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Improperly obtained evidence in criminal proceedings: An updated framework

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The Use of Expert Opinion Evidence in Criminal Proceedings: An Updated Framework

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I. Introduction

1 The 2012 amendments to the Evidence Act[2] "significantly broadened the admissibility criteria for expert evidence";[3] at the same time, the judicial discretion to deny admissibility of relevant expert opinion evidence was also introduced. This article considers the key developments pre- and post-amendments, and in doing so provides an updated framework for prosecutors and defence counsel alike to admit and challenge expert opinion evidence in criminal proceedings. Since it complements earlier articles in this series on similar fact[4] and hearsay evidence,[5] readers are assumed to be broadly familiar with the features of the Evidence Act, such as its admissibility paradigm, the distinction between general and specific relevancy provisions, and the limits placed by s 2(2) on invoking common law rules of evidence.

II. Framework for admitting expert opinion evidence

A. General parameters

2 Traditionally, a witness is only supposed to testify as to facts directly perceived, and not to offer inferences about those facts.[6] Sir James Fitzjames Stephen, the original drafter of the Indian Evidence Act, recognised this prohibition of opinion evidence as one of the longstanding exclusionary rules under the common law.[7] The rationale for the prohibition was twofold: inferences are generally unreliable, and inferences should be drawn by the judge. But because courts occasionally – and increasingly – benefit from opinion evidence, the Evidence Act permits exceptions to this prohibition both with respect to experts (principally, s 47) and laypersons (ss 49 to 52).[8] This article focuses on the former and the various factors that go towards determining admissibility thereunder. In this sense, it is unlike other articles in the series which had to consider multiple gateways of admissibility.

3 Before discussing the specifics of the relevant Evidence Act provisions, it is important to note two subsidiary common law rules that the statute does not address explicitly. The first is the basis rule,[9] which dictates that an opinion must be capable of being proved by independently admissible evidence – thus, for instance, an opinion should not be predicated on hearsay if it is to be admissible.[10] The second such rule is the ultimate issue rule, which states a judge must not simply adopt an expert's opinion on an issue without satisfying himself that it is the correct outcome, especially if the decision turns on the issue in question – for instance, whether an accused person is indeed exculpated because of unsoundness of mind. In addressing whether the basis rule and ultimate issue rule are part of evidence law in Singapore, the courts have held that while it is not clear if the

rules are compatible with the Evidence Act, the application of the rules would only affect the weight of the opinion evidence, and not its admissibility.[11]

4 Separately, whereas it can be seen in the cases discussed in the articles on similar fact[12] and hearsay[13] that those evidence may be "re-characterised" and admitted via the general relevancy provisions or just treated as generally useful circumstantial evidence, this has not been followed in the context of opinion evidence, whether emanating from laypersons or experts. Instead, what has happened is that Singapore courts have developed several subsidiary rules to regulate the admissibility of expert evidence. The upshot is that when evidence is clearly expert opinion evidence, one must squarely confront s 47 of the Evidence Act[14] and the said subsidiary rules. With the 2012 amendments, there is the judicial discretion that parties must now grapple with as well.

B. Section 47

(1) Section 47(1): likelihood of assistance regarding matters of science, technical, or other specialised knowledge

5 Subsection 1 of this provision allows for the admissibility of expert opinion as relevant facts, where "the court is likely to derive assistance from [the] opinion upon a point of scientific, technical or other specialised knowledge". This modified the former s 47(1) in two ways. First, the former s 47(1) took a categorisation approach to determining relevance by exhaustively listing matters of "foreign law or of science or art … identity or genuineness of handwriting or finder impressions" as subject matter being amenable to expert testimony. The current s 47(1) has clearly broadened the gateway to admissibility by taking a more general, open-ended approach.[15]

