



Expert witnesses for liability and damages: A primer

When the case value justifies expert witnesses, here is a basic guide to choosing the type of experts required

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When handling a personal-injury case it is crucial to focus on the detailed facts of the incident, including your client's injuries, damages, and medical history. When liability is contested, winning begins with establishing liability, so always start there.

The right liability expert will depend on the specifics of the case. For example, you may need a safety expert to pinpoint how and where the negligence occurred, or an engineer to address building code violations. Liability experts play a critical role in identifying applicable regulations and determining whether they were violated. Their testimony helps tell the story of negligence, clearly showing the jurors where and how the defendant failed to meet established standards.

When it comes to damages, the necessary experts are generally consistent across cases. These experts typically include medical professionals, vocational experts, and, in some cases, a functional capacity evaluation specialist. Other essential experts may include a nurse, life care planner, cost projection expert, or economist.

Representing your client effectively means telling a compelling story. Choose expert witnesses who will help you present that story in the most persuasive way possible.

The rules of the road

When laying out a case against a defendant for unsafe practices that caused an injury, it is essential to establish the applicable safety standards and "rules of

the road" for that industry. This helps educate your audience, whether it's a judge, jury, or mediator who may not be familiar with specific safety regulations for a hazardous activity or worksite. Ideally, the defendant will have violated a relevant safety code, but even if they haven't, they may still have violated accepted industry standards by taking dangerous shortcuts that put others at risk.

Establishing these safety rules from the start is critical. From the very beginning, make sure your audience is aware of the danger and the reasonable precautions that should have been taken to prevent the injury. Clearly defining these rules allows the audience to understand that the defendant's actions recklessly ignored safety measures, creating a hazardous situation that led to your client's injury.

In discussing safety rules and practices, it is useful to organize the argument in descending order of ideal versus actual (unsafe) practices:

1. Statutes and regulations
2. Industry safety standards
3. The defendant company's own policies and procedures
4. The company's typical day-to-day practices
5. How the company behaved on the day of the incident

This framework helps illustrate how the defendant's conduct deviated from acceptable safety practices. An expert witness will play a key role in identifying these rules, assessing whether the defendant followed them, and determining if the deviation caused the injury. By

establishing the correct rules of conduct, you provide the jury with a clear standard by which to judge the defendant's actions, making it easier to conclude that the defendant was at fault.

Evidence Code - What is an expert witness?

Evidence Code sections 720 and 801 address expert witnesses and their testimony. A person is qualified to testify as an expert if they possess special knowledge, skill, experience, training, or education sufficient to qualify them as an expert on the subject related to their testimony. (Evid. Code, § 720(a).) This qualification must be established before the witness can testify, unless a party objects. (Evid. Code, § 720.)

An expert witness may only testify to opinions on matters that are beyond common experience and that are based on reasonably reliable information. This information can include the expert's special knowledge, skill, experience, training, and education. (Evid. Code, § 801.) Evidence Code section 801, subdivision (a) specifically states that expert testimony is presented to offer opinions on "a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact." (Evid. Code, § 801, emphasis added.)

It is also important to note that expert witnesses can be cross-examined just like any other witness. They can also be questioned about their qualifications, the subject of their testimony, and the basis for their opinions.



Liability experts

A liability expert witness plays a crucial role in personal-injury cases. Their primary function is to evaluate the facts, determine fault, and provide expert testimony on whether the responsible party met their legal obligations or if their negligence caused harm. The specific type of liability expert required will vary depending on the details of the case, highlighting specific regulations and industry standards that were ignored.

Liability experts play a key role in building a compelling narrative for your case, guiding the jury to understand both the applicable safety rules and the reasons behind them. These experts clarify the importance of inspections, codes, and safety standards, and demonstrate how the defendant's failure to meet these obligations directly contributed to the injury or harm.

By illustrating what a safety-conscious individual should have done under similar circumstances, liability experts help establish the defendant's negligence. Their testimony helps shift the jury's focus onto the defendant's failure to meet legal obligations and strengthen your case.

Common types of liability experts

When selecting expert witnesses, it's essential to consider the unique needs of your case. While this is not an exhaustive list, here are some common types of liability experts to consider:

1. Motor-vehicle accidents

- **Accident reconstruction expert:** Reconstructs the accident scene, analyzing factors like vehicle speeds, angles of impact, and road conditions to determine how the accident occurred.
- **Biomechanical engineer:** Examines how the forces of the crash affected the occupants of the vehicle and whether the injuries claimed are consistent with the nature of the accident.
- **Forensic analyst/visual acuity expert/ animator:** Reconstructs the accident by creating visual representations, such as animations or diagrams, to illustrate how the incident occurred.

- **Mechanical Engineer:** Investigates whether mechanical failures (i.e., brake malfunctions) contributed to the accident.

- **Roadway safety expert:** Evaluates the design, signage, and maintenance of the roadway to determine if they played a role in the accident.

