

JUDICIAL DEPARTMENT, FEDERATION OF MALAYA

REGISTRAR'S CIRCULAR NO. 5 OF 1961

MEDICAL EVIDENCE

It has come to the notice of the Chief Justice that there seems to be some misapprehension on the part of Magistrates and on the part of Government Medical officers regarding medical evidence.

2. It must be borne in mind that medical evidence consists of two parts. First, there is the factual evidence of what the witness has actually observed, the time at which he saw the body or the patient and what he observed on making his examination and so forth. Then there is the evidence of opinion; the inferences which the witness is prepared to draw from what he has observed in the light of his training and experience.

3. As regards the factual evidence, there is seldom any room for misunderstanding as the general standard of care and accuracy of observation on the part of medical officers is commendably high.

4. It is with regard to evidence of opinion, however, that difficulties and misunderstandings appear to arise. Here it must always be remembered that, generally speaking, Government Medical officers in this country are not specialists in the sort of case regarding which they are called on to give evidence in Court. They have all received instruction as students in what is called forensic medicine but some of them have had very little practical experience of cases of personal injury or of unnatural death. Again, it must be remembered that certain signs of physical injury can be very difficult to interpret. For example, it is at times extremely difficult to form an opinion as to whether a scalp wound has been caused by a sharp or by a blunt instrument.

5. Yet again, certain injuries, such as certain types of fracture which are not of great importance from the medical point of view though they may be of legal importance (e.g. as making out grievous hurt), may easily be missed in the course of a routine examination particularly when the health of the injured person is not seriously affected.

6. In the circumstances, the Chief Justice would suggest that misunderstandings will be avoided if these things are borne in mind and if two rules are observed:-

- (i) A Medical officer should never be reluctant to say, if such be the case, that he does not know the answer to a question.
- (ii) A Medical officer should never be pressed to answer hypothetical questions which he appears to be reluctant to answer or to go further than he is freely prepared to go in the expression of opinions.

7. This circular has been seen by the Director of Medical Services who agrees with its contents.

S.S. Gill
(S.S. GILL)
REGISTRAR

The Federal Registry,
Supreme Court,
Federation of Malaya,
Kuala Lumpur.
5th December, 1961.
(Ref: No. (83) in RSC.126/52 &
No. (50) in RSC.39/54)

To:
All Presidents, Sessions Courts.
All Circuit Magistrates.

c.c.
The Director of Medical Services, Federation of Malaya,
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