

รายการอ้างอิง

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ภาคผนวก

ภาคผนวก ก

Federal Rules of Evidence

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404. Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes

(a) Character evidence generally

Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character of accused - In a criminal case, evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404

(a)(2), evidence of the same trait of character of the accused offered by the prosecution;

(2) Character of alleged victim - In a criminal case, and subject to the limitations imposed by Rule 412, evidence of a pertinent trait of

· character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first aggressor;

(3) Character of witness - Evidence of the character of a witness, as provided in rules 607, 608, and 609

(b) Other crimes, wrongs, or acts

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and reputation evidence of character.

The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct.

Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' character for truthfulness, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) General rule.

For the purpose of attacking the character for truthfulness of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined

that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.

(b) Time limit.

Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of pardon, annulment, or certificate of rehabilitation.

Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile adjudications.

Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of

the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of appeal.

The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Rule 413. Evidence of Similar Crimes in Sexual Assault Cases

(a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

(d) For purposes of this rule and Rule 415 "offense of sexual assault" means a crime under Federal law or the law of a State (as defined in section 513 of title 18, United States Code) that involved--

(1) any conduct proscribed by chapter 109A of title 18, United States Code;

- (2) contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;
- (3) contact, without consent, between the genitals or anus of the defendant and any part of another person's body;
- (4) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or
- (5) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(4).

Rule 414. Evidence of Similar Crimes in Child Molestation Cases

- (a) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.
- (b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.
- (c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.
- (d) For purposes of this rule and Rule 415 "child" means a person below the age of fourteen, and "offense of child molestation" means a crime under Federal law or the law of a State (as defined in section 513 of title 18, United States Code) that involved--

- (1) any conduct proscribed by chapter 109A of title 18, United States Code, that was committed in relation to a child;
- (2) any conduct proscribed by chapter 110 of title 18, United States Code;
- (3) contact between any part of the defendant's body or an object and the genitals or anus of a child;
- (4) contact between the genitals or anus of the defendant and any part of the body of a child;
- (5) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child; or
- (6) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(5).

ภาคผนวก ข**The Criminal Justice Act 2003****PART 11****EVIDENCE****CHAPTER 1****EVIDENCE OF BAD CHARACTER***Introductory***98 "Bad character"**

References in this Chapter to evidence of a person's "bad character" are to evidence of, or of a disposition towards, misconduct on his part, other than evidence which-

(a) has to do with the alleged facts of the offence with which the defendant is charged, or

(b) is evidence of misconduct in connection with the investigation or prosecution of that offence.

99 Abolition of common law rules

(1) The common law rules governing the admissibility of evidence of bad character in criminal proceedings are abolished.

(2) Subsection (1) is subject to section 118(1) in so far as it preserves the rule under which in criminal proceedings a person's reputation is admissible for the purposes of proving his bad character.

Defendants

101 Defendant's bad character

(1) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if-

(a) all parties to the proceedings agree to the evidence being admissible,

(b) the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it,

(c) it is important explanatory evidence,

(d) it is relevant to an important matter in issue between the defendant and the prosecution,

(e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant,

(f) it is evidence to correct a false impression given by the defendant, or

(g) the defendant has made an attack on another person's character.

(2) Sections 102 to 106 contain provision supplementing subsection (1).

(3) The court must not admit evidence under subsection (1)(d) or (g) if, on an application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(4) On an application to exclude evidence under subsection (3) the court must have regard, in particular, to the length of time between the

matters to which that evidence relates and the matters which form the subject of the offence charged.

102 "Important explanatory evidence"

For the purposes of section 101(1)(c) evidence is important explanatory evidence if-

(a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and

(b) its value for understanding the case as a whole is substantial.

103 "Matter in issue between the defendant and the prosecution"

(1) For the purposes of section 101(1)(d) the matters in issue between the defendant and the prosecution include-

(a) the question whether the defendant has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence;

(b) the question whether the defendant has a propensity to be untruthful, except where it is not suggested that the defendant's case is untruthful in any respect.

