

THE IMPORTANCE OF FORENSIC ACCOUNTING IN FORENSIC ECONOMIC AND FINANCIAL EXAMINATION¹

Review paper

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Aleksandar Čudan²

University of Criminal Investigation and Police Studies, Belgrade

Dragan Cvetković

Belgrade Police Department, Criminal Police Administration

Abstract: Economics and financial expert witnesses too participate in the process of determining facts pertinent to a case. The need for a forensic examination in legal proceedings arises when the court does not have the knowledge necessary to determine all relevant facts and render a final judgment, which is the reason why courts engage expert witnesses to determine facts by applying knowledge and skills within their expertise. The topic of this paper is forensic accounting with a special emphasis on its importance and role in forensic financial examination. The aim of the paper is to emphasize the importance of forensic accounting in the purpose of forensic economic and financial examination and the need for its further improvement and development. The practical aim of this paper is to promote financial forensics as a profession of the new millennium. Given the turbulent past and expected future, the Republic of Serbia undoubtedly needs this type of personnel.

Keywords: forensic accounting, expert witness, legal proceedings, fraud, forensic science

INTRODUCTION

Forensic science is an application of knowledge and technology from a wide range of scientific disciplines and it provides answers relevant to the court, be it in criminal or civil cases, meaning at the same time the application of science to administering the justice. In developed countries, that is, in the European Union, the number of forensic investigations has increased several times in the past decade, with the Netherlands Forensic Institute as one of the most developed institutes in Europe, in which the number of employees has tripled since the beginning of the new millennium, (Tjark, 2013: 3).

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² Corresponding author: dr Aleksandar Čudan, Associate Professor, University of Criminal Investigation and Police Studies, Belgrade, Serbia. E-mail: aleksandar.cudan@kpu.edu.rs

Forensic science has evolved in different directions, thus in the direction of forensic accounting as well, as a result of serious damage to the economy caused by fraud and fraudulent financial statements (Čudan, 2014). Forensic accounting is a special branch of accounting, which deals with the use of accounting expertise in the prevention and investigation of different types of criminal activities within a company as well as in gathering evidence relevant to a litigation. Numerous examples of financial scandals in the past period have highlighted the shortcomings and limitations of auditing in detecting criminal activities, including the need to apply forensic accounting knowledge and skills to investigating and detecting various criminal activities.

Forensic evidence is collected in a way to be admissible in a court of law. Forensic accounting does not function as an advocate for one side or the other. This is the reason why forensic experts and their knowledge become a link which complements and makes the combat against economic crime even more effective.

In modern conditions, it is almost impossible to conclude criminal proceedings in case of economic crimes, in which a forensic expert, as a source of evidence or person with relevant expertise and skills necessary to determine or evaluate an important fact, was not called upon to provide expert opinion. Adherence to professional rules and the enforcement of their actual application is possible through the use of innovative bookkeeping and accounting branches: forensic accounting. Given that forensic accountants, who are familiar not only with auditing, accounting and financial reporting but also with legal regulations and laws, actuarials, statistics, software tools, and personality psychology, are gaining an important role not only in fraud detection but also in the provision of economic and financial expert opinion in criminal or civil cases, with the aim of gathering evidence that is relevant to litigation and dispute resolution. Taking into account the above issues, it may be said that forensic economic and financial examination holds a special place among a wide array of forensic scientific disciplines.

This paper addresses the concept of forensic accounting, the scope and tasks of forensic accounting, the legal and institutional framework of forensic accounting and financial expertise, including the importance and role of economic and financial expert testimony in court proceedings.

FORENSIC ACCOUNTING: CONCEPT, SCOPE, AND TASKS

In modern usage, the terms *forensics* and *forensic science* are often interchangeable. Given that the adjective *forensic* is synonymous with *legal* or *court-related*, this substitution cannot be considered very precise. However, the term has become so well-established in modern usage that many dictionaries offer similar meanings of the terms *forensics* and *forensic science*.

In the broadest sense, forensic science means the application of knowledge and technology from various scientific disciplines to solving legal issues. In practical application, forensic science uses its own experiential methods and borrows methods from other scientific disciplines, adapting them to its own needs in practice, whereby the adapted and innovated ones necessarily gain practical instructive importance. Due to the use of various forensic analyses,

this type of evidence often plays a final role in determining the guilt or innocence of the accused or defendant. In other words, forensic science involves the application of scientific methods to detecting and interpreting material traces, which is why the experts performing these tasks are called forensic scientists (Ivanovic and Ivanovic, 2013).

