

Admissibility of Evidence in the Lay Participation System of Criminal Courts: With an Attention to Scientific Evidence

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Abstract

This article discusses admissibility of evidence in Taiwan's lay participation system of criminal trials, which will be implemented in 2023. Admissibility means that proffered evidence may be submitted to finders of fact and be evaluated for its probative value. Professional judges serve as a filter to screen out unqualified evidential materials. According to Taiwan's Constitutional Court decision, the necessary element for admissibility in criminal trial is "natural relevancy". Since this concept does not appear in statutes, nor does the Court provide its definition, "natural relevancy" is open to interpretation. So, the filter mechanism for admissibility does not function effectively and consistently in existing trials. Nevertheless, it does not seem to be a serious problem, because current criminal trials are dominated by professional judges, who take charge of everything: admissibility, probative value of evidence, and final decisions of cases. Nevertheless, the lack of a filter for unqualified evidence will be a nightmare in the lay participation system. Inadmissible evidence is not allowed to be submitted to lay judges, in case it will bias their decisions, and substantially delay the trial. Hence, professional judges will be expected to insulate lay judges from inadmissible evidence, by excluding evidence in the preliminary hearing stage. However, professional judges do not have a useful tool for excluding inadmissible evidence, because there has been no clear definition of admissibility and little discussion about this issue.

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After reviewing academic literature and court decisions in Taiwan and the United States, this article holds that natural relevancy should be interpreted as the minimum probative value that an evidential material has on the fact which is of consequence for determination of a case. This is the standard adopted in the Federal Rules of Evidence of the U.S., and I argue for its adoption in Taiwan as well. In addition to the general definition of natural relevancy and admissibility, this article particularly focuses on how these concepts should apply to scientific evidence. Neither legal knowledge, common sense nor experience can help professional judges decide whether scientific evidence is scientifically proved, and should be factored into court decisions. That is, some additional criteria have to be defined for the evaluation of scientific evidence, to help professional judges fulfill their tasks. This article contends that the debate concerning the “Frye test” and the “Daubert test”, in the U.S., may provide a useful reference for Taiwan’s courts.

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