6 Second, whereas the former s 47(1) set the threshold as "[w]hen the court has to form an opinion" – in other words, the expert opinion evidence must be necessary to assist the court – the current s 47(1) lowers this bar by setting the threshold as likelihood of assistance to the court, and constitutes a rejection of the Law Reform Committee's recommendation of substantial assistance as the touchstone.[16] As Parliament stated, the current s 47 is meant to "[widen] the cases where the court can have the benefit of an expert's views, if it so desires".[17] This is also why s 47(3) was introduced, which states that an expert opinion "shall not be irrelevant merely because the opinion or part thereof relates to a matter of common knowledge".[18]

7 In sketching out the contours of the current s 47(1), the older cases are instructive on the logically prior question of whether an expert is even needed in the first place. In the context of traffic accidents, the High Court in Public Prosecutor v Julia Elizbeth Tubbs admitted expert evidence from policemen who specialised in accident reconstructions.[19] However, in Ong Chan Tow v R ("Ong Chan Tow"), expert evidence from a motor engineer regarding what he believed to have happened at the scene of a traffic accident was not required and therefore inadmissible.[20]

8 In the context of determining mens rea, the Court of Appeal in Chou Kooi Pang v Public Prosecutor ("Chou Kooi Pang") affirmed the High Court's rejection of the expert evidence on the appellant's low intelligence and his consequent lack of knowledge that he was carrying drugs.[21] This was because it was for the courts to determine whether the appellant had the requisite mens rea, and this process of fact-finding "should not be surrendered to professionals such as psychiatrists, but should remain the province of the courts".[22] On this same basis, the High Court in Ng So Kuen Connie v Public Prosecutor ("Ng So Kuen Connie") rejected the psychiatric evidence tendered by the Prosecution and Defence, which had concluded that the appellant was suffering from hypomania and therefore did not possess the requisite mens rea.[23] This is in contrast to similar fact evidence where the court recharacterised and admitted evidence of previous drug trafficking transactions under ss 6 and 9 as such evidence was relevant evidence pertinent to the accused's mental state.[24]

9 However, if the threshold under the current s 47 is applied, the expert evidence in Ong Chan Tow, Chou Kooi Pang and Ng So Kuen Connie would likely be admissible because the court would be able to derive some assistance from such evidence. Indeed, after the 2012 amendments, it is fairly apparent that the courts have taken a more generous approach in admitting expert opinion evidence generally.[25] This is true too with regard to the scope of the subject matter. For instance, in Mahsoud Rahimi bin Mehrzad v Public Prosecutor,[26] the Court of Appeal found evidence on drug slang to be "other specialised knowledge" admissible under s 47.

10 Ironically, despite the broadened gateway, matters of science may face the greatest resistance if they fall outside the established domains or orthodoxy. If one, as suggested by the Law Reform Committee,[27] applies the standard set by the US Supreme Court in Daubert v Merrell Dow Pharmaceuticals Inc,[28] scientific expert testimony is only admissible if it is validated by methods and procedures used in the particular field. As such methods and procedures refer to peer review, publication, the testing of claims, and general acceptance by the relevant professional community, emerging areas of science and pseudoscience would probably not meet the threshold for relevance. Yet if this is so, it would be incongruous with everything that has been said about the current s 47(1) thus far. Without case law explicating this, the jury is still out as to whether the real test in s 47(1) is simply that of general reliability, keeping in mind too that (as shall be seen) reliability also features as a factor when deciding if s 47(4) is successfully invoked.

(2) Section 47(2): who qualifies as an expert?

11 Subsection (2) defines "an expert". The requirement that experts be "specially skilled" in the previous iteration has been replaced in the 2012 amendments by a requirement that experts acquire their specialised knowledge "based on training, study or experience".[29] This change is in line with the courts' "considerable laxity as to who qualifies as an expert",[30] and it makes clear that an expert is not required to have professional qualification. The fact that an expert has not acquired his knowledge professionally may not be material.[31] This was already true in the cases interpreting s 47 before its 2012 amendment. For instance, in Leong Wing Kong v Public Prosecutor, an experienced Central Narcotics Bureau ("CNB") officer, with more than 20 years' experience, was found to have sufficient working experience to be considered an expert in the matters on which he gave evidence.[32] This was echoed in Masoud Rahimi bin Mehrzad v Public Prosecutor, where the Court of Appeal rejected the appellant's argument that a CNB officer, with 13 years of experience dealing with drug informers and accused persons, was not a qualified expert.[33]