Although there are many definitions in the forensic accounting literature, the widely accepted and most complete definition is the one formally acknowledged by the Association of Certified Fraud Examiners (ACFE)³ according to which forensic accounting is defined as the use of accounting skills in potential or actual civil or criminal cases, including the generally accepted accounting and audit principles, to determine lost profits, income, asset values or to assess damage, including the assessment of the efficacy of internal controls, uncovering a fraud or the performance of other activities requiring the inclusion of accounting expertise in the legal system (Cvetkovic and Djuric, 2017).

In addition to a wide range of applications, forensic accounting may be applied in two primary areas:

1. *Investigative accounting* is primarily aimed at detecting and uncovering fraud when it is suspected that a destructive unlawful act has been committed in the financial statements, that is, when the client's business is preventively audited. Investigative accounting involves a comprehensive investigation of criminal activities. It also integrates knowledge in accounting, auditing and investigative techniques and can take two forms:

- a) Financial crime investigation – is a special discipline within forensic accounting that investigates financial statement fraud. This type of investigation involves taking a proactive and reactive approach to the methodology aimed at identifying financial statement fraud. This type of forensic accounting work is performed by investigators who typically work in the office of state controllers and investigative/detective agencies, auditing agencies, and criminal police services. It is a team of experts with different knowledge, skills, and experience which they use to detect and document criminal activities.
- b) Forensic auditing of financial statements is a new specialized service used in the financial statement audit process. Forensic audit means engaging the services of an auditor with specialist training and experience in fraud prevention and detection through an auditing agency.⁴

2) *Litigation support* – the provision of professional services when certain acts have already been identified and brought before the court. It refers to the provision of professional services to persons involved in a legal dispute. Profes-

³ Association of Certified Fraud Examiners (ACFE) is an independent professional multidisciplinary organization covering a large number of forensic disciplines or similar fields, including forensic accounting. The purpose of the ACFE is to provide its members with continuous training in the area of forensic accounting and counseling. The ACFE has raised standards to a higher standard through education and training. One of the certifications issued by ACFE is Certified Forensic Accountant (Cr.FA). the ACFE is also a leader in anti-fraud training, gaining a high reputation and public confidence in the profession as an instrument for combating fraud. The primary aim of this organization is to minimize fraud occurrences and assist its members in fraud detection.

⁴ *Forensic Audit vs. Financial Statement Audits, Currents Accounts*, (2008). Retrieved from: <http://www.iagforensics.com/wp-content/uploads/2009/12/GSCPA-Thomas Buckhoff-ct08.pdf>

sional services are provided by persons with accounting and auditing skills and other knowledge contributing to the resolution of a dispute, such as economic and financial expertise, consulting and other services (Aleksić, et al., 2015). The American Institute of Certified Public Accountants (AICPA) defines litigation services as any professional assistance given to lawyers by non-lawyers in litigation process. Litigation services can be classified into three areas:

- a) Consulting expert – forensic accountants provide advice on accounting and financial matters relevant to a legal dispute. Consultants do not testify as expert witnesses in trials. Rather, they assist the lawyers and/or the parties to the litigation in various ways, using their accounting and auditing knowledge and skills. A forensic accountant can measure the economic damages or losses resulting from, for example, a breach or termination of a contract, then manage, sort, index and summarize a large number of accounting information to make it understandable and usable in a court of law.
- b) Forensic economic and financial examination services– based on their experience, knowledge and expertise, forensic accountants may serve as expert witnesses. As expert witnesses, forensic accountants may provide the opinion in the form of a report on the subject matter in accordance with the instructions they are given. In the proceedings already initiated, within evidentiary actions, the court may retain an expert witness to provide expert opinion “when it is necessary to have opinion evidence to assist in determining or evaluating an important fact.” An expert witness provides expert opinion on a particular matter based on his or her unique experience, education or training.” When testifying, expert witnesses “has to take a neutral position, because his or her role is to influence the court through facts rather than emotions.” A skilled forensic accountant who possesses a satisfactory level of knowledge and skills in accounting, auditing, and other areas of finance, may, in accordance with the rules of domestic legislation, register as an expert in financial matters and submit his or her expert report stating findings and opinion on a particular aspect of the case at the court’s request, independently or within a specific professional institution (Petković, 2010: 161).
- c) Other services – within the scope of their activities, forensic accountants may exceptionally serve as mediators to assist one of the parties to the proceedings.

