

# Evidence Notes

Week 8 – Opinion

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## Opinion rule

- Always start with whether evidence is relevant: s 55. If so, can it be excluded or included through the opinion rule and its exceptions?
- An opinion is 'an inference drawn from observed and communicable data': Lindgren J in *Allstate Life Insurance Co Limited v ANZ* (1996).
- Difference between opinion and fact lies on same continuum and the difference is a matter of degree.
- *Allstate Life Insurance v ANZ* (1996): Investment advisor was giving evidence. Asked what he would have done in hypothetical situation. Answer given. Court held answer to be matter of fact and not an opinion. It was held to be a statement of what he would have done i.e. would have done x, x would be a fact in those circumstances.
- Decision in *Allstate* accepted by Full Federal Court in *Bank of Valletta PLC v National Crime Authority* (1999). NCA made statement in publication that it had not obtained 'any further information that identifies any relevant offence or suspect'. Question: Was this conclusion an opinion? Court held it was a statement of fact. A statement of negative fact. Not an inference from observed or communicable data.
- *Quick v Stoland Pty Ltd* (1998): Case about insolvency. Witness giving evidence (was an accountant and auditor). He testified he examined records and thought it was insolvent from a particular date. Court had to decide whether solvency was matter of fact or opinion. Branson J in FCA said "except where evidence is very clear and obvious, solvency is a matter of opinion. Given complexity of corporate accounts and finance, most ordinary people would not be able to determine solvency without consulting an expert". The expert after examining the books had to draw an inference from that data which meant it was an opinion. Another expert could have also examined the books and determined a different date of solvency.
- Rationale for the opinion rule
  - It is the fact finder's role to draw inferences and conclusions from facts
  - For a witness to draw an inference or conclusion could subvert the fact finder's function
  - Opinions have the potential to confuse fact finders about their ultimate purpose, which is to make findings of fact.

## 76 The opinion rule

- (1) Evidence of an opinion is not admissible to prove the existence of a fact about the existence of which the opinion was expressed.
- (2) Subsection (1) does not apply to evidence of an opinion contained in a certificate or other document given or made under regulations made under an Act other than this Act to the extent to which the regulations provide that the certificate or other document has evidentiary effect.

- Form of exclusionary rule similar to hearsay rule (s 59). With hearsay evidence, just because somebody said or did something in the past doesn't mean it's true. With opinion evidence, just because somebody thinks or believes something doesn't mean it is true.
- Applies only where somebody's opinion is adduced for an opinion purpose i.e. to prove a fact which the opinion is based.
- Opinion rule doesn't apply to keep out evidence to show somebody held an opinion i.e. the holding of an opinion is a fact in issue, example in a defamation case.

## Exceptions

### 77 Exception: evidence relevant otherwise than as opinion evidence

The opinion rule does not apply to evidence of an opinion that is admitted because it is relevant for a purpose other than proof of the existence of a fact about the existence of which the opinion was expressed.

- *R v Whyte* (2006): Not to show s 77 was applied in that case, but that s 77 could be applied on these facts. Man detained woman for period of time. She was released/rescued. Police charged