12 What is important, instead, is that the expert's training, study, or experience relates specifically to the matter in issue.[34] In this regard, the court will "scrutinise the credentials and relevant experience of the experts in their professed and acknowledged areas of expertise" to ensure that they have credibility in the matter.[35] Where the matter in issue involves a medical assessment of an accused person, the courts will look at whether the expert's conclusion is based on his direct or personal observation of the accused, or on the accused's own accounts.[36] The court will also factor in the length of the expert's experience in the relevant field[37] and the expert's methods for obtaining the specialised knowledge.[38] In Muhammad Jefrry v Public Prosecutor, the court preferred the expert opinion of the prosecution expert to that of the defence despite the latter being more titled.[39] This was because the prosecution expert's opinion was consistent with the withdrawal symptoms displayed by the applicant, while the defence expert's opinion was "speculative and theoretical".[40]

(3) Section 47(4): relevant expert opinion evidence may be denied admissibility if it is "in the interests of justice" to do so

13 Subsection (4), like s 32(3) in the context of hearsay evidence,[41] is meant to safeguard against the significant broadening of "the admissibility criteria for expert evidence".[42] It does so by giving the courts discretion to treat expert opinion evidence that is otherwise relevant under s 47(1) as irrelevant "in the interests of justice". On one view, this discretion stems from the courts' inherent jurisdiction to

prevent injustice at trial and it appears that, at least in the context of criminal proceedings, the discretion may be exercised if the probative value of a piece of expert opinion evidence is outweighed by its prejudicial effect. The less significant or probative the evidence, the less forceful the countervailing factors need to be to justify exclusion.[43]

14 Probative value refers to an evidence's ability to prove a fact in issue or a relevant fact.[44] As for prejudicial effect, it refers to how the admission of the evidence might be unfair to the accused as a matter of process.[45] The balancing exercise takes into account the competing considerations including "the rights of accused persons to be protected from acts that are beyond the bounds of propriety or situations that are patently unfair". This follows from the recent clarification by the Court of Appeal in Sulaiman bin Jumari v Public Prosecutor,[46] albeit in the context of s 258(3) of the Criminal Procedure Code.[47] Arguably, this resolves uncertainty over whether prejudicial effect was simply the lack of probative value – because if this had been the case, then there would be no need to balance probative value and prejudicial effect because the exercise of the courts' discretion would boil down to a question of probative value.[48]

15 Other potential factors[49] in the balancing exercise include the reliability of the evidence, its tendency to confuse or mislead, additional costs of admitting it even though it is unnecessary or duplicative, delay in the proceedings as a result of adducing it, distraction of the court or the parties, and "the rights of accused persons to be protected from acts that are beyond the bounds of propriety or situations that are patently unfair".[50] Such factors also apply to criminal proceedings.[51]

C. Procedural requirements in civil proceedings just as applicable

16 Generally, the Rules of Court[52] apply only to civil proceedings, but the Court of Appeal in Public Prosecutor v Chia Kee Chen ("Chia Kee Chen") has clarified that "the principles relating to an expert's duty to the court set out therein are equally applicable to criminal proceedings".[53] Order 40A r 2 stipulates that it is the duty of an expert to assist the court, and this duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.[54] Order 40A r 3(2)(h) then provides that the expert report must "contain a statement that the expert understands that in giving his report, his duty is to the Court and that he complies with that duty". To be clear, the court would look beyond the expert's written acknowledgement to see if the expert has, in substance, complied with his duty to the court.[55]

17 Next, O 40A r 3(2)(b) provides that the expert report must give details of any literature or other material which he has relied on. The expert must also present "the underlying evidence and the analytical process by which he reached his conclusion".[56] These requirements are "mandatory except where the court otherwise directs",[57] and it is "the duty of the solicitor instructing the expert to bring these [requirements] to the latter's attention".[58] The Court of Appeal in Chia Kee Chen has confirmed that "there is no reason why the basic principles relating to an expert's duty to give reasons … should not apply equally in the context of criminal cases".[59]