2. Premises liability

- **Property management expert:** Testifies about the proper management and maintenance of the property, focusing on issues like tenant safety, hazard prevention, and building maintenance.
- **Mechanical engineer:** Reviews whether the building systems, such as elevators, escalators, or HVAC systems, were maintained according to safety standards.
- **Safety consultant:** Examines whether the property was inspected regularly and whether safety hazards were identified and addressed in a timely manner.
- **General contractor:** Provides insight into whether construction or repairs were performed in compliance with building codes and industry standards.
- **Building code expert:** Can testify about violations of building codes and whether the property met safety regulations at the time of the incident.
- **OSHA inspector/safety expert:** Explains how the defendant violated occupational safety standards.

Damages experts

Damages experts are essential to fully demonstrate the extent of harm and its impact on your client's life. Damages experts typically include medical professionals, vocational experts, and, when your client's ability to work is affected, a functional capacity evaluation specialist. Other key damages experts may include nurses, life care planners, cost projection specialists, and economists.

In addition, your client's treating physicians can serve as highly credible witnesses. They have direct experience with the client's injuries, treatment, and prognosis, allowing them to verify the extent of harm. Treating physicians can testify about the necessary course of

treatment, potential long-term impacts, and the likelihood that the incident caused the injuries. Their firsthand knowledge makes them powerful in establishing the severity of the damage and your client's future needs.

Types of damages experts

While this is not an exhaustive list, here are some common types of damages expert witnesses to consider when building your case.

- **Treating physicians,** such as: internal medicine specialists, pain management physicians, orthopedic surgeons, neurologists, physical therapists
- **Life care planner**
- **Vocational expert**
- **Economist**

In damages cases, each expert's testimony builds upon the information provided by the previous one, forming a solid foundation for calculating future needs and financial impacts.

Treating physicians lay the groundwork by diagnosing the injuries to your client, providing a prognosis for recovery, and detailing necessary future treatments and care. Their testimony establishes the severity and nature of the injuries and the medical care required in the short and long term.

With this medical information, the life-care planner creates a detailed plan for future medical treatments, therapies, and any ongoing support needs. This includes the frequency and duration of treatments, potential surgeries, medications, and rehabilitation services.

The vocational expert builds on the life care planner's assessment to evaluate how the injuries will affect the client's ability to work. They analyze how the injuries impact the client's current job and future employability, and whether the client can continue in their career or if they will need to pursue alternate work.

Finally, the economist uses the information from all the previous damages experts to calculate the total financial impact. They assess the future cost of medical care, lost wages,



diminished earning potential, and other economic losses, providing a comprehensive picture of the financial damages.

How to choose the right expert

Qualifications and experience

Start by examining the expert's qualifications and experience. It is essential to choose an expert with relevant expertise and credentials in the specific field your case involves. Ideally, the expert should have prior experience with cases like yours. Begin by calling the expert and conducting an initial interview to gauge their knowledge and assess how well they might fit with your case. Experienced expert witnesses bring authority and can draw on prior knowledge to benefit your case. Utilize their expertise to explain medical or technical aspects clearly, helping the jury understand the connection between defendant's actions and your client's injuries.

Reliability and methodology

Additionally, consider the expert's reliability. Check whether their previous testimony has been accepted in court and whether their methodology has been challenged or scrutinized. A strong, proven methodology helps protect against challenges during cross-examination. Highlight the expert's methodology to provide a solid foundation for their conclusions.

Impartiality and credibility

Consider the expert's impartiality. A credible expert should be perceived as unbiased and focused solely on the facts. Their testimony will carry more weight if they come across as neutral and objective. Impartial experts are more credible

and persuasive, especially under cross-examination. Your expert should be able to provide straightforward, objective testimony that emphasizes the facts of the case at hand without exaggeration.

Use the expert to tell the story

Experts should help clarify your client's story by simplifying complex issues, showing how the defendant's actions caused the injuries. Their testimony shapes the jury's understanding of important facts. Integrate the expert's testimony to support your story, adding depth to the damages and the impact on your client.

Start your search early

Start your search early and be deliberate in selecting someone who will strengthen every aspect of your case. Give the expert time to review the case thoroughly, allowing for better preparation and strategy alignment. Early engagement ensures the expert is ready to counter opposing arguments and present cohesive testimony. Provide enough time and information so the expert can offer insights that may strengthen your case or expose any weaknesses.

Courtroom experience

Lastly, evaluate how effectively the expert can communicate complex information to a judge or jury. You want someone who can clearly explain their testimony without appearing either overly arrogant or incompetent. Strong communication skills are key to ensuring the expert's insights are easily understood by everyone in the courtroom. Effective communication ensures the jury can follow and engage with your expert's

testimony. Guide the expert to explain the "why" and "how" of the case, simplifying complex events to make them more relatable.

Conclusion

Liability and damages expert witnesses can make or break your personal injury case. Selecting the correct experts takes careful research and due diligence. You want to be confident that you have found the perfect experts for your client's case.

Both liability and damages experts are essential in personal injury cases, as their specialized knowledge can greatly influence the outcome. The right expert can help establish key facts, clarify liability, and quantify damages in a way that resonates with the jury. Take the time to evaluate whether expert testimony is necessary for your case, and if so, choose experts with the appropriate qualifications, strong communication skills, and credibility.

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