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CHAPTER 5

Evidence Obtained Unlawfully or Unfairly

5.00 Competing concerns

> **"We must not judge of the means," said Dupin, "by the shell of an examination. The Parisian police, so much extolled for acumen, are cunning, but no more. There is no method in their proceedings, beyond the method of the moment. They make a vast parade of measures; but, not infrequently, these are so ill-adapted to the objects proposed, ... results attained by them are not infrequently surprising, but for the most part, are brought about by simple diligence and activity."**
>
> Edgar Allan Poe – *Murders in the Rue Morgue (1841)*

Normally all relevant non-confession evidence is admissible, even when improperly or illegally obtained. However, the court maintains a discretion to exclude such evidence on such grounds as prejudicial effect, preventing a fair trial, or breach of fundamental rights. Not infrequently, the court has to look into police undercover operations and "honey trap" cases, where the crime itself may be, or alleged to be, partially induced by the undercover operation or where it provides an opportunity for the accused to commit crime.

5.01 Relevant evidence presumed admissible

As stated in ***Chun Man Timber Development Ltd v Kwan Chia Cheng*** (HCA2531/2002, 4091/2003, CFI, 22 February 2008, Deputy Judge Anthony To),

> "As a matter of Hong Kong law, any evidence which has probative value bearing on the issue to be adjudicated is admissible. But the court has discretion to exclude evidence obtained unlawfully so as to protect the integrity of its judicial process in cases where it is unfair to rely on such evidence or where its prejudicial effect outweighs its probative value: see *Kuruma v The Queen* [1955] AC 197 and *Jones v University of Warwick* [2003] 1 WLR 954. The burden is on the party resisting admissibility of the evidence to persuade the court to exclude the evidence."

Evidence relevant to an issue in a case is presumed admissible even when obtained in the following ways:

1) By theft: ***R v Leatham*** (1861) 8 Cox CC 498 where Crompton J said "It matters not how you get it; if you steal it even, it would be admissible in evidence".
2) As a result of an unlawful search of the person: ***Kuruma v R*** [1955] AC 197 and ***Jones v Owen*** (1870) 34 JP 759, where on a charge of unlawful fishing, evidence that the defendant had been in possession of a salmon was held to have been rightly admitted notwithstanding that it was discovered following an unlawful search by a police officer.
3) From an unlawful search of premises: ***Jeffrey v Black*** [1978] 1 All ER 555, [1978] QB 490.
4) When obtained by using an *agent provocateur* or police agent: ***R v Sang*** [1980] AC 402 (HL).

The general principle underlying this area of law was stated in ***Kuruma v R*** [1955] AC 197 (PC).

Kuruma v R

Kuruma, the appellant, a Kenyan man previously of good character had leave of absence from his European farmer employer to visit his reserve. He went on his bicycle along a main road on which he knew there was a road block where he would be liable to be subjected to a stop and search. He could have gone by another route where there was no road block. At the block he was stopped and a police constable examined his papers, which were in order and then ran his hands over the appellant's clothing. According to the officer, believing he felt in the pocket of the appellant's shorts a pocket knife and ammunition he blew his whistle to summon a superior officer, Rattan Singh. Neither of the police officers was of or above the rank of assistant inspector. The prisoner was taken by them to an enclosure where he was made to take off his shorts, which were then shaken and a pocket knife and two rounds fell out. He was then taken to the police station and charged with the offence. The two rounds were marked and were subsequently produced in evidence.

This was an appeal from a Court of Appeal judgment for Eastern Africa dismissing an appeal from a conviction by an Emergency Kenyan Court where the appellant was convicted of being in unlawful possession of two rounds of ammunition contrary to reg 8A(1) of the Emergency Regulations 1952 of Kenya, and sentenced to death. Leave was obtained on the ground the evidence proving that the appellant was in possession of the ammunition was illegally obtained and should not have been admitted. The illegality in question related to the fact that neither officer involved in the stop and search was of or above the rank of inspector as required by the Emergency Regulations, section 29 of which provided:

> "any police officer of or above the rank of assistant inspector with or without assistance and using force if necessary ... may stop and search ... any individual whether in a public place or not if he suspects that any evidence of the commission of an offence against this regulation is likely to be found on such ... individual and he may seize any evidence so found."

