THE NEW CRITERIA FOR EXPERT EVIDENCE IN BRITISH COURTS – CASE LAW, STATUTORY RULES AND A NEGLIGENCE CASE STUDY

Paul Eisenberg
University of Portsmouth, University House Winston Churchill Avenue, Portsmouth PO1 UP, United Kingdom
eisenberg.scholar@gmail.com

Abstract

This work aims to analyse the legislation proposed by The Law Commission in Great Britain in order to establish statutory criteria for expert evidence in court. The proposal is assessed against the amendment of the Criminal Procedure Rules (CPR) initiated by The Government. From this comparison implications for expert witnesses are derived. For illustrative purposes, the case study of fictitious divorce proceedings of Peter Morgan is dealt with. The study shows legal remedies available to a party against its expert witness in negligence cases. Methodologically, expert evidence admissibility criteria are discussed on the background of common law rules and the Criminal Procedure Rules (2015). Legal academic literature is consulted to enrich the argument. The findings show that the Criminal Procedure Rules (2015) are rooted in settled case law, albeit stressing expertise enhancement and professional qualifications. The discussion of the Peter Morgan case study provides for a legal route for negligence claims based on the case law of Jones v Kaney. The originality of this work is based
upon a thorough analysis of case law and legal writings, with the focus on newly introduced Criminal Procedure Rules and recent landmark cases.

Keywords
Expert Witness, Expert Evidence, Expert Admissibility, Criminal Procedure Rules, Negligence, Case Study

1. Introduction

The criminal justice of England and Wales has been shaken by several convictions based on expert witness statements which have proved unreliable (Livesey, 2017; Edmond and Roberts, 2011). In *R v Dallagher* the defendant was sentenced because of the expert’s opinion that the defendant’s ear-print matched the ear-print on a window of the crime scene. In *R v Clark* the expert failed to disclose test results and thus did not meet professional and academic standards. Moreover, the expert had made statements about the statistical probability of two cot deaths in the same family, which was not his area of expertise (Great Britain. The Law Commission, 2009). In *R v Cannings* several medical experts have falsely excluded genetic predisposition of infant deaths in a family (McKie, 2012; Raposo, 2015). Finally, in *R v Harris and others* the expert’s presumption was challenged that head injuries of babies could only result from murderous shaking (Ward, 2013). According to *Burgoyne v Pendlebury* expert reports in breach of court procedure rules can nevertheless be considered by the trial judge. To prevent the courts from following a generous approach to admissibility of expert evidence the Law Commission demands a statutory expert reliability test (Rozenberg, 2014). The proposed legislation should establish statutory criteria for expert evidence (Great Britain. The Law Commission, 2011). The Government opposes the proposal. It is afraid of additional litigation about experts’ admissibility (Roberts, 2016) and higher administrative costs (Great Britain. The Ministry of Justice, 2013). Instead, it initiates the amendment of the Criminal Procedure Rules (CPR). The purpose of this work is to evaluate the recommendations of the Law Commission and to show what implications the new CPR have for expert witnesses.

The rules governing expert witness statements are exemplified by the case study of the fictitious divorce proceedings of Peter Morgan. The trial judge directs Peter’s expert witness to prepare a Joint Statement with Mr. Smith, the expert witness of Peter’s wife Mable. This court order is induced by the diverging assessment of Mable’s net worth by the two experts of £11
million (Peter’s expert) and £250,000 (Mr. Smith), respectively. During the expert meeting Peter’s expert agrees with Mr. Smith’s assessment due to overfatigue, alcohol consumption and confusion and signs the Joint Statement accordingly. As a result, Peter forfeits the possibility to claim a higher share of Mable’s assets. This work investigates whether Peter is entitled to sue his expert for negligence (Laird, 2018) and on which law and grounds to base his action. Finally, any defences to Peter’s action are evaluated.

2. Methodology

Current and previous criminal procedure rules concerning the admissibility of expert evidence are used as a benchmark for discussion. The common law on expert admissibility can be traced back to *R v Turner*. It incorporates the following four requirements (Henneberg, 2015).

2.1 Assistance

An expert’s opinion has to be scientific. Speculations (*R v Gilfoyle*) and unscientific methods like astrology (*R v Robb*) are inadmissible. The opinion must be outside of a judge’s or jury’s knowledge, for example investment banking expertise (*Barings Plc (In Liquidation) v Coopers & Lybrand (No.2)*). This makes the opinion assisting and necessary to understand the case at issue (*R v Mohan*).