(2) Where subsection (1)(a) applies, a defendant's propensity to commit offences of the kind with which he is charged may (without prejudice to any other way of doing so) be established by evidence that he has been convicted of-

(a) an offence of the same description as the one with which he is charged, or

(b) an offence of the same category as the one with which he is charged.

(3) Subsection (2) does not apply in the case of a particular defendant if the court is satisfied, by reason of the length of time since the conviction or for any other reason, that it would be unjust for it to apply in his case.

(4) For the purposes of subsection (2)-

(a) two offences are of the same description as each other if the statement of the offence in a written charge or indictment would, in each case, be in the same terms;

(b) two offences are of the same category as each other if they belong to the same category of offences prescribed for the purposes of this section by an order made by the Secretary of State.

(5) A category prescribed by an order under subsection (4)(b) must consist of offences of the same type.

(6) Only prosecution evidence is admissible under section 101(1)(d).

104 "Matter in issue between the defendant and a co-defendant"

(1) Evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible on that basis under section 101(1)(e) only if the nature or conduct of his defence is such as to undermine the co-defendant's defence.

(2) Only evidence-

- (a) which is to be (or has been) adduced by the co-defendant, or
 - (b) which a witness is to be invited to give (or has given) in cross-examination by the co-defendant,
- is admissible under section 101(1)(e).

105 "Evidence to correct a false impression"

(1) For the purposes of section 101(1)(f)-

(a) the defendant gives a false impression if he is responsible for the making of an express or implied assertion which is apt to give the court or jury a false or misleading impression about the defendant;

(b) evidence to correct such an impression is evidence which has probative value in correcting it.

(2) A defendant is treated as being responsible for the making of an assertion if-

(a) the assertion is made by the defendant in the proceedings (whether or not in evidence given by him),

(b) the assertion was made by the defendant-

(i) on being questioned under caution, before charge, about the offence with which he is charged, or

(ii) on being charged with the offence or officially informed that he might be prosecuted for it,

and evidence of the assertion is given in the proceedings,

(c) the assertion is made by a witness called by the defendant,

(d) the assertion is made by any witness in cross-examination in

response to a question asked by the defendant that is intended to elicit it, or is likely to do so, or

(e) the assertion was made by any person out of court, and the defendant adduces evidence of it in the proceedings.

(3) A defendant who would otherwise be treated as responsible for the making of an assertion shall not be so treated if, or to the extent that, he withdraws it or disassociates himself from it.

(4) Where it appears to the court that a defendant, by means of his conduct (other than the giving of evidence) in the proceedings, is seeking to give the court or jury an impression about himself that is false or misleading, the court may if it appears just to do so treat the defendant as being responsible for the making of an assertion which is apt to give that impression.

(5) In subsection (4) "conduct" includes appearance or dress.

(6) Evidence is admissible under section 101(1)(f) only if it goes no further than is necessary to correct the false impression.

(7) Only prosecution evidence is admissible under section 101(1)(f).

106 "Attack on another person's character"

(1) For the purposes of section 101(1)(g) a defendant makes an attack on another person's character if-

(a) he adduces evidence attacking the other person's character,

(b) he (or any legal representative appointed under section 38(4)

of the Youth Justice and Criminal Evidence Act 1999 (c. 23) to cross-examine a witness in his interests) asks questions in cross-examination that are intended to elicit such evidence, or are likely to do so, or

(c) evidence is given of an imputation about the other person made by the defendant-

(i) on being questioned under caution, before charge, about the offence with which he is charged, or

(ii) on being charged with the offence or officially informed that he might be prosecuted for it.

(2) In subsection (1) "evidence attacking the other person's character" means evidence to the effect that the other person-

(a) has committed an offence (whether a different offence from the one with which the defendant is charged or the same one), or

(b) has behaved, or is disposed to behave, in a reprehensible way;

and "imputation about the other person" means an assertion to that effect.

(3) Only prosecution evidence is admissible under section 101(1)(g).

