

ASA Annual Conference 2018

Expert Evidence - Conflicting Assumptions and Expectations - The Civil Law Perspective

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Introduction

- > Assumptions and expectations – “baggage”

- > Whose “baggage”?
 - > civil law vs. common law?
 - > the “*litigators*” vs. the “*arbitration kids*”

- > What “baggage”?

- > What “civil law” perspective?

- > What “expert”?

Role of experts

- > Party-appointed vs. court-appointed experts
- > Means of evidence vs. party pleading; and positions in between
- > Experts vs. expert witnesses
- > Facts vs. law; or law as fact?
- > Differences between civil law jurisdictions
- > Choice of experts

Scope of expert evidence

- > Court-appointed experts
 - > Answering specific questions vs. broad determinations
 - > Power and duties to investigate facts

- > Party-appointed experts

Duties of experts

- > Duties to the court / tribunal
- > Duties to the parties
- > Duties to appointing counsel
- > Professional / ethical duties

A right to expert evidence?

- > state court proceedings
 - > court-appointed expert
 - > party-appointed expert

- > arbitral proceedings
 - > party-appointed expert
 - > tribunal-appointed expert



- > Awareness
- > Respect
- > Flexibility
- > Common understanding
- > Discussion
- > ~~IBA Guidelines on Experts in International Arbitration~~

Thank you for your attention.

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