2.2 Relevant Expertise

Sutherland (2009) points out that expert should be academically or professionally qualified (*R v Bonython; Dole v Johnson*). Courts use guidelines to assess academic expertise, for example in cases involving medical evidence (*R v Henderson and others*) or DNA evidence (*R v Weller*).

2.3 Evidentiary Reliability

This requirement calls for an established field of expertise for the evidence to be derived from (*R v Reed; R v Broughton*). This may be research results and techniques generally accepted by scientists (Ormerod, & Barsby, 2002).

2.4 Impartiality

Civil common law requires expert’s impartiality (*Clonard Developments Ltd. v Humberts; Anglo Group v Winther Brown & Co., Ltd.; Field v Leeds City Council; Liverpool Roman Catholic Archdiocesan Trust v David Goldberg QC; Toth v. Jarman*). However, for
criminal proceedings partisanship does not affect admissibility (R v Stubbs; Leo Sawrij v North Cumbria Magistrates’ Court).

Expert admissibility is also governed by CPR 2015, which follow the four common law requirements (Forensic Science Regulator, 2015). The previous CPR 2013 were amended with regard to admissibility on five accounts. Rule 19.2(1)(b) requires the expert to assist the court’s case management and to follow the court’s directions. Rule 19.2(3)(a) obliges the expert to define his “area or areas of expertise”. Rule 19.2(3)(b) makes him to “draw the court’s attention to any question to which the answer would be outside the expert’s area or areas of expertise”. Rule 19.3(3)(c) requires the party introducing the expert to notify the court about anything that may detract the expert’s credibility (Brian, & Cruickshank, 2017). Rule 19.4(h) makes the expert include in his report information so that the court may decide about his reliability (Forensic Science Regulator, 2015).

In addition to the CPR amendments mentioned above, Rule 19.2(1)(a) enumerates the expert’s duties as “giving opinion which is objective and unbiased, and within the expert’s area or areas of expertise”. According to Rule 19.2(2) “this duty overrides any obligation to the person from whom the expert receives instructions or by whom the expert is paid”. These rules correlate with the common law in National Justice Cia Naviera SA v Prudential Assurance Co., Ltd.

Although supporting the court, an expert must not assume a deciding position (Lazo, 2018) – the case is for the jury to decide (R v Stockwell). However, the jury is not obliged to accept expert evidence (R v Lanfear).

The Civil Justice Council has issued a Protocol for the Instruction of Experts (2009) which may have impact on experts giving evidence in criminal courts. Moreover, experts can derive their duties from The Expert Witness Institute Code of Practice (2005).

3. Discussion

3.1 What implications do the new rules have for expert witnesses?

The new CPR 2015 rules narrow the expert witness’ focus of expertise (Rule 19.2(3)(a) and Rule 19.2(3)(b)) and scrutinise the expert’s credibility (Rule 19.3(3)(c)) and reliability (Rule 19.4(h)). The new rules mitigate former case law where expertise and qualification had not been properly considered by the judge (R (Doughty) v Ely Magistrates’ Court). Therefore,
accreditation and training may become more important for expert witnesses to prove their specialisation and to substantiate their credibility and reliability (Rothwell, 2010).

Expert witnesses are expected to closely collaborate with the court (Rule 19.2(1)(b)). Criminal courts can order a pre-hearing discussion among experts to reduce controversial issues. Courts can also punish non-compliance by prohibiting that expert’s evidence (Rule 19.6(4)). Courts can direct that evidence is to be given by a single joint expert and engage in expert selection (Rule 19.7(2)(b)). Hence, experts should be compliant to avoid punishment under Rule 19.6(4) and should be accredited and qualified in order to be selected under Rule 19.7(2)(b).

