
Contents

Preface	ix
Acknowledgements	xi
Part 1	1
1 Introduction	3
1.1 Introduction	3
1.2 What is expert evidence?	4
1.3 The expanding role of the expert witness	5
1.4 What makes a good expert witness?	7
1.5 What is an expert witness and what is an expert witness used for?	10
1.6 Duties of the expert witness	16
1.7 Use of expert evidence	19
1.8 Summary	21
2 Independence and Duties	23
2.1 Introduction	23
2.2 Duties of expert witnesses	23
2.3 Partiality and impartiality	26
2.4 Failings in obligations	28
2.5 Investigations	29
2.6 Conflict of interest	30
2.7 Those giving instructions	33
2.8 Summary – nature of the conflicting duty	35
3 Roles in Different Forums	37
3.1 Introduction	37
3.2 Litigation	38
3.3 Arbitration	44
3.4 Adjudication	45
3.5 Mediation	47
3.6 Expert determination	48
3.7 Informal processes	49
3.8 Summary	50

4	Different Types of Expert	51
4.1	Introduction	51
4.2	The expert witness	51
4.3	The expert advisor	51
4.4	Tribunal-appointed experts	56
4.5	The single joint expert	62
4.6	Assessors	81
4.7	Expert determination	83
4.8	Expert evaluation	91
4.9	ICC expertise rules	92
4.10	The advocate and expert witness	94
5	Procedural Rules, Evidential Rules and Professional Codes	95
5.1	Introduction	95
5.2	Civil Procedure Rules	96
5.3	Domestic arbitration	105
5.4	International arbitration	112
5.5	The IBA Rules of Evidence	120
5.6	Professional institute rules	124
5.7	Summary	128
6	The International Dimension	129
6.1	Introduction	129
6.2	What is international?	130
6.3	General issues arising	130
6.4	Key differences in approach	131
6.5	International legal issues	134
6.6	International application of professional standards	135
Part 2		137
7	Selection and Appointment	139
7.1	Introduction	139
7.2	Pre-appointment	142
7.3	Availability	145
7.4	Expert witness interviews	146
7.5	Terms and conditions	150
7.6	Fees and getting paid	151
7.7	Instructions	154
7.8	Ending the appointment	161
7.9	Summary	164
8	Obtaining Information	165
8.1	Introduction	165
8.2	Litigation	166

8.3	Domestic arbitration	166
8.4	International arbitration	167
8.5	Getting started	169
8.6	Focusing in on the issues	172
8.7	Electronic disclosure	174
8.8	Further documents and disclosure	174
8.9	Other experts	175
8.10	Redfern Schedules	177
8.11	At the trial or hearing	178
8.12	Access to the site and property	179
8.13	Translation of documents	179
8.14	Other problem areas	180
8.15	The expert report	182
8.16	Summary	182
9	Writing Reports	183
9.1	Introduction	183
9.2	Where to start	184
9.3	Duty to the tribunal	186
9.4	Independent opinions	187
9.5	Writing the report	193
9.6	Structure, layout, contents	198
9.7	The expert's qualifications	204
9.8	Use of assistants	208
9.9	All sources shown	212
9.10	Facts and instructions relied upon	214
9.11	Accurate and complete	217
9.12	Sampling	219
9.13	Instructions received	221
9.14	Joint briefs or terms of reference	223
9.15	Qualifications or ranges of opinions	225
9.16	Report conclusions	227
9.17	Statement of truth	227
9.18	Declarations	228
9.19	Questions on an expert report	230
10	Meetings of Experts	233
10.1	Introduction	233
10.2	Purpose	238
10.3	Timing	241
10.4	Agenda	243
10.5	How to record and report on the meeting	249
10.6	Producing a joint statement	252
10.7	Binding effect of experts' agreements	258
10.8	Attendance of lawyers	264

10.9	Involving a tribunal expert/facilitator/manager	266
10.10	Attendance of the arbitrator	269
10.11	A change of expert	271
10.12	Conclusions	274
11	Giving Evidence	275
11.1	Introduction	275
11.2	Will oral evidence be taken?	277
11.3	Preparation before the hearing	279
11.4	Split hearings	285
11.5	Giving evidence at the hearing	288
11.6	Modern technology	291
11.7	Examination-in-chief	293
11.8	Cross-examination	294
11.9	Tribunal examination	297
11.10	Re-examination	298
11.11	'In purdah'	298
11.12	'Hot tubbing'	299
11.13	Tribunal- and jointly-appointed experts	306
11.14	Ex-parte proceedings	307
11.15	Post-hearing activities	308
12	Liability and Immunity	311
12.1	Introduction	311
12.2	How could liability arise?	311
12.3	General immunity as it has been historically	313
12.4	Erosion of the general position	314
12.5	Current expert liability (for what and to whom)	315
12.6	The facts of <i>Jones v Kaney</i>	316
12.7	The main judgment	317
12.8	Issues for experts to consider	322
12.9	Likely future developments	322
Appendix 1	Useful Websites for Further Information and Common Abbreviations	325
Appendix 2	Tables Comparing Rules for Different Types of Expert Involvement	327
Appendix 3	Typical Tribunal Order for 'Hot Tubbing'	345
	Index	347