D. Psychiatric experts

18 When there is a dispute over whether an accused person possesses the requisite mens rea to be convicted, the role of psychiatric experts becomes particularly important. In Ho Mei Xia Hannah v Public Prosecutor,[60] the issue was whether there was a significant contributory link between her persistent depressive disorder and the offences she committed. The High Court noted that such a question "invariably require[d] that the court consider the expert opinion of a psychiatrist".[61] In this connection, in 2018, there was a proposed amendment of the Criminal Procedure Code for the appointment of a panel of psychiatrists by a Selection Committee.[62] Under this amendment, a psychiatrist's opinion would only be admissible in criminal proceedings if the psychiatrist is a member of the panel of admitted psychiatrists.[63] The Senior Minister of State for Law had stated that

the intention of the amendment was not to "set an extremely high bar for admission to the panel" and that "most psychiatrists with the relevant forensic training will be able to qualify".[64]

19 This regime may be contrasted with the management of expert opinion evidence in civil proceedings. First, O 40A r 1(1) allows the court to "limit the number of expert witnesses who may be called at the trial to such number as it may specify", such that the parties to the proceedings may be required to jointly appoint a single expert. Second, O 40A r 5 allows the court to "direct a discussion between experts" to identify the issues in the proceedings and possibly reach agreement on said issues. While O 40 "theoretically empowers the court to appoint an expert on its own initiative if parties cannot agree on an expert, there have been no reported cases of the court exercising this power over parties' objections".[65] Therefore, unlike the establishment of a panel of psychiatrists which "militates against a party's liberty to … find his own experts as he sees fit within an adversarial model of criminal justice … civil cases are given libertarian treatment and can run the full adversarial course".[66]

III. Evaluating opinion evidence

20 Where cases involve only one expert's unchallenged evidence, it is "axiomatic … that a judge is not entitled to substitute his own views for those of an uncontradicted expert's".[67] This, however, does not mean that the court should unquestioningly accept unchallenged evidence. Rather, evidence must invariably be "sifted, weighed and evaluated in the context of the factual matrix and in particular, the objective facts"[68] and should not be speculative.[69] Where appropriate, the expert opinion should also be stated as definitively and clearly as possible, avoiding ambiguity and minimising room for subjectivity in interpretation.[70] Ultimately, if the expert evidence is based on sound grounds and supported by the basic facts, the court can do "little else than to accept the evidence".[71] On the part of counsel, it is inappropriate to challenge the evidence simply by making assertions on the subject matter without first establishing or even putting the relevant facts to the experts at trial, or arguing that expert opinion should be "summarily dismissed" because the expert was not present at the scene.[72]

21 Where there is conflicting expert evidence, as would often be the case where experts are called upon by both parties, the court may choose to elect between two theories or reject both, but it cannot impose its own opinion or adopt a third theory of its own.[73] In assessing the relative value of the testimony of expert witnesses, the court considers "their demeanour, their type, their personality, and the impression made by them upon the trial judge"[74] and the "value, impressiveness and reliability of the expert evidence".[75] If the trial judge had "carefully and dispassionately weighed" the respective theories, and a clear conclusion in fact had been reached by him, it would be improper or unsafe for the appellate court to reverse the conclusion.[76]

22 Cases of conflicting expert evidence should not be resolved by looking at the sheer number of experts articulating a particular opinion, but by the consistency and logic of the preferred evidence.[77] Expert evidence that is based on assumptions are less likely to be adopted by the courts.[78] In Sakthivel Punithavathi v Public Prosecutor, despite there being two prosecution expert witnesses, the High Court accepted the defence witness's testimony because it was not only the most thoughtful, thorough and comprehensive, but also coherent and logical.[79] This was in contrast to the prosecution experts who had limited subject matter experience, were neither impressive nor persuasive, and had premised their findings on unfounded assumptions.[80]