3.2 Was the Law Commission justified in making the recommendations suggested in its initial report?

In view of the recent High Court case R (on the application of Wright) v CPS the focus of the new CPR 2015 is on preventing experts from giving evidence not covered by their expertise (Jackson, & Stockdale, 2015). Hence, it may be argued that the Law Commission’s goal – which is to scrutinise expert evidence more thoroughly – has entered the new CPR 2015. By the way, the Commission’s suggestions had already been part of settled case law. Thus, an expert should disclose an issue falling out of his expertise (R v Harris). Parties have to persuade the judge to admit expert evidence on the basis of expertise (Clarke (Executor of the Will of Francis Bacon) v Marlborough Fine Art (London) Ltd.). Facts rendering experts inadmissible should be reported to the court as soon as possible (R (Factortame Ltd. and Others) v Secretary of State for Transport, Local Government and the Regions (No 8)). The defendant may introduce any evidence to exonerate himself (R v Lowery). But no expert will be admitted under common law in matters of fact (Re ISG Group Ltd. (No 2), of obvious observations (Thermos Ltd. v Aladdin Sales & Marketing Ltd.; Isaac Oren v Red Box Toy Factory Ltd.) or of interpretation of commercial contracts, which is genuine judicial work (J.P. Morgan Chase Bank v Springwell Navigation Corporation). Finally, courts have been aware of budgetary constraints (R v Jisl). The Law Commission’s suggestion to allow criminal courts to disapply the proposed test at court’s discretion for the sake of procedural economy raises the question of whether the test is necessary at all (Great Britain. The Law Commission, 2011).
4. The case study of Peter Morgan

4.1 Is Peter Morgan entitled to sue?

The expert owes Peter a duty of care in contract and tort (Doyle, & Fentem, 2011). The duty of care is based on Peter’s reliance on his expert and on the proximity between them (Muirhead v Industrial Tank Specialities Ltd.). The reliance is induced by the expert holding himself out as a specialist in the field (Mutual Life & Citizens Assurance v Evatt). Peter’s expert has been in control of his conduct (Herstein, 2010). Hence, Peter could expect the expert to conduct his work with reasonable skills and care (Bolam v Friern Hospital Management Committee).

Furthermore, the duty of care must have been breached (Marks, 1989). Producing a flawed Joint Statement that substantially devalues Peter’s case is not in Peter’s interest, constituting a breach. The breach of duty can be established without Peter’s expert being aware of the precise amount of the damage caused (Hughes v Lord Advocate; Bolton v Stone; Paris v Stepney Borough Council).

Peter must suffer damage from the expert’s breach of duty (Zipursky, 2009). The damage must have occurred but for the expert’s breach of duty (Goldberg, 2011). Peter would have hardly restricted himself to Mr. Smith’s number of Mable’s net worth but for the Joint Statement (Barnett v Chelsea and Kensington Hospital Management Committee). The Joint Statement as signed by Peter’s expert materially contributes to Peter’s damage (McGhee v National Coal Board; Fairchild v Glenhaven Funeral Services Ltd.). Therefore, Peter is entitled to sue his expert for negligence.

4.2 What is the law on this issue?

Historically, expert witnesses have enjoyed immunity from suit for negligence (Doyle, & Fentem, 2011). Centuries ago courts established immunity from liability due to slander (Cutler v Dixon) and defamation (R v Skinner) for statements in court proceedings. Over time, immunity from breach of duty of confidence (Watson v M’Ewan), from conspiracy (Marrinan v Vibart), from false and malicious evidence (Roy v Prior) and from sexual discrimination (Heath v Commissioner of the Metropolitan Police) at court has become settled case law. However, for lawyers (Saif Ali v Sydney Mitchell & Co) and for expert witnesses (Palmer v Durnford-Ford) the courts differentiated between immunity from statements made during proceedings and liability for advice given on other occasions. The distinction was driven by public policy.
considerations to preserve effective trials without putting experts at risk of follow-up suits (Bal, 2009). However, this policy has been limited by *Meadow v General Medical Council*. The Court of Appeal cancelled expert witness’ immunity against professional disciplinary proceedings resulting from poor performance as expert in court. The abolishment of the lawyers’ immunity by *Arthur JS Hall v Simons* has shown that trial effectiveness has not suffered and that barristers have not been deterred from providing legal services in the aftermath (Shapiro, 2011). *Arthur JS Hall v Simons* also had effects on non-legal experts: if advocating the case of their clients instead of merely supplying expert evidence, they could no longer rely on immunity (Tromans, 2011). These legal developments have led to the Supreme Court’ ruling in *Jones v Kaney* which has aligned the abolishment of immunity for expert witnesses with that for lawyers (Van Dellen, 2011). The long-established policy considerations have been regarded subordinate to the rule that remedy should be provided for a wrong suffered (*Darker v Chief Constable of West Midlands*).

