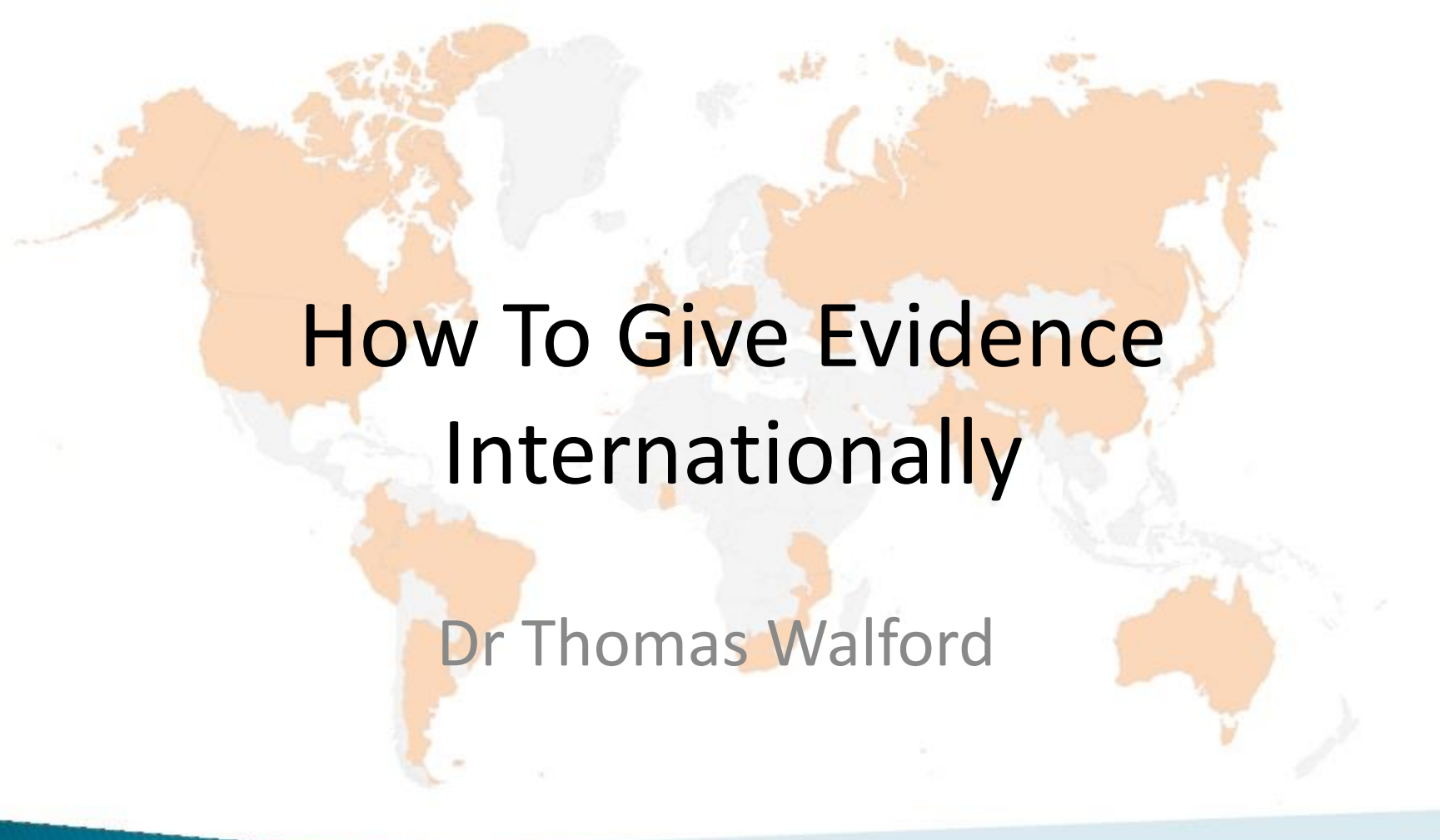




# How To Give Evidence Internationally

Dr Thomas Walford

Expert Evidence



# Expert Evidence International

Expert Evidence International Limited covers all the main areas of dispute resolution.

We provide Expert Witness Services, Dispute Resolution, Mediation, Arbitration and Adjudication services. We are committed to professionalism and client service. A wide range of experts cover the different means of dispute resolution in the financial and construction sectors.

