

**THE PROVEN
WAY TO SOURCE
THE RIGHT EXPERT**

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Expert Opinion Services

integrity

INTRODUCTION

Dr John Cooke - Expert

- Architect and Arbitrator. Resident architectural expert with Unisearch since 1985 in over 5000 cases (and counting)
- Dr Cooke has presented in the Federal Court of Australia, NSW Supreme Court, ACT Supreme Court and NSW District Court

John Arneil – Director Unisearch

- Since 2006 John has had primary responsibility for Unisearch which manage up to 900 matters per annum
- John regularly presents seminar topics for the UNSW Centre for Continuing Education (Faculty of Law) in the area of Expert Evidence

WHY CONSIDER AN EXPERT?

- An expert can provide vital independent scientific, technical, or other specialised knowledge that may assist in the understanding of evidence or facts in a litigious matter
- Experts are typically engaged to:
 - Help the court understand scientific evidence; or
 - To dispute facts; or
 - Identify a mistake.
- The primary benefits of utilising an expert are to eliminate variables and expedite a matter
 - This is achieved through assisting the decision-making process and/ or educating the court in an unprejudiced capacity that can withstand scrutiny

MAKITA V SPROWLES (2001)

Heydon JA summarised the criteria for admissibility; qualifying who is an “expert” and how they apply their expertise to opinion and the need to demonstrate a clear basis for the opinion. (para 85)



85 In short, if evidence tendered as expert opinion evidence is demonstrated that there is a field of "specialised knowledge"; to which the witness demonstrates that by reason of specified training or experience he or she has become an expert; the opinion proffered must be "wholly or substantially based on specialised knowledge"; so far as the opinion is based on facts "observed" by the expert, those facts must be admissibly proved by the expert, and so far as the opinion is based on facts not so proved, they must be identified and proved in some other way; it must be established that the expert has a proper foundation for it; and the opinion of an expert must be based on the scientific or other intellectual basis of the conclusions reached by the expert in the field of "specialised knowledge" in which the witness has specialised knowledge or experience", and on which the opinion is "wholly or substantially based on facts observed so as to produce the opinion propounded. If all these conditions are satisfied, the court cannot be sure of that, the evidence is strictly speaking not inadmissible, but it is of diminished weight. And an attempt to make the basis of the opinion

Setting precedent since 1959.

HEYDON J'S SIX REQUIREMENTS AT [85]

1. The opinion has to be on an area that the Court accepts is an area of specialised knowledge;
2. The witness must demonstrate that by reason of specified training, study or experience they are an expert in that area;
3. The opinion must be on matters within that area of expertise;
4. The expert must state, and the party calling the expert must prove, the facts on which the expert opinion is based;
5. If any facts relevant to the opinion are assumed they must be identified and proved in some other way; and
6. The expert must explain their reasoning as to how the opinion expressed, was reached.

STANDARDS & HANDBOOKS

- AS/NZS 3661.1:1993 Slip resistance of pedestrian surfaces
Part 1: Requirements
- British Pendulum friction test (British Pendulum Number (BPN) or Slip Resistance Value (SRV))
- Tortus friction test (dynamic coefficient of friction)
- AS/NZS 4586:1999 Slip resistance classification of new pedestrian surface materials
- HB 197:1999 An Introductory Guide to the Slip Resistance of Pedestrian Surface Materials
- AS/NZS 4663:2004 Slip resistance of existing pedestrian surfaces
- AS 4586-2013 Slip resistance classification of new pedestrian surface materials



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STRONG V WOOLWORTHS [2012] HCA 5

...the appeal concerns the familiar difficulty in “slipping cases” of establishing a causal connection between the absence of an adequate cleaning system and the plaintiff’s injury when it is not known when the slippery substance was deposited.



BUILDING REGULATIONS & CASES

BUILDING REGULATIONS

- Ordinance 71 (1921)
- Ordinance 70 (1 July 1974)
- Building Code of Australia (1 January 1992)

CASES

- Ahluwalia v Robinson [2003] NSWCA 175
- Jones v Bartlett (2000) 205 CLR 166
- King v Stewart (1994) 85 LGERA 384
- Tweed Shire Council v Hancomatic Music Pty Ltd [20070 NSWCA 350]

Setting precedent since 1959.

HUDSPETH V SCHOLASTIC CLEANING & ORS [2014] VSCA 78

"Ms Hudspeth said that she had not previously seen any evidence of vandalism or missing soap dispensers during the few months over which they had been installed."



Setting precedent since 1959.

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HUDSPETH V SCHOLASTIC CLEANING & ORS [2014] VSCA 78 CONT.

"Ms Hudspeth said that she had ~~not~~ previously seen ~~any~~ evidence of vandalism ~~or~~ ~~missing~~ on the soap dispensers during the few months over which they had been installed, to which she had advised her employer."

"Ms Hudspeth said that she had previously seen evidence of vandalism on the soap dispensers during the few months over which they had been installed, to which she had advised her employer."

QUESTIONS?

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