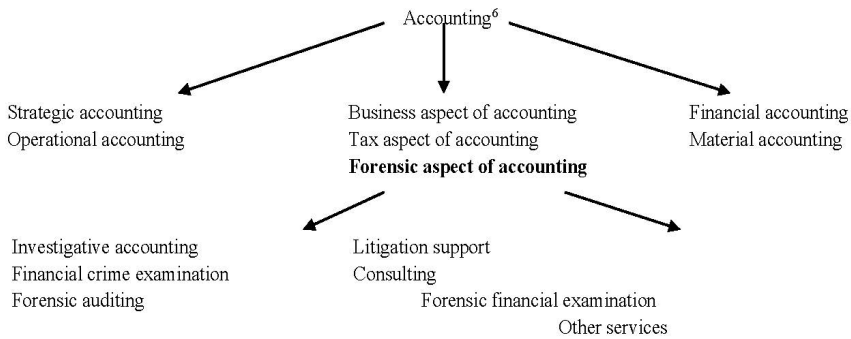


Figure 1: Schematic representation of the place of forensic accounting within accounting activity and its scope (Čudan, Nikoloska, 2018: 261)

The tasks of forensic accountants are to analyze, interpret, summarize, and present interrelated business-financial positions which are understandable and appropriately corroborated. Forensic accountants:

- compile documentation, investigate and analyze evidence of fraud;
- develop computer applications to manage the information collected or present financial evidence;
- communicate their findings in the form of reports;
- provide assistance in litigation, testify in court as expert witnesses, and prepare visual aids to support trial evidence (Dimitrijevic & Danilovic, 2017: 311).

It may be said that forensic accounting serves to uncover the truth in disputes, therefore forensic experts often appear as witnesses, professional witnesses, expert witnesses, analysts and the like. Forensic accounting is gaining in importance with the rise in the number of frauds, economic crime, and fraudulent misrepresentation.

LEGAL AND INSTITUTIONAL FRAMEWORK FOR FORENSIC ACCOUNTING AND FORENSIC ECONOMIC AND FINANCIAL EXAMINATION

Forensic accounting is an interdisciplinary field and a forensic accountant should, in addition to his or her knowledge of accounting and its regulation, also be familiar with the legal regulations of the country in which he performs his activities. Forensic accountants, that is, expert witnesses with expertise in economics and finance, are expected to be familiar with domestic criminal, civil, commercial and labor laws. The provision of expert opinion is mentioned by virtually all laws. Expert opinion is required not only because the authority conducting proceedings lack specialized expertise, which is often a court, but also because they cannot independently evaluate those facts that re-

⁵ Translator's note: Translation of Figure 1.

quire a certain level of education, training or a qualification even when having relevant expertise (Čudan, 2014).

Material and formal conditions must exist in legal proceedings in order for forensic examination to be carried out, depending on the expert witness' expertise and skills, that is, the forensic accountant carrying out forensic examination. Material conditions mean that expert witnesses must obtain all relevant data from institutions, organizations or litigant and be qualified to carry out this type of work. Formal conditions mean that expert witnesses must have a written request issued by the authority conducting proceedings to conduct forensic examination.

Procedural law defines the material and formal conditions for conducting forensic examination and the examination process itself, depending on the type of examination, is carried out in accordance with the rules of a specific profession and skills. The material condition requesting forensic examination arises from the need to obtain a finding or opinion from an individual or institution possessing the necessary expert knowledge to evaluate or determine an important fact, while the formal condition requires that the authority conducting proceedings issue a written order requesting forensic examination.

According to the provisions of the Law on Expert Witnesses,⁶ the provision of expert opinion means professional activities performed using scientific, technical and other advances to provide the court or other authority conducting proceedings with the necessary expert knowledge used to establish, evaluate or clarify legally relevant facts. Expert opinion may be provided by natural and legal persons who meet the requirements stipulated by this Law, government institutions, along with scientific and professional institutions.

