

**Rule 704. Opinion on Ultimate Issue**

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

***Committee Comment - 1977***

*Expert and lay witnesses will not be precluded from giving an opinion merely because the opinion embraces an ultimate fact issue to be determined by the jury. If the witness is qualified and the opinion would be helpful to or assist the jury as provided in Rules 701-703, the opinion testimony should be permitted. In determining whether or not an opinion would be helpful or of assistance under these rules a distinction should be made between opinions as to factual matters, and opinions involving a legal analysis or mixed questions of law and fact. Opinions of the latter nature are not deemed to be of any use to the trier of fact. The rule is consistent with existing practice in Minnesota as stated in *In re Estate of Olson*, 176 Minn. 360, 370, 223 N.W. 677, 681 (1929):*

*...Standing alone, the objection that the opinion of a qualified witness is asked upon the very issue and the ultimate one for decision is not sufficient. So long as the matter remains in the realm where opinion evidence is customarily resorted to, there is ordinarily no valid objection to permitting a person who has qualified himself to express an opinion upon the ultimate issue. That is a matter well left to the discretion of the trial judge. While in a will contest the opinion of a witness, lay or scientific, should not be asked as to the testator's capacity to make a valid will, there is certainly no objection to questions concerning his ability to comprehend his property and dispose of it understandingly.*

*See also *In re Estate of Jenks*, 291 Minn. 138, 144, 189 N.W.2d 695, 698 (1971).*