

A man is charged with possession of heroin. The prosecution called as a witness an experienced dog trainer who testified that he was in the airport with a dog trained to detect heroin. As the man approached, the dog immediately became alert and pawed and barked frantically at the man's briefcase. The man managed to run outside and throw his briefcase into the river, from which it could not be recovered. After the witness's experience is established, he is asked to testify as an expert that the dog's reaction told him that the man's briefcase contained heroin.

Is the witness's testimony admissible?

- A. No, because it is based on hearsay not within any exception.
- B. No, because of the unreliability of the reactions of an animal.
- C. Yes, as evidence of the man's guilt.
- D. Yes, because an expert may rely on hearsay.

## Explanation:

An **expert witness** is one who possesses specialized knowledge, skill, experience, education, or training in a subject that pertains to an issue in litigation. Expert witness **testimony is admissible** for substantive purposes—ie, to help prove a material fact or issue—if it is both:

**relevant** – the testimony will **help the trier of fact** (1) understand the evidence OR (2) **determine a fact** in issue *and*

**reliable** – the testimony is (1) **based on sufficient facts** or data AND (2) the **product of reliable principles** and methods that the expert reliably applied to the facts of the case.

Here, the prosecution called an experienced dog trainer who seeks to testify that the dog's reaction to the man's briefcase told him that the briefcase contained heroin. This expert testimony would help the trier of fact determine the fact in issue—ie, whether the man possessed heroin—and is likely reliable based on his experience. Therefore, his testimony is admissible as substantive evidence of the man's guilt.

**(Choices A & D)** Hearsay is an out-of-court statement offered to prove the truth of the matter asserted therein and is inadmissible unless **excluded or excepted** from the hearsay rule. An expert *may* rely on inadmissible hearsay to form an opinion. But for a statement to constitute hearsay, the declarant must be a person—not a dog.

**(Choice B)** The reactions of trained animals (eg, drug-detection dogs) are commonly relied upon as a basis for expert testimony.

## Educational objective:

Expert testimony is admissible as substantive evidence if it will help the trier of fact understand the evidence or determine a fact in issue (ie, relevant) AND is based on sufficient facts/data and the product of reliable principles/methods reliably applied by the expert (ie, reliable).

## References

Fed. R. Evid. 702 (expert witness testimony).

Copyright © 1997 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

## Admissibility of expert testimony

