

58. Expert Witnesses

58.1 Legislation

[Last reviewed: September 2024]

Nil.

58.2 Commentary

[Last reviewed: September 2024]

A jury is entitled to scrutinise expert evidence for qualifications, concessions and reservations contained within it, and to consider whether the factual basis for opinions given has been made out (*R v Michaux* [1984] 2 Qd R 159, 164). It is not entitled to reject unchallenged medical evidence where there is no evidence to the contrary (*R v Dick* [1966] Qd R 301; *R v Chester* [1982] Qd R 252; *R v De Voss* [1995] QCA 518). In *R v Gemmill* (2004) 8 VR 242, it was held that it was not a correct proposition that the trial judge had a right, let alone a duty, to direct a jury that where there is a conflict between witnesses they should regard one expert witness as superior to another. Such a notation would cut across the boundaries between judge and jury. This was a matter for the jury to determine.

58.3 Suggested Direction

[Last reviewed: September 2024]

Certain witnesses whom you've heard referred to as expert witnesses have been called to give evidence. The ordinary rule is that witnesses may speak only as to facts and not express their opinions. An exception to the general rule is that persons duly qualified to express some opinion in a particular area of expertise are permitted to do so on relevant matters within the field of their expertise.

However, the fact that we refer to such witnesses as expert does not mean that their evidence has automatically to be accepted. You are the sole judges of the facts and you are entitled to assess and accept and reject any such opinion evidence as you see fit. It is up to you to give such weight to the opinions of the expert witnesses as you think they should be given, having regard in each case to the qualifications of the witness and whether you thought them impartial or partial to either side and the extent to which their opinion accords with whatever other facts you find proved. This is a trial by jury, not a trial by expert; so it is up to you to decide what weight or importance you give to their opinions or indeed whether you accept their opinion at all.

It is also important to remember that an expert's opinion is based on what the expert witness has been told of the facts. If those facts have not been established to your satisfaction, the expert's opinion may be of little value.

(Where there is unanimous expert opinion): In this case, the expert witnesses have expressed agreement as to [issue]. You ought not to reject that view unless the matters on which it is based have not been proved to your satisfaction, or you consider that there is other evidence which casts doubt on the experts' view.

(Where expert evidence is given by audio visual link under s 39PB of the *Evidence Act 1977*, the court must give the following directions): [X] gave expert evidence by audio visual link. You must not give that evidence any more or less weight, or draw any adverse inferences against a party simply because that evidence was by audio visual link.