

Alabama Rules of Evidence

Article VII. Opinions and Expert Testimony

Rule 704.

Opinion on ultimate issue.

Testimony in the form of an opinion or inference otherwise admissible is to be excluded if it embraces an ultimate issue to be decided by the trier of fact.

Advisory Committee's Notes

Evidence of an opinion that goes to an ultimate issue in the case is inadmissible, whether offered by a lay witness or by an expert witness. *McLeod v. Cannon Oil Corp.*, 603 So.2d 889 (Ala.1992); *Robinson v. State*, 574 So.2d 910 (Ala.Crim.App.1990). See C. Gamble, *McElroy's Alabama Evidence* § 127.01(5)(d) (4th ed. 1991). The basis for the preclusion is the fear that the admission of such an opinion will preempt the role and function of the factfinder. Rule 704 continues the preexisting principle that witnesses generally are precluded from giving opinions that involve legal definitions or conclusions. See, e.g., *Ex parte Dial*, 387 So.2d 879 (Ala.1980) (reversible error to permit policeman to give opinion as to whether an individual was an "accomplice"); *Wilkinson v. Duncan*, 294 Ala. 509, 319 So.2d 253 (1975) (physician not permitted to give opinion that testator had sufficient testamentary capacity to make a will). See also C. Gamble, *McElroy's Alabama Evidence* § 128.07 (4th ed. 1991). That principle is often referred to as the "ultimate issue rule."

The adoption of Rule 704 constitutes a rejection of the corresponding federal rule, under which the ultimate issue rule is abandoned. See Fed.R.Evid. 704(a).

There is no intent that adoption of Rule 704 should abrogate preexisting case law liberalizing the application of the ultimate issue rule. See, e.g., *Harrison v. Wientjes*, 466 So.2d 125, 127 (Ala.1985); *Boatwright v. State*, 351 So.2d 1366 (Ala.1977).