23 Indeed, the evaluation of an expert opinion may be affected by its lack of reliability. It has been noted that "medical evidence may also be cast in doubt or rejected entirely where the factual basis upon which the medical opinion is premised is rejected at trial", and may also be rejected when viewed against the surrounding circumstances of the case.[81] In Public Prosecutor v Azlin bte Arujunah, there was "a significant misalignment between the opinion evidence that [the Defence] sought to rely on and the factual evidence that they realised (belatedly) that they had to adduce".[82] As the medical opinion was based on unreliable hearsay that was not corroborated by the statement-

maker's own statements or other witnesses,[83] the High Court found that the medical evidence was not grounded on a "sufficient factual basis" and rejected it.[84] This dovetails with ss 48 and 53 of the Evidence Act, which provide respectively that "[f]acts not otherwise relevant are relevant if they support or are inconsistent with the opinions of experts when such opinions are relevant" and that "[w]henever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant".[85]

IV. Conclusion

24 The admissibility of expert opinion evidence has been clearly stipulated under s 47. The significant broadening of admissibility criteria under ss 47(1)–47(3) would mean that there are two key avenues left for the objection of expert opinion evidence: the court's discretion under s 47(4) and weight. It remains to be seen what amounts to patent unfairness or exceeds the bounds of propriety in the context of expert opinion evidence, such that the exclusionary discretion would be exercised. In any case, this table sets out how opposing positions may be taken where expert opinion evidence is concerned, keeping in mind the various subsidiary rules the courts have developed over the years:

Type of dispute	Rely on the evidence	Challenge the evidence
Admissibility through s 47	Show that the expert opinion: • Satisfies the low threshold of likelihood of assistance to the court • Falls within the broad definition of a point of specialised knowledge • Is given by an expert with training, study, or experience in the matter in issue	• The expert opinion seeks to establish a fact, as opposed to its scientific, technical, or other specialised significance • The expert's training, study, or experience does not relate specifically to the matter in issue • The admission of the expert opinion might be unfair to the accused as a matter of process
Admissibility of further evidence through ss 48 and 53	• Use to further admit evidence which supports the admitted expert opinion	• Use to admit evidence which controverts the admitted expert opinion
Admissibility of lay opinion evidence through s 51	• Use where the opinion cannot be categorised into scientific, technical or other specialised knowledge	• The lay person does not possess "special means of knowledge"
Factors affecting the admissibility of evidence	Show that the expert opinion is: • Unchallenged, based on sound grounds, and is supported by basic facts • Reliable, in that the opinion was not formed based upon lies or material embellishments	• Put forth conflicting evidence that is consistent, logical and not based on assumptions so that the court has to elect between the two theories or reject both • Show that the factual basis upon which the opinion is premised is incorrect
Weight	The weight a court would place on an expert opinion could depend on any of the following factors: • Application of the basis rule • Application of the ultimate issue rule	

	• How speculative the opinion is • The level of (where relevant, practical) experience the expert has in the field in question • The expert's credibility • The expert's impartiality • Consistency with logic, common sense, and the surrounding facts • Whether the procedural requirements are satisfied

Endnotes

1 While the author is an AGC Professorial Fellow, the views expressed in this article are his own.

2 Cap 97, 1997 Rev Ed.

3 Masoud Rahimi bin Mehrzad v Public Prosecutor [2017] 1 SLR 257 at [64].

4 Chen Siyuan & Chang Wen Yee, "The Use of Similar Fact in Criminal Proceedings: An Updated Framework" [2020] SAL Prac 25.

5 Chen Siyuan, Chai Wen Min & Lau Yi Hang, "The Use of Hearsay Evidence in Criminal Proceedings: An Updated Framework" [2021] SAL Prac 8.

6 Sim Cheng Soon v BT Engineering Pte Ltd [2007] 1 SLR(R) 148 at [22]. See also the definition of "fact" in s 3(1) of the Evidence Act (Cap 97, 1997 Rev Ed).

7 See generally Chen Siyuan & Lionel Leo, The Law of Evidence in Singapore (Sweet & Maxwell, 2018) at ch 6.

8 Section 53 is the final provision pertaining to opinion evidence, but likely applies to both expert and layperson opinions.

