Lectures 6 - 8

Opinion

A. INTRODUCTION

B. LAY OPINION
   • Leong Wing Kong v PP [1994] 1 SLR(R) 681
   • R v Davies [1962] 1 WLR 1111
   • Sherrard v Jacob [1965] NI 151
   • Graat v R [1982] 144 DLR (3d) 267

C. EXPERT OPINION

General principles
   • Pacific Recreation Pte Ltd v SY Technology Inc [2008] 2 SLR(R) 491
   • Westacre Investments Inc v The State-Owned Company Yugoimport SDPR [2009] 2 SLR(R) 166
   • Chandrasekaran & Ors v PP [1971] 1 MLJ 153
   • Sim Ah Oh v PP [1962] MLJ 42
   • Leong Wing Kong v PP [1994] 1 SLR(R) 681

Qualifications of expert
   • PP v Muhamed bin Sulaiman [1982] 2 MLJ 320
   • PP v Chong Wei Kian [1990] 3 MLJ 165

Justification for expert
   • Ong Chan Tow v R [1963] MLJ 160
   • PP v Tubbs Julia Elizabeth [2001] 2 SLR(R) 716
   • Khoo Bee Kiong v Ang Chun Hong [2005] SGHC 128
   • R v Turner [1975] QB 834
   • Chou Kooi Pang v PP [1998] 3 SLR(R) 205
   • Lowery v R [1974] AC 75

Ultimate issue
   • DPP v ABC Chewing Gum [1968] 1 QB 159.

Evaluation of expert testimony
   • Saeng-Un Udom v PP [2001] 2 SLR(R) 1
   • Sakthivel Punithavathi v PP [2007] 2 SLR(R) 983
Conflicting expert testimony

- *Tengku Jonaris Badlishah v PP* [1999] 1 SLR(R) 800
- *McLean v Weir* [1973] 3 CCLT 87
- *Muhammad Jefrry bin Safii v PP* [1996] 2 SLR(R) 738

Grounds of opinion

- *AD v AE* [2005] 2 SLR(R) 180
- *Khoo Bee Kiong v Ang Chun Hong* [2005] SGHC 128

Ethical perspectives

- *Vita Health Laboratories Pte Ltd v Pang Seng Meng* [2004] 4 SLR 162
- *Khoo Bee Kiong v Ang Chun Hong* [2005] SGHC 128.
- *Mühlbauer AG v Manufacturing Integration Technology Ltd* [2010] 2 SLR 724

Novel science

- *Frye v US* 293 F 1013 (1923)

Jeffrey Pinsler
Discretion to Exclude Evidence

ARTICLES:


A. QUESTIONS AND POINTS TO CONSIDER

(1) Is there a general principle governing the discretion to exclude evidence in the EA?
(2) Consider s 5 of the EA
(3) Are the admissibility provisions of the EA and CPC sufficient to ensure that admitted evidence will always be in the interest of justice?
(4) If there is no statutory basis for a general discretion to exclude evidence, can the principle be incorporated from common law?
(5) What is the effect of s 2(2) of the EA on the question raised in (4)?
(6) Specific discretions in s 32(3) and s 47(4) of the EA concerning hearsay and expert opinion evidence.
(7) Minister’s comment in Parliament that s 32(3) and s 47(4) of the EA are in addition to the court’s inherent jurisdiction to exclude evidence.

B. PRIMARY CASES

• Cheng Swee Tiang v PP [1964] MLJ 291
• Kuruma Kaniu v The Queen [1955] AC 197
• R v Sang [1980] AC 402
• Ajmer Singh v PP [1985-1986] SLR(R) 1030
• How Poh Sun v PP [1991] 2 SLR(R) 270
• Chan Chi Pun v PP [1994] 1 SLR(R) 654
• SM Summit Holdings Ltd v PP [1997] 3 SLR(R) 138
• Wong Keng Leong Rayney v Law Society of Singapore [2007] 4 SLR(R) 377 (CA); [2006] 4 SLR(R) 934 (HC)
• Law Society of Singapore v Tan Guat Neo Phyllis [2008] 2 SLR(R) 239
• Lee Chez Kee v PP [2008] 3 SLR(R) 447 at [106]
• PP v Dahalan bin Ladaewa [1995] 2 SLR(R) 124
• Muhammad bin Kadar v PP [2011] 3 SLR 1205

J. Pinsler
Legal Professional Privilege

Application of the EA:
- EA, s 2(1)
- Yap Sing Lee v MCST No 1267 [2011] 2 SLR 998

Introduction and rationale
- Greenough v Gaskell (1833) 1 My & K 98
- R v Derby Magistrates’ Court [1996] 1 AC 487
- Skandinaviska Enskilda Banken AB (Publ) v Asia Pacific Breweries (Singapore) Pte Ltd [2007] 2 SLR(R) 367

Elements of s 128(1) and s 128A.
- Balabel v Air India [1988] 2 All ER 246.
- Skandinaviska Enskilda Banken AB (Publ) v Asia Pacific Breweries (Singapore) Pte Ltd [2006] 3 SLR(R) 441; [2007] 2 SLR(R) 367.
- Smith v Daniell 44 LJ Ch 189.
- Re Sarah Getty v Getty Trust [1985] 2 All ER 809.
- R v Peterborough Justices, ex parte Hicks [1977] 1 WLR 1371.