Consequently, Peter can base his suit for negligence on the case law of *Jones v Kaney*.

### 4.3 On what grounds could Peter Morgan base his action?

The way Peter’s expert conducts the Joint Statement negotiations offers several grounds on which to base the action. The negotiations are conducted in a bar over a bottle of wine. Goodliffe and Brooke (1996) point out that alcohol can compromise care exercised by a legal professional. The meeting takes place after a conference at which Peter’s expert has attended several speeches and workshops. Furthermore, at that evening hour, he suffers from jet-lag and is hardly able to concentrate due to this fatigue. Ming (2003) shows that pharmacists increasingly make dispensing mistakes when they are tired, violating professional standard of care towards patients. Khalafi (2014) stresses that lack of concentration at work due to sleepiness can result in performance losses. Indeed, Peter’s expert forgets to take relevant documents to the negotiations and even confuses Peter’s case with another appointment.

The adverse expert Mr. Smith applies different aggressive negotiation techniques to make Peter’s expert giving in (Schatzki, 2009). He exercises pressure by recalling an alleged deadline and by making overbearing statements, pushing for an immediate agreement to be met at the same night. Also, it is Mr. Smith who orders a bottle of wine and keeps refilling Peter’s expert’s glass, which further decreases his concentration. However, Peter’s expert is not obliged to drink alcohol and to response to Mr. Smith’s claims. Instead, he could ask to postpone the meeting to be better equipped at a later point in time. The probability of breach of duty from conducting the
negotiations despite the overfatigue, alcohol consumption and confusion is reasonably foreseeable (Overseas Tankship (UK) Ltd. v Morts Dock and Engineering Co Ltd.). Conducting the expert meeting under such circumstances violates what can be reasonably expected of professional skills and care (Bolam v Friern Hospital Management Committee).

The next day Peter’s expert suffers from nervousness ahead of the lecture to be held by him at the ongoing conference. Thus, he signs a copy of the Joint Statement prepared by Mr. Smith without even reading the copy. Such conduct of Peter’s expert may be reasonably considered as careless (Moore, 2003). It also amounts to the expert’s conduct in Jones v Kaney. In that case a draft Joint Statement was signed under alleged pressure and without reference to the underlying documentary evidence.

4.4 Are there any defenses to Peter Morgan’s action?

In order to defend him from Peter’s action the expert may rely on the case law of Stanton v Callaghan. In that case the court ruled that an expert may depart from his previous advice in order to support the court in reaching an honest result for the parties. The court held that an expert should strive for achieving agreement on as many issues as possible during expert negotiations without breaching a contract with his instructing party or becoming liable in tort of negligence. This overriding duty to the court is stated in Rule 35.3(2) Civil Procedure Rules. The expert could also point to the rulings in Clonard Developments Ltd. v Humberts and Anglo Group v Winther Brown & Co., Ltd. In these cases, the courts held expert evidence to be inadmissible if the expert was considered partial and biased. Thus, the expert may bring forward the defence that he signed the Joint Statement to support the court in finding a solution to the case and to demonstrate independence from Peter. However, this would constitute a self-serving assertion unsupported by any evidence (Hopkins v Hopkins). Hence, the court would probably dismiss this defence (Ulster Bank (Ireland) Ltd. v De Kretser & Anor).

Peter claims that the expert failed to liaise with his lawyers before signing the Joint Statement. Stanton v Callaghan provides defence for experts agreeing on issues that were not previously discussed with the client’s solicitor. However, Peter’s expert did not refrain from consulting the solicitors on the basis of his professional judgement. To the contrary, he signed the Joint Statement without any professional judgement at all. From a lack of professional judgement negligence can be concluded (Griffiths, 2000). Finally, following Jones v Kaney it may be argued that the public goal to encourage experts to operate without close control of
solicitors and without the threat of litigation is now considered subordinate to the rule that a wrong should be mitigated by a remedy (Shapiro, 2011). From the above analysis, it follows that no defence is available to the expert against Peter’s action.

