E X P E R T E V I D E N C E

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P R E F A C E

In the modern world of today, disputes brought to the courts for settlement have been increasingly becoming more complex and technical. Expertise in the law does not fully equip judges to solve the disputes as the disputes cover a wide range of interests and expertise. Thus there is an increasing need for the assistance of experts to assist the court by their knowledge, skill and experience in their respective trade or professions.

However, their assistance cannot be taken blindly as their function are only to assist and not to take over the decision-making function of the court. Furthermore experts not only assist the courts but they also have vested interests with the parties which called them. It is on this background that this paper is written to highlight the principles guiding the use of expert evidence in courts with a special reference made to the Malaysian legal position.

C O N T E N T S

CHAPTER I

A. Brief History of the Use of Expert Evidence

One of the noble aims of the court of law is to determine the truth in any dispute. In earlier times the methods used were very primitive and unreliable, usually based on customs and superstitions. Quite often the guilty ones eluded punishments by sheer trickery and brute strength.

The use of experts in a court trial can be dated as early as the 14th Century in the American case of Polulich v Schmidt Tool Die and Stamping Company[1], where a judge stated the power and the right of a judge to call for an expert to assist him. This judge was probably referring to a case in 1345, where it was reported that surgeons were summoned from London to say if a wound was fresh.

1. 46 N.J. Super 135

There were also reports of cases heard in 1494 and 1555 containing references to the practice of calling masters of grammar to assist in interpreting legal documents and later in interpreting commercial instruments. Juries of matrons were believed to be experts in deciding whether a woman was pregnant or not and juries of tradesmen were summoned to advice whether their colleagues had breached the customs of the guilt or been guilty of malpractice.

Courts of law nowadays are rather forutnate to be able to rely on the ever-widening range of scientific and technical knowledge made in various fields of learning to help them in the investigation of the truth.

It would be impractical for the court to ignore such aids because if for example a court whose mind is not trained in the science of medicine attempts to act as an expert, without the aid and assistance of the medical expert, such a course is most unsatisfactory and is fraught with grave consequences.