9 Khoo Bee Keong v Ang Chun Hong [2005] SGHC 128 at [68].

10 Gema Metal Ceilings (Far East) Pte Ltd v Iwatani Techno Construction (M) Sdn Bhd [2000] SGHC 37 at [74]; Anita Damu v Public Prosecutor [2020] 3 SLR 825 at [31]. See also Creative Technology Ltd v Huawei International Pte Ltd [2017] SGHC 201.

11 Wellform Construction Pte Ltd v Lay Sing Construction Pte Ltd [2001] SGHC 12 at [19]–[20]; JSI Shipping (S) Pte Ltd v Teofoongwonglcloong [2007] 4 SLR(R) 460 at [51] and [138]; Anita Damu v Public Prosecutor [2020] 3 SLR 825 at [36]; Kiri Industries Ltd v Senda International Capital Ltd [2021] 3 SLR 215 at [92]–[98]. Cf Eu Lim Hoklai v Public Prosecutor [2011] 3 SLR 167; Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority [2014] 1 SLR 1047.

12 Chen Siyuan & Chang Wen Yee, "The Use of Similar Fact in Criminal Proceedings: An Updated Framework" [2020] SAL Prac 25.

13 Chen Siyuan, Chai Wen Min & Lau Yi Hang, "The Use of Hearsay Evidence in Criminal Proceedings: An Updated Framework" [2021] SAL Prac 8.

14 It may be possible, however, to admit the evidence via the lay opinion evidence provisions. For instance, in Leong Wing Kong v Public Prosecutor [1994] 1 SLR(R) 681, the Court of Appeal preferred to base the admissibility of the police officer's evidence regarding the practice of drug users and suppliers on s 51 rather than s 47. Section 51 concerns the relevance of opinions of persons having "special means of knowledge" as to the "usages and tenets of any body of men or family", "constitution and government of any religious or charitable foundation", or "meaning of words or terms used in particular districts or by particular classes of people".

15 Sudha Natrajan v The Bank of East Asia Ltd [2017] 1 SLR 141 at [45]. For the continued relevance of handwriting experts, see Public Prosecutor v Salzawiyah bte Latib [2021] SGHC 16 at [252].

16 Chen Siyuan & Lionel Leo, The Law of Evidence in Singapore (Sweet & Maxwell: 2018) at para 6.034.

17 Parliamentary Debates, Official Report (14 February 2012), vol 88 at cols 1127–1128 (K Shanmugam, Minister for Foreign Affairs and Law).

18 The basis rule is yet another subsidiary common law rule regarding opinion evidence.

19 [2001] SGHC 212.

20 Ong Chan Tow v R [1963] MLJ 160.

21 Chou Kooi Pang v Public Prosecutor [1998] 3 SLR(R) 205 at [12].

22 Chou Kooi Pang v Public Prosecutor [1998] 3 SLR(R) 205 at [17]. See also Public Prosecutor v Boh Soon Ho [2020] SGHC 58 at [89], in the context of the defence of diminished responsibility, where the second limb is determined largely based on expert evidence, but the first and third limbs are determined by the fact-finder.

23 Ng So Kuen Connie v Public Prosecutor [2003] 3 SLR(R) 178 at [33].

24 Public Prosecutor v Ranjit Singh Gill Menjeet Singh [2017] 3 SLR 66 at [19].

25 See for instance Public Prosecutor v Apinyowichian Yongyut [2016] SGDC 24 at [47]. In the context of civil proceedings, see Sudha Natrajan v The Bank of East Asia Ltd [2017] 1 SLR 141 at [45].

26 [2017] 1 SLR 257 at [64]. Note that in Anita Damu v Public Prosecutor [2020] 3 SLR 825, the High Court drew a distinction between the existence of a fact, in that case the accused's auditory hallucinations at the time of the offences, and the possible medical significance of said fact, which is a point of scientific and medical knowledge on which expert evidence would be admissible.

27 Vinodh Coomaraswamy, Report of the Law Reform Committee on Opinion Evidence (October 2011) at pp 30–32.

28 (1993) 509 US 579.