Relationship between s 128(1) and 131
- IBM v Phoenix International (Computers) [1995] 1 All ER 413.
- Impact of amendments: sections 128A, 130, 131, s 3(6) and (7). [See slides 37 and 38]

Application of ss 128 and 128A to persons supervised by legal professional advisers
- Section 129: Sections 128 and 128A apply to “interpreters and other persons who work under the supervision of legal professional advisers”.
Exceptions to the operation of privilege: s 128(2)(a) and (b)

- Illustrations (a), (b) and (c),
- *Francis & Francis (a firm) v Central Criminal Court* [1988] 3 All ER 775.
- *Brown v Foster* (1857) 1 H&N 736
- *Gelatissimo Ventures (S) Pte Ltd & Ors v Singapore Flyer Pte Ltd* [2010] 1 SLR 833

Waiver

- Sections 128, 128A, 130, 131 (as amended). *[See slide 43]*.
- *Calcraft v Guest* [1890] 1 QB 759.
- *Lord Ashburton v Pape* [1913] 2 Ch 469.
- *Tentat Singapore Pte Ltd v Multiple Granite Pte Ltd & Ors* [2009] 1 SLR(R) 42.

Litigation privilege

- *Wee Keng Hong Mark v ABN Amro Bank NV* [1997] 1 SLR(R) 141.
- *Skandinaviska Enskilda Banken AB (Publ) v Asia Pacific Breweries (Singapore) Pte Ltd* [2006] 3 SLR(R) 441; [2007] 2 SLR(R) 367.
- *Brink’s Inc & Anor v Singapore Airlines Ltd & Anor* [1998] 2 SLR(R) 372.
- Articles by Chin TY, Ho Hock Lai and J. Pinsler cited above.

J. Pinsler
Seminars 3 - 4

SEMINAR QUESTIONS ON OPINION EVIDENCE, DISCRETION TO EXCLUDE AND PRIVILEGE

1. Bo, Jo and Mo are charged with vandalising a cash dispensing machine and stealing money from it. They all deny committing the crime. They seek to adduce the following evidence respectively in their favour.

   (a) The evidence of Bo’s psychiatrist (A) that Bo is an extreme introvert and could not have committed such an overt act.

   (b) The evidence of Jo’s witness (B) (an amateur hobbyist who has considerable experience in assessing film) to the effect that none of the faces caught on the photograph taken from the security camera (above the ATM machine) belonged to Jo.

   (c) The letter of Mo’s doctor (C) to the effect that Mo was very ill on the day of the alleged crime and therefore could not possibly have been involved and is innocent of the crime.

   (d) The evidence of Mo’s professional astrologist (D) that Mo was not destined to commit such an act.

Consider whether the evidence referred to in (a), (b), (c) and (d) is admissible. Would the prosecution’s decision not to call an expert on any of these issues mean that the court would more readily accept the evidence of A, B, C and D (assuming that they are permitted to give evidence)?

2. “In deciding whether to exercise the discretion to exclude evidence obtained from an accused person, the court will consider the unfairness of its use at the trial but never the unfairness of the manner in which the evidence was obtained prior to the trial.” Is this a correct statement of the law?

3. Is the failure of the police to comply with the procedure prescribed under s 22 and s 23 CPC 2010 in taking a statement ever a ground for excluding it as a matter of judicial discretion?

4. The exclusionary discretion referred to in Muhammad bin Kadar v PP [2011] 3 SLR 1205 and the statutory discretions provided by s 32(3) and s 47(4) complement each other. Critically discuss this proposition.

5. ABC is a company which manufactures cars. Over the last two months, there have been twenty complaints concerning malfunctioning steering columns in these cars. Ten of the cars were involved in traffic accidents. The President of ABC (“Pres”) is concerned about sales and potential law suits (although no legal process has yet been issued against ABC).
Pres calls ABC’s in-house legal adviser (Sue) for a meeting. In the course of their meeting, they discuss the complaints and the accidents. Sue advises Pres on the potential liability of ABC. Sue also advises Pres to obtain a report from an expert (“Ex”) on steering columns to investigate the circumstances and determine whether ABC had manufactured the steering columns negligently. Ex tenders his report which expresses the view that ABC had manufactured defective steering columns for its cars. Pres asks Sue whether she could ask Ex to change the report so that ABC appears blameless. Sue refuses to do so. Sue also contacts an advocate and solicitor in practice (“Law”) in anticipation of potential actions against ABC. Eventually, a civil action is brought against ABC.

(a) Discuss any issues of legal professional privilege which arise from the communications / discussions between Pres and Sue.

(b) Is Ex’s report protected by legal advice and/or litigation privilege?

(c) Sue, Law and Ex meet to discuss how to respond to the suit. Sue writes a memorandum to Pres on these discussions. Are these communications privileged?

(d) Assume that Pres is required to give his account of the circumstances in response to an investigation by the Ministry of Transport. Pres receives written communications from Sue and Law concerning what he should say to the Ministry. Are these communications privileged as against the plaintiff in the civil action?

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