5. Conclusion

The Law Commission recommends to streamline and to clarify the traditional judge-made law by statutes (Sales, 2012). However, due to settled case law and budgetary constraints, the Government takes the middle way and amends CPR. The new rules stress the expert witness’ need to enhance expertise and qualification and to strive for accreditation. Therefore, future studies could analyse how experts could gain and broaden proficiency under time and costs constraints (Price, 2018). Other possible venues for future research could deal with expert opinion as opposed to established majority opinion (Powers, 2017). Parallel research on expert evidence covers jury perception with regard to gender (Maeder, McManus, McLaughlin, Yamamoto, Stewart, & Walla, 2016) and the psychological dimensions of individuals involved in court proceedings (Case, 2016). Gender and psychology are not covered by this article, which may be considered a research limitation.

The fictitious scenario of Peter Morgan shows that a careless expert witness cannot rely on immunity from suit for negligence any more. The landmark case Jones v Kaney provides the reasoning for the abolishment of immunity. Expert witnesses volunteer to supply evidence at court against a fee (Wall, 2009). Thus, they cannot be compared to (lay) witnesses of fact who are obliged to appear in court and are not rewarded (Abbott, 2011). Witnesses of fact remain immune (Cooper, 2011). Hence, it appears justified that expert witnesses should exercise reasonable care in exchange for a monetary reward and that they should bear monetary losses if falling short of standards of care. Finally, Jones v Kaney abolishes the paradox that experts would accept a duty of care towards clients only in case of immunity from suit for breach of duty (Freckelton, 2012). This, also, may be considered to be fair.

References

Abbott, N. S. (2011). Expert Witness or Litigant Expert? Don’t Take Your Expert For Granite.

*The Canadian Geotechnical Society*. Retrieved from: [https://www.cgs.ca/pdf/2011%20-%20Expert%20Witness%20of%20Litigant%20Expert.pdf](https://www.cgs.ca/pdf/2011%20-%20Expert%20Witness%20of%20Litigant%20Expert.pdf)
Bal, B. S. (2009). The Expert Witness in Medical Malpractice Litigation. *Clinical Orthopaedics and Related Research*, 467(2), 383–391. https://doi.org/10.1007/s11999-008-0634-4

Brian, D. J., & Cruickshank, A. (2017). Police officers giving evidence: Discussing gaps, contradictions and next steps. *The Police Journal Theory, Practice and Principles*, 90(2), 160-172. https://doi.org/10.1177/0032258X16674022

Case, P. (2016). Dangerous Liaisons? Psychiatry and Law in the Court of Protection—Expert Discourses of ‘Insight’ (and ‘Compliance’). *Medical Law Review*, 24(3), 360-378. https://doi.org/10.1093/medlaw/fww027

Civil Justice Council (2009). *Protocol for the Instruction of Experts to give Evidence in Civil Claims*. Retrieved from: https://www.justice.gov.uk/courts/procedure-rules/civil/contents/form_section_images/practice_directions/pd35_pdf_eps/pd35_prot.pdf

Cooper, P. (2011, May 20). Call yourself an expert? *New Law Journal*. Retrieved from: https://www.newlawjournal.co.uk/content/call-yourself-expert

Doyle, H., & Fentem, R. (2011). Expert Evidence: Back to Basics and Recent Hot Topics. Retrieved from: http://www.guildhallchambers.co.uk/files/ExpertEvidenceBackToBasics_and_RecentHotTopics.doc

Edmond, G., & Roberts, A. (2011). Procedural Fairness, the Criminal Trial and Forensic Science and Medicine. *Sydney Law Review*, 33, 359-394.

Expert Witness Institute (2005). *The Expert Witness Institute Code of Practice*. Retrieved from: http://www.pragmaconsulting.net/downloads/Expert%20witness%20code%20of%20practice%20Academy%20of%20Experts.pdf

Freckelton, I. (2012). Case Commentary. Civil Liability of Health Practitioners for their Forensic Work: Further Erosion of the Witness Immunity Rule Jones v Kaney [2011] UKSC 13; [2011] 2 All ER 671, [2011] 2 WLR 823. *Psychiatry, Psychology and Law*, 19(4), 451-463. https://doi.org/10.1080/13218719.2012.717247

Forensic Science Regulator (2015). *Newsletter October 2015*. No 26. Retrieved from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470526/FSR_Newsletter_26__October_2015.pdf
Goldberg, R. (2011). Medical Malpractice and Compensation in the UK. *Chicago-Kent Law Review*, 87(1), 131-161.