29 Evidence Act (Cap 97, 1997 Rev Ed) s 47(2).

30 Masoud Rahimi bin Mehrzad v Public Prosecutor [2017] 1 SLR 257 at [63].

31 Public Prosecutor v Muhamed bin Sulaiman [1982] 2 MLJ 320.

32 Leong Wing Kong v Public Prosecutor [1994] 1 SLR(R) 681 at [17].

33 Masoud Rahimi bin Mehrzad v Public Prosecutor [2017] 1 SLR 257 at [63]–[65].

34 Eller, Urs v Cheong Kiat Wah [2020] SGHC 106 at [36].

35 Sakthivel Punithavathi v Public Prosecutor [2017] 2 SLR(R) 983 at [75].

36 Hanafi bin Abu Bakar v Public Prosecutor [1999] SGCA 59 at [38], [67] and [70].

37 Sakthivel Punithavathi v Public Prosecutor [2017] 2 SLR(R) 983 at [75].

38 Teh Thiam Huat v Public Prosecutor [1996] 3 SLR(R) 234 at [25]; Ong Pang Siew v Public Prosecutor [2011] 1 SLR 606 at [71]–[73].

39 Muhammad Jefrry v Public Prosecutor [1996] 2 SLR(R) 738 at [107].

40 Muhammad Jefrry v Public Prosecutor [1996] 2 SLR(R) 738 at [111].

41 Chen Siyuan, Chai Wen Min & Lau Yi Hang, "The Use of Hearsay Evidence in Criminal Proceedings: An Updated Framework" [2021] SAL Prac 8 at [19].

42 Masoud Rahimi bin Mehrzad v Public Prosecutor [2017] 1 SLR 257 at [64].

43 See also Gimpex Ltd v Unity Holdings Business Ltd [2015] 2 SLR 686 at [106] and Public Prosecutor v Chia Kee Chen [2018] 2 SLR 249 at [55].

44 Sulaiman bin Jumari v Public Prosecutor [2021] 1 SLR 557 at [47].

45 Sulaiman bin Jumari v Public Prosecutor [2021] 1 SLR 557 at [47].

46 Sulaiman bin Jumari v Public Prosecutor [2021] 1 SLR 557 at [47].

47 Cap 68, 2012 Rev Ed.

48 Chen Siyuan, Chai Wen Min & Lau Yi Hang, "The Use of Hearsay Evidence in Criminal Proceedings: An Updated Framework" [2021] SAL Prac 8 at [22].

49 Gimpex Ltd v Unity Holdings Business Ltd [2015] 2 SLR 686 at [106].

50 Sulaiman bin Jumari v Public Prosecutor [2021] 1 SLR 557 at [47]. See also Public Prosecutor v Sutherson, Sujay Solomon [2016] 1 SLR 632, where the court admitted hearsay evidence after addressing concerns about its impropriety.

51 See, eg, in the context of s 32(3), Public Prosecutor v Sutherson, Sujay Solomon [2016] 1 SLR 632.

52 Cap 322, R 5, 2014 Rev Ed.

53 [2018] 2 SLR 249 at [117].

54 See also Ho Mei Xia Hannah v Public Prosecutor [2019] 5 SLR 978 at [44]–[56].

55 Teo Ai Ling v Koh Chai Kwang [2010] 2 SLR 1037 at [20]–[22].

56 Public Prosecutor v Chia Kee Chen [2018] 2 SLR 249 at [118]; Pacific Recreation Pte Ltd v S Y Technology Inc [2008] 2 SLR(R) 491 at [85].

57 Pacific Recreation Pte Ltd v S Y Technology Inc [2008] 2 SLR(R) 491 at [65].

58 Pacific Recreation Pte Ltd v S Y Technology Inc [2008] 2 SLR(R) 491 at [89].

59 Public Prosecutor v Chia Kee Chen [2018] 2 SLR 249 at [119].

60 [2019] 5 SLR 978.