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# Aims for an Expert Witness

- Credibility.
- Impartiality
- Independence

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# Expert Evidence International

- Civil & Criminal
- Individuals and Institutions
- Claimants and Defendants
- UK, UK territories and International

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# Rules that Govern the Role of an Expert Witness

- Many major legal jurisdictions have their own rules.
- Sometimes even an individual judge has his own rules.
  - Ikarian Reefer Rules

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# The Rules for the Expert are important

- Often a cross examination question
- Never irritate by not understanding the legal framework
  - Be professional

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# International Rules

<http://expert-evidence.com/what-constitutes-bias-in-an-expert-witness/> or <http://bit.ly/1LJ2nST>

- **English Civil** – [Civil Procedure Rules Part 35](#), [Practice Direction 35](#) and the [Protocol for the Instruction of Experts to give Evidence in Civil Claims](#) and the [Guidance for the instruction of experts in civil claims 2014](#).
- **English Criminal** – [Criminal Procedural Rules part 19](#).
- **Scotland** – No formal rules but there is a [Code of Practice](#) and case law similar to [Ikarian Reefer](#) principles.
- **Northern Ireland** – [Codes of Practice](#) for Experts [PD 1/2015](#) , [PD 7/2014](#) , [PD 2/2009](#) & [PD 6/2002](#). Please note that the expert declaration in 6/2002 has been replaced by 7/2014.
- **Jersey** – [Civil Evidence \(Jersey\) Law 2003](#) revised to 1 January 2013 and [detail](#).
- **Guernsey** – [The Evidence in Civil Proceedings \(Guernsey and Alderney\) Rules 2011](#).
- **Switzerland** – [Article 272 of Swiss Civil Procedure Code](#).
- **Europe** – Civil Litigation Guide (to be enacted) and published in 5 languages – [Expert's European Guide for Legal Expertise including Code of Conduct](#).
- **Council of Europe** – Human Rights and Rule of Law – European Commission for the Efficiency of Justice ('CEPEJ') – [Guidelines on the role of court-appointed experts in judicial proceedings of Council of Europe's Member States](#).
- **Australia** – [Practice Note CM7](#).
- **Canada** – [Rule 53.03 Code of Conduct for Expert of the Federal Court Rules](#) and [The Advocates' Society – Principles governing communications with testifying experts](#).
- **Bermuda** uses the [Ikarian Reefer](#) precedent,
- **Dubai International Financial Centre** ('DIFC') [Rules part 31](#) and [Schedule A](#).
- **Hong Kong** uses the [Rules of the High Court](#) precedent.
- **Singapore** – [Evidence Act – Opinions of third persons when relevant](#) , [Criminal Procedure Code – Report of qualified persons](#) , [Rules of the Court Order 40](#) and [40A](#).
- **US** – [Federal Rules of Civil Procedure, Rule 26](#) and also by [Federal Rules of Evidence, Rule 706](#).

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# Judge's own rules

Example: Northern Californian Courts  
District Judge William Alsup

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# District Judge William Alsup

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[SEARCH](#)

United States District Court

NORTHERN DISTRICT OF CALIFORNIA

PHYLLIS J. HAMILTON, CHIEF JUDGE    SUSAN Y. SOONG, CLERK OF COURT

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## Standing Orders

|                                                                                                                     | Effective Date |
|---------------------------------------------------------------------------------------------------------------------|----------------|
| <a href="#">Judge Alsup's Application to Enter a Guilty Plea (.pdf, 21 KB)</a>                                      | 10/08/2010     |
| <a href="#">Judge Alsup's Guidelines For Trial And Final Pretrial Conference in Civil Bench Cases (.pdf, 40 KB)</a> | 01/11/2016     |
| <a href="#">Judge Alsup's Guidelines For Trial and Final Pretrial Conference In Civil Jury Cases (.pdf, 53 KB)</a>  | 01/11/2016     |
| <a href="#">Standing Order For All Judges Of The Northern District Of California (.pdf, 55 KB)</a>                  | 11/01/2014     |
| <a href="#">Judge Alsup's Supplemental Order to Order Setting Initial CMC in Civil Cases (.pdf, 35 KB)</a>          | 03/17/2016     |

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# District Judge William Alsup Rules

| <a href="#"><u>Civil Bench Trials</u></a> | <a href="#"><u>Civil Jury Trials</u></a> | Detail                                                                                                                                                                                   |
|-------------------------------------------|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12                                        | 15                                       | At trial, the direct testimony of experts will be limited to the matters disclosed in their reports. New matters may not ordinarily be added on direct examination.                      |
| 13                                        | 16                                       | The retained expert who seeks to vouch for the credibility of fact witnesses and/or to vouch for one side's fact scenario.                                                               |
| 14                                        | 17                                       | Experts and doctors who perform scientific tests, site visits, or treat victims, among other possibilities, may testify to their findings within the scope of their firsthand knowledge. |
| 15                                        | 18                                       | As to damages studies, the cut-off date for <i>past damages</i> will be as of the expert report (or such earlier date as the expert may select).                                         |

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# Ikarian Reefer Rules

This was followed by a judgement by **Mr. Justice Cresswell** in **National Justice Compania Naviera SA v Prudential Assurance Company Limited** in 1993.