Lord Goddard, in dismissing the appeal, stated the general rule:

> "...the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained. While this proposition may not have been stated in so many words in any English case there are decisions which support it, and in their Lordships' opinion it is plainly right in principle. In *Reg v Leatham*... objection was taken to the production of a letter written by the defendant because its existence only became known by answers be had given to the commissioners who held the inquiry under the Act, which provided that answers before that tribunal should not be admissible in evidence against him. The Court of Queen's Bench held that though his answers could not be used against the defendant, yet if a clue was thereby given to other evidence, in that case the letter, which would prove the case it was admissible.

That this general rule of admissibility is not without its limits can be seen from the judgment in ***Jeffrey v Black*** [1978] 1 All ER 555, [1978] QB 490 which indicated that, as a matter of principle, the court would not wish to encourage certain unlawful or deceptive behaviour on the part of law enforcement officials.

Jeffrey v Black

Lord Widgery CJ:

"... informations had been laid against the defendant charging him with two offences. The first was that on December 10, 1975, he unlawfully had in his possession cannabis resin, and the second was that on the same date he unlawfully had in his possession cannabis, in each instance a controlled drug the possession of which without lawful excuse is of course an offence.

...The defendant was arrested by two members of the police drugs squad in Brighton, but his arrest was nothing to do with drugs at all. He was arrested for the offence of stealing a sandwich from a public house. After he had been charged with the offence and before he was bailed, he was told by the police officers that they intended to search his premises, meaning thereby the premises in which he lived. The defendant went with the officers to his home. He opened the door with a key. The officers then entered the premises and as they crossed the hall they were asked by the defendant to be quiet because he did not wish his landlady to know what was going on. The defendant then showed them to his room and they commenced to search that room.

At that point objection was taken by the defending solicitor that it was not competent for the police officers to go further and give evidence of what they had found in this room....The basis of the objection was that, unless the accused had consented to his room being entered by the police officers, it was submitted that their entry would be unlawful, and it was further submitted that in following upon such unlawful entry any evidence acquired would itself not be admissible.

The first question which the justices had to decide was whether consent had been given or not, and they clearly came to the conclusion that it had not. We approach this case on the footing that the police officers entered without the consent of the defendant, the occupier.

Nothing daunted by this, Mr Farquharson for the prosecutor contends that as a matter of law the police officers were entitled to enter without the consent of the occupier, and so the first question of law for us to decide is whether that is a correct submission or not. Mr Farquharson has shown us all the authorities. We are very grateful to him for so doing. He

admitted quite readily that there is no authority which takes him all the way in his submission that the police officers here acted lawfully, but he invites us to say that this is a part of the law which is developing rapidly to the point when this particular entry by the police officers was not unlawful.

The last authority in line upon this subject to which I want to refer contains the words of Lord Denning MR, in what I believe to be the furthest point to which the courts have gone, and moreover to be the clearest and most helpful authority available to us in this case. The extract I want to refer to is contained in *Ghani v Jones* [1970] 1 QB 693, where Lord Denning MR said, at p 706:

> "I would start by considering the law where police officers enter a man's house by virtue of a warrant, or arrest a man lawfully, with or without a warrant, for a serious offence. I take it to be settled law, without citing cases, that the officers are entitled to take any goods which they find in his possession or in his house which they reasonably believe to be material evidence in relation to the crime for which he is arrested or for which they enter."

