

THE ADMISSIBILITY RULES OF THE EXPERT EVIDENCE GIVEN BY THE
EXPERT WITNESS

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A project report submitted in partial fulfillment of the
requirements for the award of the degree of
Master of Science in Construction Contract Management

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DECEMBER 2010

I declare that this thesis entitled “*The Admissibility Rules of The Expert Evidence Given by The Expert Witness*” is the result of my own research except as cited in the references. The thesis has not been accepted for any degree and is not concurrently submitted in candidature of any other degree.

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Date : 6 DISEMBER 2010

DEDICATION

*To my parents for giving me such a good Support,
and to my sisters for your love and the countless hours of laughter
and joy we shared throughout the years.*

Thank you for your love, support and everything

ACKNOWLEDGEMENT

First of all, I would like to express my highest gratitude to Allah for the completion of this dissertation. I wish to extend my sincere appreciation to everybody who contributed to the accomplishment of this dissertation. My dissertation supervisor, Dr Nur Emma Mustaffa is specially remembered for her time, patience and efforts in 'moulding' me and my thought processes. The completion of this dissertation would not have been possible without her conscientious guidance and encouragement.

Thanks also to all the lecturers in course of Master of Science (Construction Contract Management), PM. Dr. Maizon Hashim, En. Jamaludin Yaakob, En. Norazam Othman, Dr. Nur Emma Mustaffa, Dr. Kherun Nita Ali, PM. Dr. Fadhlin Abdullah, PM. Dr. Roslan Amiruddin, and PM. Dr. Rosli Abdul Rashid, for their patient and kind advice during the process of completing the master dissertation and course.

Lastly, without the support of my parents, all my family members and all my classmates of Construction Contract Management, completing this study would not have been possible. My wish is they all share my happiness.

ABSTRACT

As science and technology become more complex, the need of the expert evidence from the expert witness has become increasingly more important especially in the construction disputes. The nature and the rules of expert evidence given by the expert witness in civil cases including construction disputes is governed by Section 45 of the Evidence Act 1950 for Malaysia while in United Kingdom it is governed by Civil Evidence Act 1972. The main objective of this study is to discuss the compliance of admissibility rules of the expert evidence given by the expert witness as applied in those statutes. In order to achieve the objective, the analysis of four (4) legal cases which have been retrieved from Lexis-Nexis Legal Database have been conducted to determine on how the judge evaluate the expert evidence to regard them as admissible. The analysis showed that the criteria of admissibility rules of expert evidence applied are that the evidence must be relevant, necessary and the appropriate expert must have the expertise to answer to the needs of each case. Besides, the expert evidence also must comply with the rules or principles regarding the extent or special control over the manner in which the expert witness give their evidence which should not usurp the function of the court and if the expert relies on the fact to make the opinion for the fundamental question, the fact must be proven by admissible evidence.

ABSTRAK

Sejajar dengan ilmu pengetahuan dan teknologi yang semakin kompleks, keperluan keterangan pakar dari saksi pakar telah menjadi semakin penting terutama dalam pertikaian pembinaan. Oleh sebab itu, tatacara dan peraturan keterangan pakar yang diberikan oleh saksi pakar dalam kes sivil, termasuk perselisihan pembinaan telah ditetapkan di Malaysia oleh Seksyen 45 Akta Keterangan 1950 sementara di United Kingdom ianya termaktub di dalam Undang-undang Sivil Bukti 1972. Objektif utama kajian ini adalah untuk membincangkan kesahihan peraturan keterangan pakar yang diberikan oleh saksi pakar seperti yang digunapakai dalam undang-undang. Dalam rangka mencapai tujuan, analisis ke atas empat (4) kes undang-undang yang telah diambil dari Lexis-Nexis Legal Database telah dilakukan untuk menentukan tentang bagaimana hakim menilai keterangan untuk menganggap ia sebagai diterima. Keputusan analisis menunjukkan bahawa kriteria kesahihan peraturan keterangan pakar yang digunapakai adalah dimana bukti mestilah relevan, diperlukan dan pakar yang sesuai perlu memiliki kepakaran untuk jawapan atas keperluan kes masing-masing. Selain itu, keterangan pakar juga perlu mematuhi peraturan-peraturan atau prinsip-prinsip mengenai had atau kawalan khusus atas cara di mana saksi pakar memberikan bukti mereka yang mana tidak boleh menjangkau fungsi mahkamah dan jika saksi pakar menggunakan fakta untuk memberi pendapat untuk pertanyaan dasar, fakta harus dibuktikan dengan bukti yang sah.