61 Ho Mei Xia Hannah v Public Prosecutor [2019] 5 SLR 978 at [38].

62 Clause 78 of the Criminal Justice Reform Bill (Bill 14 of 2018), which would have resulted in the addition of ss 269 and 270 to the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

63 Criminal Justice Reform Bill (Bill 14 of 2018) cl 78.

64 Parliamentary Debates, Official Report (19 March 2018), vol 94 (Indranee Rajah, Senior Minister of State for Finance and Law).

65 Chen Siyuan & Eunice Chua, "2018 Changes to the Evidence Act and Criminal Procedure Code: The Criminal Justice Reform Bill and Evidence (Amendment) Bill" (2018) 30 SAcLJ 1064 at [24].

66 Chen Siyuan & Eunice Chua, "2018 Changes to the Evidence Act and Criminal Procedure Code: The Criminal Justice Reform Bill and Evidence (Amendment) Bill" (2018) 30 SAcLJ 1064 at [23]–[24].

67 Sakthivel Punithavathi v Public Prosecutor [2007] 2 SLR(R) 983 at [76].

68 Sakthivel Punithavathi v Public Prosecutor [2007] 2 SLR(R) 983 at [76]. See also Ho Mei Xia Hannah v Public Prosecutor [2019] 5 SLR 978 at [39].

69 Lim Chwee Soon v Public Prosecutor [1996] 3 SLR(R) 858 at [14].

70 Ho Mei Xia Hannah v Public Prosecutor [2019] 5 SLR 978 at [39].

71 Saeng-Un Udom v Public Prosecutor [2001] 2 SLR(R) 1 at [26]; Inngroup Pte Ltd v M Asset Pte Ltd [2020] SGHC 197 at [160]–[162].

72 Public Prosecutor v Tan Kok Meng [2021] 4 SLR 507 at [48] and [64].

73 Muhammad Jefrry v Public Prosecutor [1996] 2 SLR(R) 738 at [98]; Tengku Jonaris Badlishah v Public Prosecutor [1999] 1 SLR(R) 800 at [37]; Saeng-Un Udom v Public Prosecutor [2001] 2 SLR(R) 1 at [26].

74 Tengku Jonaris Badlishah v Public Prosecutor [1999] 1 SLR(R) 800 at [37].

75 Muhammad Jefrry v Public Prosecutor [1996] 2 SLR(R) 738 at [106] and [114]. See also Ho Mei Xia Hannah v Public Prosecutor [2019] 5 SLR 978 at [39]: "Where there is a conflict of opinion between two psychiatrists, it falls to the court to decide which opinion best accords with the factual circumstances, and is consistent with common sense, objective experience, and an understanding of the human condition."

76 Tengku Jonaris Badlishah v Public Prosecutor [1999] 1 SLR(R) 800 at [37].

77 Ilechukwu Uchechukwu Chukwudi v Public Prosecutor [2021] 1 SLR 67 at [247].

78 Sakthivel Punithavathi v Public Prosecutor [2007] 2 SLR(R) 983 at [98]; Public Prosecutor v Ahmed Salim [2021] SGHC 68 at [142]–[143].

79 Sakthivel Punithavathi v Public Prosecutor [2007] 2 SLR(R) 983 at [98].

80 Sakthivel Punithavathi v Public Prosecutor [2007] 2 SLR(R) 983 at [98].

81 Nagaenthran a/l K Dharmalingam v Public Prosecutor [2019] 2 SLR 216 at [29]. See also Public Prosecutor v Azlin bte Arujunah [2020] SGHC 168 at [138].

82 Public Prosecutor v Azlin bte Arujunah [2020] SGHC 168 at [161].

83 Public Prosecutor v Azlin bte Arujunah [2020] SGHC 168 at [161].

84 Public Prosecutor v Azlin bte Arujunah [2020] SGHC 168 at [161]. Cf Ilechukwu Uchechukwu Chukwudi v Public Prosecutor [2021] 1 SLR 67 at [117] and [256].

85 See also Gunapathy Muniandy v James Khoo [2001] SGHC 165 at [12.5]–[12.10].