

A plaintiff sued a utility company that owns a reservoir that is open to the public for recreation pursuant to a license from a federal agency. The plaintiff was severely injured in the reservoir when he dove from a boat into what he thought was deep water and hit an unmarked submerged island. The plaintiff alleges that the company was negligent in failing to mark the submerged island. At trial, the plaintiff has called an engineer and qualified him as an expert in managing reservoirs.

Which of the following opinions by the plaintiff's expert is the court most likely to admit?

- A. "The accident probably occurred in the manner shown by this computer-animated film I made."
- B. "The company could have marked the island in a day and at a cost of \$300."
- C. "The company was required by federal law to mark the island."
- D. "The plaintiff was not contributorily negligent."

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. Once qualified as an expert, a witness may testify on a disputed issue if that testimony is:

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 has reliably applied to the facts of the case.

But the expert's **opinion must relate** to his/her **field of expertise**. And since the engineer's area of expertise is managing reservoirs, the court is most likely to admit his opinion that the company could have marked the island in a day at a cost of \$300.

(Choice A) A qualified expert may offer an opinion as to how an accident probably occurred and may use demonstrative evidence (eg, computer animation) to do so. But since there is no indication that the engineer is an expert in the cause or manner of accidents, the court is unlikely to admit this opinion.

(Choice C) An expert may offer a legal opinion in certain circumstances—eg, when testifying in a legal-malpractice case—if that opinion relates to the expert's field of expertise (not seen here).

(Choice D) A qualified expert may testify as to a plaintiff's contributory negligence (or lack thereof), but there is no indication that the engineer is qualified to give such an opinion in this case.

Educational objective

A qualified expert witness may offer an opinion on a disputed issue if that opinion relates to the witness's field of expertise.

References

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

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Admissibility of expert testimony

