

# 1 California Evidence (5th), Opinion Evidence

## I. OPINION OF LAY WITNESS

### A. Traditional Rule of Exclusion.

1. [§1] Nature of Rule.
2. [§2] Criticism and Reforms.

### B. Modern Rule of Admissibility.

1. [§3] Where Opinions Are Necessary.
2. [§4] Where Opinions Are Helpful.

### C. Proper Subjects of Nonexpert Opinion.

1. Identity of Person.
  - (a) [§5] In General.
  - (b) [§6] Photographs Taken at Crime Scene.
2. [§7] Sanity.
3. Party's Own Intent, Motive, or Knowledge.
  - (a) [§8] Civil Cases.
  - (b) [§9] Criminal Cases.
4. [§10] Measure of Speed, Distance, Size, etc.
5. [§11] Appearance or Demeanor.
6. [§12] Intoxication.
7. [§13] Health, Illness, or Injury.
8. [§14] Age and Parentage.
9. [§15] Ownership and Possession.
10. [§16] Value of Services.
11. [§17] Negligence.
12. [§18] Value of Property Owned.
13. [§19] Other Subjects.

### D. Improper Subjects of Nonexpert Opinion.

1. [§20] Employment, Agency, Authority, or Control.
2. [§21] Contract or Understanding.
3. [§22] Standard of Care.
4. [§23] Veracity of Statements by Another.
5. [§24] Mental Retardation.
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## II. EXPERT EVIDENCE

### A. In General.

1. [§26] Modern Law.
2. [§27] Expert Testimony as to Facts.
3. Opinion of Expert.
  - (a) [§28] Subject of Opinion.
    - (1) [§29] In General.
    - (2) [§30] Causation in Medical Malpractice Case.
  - (c) [§31] Bases of Opinions: In General.
  - (d) Reliable Information.
    - (1) Statutory Rule and Qualification.

- (aa) [§32] Type Reasonably Relied Upon.
- (bb) [§33] Unless Precluded by Law.
- (2) Opinions of Doctors and Mental Health Professionals.
  - (aa) [§34] In General.
  - (bb) [§35] Reliance on Medical Works.
- (3) [§36] Opinions by Other Experts.
- (e) [§37] Unreliable Hearsay.
- 4. [§38] Erroneous Exclusion of Expert Testimony.

## **B. Who Are Experts.**

- 1. Expertness Is Relative.
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  - (b) [§40] Qualified Professional Expert.
  - (c) [§41] Attorney Expert on Legal Malpractice.
  - (d) [§42] Qualified Nonprofessional Experts.
  - (e) [§43] Person Testifying for First Time.
  - (f) [§44] Unqualified Persons.
- 2. [§45] Types of Expert Witnesses.

## **C. Subjects of Expert Testimony.**

- 1. Medical Evidence.
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    - (1) [§46] Injury or Disability.
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  - (b) [§48] Criminal Cases.
- 2. Syndrome Evidence.
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  - (b) [§50] Credibility Exception.
  - (c) Battered Child or Battered Intimate Partner.
    - (1) [§51] In General.
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  - (d) [§53] Rape Trauma Syndrome.
  - (e) Child Sexual Abuse.
    - (1) [§54] Evidence Inadmissible.
    - (2) [§55] Evidence Admissible.
    - (3) [§56] Sua Sponte Instruction.
- 3. Mental Condition.
  - (a) [§57] Civil Cases.
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    - (1) [§58] Subjects of Psychiatric Testimony.
    - (2) [§59] Opinion of Psychologist.
- 4. Automobile Accidents.
  - (a) [§60] In General.
  - (b) [§61] Reconstruction of Accident.
- 5. [§62] Mechanical Condition, Defect, or Similar Cause.
- 6. [§63] Operating Standards and Practices.
- 7. [§64] Practices of Criminals.
- 8. [§65] Value of Services.

9. [§66] Value of Property.
10. [§67] Handwriting and Typewriting.
11. [§68] Ballistics.
12. [§69] Fingerprints and Footprints.
13. [§70] Teeth Marks on Victim.
14. Eyewitness Identification.
  - (a) [§71] Substantial Corroboration Rule.
  - (b) [§72] Illustrations.
  - (c) [§73] Lineups.
15. [§74] Business Usage or Trade Practice.
16. [§75] Police Officer's Conduct.
17. [§76] Other Subjects.
18. Distinctions.
  - (a) [§77] Obscenity.
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  - (c) [§79] Mathematical Probability.

**D. Appointment of Experts by Court.**

1. [§80] In General.
2. California Statute.
  - (a) [§81] Any Case and Any Issue.
  - (b) [§82] Motion or Court's Own Motion.
  - (c) [§83] Examination and Cross-Examination.
  - (d) [§84] Compensation and Allowance as Costs.
  - (e) [§85] Additional Experts Called by Parties.

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1. [§86] In General.
2. [§87] Medical and Legal Malpractice.
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**B. Repudiation of Rule.**

1. [§90] California Case Law.
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**C. Illustrations: Negligence Cases.**

1. [§92] Decisions Excluding Opinions.
2. [§93] Decisions Upholding Admissibility.

**D. Illustrations: Criminal Cases.**

1. [§94] Decisions Excluding Opinions.
2. [§95] Statutory Exclusion of Opinion on Capacity To Form Intent.
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**A. In General.**

1. [§99] Law Revision Commission Study.
2. [§100] Original Statute and Subsequent Legislation.

3. [§101] Statutory Scope.

**B. Value Shown Only by Opinion.**

1. [§102] General Rule.

2. [§103] Opinions of Expert or Owner.

3. [§104] Opinions of Knowledgeable Designees.

**C. Bases of Opinion.**

1. [§105] In General.

2. Sales.

(a) [§106] Other Sales of Property Being Condemned.

(b) [§107] Other Sales of Comparable Property.

(c) [§108] Contract to Sell.

(d) [§109] Subsequent Sales.

(e) [§110] Trend in Sales Prices or Values.

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4. [§116] Assessed Valuation.

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6. [§118] Other Improper Matters.