Article 113 of the Criminal Procedure Code of the Republic of Serbia⁷ stipulates that forensic examination is required in those cases where it is necessary to obtain expert opinion from a person with necessary expertise to evaluate or determine an important fact. The legislature has divided forensic examinations in criminal cases into those explicitly normalized by law and those regulated by general provisions on forensic examination. According to the type of forensic examination, that is, the type of facts to be determined, forensic examination may be divided into:

- forensic examination of a cadaver (forensic pathology);
- forensic examination of personal injuries;
- forensic psychiatric examination;
- forensic examination of the general ledger;
- forensic examination of photographs, audio and video recordings.

Forensic economic and financial examination is at the same time very complex and delicate for the judge who, from a critical point of view, must analyze and evaluate the findings and opinions on matters that do not fall within the experience and knowledge of the judge, because the presentation of evidence can refer to specialized knowledge and scientific disciplines, requiring expertise not available to the court, such as the field of economics and accounting. This type of forensic expertise may be provided by legal and natural persons. Legal entities which may serve as ex-

⁶ Law on Expert Witnesses, *Official Gazette of the Republic of Serbia*, No. 44 dated 30.06.2010.

⁷ Criminal Procedure Code, *Official Gazette of the Republic of Serbia*, No. 35/2019 dated 01.12.2019.

pert witnesses include institutions which can provide forensic services within circumscribed areas, such as *Zavod za veštačenje* (Bureau of Forensic Science) in Belgrade. Government agencies may also provide forensic services within circumscribed areas. Other organizations such as faculties, institutes, the associations of accountants and auditors play an important role in the provision of forensic services.

Only Serbian nationals can conduct forensic economic and financial examination within our government-owned bodies, while persons who have been registered at the Register of Expert Witnesses may provide expert opinion in legal proceedings. Of course, expert witnesses need to have business acumen, but they also must meet other requirements that make them worthy of the job.

In Serbian judicial practice, there is a formulation which determines who is competent to provide expert opinion in the economic and financial area. Since the term “economic and financial area” is very broad, there are more than ten specialist courses in economic studies today. Therefore, this term must be strictly defined in order to avoid mistakes and omissions encountered in many controversial situations in practice. Due to the fact that someone has been declared competent in the area of economics and finance, it often happens in practice that expert witnesses easily accept an assignment where they do not have the knowledge, experience, qualifications and professional training appropriate for the assignment (Đorđević, 2011).

An expert witness has knowledge, experience, training or skill to determine or evaluate an essential fact in litigation. In order to conduct forensic examination, individuals and legal entities have to meet specific requirements which are prescribed by the provisions of the Law on Expert Witnesses.⁸

The most important court’s activity regarding forensic economic and financial examination is the evaluation of expert reports and opinions, that is, testimony. The essence of this evaluation is to determine, in a certain case, whether the opinion formulated by the expert witness has confirmed or denied the existence of a fact in question. In criminal cases, each piece of evidence is evaluated individually and in relation to other evidence, but the evaluation of the opinions provided by financial expert witnesses and is somewhat more complex⁹

⁸ *Official Gazette of the Republic of Serbia*, No.44 dated 30.06.2010.

⁹ In practice, it happens that the parties, most often the defendant and his defense counsel, independently obtain expert opinion, which, as a rule, contradicts expert opinion provided by an expert witness appointed by the authority conducting proceedings. Such expert opinion is not procedurally valid, which is why first-instance courts treat it only as a specific form of challenging the findings of the primary forensic examination.

Table 1. *Average duration of trial and forensic examination (in days) for the period 2015-2018.*¹⁰

Duration	Basic Courts	Commercial Courts	Serbia (average)
Average duration of trial	865	519	726
Average duration of forensic examination	65	49	54

Source: World Bank, 2018

Comparing the duration of forensic work with the total trial time, the work of expert witness amounted to an average of 7.5% of the total trial time.

Table 2. *Duration of forensic examinaion as % of trial duration*

Duration in %	Basic Courts	Commercial Courts	Serbia (average)
Duration of forensic examination as % of trial duration	7,5%	8,3%	7,5%

Source: World Bank, 2018

With the development of economics, finance and bookkeeping, numerous possibilities of applying research results to determining a questionable factual situation in criminal proceedings are created, such as misdemeanors in the field of economic crime, inappropriate criteria for assessing the qualifications of expert witnesses, inappropriate way of collecting material, gaps in the practical management of expert witness work, uncritical examination of expert witness opinions, and so on.

