

Could?

COULD, the preterite of "can"—a verb now used only as an auxiliary and in the indicative mood. The dictionary tells us that its meaning is "was able, capable or susceptible", and it was improperly introduced into English from Latin through the influence of would and should. For our purpose let us consider the word as expressing ability or possibility.

Owing to the times in which we live, our criminal law courts are becoming ever more dependent upon testimony of witnesses scientifically-trained or specialists in their field to assist in matters wherein such training is a prerequisite. Civilization has reared an edifice of systemized and classified knowledge which is beyond the powers of any one mind or small group of minds to envelop. Hence the necessity of calling upon those skilled in a particular branch of knowledge for assistance.

Such testimony is usually referred to as expert testimony in the sense that the question involved "is one upon which competency to form an opinion can only be acquired by a course of special study or experience". (Phipson on Evidence, 8th Edition, p. 378.) It is interpretive in character and subject to limitations and rules. (Phipson on Evidence—"Opinions of Experts" and Canada Evidence Act, Chapter 59, R.S.C. 1927.) The principle of many types of so called scientific identification invokes the Theory of Probability (Formulated by the late Simon Newcomb—professor of mathe-

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A small word and its various ramifications discussed by a student of semantics. The mission of this article is to act as a deterrent to those who sometimes seek to employ expert evidence merely for its illusionary effect upon a jury rather than its true purpose of assisting the Court.

matics, John Hopkins University) and the laws of permutations and combinations; it is attained by a process of inductive reasoning in the sense that general conclusions are arrived at through the result of relatively few factual experiences, observations and experiments.

In some instances scientific or specialized knowledge will provide a direct affirmative or negative answer to the particular question relevant to the issue before the court. In others, the question is not capable of direct answer and is therefore subject to varying shades of interpretation and to other qualifications. It is in the latter that one hears the verb auxiliary "could"—the subject of our reflections—in the form "could be", "could have" and so on, introduced in the testimony of the scientific or specialist, when the conclusion given is, to a degree, in the affirmative. For example—favoring the side calling the witness. An inference affecting the issue is created, and the testimony is, or should be, subject to strict scrutiny to test the substance of the premise and its corollary.

Particular care therefore should be taken to make clear the premise upon which the conclusion is predicated in such instances. All rational alternative conclusions capable of being derived