

In a prosecution of a defendant for forgery, the defense objects to the testimony of a government expert on the ground of inadequate qualifications. The government seeks to introduce a letter from the expert's former criminology professor, stating that the expert is generally acknowledged in his field as well qualified.

On the issue of the expert's qualifications, who may properly consider the letter?

- A. Both the judge and the jury, because the letter is not offered for a hearsay purpose.
- B. Neither the judge nor the jury, because it is hearsay not within any exception.
- C. The judge, without regard to the hearsay rule.
- D. The jury, without regard to the hearsay rule.

**Explanation:**

A witness is qualified to provide **expert opinion testimony** if the witness has specialized knowledge, skill, experience, education, or training in a subject that pertains to an issue in the case. Whether a witness meets these qualifications is a **preliminary question** for the **court**—not the jury. The court is **not bound by the rules of evidence** in deciding such questions.\* Therefore, the court may consider otherwise inadmissible hearsay (eg, the professor's letter) in determining if a witness is qualified to provide expert opinion testimony **(Choices A, B & D)**.

\*The Federal Rules of Evidence typically apply to all civil and criminal proceedings before U.S. district courts, U.S. courts of appeal, U.S. bankruptcy courts, the U.S. Court of Federal Claims, and U.S. magistrate judges. Preliminary-question hearings are one **exception** to this rule.

**Educational objective:**

Whether a witness meets the qualifications to offer expert opinion testimony is a preliminary question for the court—not the jury. The court is not bound by the rules of evidence when determining such questions.

**References**

Fed. R. Evid. 104 (preliminary questions).

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