Goodliffe, J., & Brooke, D. (1996). *Alcoholism in the legal profession*. Retrieved from: [http://www.articles.jgoodliffe.co.uk/articles/allegpr1.htm](http://www.articles.jgoodliffe.co.uk/articles/allegpr1.htm)

Great Britain. The Law Commission (2009). *The Admissibility of Expert Evidence in Criminal Proceedings in England and Wales. A New Approach to the Determination of Evidentiary Reliability*. Consultation Paper 190. Retrieved from: [http://www.lawcom.gov.uk/wp-content/uploads/2015/03/cp190_Expert_Evidence_Consultation.pdf](http://www.lawcom.gov.uk/wp-content/uploads/2015/03/cp190_Expert_Evidence_Consultation.pdf)

Great Britain. The Law Commission (2011). *Expert Evidence in Criminal Proceedings in England and Wales*. London: The Stationery Office.

Great Britain. The Ministry of Justice (2013). *The Government’s response to the Law Commission report: Expert Evidence in Criminal Proceedings in England and Wales (Law Com No 325)*. London: The Ministry of Justice.

Griffiths, J. R. (2000). The law of negligence. In: M. Drury (Ed.), *Clinical Negligence in General Practice* (pp. 43-72). Abington: Redcliff Medical Press Ltd.

Henneberg, M. (2015). Admissibility Frameworks and Scientific Evidence: Controversies in Relation to Shaken Baby Syndrome / Abusive Head Trauma. *British Journal of American Legal Studies*, 4(2), 555-584.

Herstein, O. J. (2010). Responsibility in Negligence: Why the Duty of Care is not a Duty “To Try”. *Law Faculty Publications*. Paper 127. Retrieved from: [http://scholarship.law.cornell.edu/facpub/127](http://scholarship.law.cornell.edu/facpub/127)

Jackson, A., & Stockdale, M. (2015). R (on the application of Wright) v the Crown Prosecution Service: admissibility of expert evidence an Criminal Practice Direction Part 33A (Case Comment). *The Journal of Criminal Law*, 79(4), 246-249. [https://doi.org/10.1177/0022018315597852](https://doi.org/10.1177/0022018315597852)

Khalafi, N. (2014). *Workplace sleepiness: causes, consequences and countermeasures*. Master Thesis. Missouri University of Science and Technology. Retrieved from: [http://scholarsmine.mst.edu/masters_theses/index.3.html#year_2013](http://scholarsmine.mst.edu/masters_theses/index.3.html#year_2013)

Laird, D. (2018). False Expert Witness Testimony in a Medical Negligence Case. *Journal of Legal Medicine*, 34, 44-46.
Lazo, K. C. (2018). Practice to Policy: Assessing Evidence-Based Decision-Making in Health Policy in Greater Manchester. *PEOPLE: International Journal of Social Sciences*, 4(29), 1051-1070.

Livesey, M. C. (2017). *The Effectiveness of Expert Evidence*. Paper presented at the Australian Bar Association Conference 2017. Retrieved from: [http://austbar.asn.au/uploads/pdfs/abaconf2017/Livesey_QC,_Mark_The_Effectiveness_of_Expert_Evidence.pdf](http://austbar.asn.au/uploads/pdfs/abaconf2017/Livesey_QC,_Mark_The_Effectiveness_of_Expert_Evidence.pdf)

Maeder, E. M., McManus, L. A., McLaughlin, K. J., Yamamoto, S., Stewart, H., & Walla P. (2016). Jurors’ perceptions of scientific testimony: The role of gender and testimony complexity in trials involving DNA evidence. *Cogent Psychology*, 3(1), 1-14. [https://doi.org/10.1080/23311908.2016.1264657](https://doi.org/10.1080/23311908.2016.1264657)

Marks, D. W. (1989). Professional Negligence: Contribution and Contributory Negligence. *The University of Queensland Law Journal*, 15(2), 209-227.