I draw particular attention to the fact that Lord Denning MR is expressing the opinion that this activity on the part of the police officers is permissible in law if the goods which they find are goods which they reasonably believe to be material evidence in relation to the crime for which he is arrested. It may very well be that if the police officers in the instant case had had any sort of reason for thinking that the defendant's theft of the sandwich required an inspection of his premises, they might very well have made that inspection without further authority. But it is perfectly clear that when they sought to enter his premises, and did enter his premises they were not in the least bit concerned about the sandwich. Their concern was something quite different, namely, whether they would find drugs on the premises.

...I do not accept that the common law has yet developed to the point, if it ever does, in which police officers who arrest a suspect for one offence at one point can as a result thereby authorise themselves, as it were, to go and inspect his house at another place when the contents of his house, on the face of them, bear no relation whatever to the offence with which he is charged or the evidence required in support of that offence.

However, Mr Farquharson, having failed to succeed on his first point, is by no means exhausted in this matter because the next point he takes is that, even if the justices were right in holding that the entry of these two police officers was unlawful, that does not prevent any drugs or the like which they found in the house from being the subject of admissible evidence in the trial.

It is firmly established according to English law that the mere fact that evidence is obtained in an irregular fashion does not of itself prevent that evidence from being relevant and acceptable to a court. The authority for that is *Kuruma v The Queen* [1955] AC 197, and I need only refer to one passage to make good the proposition which I have already put forward, and that is at p 203 and reads:

> "In their Lordships' opinion the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained. While this proposition may not have been stated in so many words in any English case there are decisions which support it, and in their Lordships' opinion it is plainly right in principle."

There one has that pronouncement from the Privy Council, and I have not the least doubt that we must firmly accept the proposition that an irregularity in obtaining evidence does not render the evidence inadmissible. Whether or not the evidence is admissible depends on whether or not it is relevant to the issues in respect of which it is called.

At this point it would seem that the prosecutor ought to succeed in his appeal because at this point what he appears to have shown is that the justices were wrong in failing to

recognise the law as stated in *Kuruma v The Queen* [1955] AC 197. But that is not in fact the end of the matter because the justices sitting in this case, like any other tribunal dealing with criminal matters in England and sitting under the English law, have a general discretion to decline to allow any evidence to be called by the prosecution if they think that it would be unfair or oppressive to allow that to be done.

In getting an assessment of what this discretion means, justices ought, I think, to stress to themselves that the discretion is not a discretion which arises only in drug cases. It is not a discretion which arises only in cases where police can enter premises. It is a discretion which every judge has all the time in respect of all the evidence which is tendered by the prosecution. It would probably give justices some idea of the extent to which this discretion is used if one asks them whether they are appreciative of the fact that they have the discretion anyway, and it may well be that a number of experienced justices would be quite ignorant of the possession of this discretion. That gives them, I hope, some idea of how relatively rarely it is exercised in our courts. *But if the case is exceptional, if the case is such that not only have the police officers entered without authority, but they have been guilty of trickery or they have misled someone, or they have been oppressive or they have been unfair, or in other respects they have behaved in a manner which is morally reprehensible, then it is open to the justices to apply their discretion and decline to allow the particular evidence to be let in as part of the trial.* I cannot stress the point too strongly that this is a very exceptional situation, and the simple, unvarnished fact that evidence was obtained by police officers who had gone in without bothering to get a search warrant is not enough to justify the justices in exercising their discretion to keep the evidence out.

Just what the justices' view on this discretion was is very hard to say from the case. The case itself seems to suggest that the whole issue was fought out on the question of fact, namely, whether the police officers had or had not permission to go in.... in fairness to the defendant we ought to assume that the argument as to discretion was put forward, and we ought to consider whether the justices in this case could support their discretion. In my judgment, they could not. For the reasons I have already given the justices would not be justified in exercising their discretion favourably to the defence simply because the evidence in question had been obtained by police officers who had entered without the appropriate authority.

For those reasons I think that the appeal should be allowed and I would send the case back for a re-hearing before a different bench." (emphasis supplied)

Forbes J:

"...the case should be sent back for re-hearing in that way. I desire to add something about the substance of the first point argued ...