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# The Seven Principles (1)

1. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.
2. An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise<sup>+</sup>. An expert witness in the High Court should never assume the role of an advocate.

+ see Polivitte Ltd -v- Commercial Union Assurance

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# The Seven Principles (2)

3. An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion
4. An expert witness should make it clear when a particular question or issue falls outside his expertise.

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# The Seven Principles (3)

5. If an expert's opinion is not properly researched because he considers that insufficient data are available, then this must be stated with an indication that the opinion is no more than provisional. In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report<sup>+</sup>.

+ see Derby –v- Weldon

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# The Seven Principles (4)

6. If, after exchange of reports, an expert witness changes his view on a material matter having read the other side's expert's report or for any other reason, such a change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the court.
7. Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports.

+ see Derby –v- Weldon

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# Singaporean Rules

- Evidence Act
- Criminal Procedure Code
- Rules of Court

## Expert evidence

Opinions of experts are generally admissible, on the premise that the expert's opinion is sufficiently relevant, and will help to advance the court's inquiry into the facts.

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# Singapore Evidence Act

## Opinions of experts

47.—(1) Subject to subsection (4), when the court is likely to derive assistance from an opinion upon a point of scientific, technical or other specialised knowledge, the opinions of experts upon that point are relevant facts.

(2) An expert is a person with such scientific, technical or other specialised knowledge based on training, study or experience.

(3) The opinion of an expert shall not be irrelevant merely because the opinion or part thereof relates to a matter of common knowledge.

(4) An opinion which is otherwise relevant under subsection (1) shall not be relevant if the court is of the view that it would not be in the interests of justice to treat it as relevant.

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# Singapore Rules of Court

## Obtaining assistance of assessors or experts (O. 32, r. 12)

**12.** If the Court thinks it expedient in order to enable it better to determine any matter arising in proceedings in Chambers, it may obtain the assistance of an assessor or expert pursuant to Order 33 or Order 40, as the case may be.

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# Singapore Rules of Court

## Order 40A Experts of parties

- 1 Limitation of expert evidence (O. 40A, r. 1)
- 2 Expert's duty to the Court (O. 40A, r. 2)
- 3 Requirements of expert's evidence (O. 40A, r. 3)
- 4 Written questions to expert (O. 40A, r. 4)
- 5 Discussions between experts (O. 40A, r. 5)
- 6 Concurrent expert evidence (O. 40A, r. 6)

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# Direct Examination

<http://expert-evidence.com/direct-examination-of-the-expert-witness/>

## Normal Elements to the Direct Examination or Examination in Chief:

- **Qualifications of the Expert** - education, skill or training to qualify
- **Establishing the basis of the opinion** - opinion and the relevant assumptions.
- **Opportunity to put opinion in context** and get the expert to explain its relevance to the case

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# Cross Examination Examination

<http://expert-evidence.com/cross-examination-of-an-expert-witness-2/>

- **Think** about your answer and make sure it is the answer to the question;
- Don't be **rushed**;
- Don't get **riled**;
- **Never** be concerned about not knowing the answer ;
- Always **reply to questions in full**;
- Provide your answers to whoever is going to make the **final decision** in the case;
- Keep it **clear and simple**;
- Ensure that what you say is **consistent** with your report ;
- **Avoid Jargon**;

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# Cross Examination Examination

<http://expert-evidence.com/cross-examination-of-an-expert-witness-2/>

- Make all your points firmly and refer to **assumptions**;
- **Never agree** to any opinions, be very careful of anything **hypothetical**;
- Always end an answer with your **conclusion** and opinions;
- Remember this is not a point scoring exercise;
- Ask the court usher what you should **call the judge**;
- **Never overstating** a position; and
- Quote **from your report**
- Remember **L.A.D.S.**

Listen to the question asked, **A**nswer the question asked and only that, **D**on't argue  
be **S**hort and **S**uccinct

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# Questions

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