McKie, I. A. J. (2012). *Expert Evidence: Reliability and Relevance*. Retrieved from: [http://www.shirleymckie.com/documents/Expertpapersummary17313.pdf](http://www.shirleymckie.com/documents/Expertpapersummary17313.pdf)

Ming, K. L. Y. (2003). A Duty to Care: Pharmacists’ Negligence: Implications for Pharmacists and Lessons Arising. *Allied Health Professions*, 5, 1-9.

Moore, D. (2003). The Boundaries of Negligence. *Theoretical Inquiries in Law*, 4(1), 339-365. [https://doi.org/10.2202/1565-3404.1065](https://doi.org/10.2202/1565-3404.1065)

Ormerod, D. C., & Barsby, C. (2002). Case Comment – Evidence: prosecution relying on expert evidence relating to ear prints. *Criminal Law Review*, 821-823.

Powers, M. (2017). Expert witnesses: stuck between the courts and the GMC. *BMJ British Medical Journal*, 357. Retrieved from [https://www.bmj.com/content/357/bmj.j2034](https://www.bmj.com/content/357/bmj.j2034) [https://doi.org/10.1136/bmj.j2034](https://doi.org/10.1136/bmj.j2034)

Price, P. (2018). Current and future challenges facing medico-legal experts – An expert’s view. *Journal of Patient Safety and Risk Management*, 23(3), 109-113.

Raposo, V. L. (2015). How Can Asian Countries Deal with Medical Liability and Patient Compensation. *PEOPLE: International Journal of Social Sciences*, 1(19; 942-956.

Roberts, P. (2016). LTDNA Evidence on Trial. *Frontier in Genetics*, 7(180), 1-13. [https://doi.org/10.3389/fgene.2016.00180](https://doi.org/10.3389/fgene.2016.00180)
Rothwell, R. (2010, November 23). Forensic expert witnesses should be accredited, warns judge. The Law Society Gazette. Retrieved from: https://www.lawgazette.co.uk/58151.article

Rozenberg, J. (2014, October 15). Are juries being blinded by science? The Guardian. Retrieved from: https://www.theguardian.com/law/2014/oct/15/juries-blinded-science-lord-chief-justice-primers

Sales P. (2012). Judges and Legislature: Values into Law. Cambridge Law Journal, 71(2), 287-296. https://doi.org/10.1017/S0008197312000499

Schatzki, M. (2009). Negotiation. The Art of Getting What You Want. New York: Signet Books.

Shapiro, D. (2011). Jones v Kaney [2011] UKSC 13. Expert Witness: now liable for inexpert evidence. Retrieved from: http://www.crownofficechambers.com/assets/docs/news/jones_v_kaney_article.pdf

Sutherland, R. (2009). Expert Evidence – The Role, Duties and Responsibilities of the Expert Witness in Litigation. Paper presented at the Expert Witness Training Seminar by Terra Firma Chambers, Edinburgh. Retrieved from: http://www.terrafirmachambers.com/articles/ExpertEvidence-RoleDutiesandResponsibilitiesoftheExpertWitnessinCourtProceedings.pdf

The Expert Witness Institute (2005). Code of Practice for Experts. London: The Academy of Experts.

Tromans, C. (2011, August 18). Expert Witnesses. The Law Society Gazette. Retrieved from: https://www.lawgazette.co.uk/law/expert-witnesses/61815.article

Van Dellen, A. (2011, November 04). The aftershock. New Law Journal. Retrieved from: https://www.newlawjournal.co.uk/content/aftershock

Wall, W. (2009). Forensic Science in Court: The role of the Expert Witness. Oxford: Wiley-Blackwell.

Ward. T. (2013). Expert evidence and the Law Commission: implementation without legislation? Criminal Law Review, 7, 561-576.

Zipursky, B. (2009). Foreseeability in Breach, Duty, and Proximity Cause. Wake Forest Law Review, 44, 1247-1275.

