

1 **Rule 702. Testimony by ~~E~~xperts.**

2 (a) Subject to the limitations in paragraph (b), a witness who is qualified as an expert by  
3 knowledge, skill, experience, training, or education may testify in the form of an opinion  
4 or otherwise if the expert's scientific, technical, or other specialized knowledge will help  
5 the trier of fact to understand the evidence or to determine a fact in issue.

6 (b) Scientific, technical, or other specialized knowledge may serve as the basis for expert  
7 testimony only if there is a threshold showing that the principles or methods that are  
8 underlying in the testimony

9 ~~(b)(1)~~ are reliable,

10 ~~(b)(2)~~ are based upon sufficient facts or data, and

11 ~~(b)(3) have been~~ are reliably applied to the facts, or, if not applied to the facts, are  
12 offered to assist the factfinder in understanding principles relevant to the case.

13 (c) The threshold showing required by paragraph (b) is satisfied if the underlying  
14 principles or methods, including the sufficiency of facts or data and the manner of their  
15 application to the facts of the case, are generally accepted by the relevant expert  
16 community.

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18 2026 Advisory Committee Note. The language of Rule 702(b)(3) has been amended to  
19 recognize existing caselaw allowing the use of so-called "blind experts." Further, the  
20 Original Advisory Committee Note states, "Section (b) adopts the three general  
21 categories of inquiry for expert testimony contained in the federal rule." This portion of  
22 the original note may no longer be accurate.

23 **2011 Advisory Committee Note.** The language of this rule has been amended as part of  
24 the restyling of the Evidence Rules to make them more easily understood and to make  
25 class and terminology consistent throughout the rules. These changes are intended to be

26 stylistic only. There is no intent to change any result in any ruling on evidence  
27 admissibility.

28 **Original Advisory Committee Note.** Apart from its introductory clause, part (a) of the  
29 amended Rule recites verbatim Federal Rule 702 as it appeared before it was amended in  
30 2000 to respond to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The  
31 2007 amendment to the Rule added that introductory clause, along with parts (b) and (c).  
32 Unlike its predecessor, the amended rule does not incorporate the text of the Federal Rule.  
33 Although Utah law foreshadowed in many respects the developments in federal law that  
34 commenced with *Daubert*, the 2007 amendment preserves and clarifies differences  
35 between the Utah and federal approaches to expert testimony.

36 The amended rule embodies several general considerations. First, the rule is intended to  
37 be applied to all expert testimony. In this respect, the rule follows federal law as  
38 announced in *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999). Next, like its federal  
39 counterpart, Utah's rule assigns to trial judges a "gatekeeper" responsibility to screen out  
40 unreliable expert testimony. In performing their gatekeeper function, trial judges should  
41 confront proposed expert testimony with rational skepticism. This degree of scrutiny is  
42 not so rigorous as to be satisfied only by scientific or other specialized principles or  
43 methods that are free of controversy or that meet any fixed set of criteria fashioned to test  
44 reliability. The rational skeptic is receptive to any plausible evidence that may bear on  
45 reliability. She is mindful that several principles, methods or techniques may be suitably  
46 reliable to merit admission into evidence for consideration by the trier of fact. The fields  
47 of knowledge which may be drawn upon are not limited merely to the "scientific" and  
48 "technical", but extend to all "specialized" knowledge. Similarly, the expert is viewed,  
49 not in a narrow sense, but as a person qualified by "knowledge, skill, experience,  
50 training or education." Finally, the gatekeeping trial judge must take care to direct her  
51 skepticism to the particular proposition that the expert testimony is offered to support.  
52 The *Daubert* court characterized this task as focusing on the "work at hand". The  
53 practitioner should equally take care that the proffered expert testimony reliably

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54 addresses the “work at hand”<sup>7</sup> and that the foundation of reliability presented for it  
55 reflects that consideration.

56 Section (c) retains limited features of the traditional *Frye* test for expert testimony.  
57 Generally accepted principles and methods may be admitted based on judicial notice.  
58 The nature of the “work at hand” is especially important here. It might be important in  
59 some cases for an expert to educate the factfinder about general principles, without  
60 attempting to apply these principles to the specific facts of the case. The rule recognizes  
61 that an expert on the stand may give a dissertation or exposition of principles relevant to  
62 the case, leaving the trier of fact to apply them to the facts. Proposed expert testimony  
63 that seeks to set out relevant principles, methods or techniques without offering an  
64 opinion about how they should be applied to a particular array of facts will be, in most  
65 instances, more eligible for admission under section (c) than case specific opinion  
66 testimony. There are, however, scientific or specialized methods or techniques applied at  
67 a level of considerable operational detail that have acquired sufficient general acceptance  
68 to merit admission under section (c).

69 The concept of general acceptance as used in section (c) is intended to replace the novel  
70 vs. non-novel dichotomy that has served as a central analytical tool in Utah’s Rule 702  
71 jurisprudence. The failure to show general acceptance meriting admission under section  
72 (c) does not mean the evidence is inadmissible, only that the threshold showing for  
73 reliability under section (b) must be shown by other means.

74 Section (b) adopts the three general categories of inquiry for expert testimony contained  
75 in the federal rule. Unlike the federal rule, however, the Utah rule notes that the  
76 proponent of the testimony is required to make only a “threshold” showing. That  
77 “threshold” requires only a basic foundational showing of indicia of reliability for the  
78 testimony to be admissible, not that the opinion is indisputably correct. When a trial  
79 court, applying this amendment, rules that an expert's testimony is reliable, this does not  
80 necessarily mean that contradictory expert testimony is unreliable. The amendment is  
81 broad enough to permit testimony that is the product of competing principles or methods

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82 in the same field of expertise. Contrary and inconsistent opinions may simultaneously  
83 meet the threshold; it is for the factfinder to reconcile ~~—~~ or choose between ~~—~~ the  
84 different opinions. As such, this amendment is not intended to provide an excuse for an  
85 automatic challenge to the testimony of every expert, and it is not contemplated that  
86 evidentiary hearings will be routinely required in order for the trial judge to fulfill his  
87 role as a rationally skeptical gatekeeper. In the typical case, admissibility under the rule  
88 may be determined based on affidavits, expert reports prepared pursuant to [Rule 26 of](#)  
89 [the Utah Rules of Civil Procedure](#) ~~Utah R. Civ. P. 26~~, deposition testimony and  
90 memoranda of counsel.

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