds fairly straightforward. It is also unlikely to unfairly hurt the accused.
Qualified?	Yes. The social worker has training in her field and 20 years of experience working with children.
No other exclusionary rule?	No. No other rule would seem to prevent the admission of this evidence.
Scenario 2	
Necessary?	Yes. Most people would not be able to tell from looking at someone's handwriting whether they were passionate about the issue they were writing about. Therefore, "passion detection" is beyond the knowledge and experience of ordinary people.
Relevant? 1. Helps resolve important issue?	Maybe. On the one hand, the evidence might help establish a motive for the theft – the accused's special passion for the Merchant of Venice. On the other hand, motive may not be a major issue in the case. And even if motive is a major issue, the fact that the accused loves Shakespeare in general may not be enough to establish motive, without additional information about what kinds of Shakespeare in particular he likes.
2. Benefits outweigh risks?	Probably not. The evidence is probably not reliable since it has attracted only some support from experts and many say more research is needed; "passion detection" is still a new and controversial theory. The evidence may or may not confuse the jury, depending on how complicated the expert's theory is. It probably won't consume too much time. The evidence is also unlikely to prejudice the accused. .
Qualified?	Probably not. Five years of experience is probably not enough to qualify someone as an expert in handwriting analysis. The PhD is irrelevant since it has nothing to do with handwriting.
No other exclusionary rule?	No. No other rule would seem to prevent the admission of this evidence.

Extension

Using the template provided, have students design a postcard to be sent to a potential juror in a criminal law trial. The postcard should be an informational resource for jurors who will be hearing expert testimony. The final product should summarize student learning on one or more aspects of expert evidence and assist a potential juror in understanding this area of law. The postcard can be a graphical or written depiction. Potential topics include: what is expert evidence, problems and issues with expert evidence, the law on expert evidence or the Mohan test. Once complete, have students do a gallery walk of each other's postcards and/or post them around the classroom.