THE IMPORTANCE AND ROLE OF FORENSIC ECONOMIC AND FINANCIAL EXAMINATION AS A BRANCH OF FORENSIC ACCOUNTING

It is very difficult to say how important forensic economic and financial examination is, given that opinions concerning the issue are quite different (Coenen, 2008: 124). Some scholars think that forensic examination is just one of many evidentiary means which is not the most important, while others believe that expert witnesses provide direct assistance to the judge or the authority conducting the fact-finding proceedings or that expert opinions directly influence the decision itself. The importance of expert witnesses and forensic economic examination depends, to a large extent, not only on the quality of

¹⁰ According to statistical data, the duration of forensic examination is not a reason to delay or adjurn hearings. Over the last three years, an average duration of expert witness work amounted to 54 days, 64 days in basic courts and 43 days in commercial courts.

their reports, but also on the position of the judge conducting proceedings and his or her assessment of the importance of expert reports (Ilić, 2010: 313).

Forensic accountants can support the process through various types of expertise in terms of business assessments, divorce cases, marital disputes, property claims, business partner checks, the evidence of commercial fraud, personal injury and serious accident claims, assessee insurance jobs, warrants to seize property, civil and criminal proceedings concerning fraud and financial irregularities and the like. Therefore, in addition to substantive regulations, the rules governing the procedure before the judicial and other government authorities in civil and criminal proceedings are of particular importance for forensic accountants.

Forensic accountant expert witnesses are independent and they can draw conclusion from and interpret the facts, so that the hired lawyer is right and the opposite party has reached wrong conclusions. If a forensic accountant expert witness proves that he or she is right, then he is a very strong expert witness. Lawyers must assist a forensic accountant expert witness to reach his or her own conclusion so that the lawyer, judge and the jury can understand it. Forensic accountants are not equal regarding their experience and the number of years they have spent in this profession. Some may be IT expert witnesses, some are limited in business, some may be experts in the tax system, some may be experts in auditing, and so on. Also, forensic accountants may be found in the entertainment, clothing, furniture, banking and other industries (Telpner & Mostek, (2002: 2).

As has already been noted, forensic accountants may serve as expert witnesses as well. When the prosecution calls upon accountants and auditors, they generally testify on the findings obtained during the investigation, and when called upon by the defense, they provide facts about the quality of the findings or opinions presented by an expert for the prosecution so that the jury members may examine the credibility and gravity of the testimony given by an expert witness for the prosecution. Accountants and auditors need to have credibility and be educated in their fields, have sufficient knowledge and skills, be recognized members of their profession, or specialize in a particular aspect of practice relevant to the subject matter. Baring this in mind, there are several areas where expert witnesses are expected to have education and qualifications that differentiate them from laymen (Mikerević et al., 2013: 113).

- Professional license, certificate, and membership of the professional body,
- Undergraduate, graduate and postgraduate degrees - expertise in a specific field of study or area of professional practice,
- Specialist training and continuing professional education that goes behind academic titles,
- Relevant teaching, lectures and consulting indicating a high level of professionalism in the field,
- Membership in professional associations,
- Direct, relevant experience gained through previous engagements as a technical advisor or expert witness in a given field,

- Access to information specific to a given case, which classifies an individual as an expert.

The guidelines that need to be followed by expert witness in the preparation and presentation of evidence at trial are the following: expert witnesses need to prepare and study the necessary material in detail, plan their testimony in advance, listen carefully and be alert, carefully consider each answer and take a break before giving answers, be honest and unbiased, use simple words and maintain professional integrity. When an auditor is on the witness stand, the protocol for successful testimony goes beyond merely telling the truth or having good forensic evidence. Auditors must persuade the judge or jurors, leaving them with a great impression (Mikerević et al., 2013: 314).

The task of an expert witness is to assist the court to determine the truth, that is, to establish a certain concreteness of facts with his or her expert witness report or opinion within his or her area of expertise (economics, finance, mechanical engineering, medicine, construction and other areas of human activities) after which a discussion opens or concludes. The course and outcome of litigation or extra-judicial proceedings depend on the quality of expert witness reports and how comprehensive they are.

According to the Law on Expert Witnesses, an expert witness is an expert, that is, a person who is trained to perform a particular activity. In terms of the Law on Expert Witnesses, the Criminal Procedure Code, and the Civil Procedure Code, expert witnesses should have prescribed authorization in the area of professional activity.