Apart from the question whether or not the officers were searching for something which had no materiality to the accusation which they were making against the accused, there is the other point that they had arrested the accused at one place and were seeking to suggest that they had, and indeed Mr Farquharson was arguing that they had, authority ipso facto to search in another place the dwelling house of the person whom they lawfully arrested. This Mr Farquharson says is a practice of the police in serious cases where it seems likely that some material evidence can be obtained by that search...

Returning to the passage from the latter of those two cases which Lord Widgery CJ has just read, and speaking for myself, I can find no unambiguous statement in that passage from the judgment of Lord Denning MR. to the effect that police officers have a right when they have arrested a person in place A to search his dwelling house in place B with nothing more. The passage on that point, and on that narrow point only, seems to me to be equivocal and one could read it one way or another.

For myself, taking that view of that passage, I would not be prepared to hold that at any rate at present the police had the wide authority which Mr Farquharson seeks to justify. For that reason, and for the reason given by Lord Widgery CJ, I reject this appeal on the first point, but I entirely accept and agree with the view put forward by Lord Widgery CJ on the

CHAPTER 11

Opinion / Expert Evidence

11.00 Overview

"My name is Sherlock Holmes. It is my business to know what other people don't know."

"On the contrary, Watson, you can see everything. You fail, however, to reason from what you see. You are too timid in drawing your inferences."

In Arthur Conan Doyle's *The Adventure of the Blue Carbuncle (1890)*

As a general proposition, the law of evidence has sought to distinguish between matters of fact and matters of opinion. Opinions involve drawing inferences from facts. Witnesses are generally limited to testify as to facts within their own personal knowledge and cannot advance their opinions on matters which are in issue. However, this will be allowed in the courtroom from layperson witnesses for convenience only in restricted circumstances. Similarly, 'expert' witnesses are permitted to give their opinions on matters falling within their area of expertise; the inference drawn by the expert should be outside the ordinary experience of the jury.

11.01 Sources of evidence

The common law insists that proof must come from the most reliable source. This applies in several areas of evidence, including hearsay (chapter 10) and opinion evidence. The traditional rule is that a witness may speak only to facts about which he or she has personal knowledge (did, said, heard, smelled or witnessed) and may not express an *opinion* about these or other facts. Whether any inference, and if so what, should be drawn from the observed and proven facts is a matter entirely for the tribunal of fact (the court or jury).

Thus, for example, on a charge of theft, a witness is permitted to say that he saw D go into a shop, take an item from the counter and leave the shop without paying for the item; but the witness cannot say that, on the basis of what he saw, D was 'dishonest' or 'intended to permanently deprive' the owner of the item in question because these latter issues relating to honesty and intention are inferences to be drawn, if at all, by the tribunal of fact once the other facts are established. Similarly, a witness is not permitted to make observations about what might have caused a fact to come into existence or what its effect might be, that D must have acted out of a particular motive; or that what D did must have put in fear or upset another party.

The admissibility of opinion evidence also depends upon the purpose for which admission is sought. Thus, where D is charged with handling stolen goods (proof of which requires that the goods were stolen goods), D's opinion or belief as whether the goods were stolen would be inadmissible to prove that the goods were stolen but would be admissible on the issue as to whether D knew or believed the goods to be stolen.

This is consistent with the fundamental doctrine of the common law that espouses trial by jury or judge (the tribunal of fact) as opposed to trial by witness. The tribunal of fact, not the witness, should draw inferences and, if need be, make value judgments. A witness should not give an opinion or state a conclusion about the very issues that the court or jury have to decide (it is sometimes said that a witness cannot give an opinion on the '*ultimate issue*'). Additionally, the giving of opinions frequently involves hearsay evidence, because the person may be relying, either explicitly or implicitly, on something that some other person has told him or her or that he or she has learned from another source.

