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ANSWER BOOK
2017 Edition

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of K&L Gates LLP

Practising Law Institute
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Preface

The expert witness, once anomalous, is now integral to virtually every lawsuit. Experts address causation, evaluate damages, and opine on everything in between—from the analysis of blood spatter at a crime scene¹ to the source of imported ceramic mugs.² Issues with expert evidence have bedeviled courts in America since the earliest days as illustrated by the Supreme Court’s oft-quoted comments in *Winans* from 1859 and Learned Hand’s history published in the *Harvard Law Review* in 1901.

Mass torts and, in particular, toxic torts highlighted the issues in the latter part of the last century. An expert opinion on a topic such as toxicological general causation, if accepted or rejected, could impact thousands of cases across the country. As the dollars involved in modern high stakes litigation—whether commercial claims or mass toxic tort allegations—have increased dramatically, so have the numbers of professional testifying experts, who charge handsome hourly fees. Whether such witnesses aid our civil and criminal justice systems is a matter of much debate. Until the bench and bar develop another way to introduce technical or specialized concepts to factfinders, however, the use of paid expert witnesses is the only procedure available to trial lawyers.

Courts have evolved procedures to help control the excesses of opinion testimony. The *Daubert* trilogy, the amendments to Federal Rule of Civil Procedure 26 and Federal Rule of Evidence 702, and their counterparts in state courts have established guidelines for expert evidence, from discovery through appeal.

This book looks at expert procedure and several important expert substantive areas using the PLI question and answer format. The aim

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1. Commonwealth v. Powell, 450 Mass. 229 (Sup. Ct. Mass. 2007).
 2. Mugworld, Inc. v. G.G. Marck & Assocs., 563 F. Supp. 2d 654 (E.D. Tex. 2007).

is to identify and respond to practical questions for trial lawyers about all aspects of the use of experts. This work is not exhaustive on each topic; the accretion of expert evidence law in the last two decades alone could fill an encyclopedia. But we hope that this collection of observations from experienced trial lawyer contributors will be a useful desktop reference on this interesting and challenging topic.