

Chapter 8: Opinion

Question One

Gloria and Fred, who live together, are facing trial for the murder of their neighbour Harry. The prosecution case is that they both killed Harry with a garden ornament after a row over parking in their street. Both plead not guilty and both claim that the other was solely responsible for the death of the Harry. Fred wants to call two expert witnesses. While he was in prison awaiting trial Fred was examined by the prison doctor, Dr Foster. Her assessment was that Fred was not suffering from mental disorder but that he had had no intention to kill Harry. Fred was aware that Gloria had been seeing a therapist, Dr Gloucester, who had told her that she was prone to fantasies and detached from reality.

Advise Fred.

Answer guidance

The admissibility of expert evidence is a matter of law for the judge. Both prosecution and defence must alert the court and the other side at the earliest practicable moment if they intend to adduce expert evidence. The first question is whether either of these potential expert witnesses would give relevant evidence on a matter which was outside the jury's experience. In relation to Fred's lack of intent the case of *R v Chard* (1971) 56 Cr App R 268 will be cited by the prosecution. In that case there was no evidence of a mental abnormality and the judge had rightly excluded the evidence of the prison doctor. You should cite also the case of *R v Turner* [1975] QB 834 which held that matters of intent including veracity and provocation were matters on which the jury could pronounce. In relation to the issue of Gloria's credibility, Fred's defence may cite *R v Lowery* [1974] AC 85 where a psychiatrist's evidence was admitted to show which of the two defendants was more likely to be credible. The second question is to address whether, if the evidence of Gloria's fantasising is held to be admissible, Dr Gloucester, the therapist, has the necessary expertise. Cite here *R v Silverlock* [1984] 2QB 766 and *R v Robb* [1991] 93 Cr App R 161. The procedure is governed by the Criminal Procedure Rules. Note also that the *Criminal Practice Directions* have adopted the recommendation of the *Law Commission Report on Expert Evidence in Criminal Proceedings* (2011) that expert evidence must be reliable to be admitted.

Question Two

'Expert opinion evidence is admissible to prove matters of specialised knowledge on which the court would be unable properly to reach a conclusion unaided'. (Glover, *Murphy on Evidence* (2015) p 418). Critically evaluate this observation.

Answer guidance

To earn a good mark it is important that you avoid the temptation simply to give a narrative account of the law and that you instead display your analytical knowledge of some of the controversies in this area. Your answer should cover the following: *R v Turner* [1975] QB 834 illustrates the traditional view of the courts, separating expert witnesses and ordinary witnesses in relation to opinion evidence; however the distinction between an area requiring specialised knowledge and one requiring common sense is difficult to draw and changes over time, see for example *R v Somanathan* [2006] 1WLR 1885. There the admitted evidence was arguably relevant to credibility, in other cases taken as an area for the jury to pronounce on unaided as in *R Chard* (1971). Note the slow acceptance of new areas of expert knowledge such as voice identification, *R v Robb* (1991) 93 Cr App r 161. A critical evaluation could include comment on the observation that admissibility is not the only issue since misinterpretation of expert evidence may lead to miscarriages of justice. Cases resulting from flawed expert evidence have shone the spotlight on such controversies, see for example *R v Cannings* [2004] 1WLR 2607 and *R v T* [2010] EWCA Crim 439 on the interpretation of statistics by Court of Appeal. Your assessment should cover the Law Commission (2011) proposals for reform and a gate-keeping role for the jury. The specifications in the Criminal Procedure Rules should be set out.