However, despite the general statement regarding confining witnesses to what they witnessed and ruling out their opinion, it is impossible to draw any clear and indisputable distinction between 'fact' and 'opinion' and much of what is received as evidence of fact in reality involves at least an element of opinion.

For example, almost every statement made by a witness contains an element of inference. To take the example of a street robbery case resting upon identification evidence in which the prosecution relies upon identifying evidence from two witnesses, W1 and W2, both of whom were asked to attend an identification parade in which the defendant and others participated. At trial, if witness W1 to the robbery states that the person at position 6 in an identity parade, of whom she caught a fleeting glimpse in the street at the time of the robbery and who was otherwise unknown to her, is a person whom she recognises as the defendant, the witness can only be offering an opinion. A second witness (W2), who also saw the robbery, may pick out the person at position 3. A third witness (W3) may pick out the person at position 9. It is obvious that if W1, W2 and W3 are truthful they cannot all be testifying to a fact but only to an *opinion*; and in this case the opinions conflict. In reality, in such cases, each witness is giving evidence based upon an inference. The law, however, recognizes that in such cases the witness cannot give evidence at all unless they are able to express an opinion and in such cases the witness is permitted to do so.

The law recognises that all testimony to matters of fact involves opinion evidence in the sense that it is a conclusion drawn from phenomena and mental impressions (as was stated by Thayer, *A Preliminary Treatise on Evidence at the Common Law*, 1898, p. 524). Even though the inference in question is one which any rational person would draw, it remains an inference. The law also recognises there are situations in which the drawing of an inference by a witness, even if possibly avoidable, is desirable. This occurs where the witness has an experience that no one else possesses, as where he or she was at the scene of the crime and saw the perpetrator and can thus identify him/her better than the tribunal of fact.

The law also recognizes and accepts that expert witnesses frequently have to rely upon hearsay evidence. In ***R v Abadom*** [1983] 1 WLR 126, [1983] 1 All ER 364 (CA) four masked and gloved men broke into the office of the Williamses family business when they were working there with other members of the family. The men were wearing balaclava helmets with slits for the eyes, so those present could only form some general impression of their description, without being able to identify them. They

were armed with cudgels and the leader broke an internal window in the office to contribute to the fright experienced by those present. They demanded to know where was money kept and took over £5,000 from an office drawer.

Abadom was charged with robbery. At trial the Crown's case was that Abadom broke a window during the robbery and fragments of glass found adhering to and imbedded in a pair of shoes taken from his home after his arrest came from that window. An expert witness for the Crown gave forensic evidence that the glass from the window and the fragments found in the shoes had an identical refractive index. The witness gave evidence he had consulted statistics compiled by the Home Office Central Research Establishment and found that the refractive index referred to occurred in only 4% of all glass samples investigated by the establishment. He gave his opinion that there was a very strong likelihood the glass from the shoes originated from the window. Abadom was convicted.

On appeal, was the evidence of the Home Office research establishment's statistics hearsay and inadmissible because the expert witness had no personal knowledge of the analysis on which the statistics were based? The Court of Appeal dismissed the appeal. Kerr LJ said

- When an expert witness is asked an opinion on a question, the primary facts on which that opinion was based must be proved by admissible evidence given either by that expert or some other competent witness.
- Once such facts were proved, the expert witness could then draw on work, including unpublished work of others in that field of expertise as part of the process of arriving at a conclusion, provided the expert referred to that material in evidence so the cogency and probative value of the conclusion could be tested by reference to that material.
- Relying on the work of others and reference to it in evidence did not infringe the hearsay rule. Accordingly, the evidence of the Crown's expert witness in which he made reference to the Home Office research establishment's statistics was admissible. The appeal would therefore be dismissed.

Generally, the law permits opinion evidence to be given in two circumstances: (1) where the giving of an opinion cannot be avoided because it does not make sense to ask the witness to separate observed facts from the inference that the witness draws from those facts; and (2) where the drawing of an inference demands specialist knowledge or skill outside the normal experience/competence of the tribunal of fact (expert evidence). Each of these will be dealt with in turn.