LIST OF CASES

Criminal law cases (chronologically)
R v Skinner [1772] Lofft. 55
R v Lanfear [1968] 2 QB 77
R v Lowery [1974] AC 85
R v Turner [1975] QB 834
R v Robb [1991] 93 CAR 161
R v Stockwell [1993] 97 Cr App R 260
R v Mohan [1994] 2 SCR 9 (Canadian Supreme Court)
R v Gilfoyle [1996] 1 CAR 302
R v Dallagher [2002] EWCA Crim 1903
R (Factortame Ltd. and Others) v Secretary of State for Transport, Local Government and the Regions (No 8) [2002] 3 WLR 1104
R v Clark [2003] EWCA Crim 1020
R v Cannings [2004] EWCA Crim 1
R v Jisl [2004] EWCA Crim 696
R v Harris and others [2005] EWCA Crim 1980
R v Harris [2006] 1 Cr App R 55, CA
R v Stubbs [2006] EWCA Crim 2312, [2006] All ER (D) 133
R v Reed [2009] EWCA Crim 2698, [2010] 1 Cr App R 23
R v Broughton [2010] EWCA Crim 549
R v Henderson and others [2010] EWCA Crim 1269, [2010] 2 Cr App R 24
R v Weller [2010] EWCA Crim 1085

Civil law cases (chronologically)
Cutler v Dixon [1585] 4 Co Rep 146
Watson v M’Ewan [1905] AC 480
Paris v Stepney Borough Council [1950] UKHL 3
Bolton v Stone [1951] AC 850
Bolam v Friern Hospital Management Committee [1957] 2 All ER 118
Overseas Tankship (UK) Ltd. v Morts Dock and Engineering Co Ltd. [1961] UKPC 2
Hughes v Lord Advocate [1963] UKHL 8
Marrinan v Vibart [1963] 1 QB 528
Barnett v Chelsea and Kensington Hospital Management Committee [1969] 1 Q.B. 428
Mutual Life & Citizens Assurance v Evatt [1971] AC 793
McGhee v National Coal Board [1972] 3 All ER 1008, 1 WLR 1
Roy v Prior [1970] 2 All ER 729
Saif Ali v Sydney Mitchell & Co. [1980] AC 198
Muirhead v Industrial Tank Specialities Ltd. [1986] QB 507
Dole v Johnson 50N Hamp 454 (1991)
Palmer v Durnford-Ford [1992] QB 483
National Justice Cia Naviera SA v. Prudential Assurance Co., Ltd., The Ikarian Reefer [1993] 2 Lloyd’s Rep 68
Clonard Developments Ltd. v Humberts [1997] EGCS 124
Clonard Developments Ltd. v Humberts [1999] EWCA Civ 553
Isaac Oren v Red Box Toy Factory Ltd. [1999] FSR 785
Anglo Group v Winther Brown & Co., Ltd. [2000] 72 Con LR 118 (TCC). 343
Burgoyne v Pendlebury July 26, 2000, unrep.
Field v Leeds City Council [2000] 1 EGLR 54
Stanton v Callaghan [2000] QB 75
Thermos Ltd. v Aladdin Sales & Marketing Ltd. [2000] FSR. 402
Barings Plc (In Liquidation) v Coopers & Lybrand (No.2) [2001] Lloyd's Rep. Bank. 85; [2001] Lloyd's Rep. P.N. 379; [2001] PNLR. 22; (2001) 98(13) LSG. 40, Ch D
Darker v Chief Constable of West Midlands [2001] 1 AC 435
Liverpool Roman Catholic Archdiocesan Trust v David Goldberg QC [2001] 1 WLR 2337
Arthur JS Hall v Simons [2002] 1 AC 674
Clarke (Executor of the Will of Francis Bacon) v Marlborough Fine Art (London) Ltd. [2002] EWHC 11 (Ch)
Fairchild v Glenhaven Funeral Services Ltd. [2002] UKHL 22
Re ISG Group Ltd. (No 2) [2003] BPIR 597
Heath v Commissioner of the Metropolitan Police [2005] IRLR 270
J.P. Morgan Chase Bank v. Springwell Navigation Corporation [2006] EWHC 2755 (Comm)
Toth v Jarman [2006] EWCA Civ 1028. [2006] 4 All ER 1276
Jones v Kaney [2010] EWHC 61 (QB)
Hopkins v Hopkins [2015] EWHC 812 (Fam)
Ulster Bank (Ireland) Ltd. v De Kretser & Anor [2016] IECA 371

Administrative law cases (chronologically)

R (Doughty) v Ely Magistrates’ Court [2008] EWHC 522 (Admin)

Leo Sawrij v North Cumbria Magistrates’ Court [2009] EWHC 2823 (Admin), [2010] 1 Cr App R 22

R (on the application of Wright) v CPS [2015] EWHC 628 (Admin)