In criminal and civil proceedings, expert opinion evidence shall be presented in order to determine or clarify a fact when the court requires the expertise which does not fall within the knowledge of the judge or jury in accordance with the law. In the Serbian literary language, the word *veštak* means an experienced, skilled, reliable, or seasoned person, but it also means a good connoisseur of something – a connoisseur or expert (Milosevic, 2004).

Lawyers, judges and forensic accountants often view expert witnesses and witnesses differently. Lawyers want expert witnesses to make a decision in favour of their clients, while judges generally want expert witnesses to make a decision when a judge is unable to reach a decision without the assistance of an expert witness. There are situations when more than one opinion is made by forensics available to an expert witness, but the judge wants the facts from the expert witness and his logic without reaching conclusions. This allows the judge to reach his or her own conclusion. A forensic accountant is a person who has an educational background in accounting and is able to assist lawyers at trial to understand and apply accounting law and discuss it. A forensic accounting expert witness has extensive experience in accounting and auditing investigations; he or she can write investigative reports and testify in court as an expert witness. They can be individually hired as litigation consultants. The expert witness must reach his or her own conclusions in court and the client who hired him may also come to the same conclusion as the expert witness (Telpner & Mostek, 2002: 1).

Expert witnesses focus solely on the forensics of the fraud that has already arisen, based on the case file and material received from the court. They possess the skills to give expert testimony, they examine evidence rather than

obtain it. Expert witnesses do not affect fraud prevention and fraud detection as forensic accountants do, nor do they evaluate the financial assets and the status of business partners, and many other forensic tasks dealt with by forensic accountants. If forensic accountants want to become expert witnesses, they must go through the legal appointment procedure to become a permanent expert witness.

Forensic accountants do not have to be expert witnesses. Considering the scope of their work, knowledge and skills they possess, forensic accountants may be police inspectors, tax inspectors, market inspectors, commercial forensic experts to evaluate business partners, internal forensic experts, and so on. If one wishes to become a permanent expert witness, the certified forensic accountant credential is different from the decision on being appointed permanent witness expert. In any case, if one wants to become a permanent expert witness, the certified forensic accountant credential will certainly mean proof of his or her knowledge of forensic accounting and thereby contribute to the affirmative decision issued by the court president. In the Republic of Serbia, forensic accounting is still undeveloped. However, some universities offer a forensic accounting course.¹¹

Thus, it follows from the aforementioned that the role of forensic accountants in the evaluation or examination process is to use knowledge and skills in litigation. Whether they are hired to detect criminal activity, or as expert witnesses, expert assistant to a prosecutor, witnesses and consultants in litigation, forensic accountants use the same knowledge and skills in accounting, auditing, statistics, economics, and so on.

CONCLUSION

It may be concluded that the introduction of financial forensic scientist profession in the Republic of Serbia will create well-educated professionals who will use international knowledge and experience in this field and apply them under our conditions. Forensic financial examination in criminal cases is conducted when it is necessary to ascertain facts from the domain of economics, finance and accounting on the basis of business documents and accounting documents. It is the forensic scientists who have the necessary tools and knowledge with effects deadlier than those given through international auditing standards to meet these expectations. Forensic accountants may, based on their expertise, knowledge and experience, be engaged as expert witnesses. When engaged as an expert witness, a forensic accountant can submit his or her report and opinion on specific court cases.

The role of forensic accounting is not to correct social anomalies, but to investigate, in this case, all forms of economic destruction and identify responsible persons. This does not mean that there is no social role for forensic accounting. Forensic work produces a concrete result, and this prevents new perpetrators. An exponent of forensic accounting is a forensic accountant, who can be defined as a person with some expert business-economic and economic-legal knowledge, with characteristics such as competence, education, reli-

¹¹ The course in Financial Forensics offered by the University of Criminal Investigation and Police Studies is taught based on the study program accredited at the graduate levels.

ability, cooperativeness, truthfulness and other virtues. The role of the expert witness in criminal proceedings is irreplaceable and makes a significant and sometimes crucial contribution to the truth.

This paper seeks to draw the attention of the professional public to the need to use forensic economic and financial examination as a form of forensic accounting, which is an indispensable evidentiary means and mechanism in the process of obtaining evidence in criminal and civil cases.

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