11.02 Unavoidable opinions by lay people

The common law recognizes that there may be situations where it would be absurd to prevent a lay person giving an opinion or to require the witness to separate what has been observed from the inference drawn by the witness. Where a witness gives testimony which is essentially descriptive, the evidence technically is a way of summarising a set of inferences based upon the observations of the witness. This will occur where a witness states that the person involved was 'a young boy' or 'an old man': in such situations it would be absurd to require the witness to give a detailed account of all the characteristics of the person concerned which gave rise to the ultimate description as 'young' or 'old' or as 'boy' or 'man'.

The law has developed beyond this to permit lay witnesses to express opinions in other limited circumstances. This is restricted to matters concerning everyday life where opinions may be safely acted upon by other citizens. On matters with respect to which it is in practice impossible for any witness to swear positively, a lay witness may give evidence of his or her opinion on questions such as identification, condition, comparison or resemblance of persons or things. Some examples of instances where a lay witness is permitted to express an opinion include:

- identification evidence of persons
- identification of physical objects
- the condition of an object
- the value of an object
- the speed of vehicles
- health
- time
- distance
- weather conditions
- the apparent age of a person
- the physical or emotional state of the person (for example, sobriety or drunkenness; calmness or distress)
- handwriting of a person known to the witness (such opinion in relation to handwriting comparison may be given by either laymen or experts. In the case of laymen, the opinion may be of little weight unless the witness had some demonstrated experience or expertise as for example gained through the course of business. Section 17 of the Evidence Ordinance which deals with comparison of disputed handwriting permits evidence to be given by witnesses in any proceedings where this is in issue and is not restricted to expert witnesses:

  > "Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses in any proceedings, and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and to the jury, if any, as evidence of the genuineness or otherwise of the writing in dispute".)

- evidence may be given of reputation or character: ***R v Rowton*** Le & Ca 520, [1861-1873] All ER Rep 549.

11.03 Opinions by experts – general principles

"Perhaps, when a man has special knowledge and special powers like my own, it rather encourages him to seek a complex explanation when a simpler one is at hand."

Sherlock Holmes – In Arthur Conan Doyle's *The Adventure of the Abbey Grange (1890)*

At common law, the drawing of inferences and formulation of opinions is in general a matter for the court or jury. However, where the issue is such that competence to form

an opinion or draw an inference depends upon special knowledge, study or experience, expert evidence is admissible on the matter. This rule has a long history.

> In ***Folkes v Chadd*** (1782) 3 Doug KB 157 an engineer was called by the plaintiffs to give evidence as to the effect of the erection of an artificial bank for preventing the sea overflowing into meadows contributed to the choking up and decay of a harbour. The defendants complained of surprise because the engineer's report had not been disclosed in advance.
>
> The question was, was the expert evidence admissible? The court held, that if the jury can form their own opinion on the issue it is inadmissible, but in this situation it could provide assistance. Lord Mansfield CJ said the opinion of scientific men upon proven facts may be given by men of science within their own science. An expert's opinion is admissible to furnish the court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If on the proven facts a judge or jury can form their own conclusions without help the opinion of an expert is unnecessary. In such a case if it is given dressed up in scientific jargon it may make judgment more difficult. The fact that an expert witness has impressive scientific qualifications does not make his opinion on matters of human nature and behaviour within the limits of normality any more helpful than that of the jurors themselves; but there is danger they may think it does.

The accepted statement defining the boundaries of expert evidence is that of Lord President Cooper in ***Davie v Edinburgh Magistrates*** [1953] SC 34:

> "their duty is to furnish the judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions so as to enable the judge or jury to form their own independent judgment by the application of these criteria to the facts proved in the case."

If the issue is one on which the jury can itself form an opinion, expert evidence is *not* admissible. For example, where the state of mind of a defendant is in issue in a criminal case, the jury will have to decide whether the defendant "intended" or was "reckless" on the basis of his or her behaviour and from the circumstances that he or she knew certain facts or foresaw certain consequences. If the defendant is a person of normal disposition, expert evidence is not admissible on such issues, as discussed in ***Turner***.

> In ***R v Turner*** [1975] QB 834 (CA), Turner killed his girlfriend in a car by battering her over the head with a hammer. At his trial for murder his defence was provocation. He said he was in love with W and understood she was pregnant by him, but she had told him she had been having affairs with two other men while he was in prison and that the expected child was not his, he lost his self control and hit her with the hammer without realising what he was doing and without intending to do her harm. His counsel sought to call a psychiatrist (i) to help the jury to accept as credible the appellant's account of what happened and (ii) indicate why the appellant was likely to be provoked. The judge asked to see the evidence. He was handed a report by the psychiatrist based on information provided in part by medical records and in part by Turner, his family and friends. The psychiatrist expressed the following opinion at the end of the report: 'His homicidal behaviour would appear to be understandable in terms of his relationship with W which... was such as to make him particularly vulnerable to be overwhelmed by anger if she confirmed the accusation that had been made about her. If his statements are true that he was taken completely by surprise by her confession, he would have appeared to have killed her in an explosive release of blind rage. His personality

> structure is consistent with someone who could behave in this way... since her death his behaviour would appear to have been consistent with someone suffering from profound grief... in the absence of formal psychiatric illness there are no indications for recommending psychiatric treatment.' The judge refused to admit the evidence of the psychiatrist on the ground that the report contained hearsay character evidence, and was irrelevant and inadmissible. The appellant was convicted of murder.
>
> The question was, was the expert evidence admissible? Lawton LJ said:
>
> "An expert's opinion is admissible to furnish the court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If on the proven facts a judge or jury can form their own conclusions without help then the opinion of an expert is unnecessary. In such a case if it is given dressed up in scientific jargon it may make judgment more difficult. The fact that an expert witness has impressive scientific qualifications does not by that fact alone make his opinion on matters of human nature and behaviour within the limits of normality any more helpful than that of the jurors themselves; but there is a danger that they may think it does."

Note

Is it right to imply that there is a recognized distinction between 'ordinary' and 'abnormal'? Should the expert opinion of psychiatrists be confined to speaking about those individuals who are 'abnormal'?

An expert is entitled to give an opinion only on relevant matters which are (1) within his or her particular area of expertise and (2) outside the general knowledge and understanding of the court or jury.

The facts upon which expert witnesses base their opinion must be proved by admissible evidence, otherwise the opinion of the expert will be inadmissible. Proof of the factual basis will enable the jury to evaluate and weigh the opinion of the expert. Expert evidence should be confined to factual situations relevant to the case and the expert should not be invited to speculate regarding hypothetical matters.

Expert evidence has been ruled inadmissible where it was sought to be introduced as to whether or not the defendant had formed the necessary intention on a charge of murder when there was no suggestion of insanity or diminished responsibility: ***R v Chard*** (1972) 56 Cr App R 268:

> ...one purpose of jury trials is to bring into the jury box a body of men and women who are able to judge ordinary day-to-day questions by their own standards, that is, the standards in the eyes of the law of theoretically ordinary reasonable men and women. That is something which they are well able by their ordinary experience to judge for themselves. Where the matter in issue is outside that experience and they are invited to deal with someone supposedly abnormal, for example, supposedly suffering from insanity or diminished responsibility, then plainly in such a case they are entitled to the benefit of expert evidence. But where... they are dealing with someone who by concession was on the medical evidence entirely normal, it seems to this Court abundantly plain, on first principles of the admissibility of expert evidence, that it is not permissible to call a witness, whatever his personal experience, merely to tell the jury how he thinks an accused man's mind-assumedly a normal mind-operated at the time of the alleged crime and with reference to the crucial question of what a man's intention was.