ภาคผนวก ค

STATUTORY INSTRUMENTS

2004 No. 3346

CRIMINAL LAW, ENGLAND AND WALES**The Criminal Justice Act 2003 (Categories of Offences) Order 2004**

Made 15th December 2004

Coming into force 29th December 2004

The Secretary of State, in exercise of the powers conferred upon him by section 103(4)(b) of the Criminal Justice Act 2003 hereby makes the following Order, a draft of which has been laid before and approved by a resolution of each House of Parliament:

1. - (1) This Order may be cited as the Criminal Justice Act 2003 (Categories of Offences) Order 2004 and shall come into force 14 days after the day on which it is made or on the day that sections 98 to 110 of the 2003 Act (Evidence of Bad Character) come into force, whichever is later.

(2) In this Order "the 2003 Act" means the Criminal Justice Act 2003.

2. - (1) The categories of offences set out in Parts 1 and 2 of the Schedule to this Order are hereby prescribed for the purposes of section 103(4)(b) of the 2003 Act.

(2) Two offences are of the same category as each other if they are included in

the same Part of the Schedule.

Scotland of Asthal Q.C.

Minister of State

Home Office

15th December 2004

SCHEDULE

Article 2

Prescribed Categories of Offences

PART 1

THEFT CATEGORY

1. An offence under section 1 of the Theft Act 1968 (theft).
2. An offence under section 8 of that Act (robbery).
3. An offence under section 9(1)(a) of that Act (burglary) if it was committed with intent to commit an offence of stealing anything in the building or part of a building in question.
4. An offence under section 9(1)(b) of that Act (burglary) if the offender stole or attempted to steal anything in the building or that part of it.
5. An offence under section 10 of that Act (aggravated burglary) if the offender committed a burglary described in paragraph 3 or 4 of this Part of the Schedule.

6. An offence under section 12 of that Act (taking motor vehicle or other conveyance without authority).

7. An offence under section 12A of that Act (aggravated vehicle-taking).

8. An offence under section 22 of that Act (handling stolen goods).

9. An offence under section 25 of that Act (going equipped for stealing).

10. An offence under section 3 of the Theft Act 1978 (making off without payment).

11. An offence of-

(a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this Part of this Schedule; or

(b) attempting to commit an offence so specified.

PART 2

SEXUAL OFFENCES (PERSONS UNDER THE AGE OF 16) CATEGORY

1. An offence under section 1 of the Sexual Offences Act 1956 (rape) if it was committed in relation to a person under the age of 16.

2. An offence under section 5 of the Sexual Offences Act 1956 (intercourse with a girl under thirteen).

3. An offence under section 6 of that Act (intercourse with a girl under sixteen).

4. An offence under section 7 of that Act (intercourse with a defective) if it was committed in relation to a person under the age of 16.
5. An offence under section 10 of that Act (incest by a man) if it was committed in relation to a person under the age of 16.
6. An offence under section 11 of that Act (incest by a woman) if it was committed in relation to a person under the age of 16.
7. An offence under section 12 of that Act (buggery) if it was committed in relation to a person under the age of 16.
8. An offence under section 13 of that Act (indecentcy between men) if it was committed in relation to a person under the age of 16.
9. An offence under section 14 of that Act (indecent assault on a woman) if it was committed in relation to a person under the age of 16.
10. An offence under section 15 of that Act (indecent assault on a man) if it was committed in relation to a person under the age of 16.
11. An offence under section 128 of the Mental Health Act 1959 (sexual intercourse with patients) if it was committed in relation to a person under the age of 16.
12. An offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child).
13. An offence under section 54 of the Criminal Law Act 1977 (inciting a girl under 16 to have incestuous sexual intercourse).
14. An offence under section 3 of the Sexual Offences (Amendment) Act 2000

(abuse of a position of trust) if it was committed in relation to a person under the age of 16.

15. An offence under section 1 of the Sexual Offences Act 2003 (rape) if it was committed in relation to a person under the age of 16.

16. An offence under section 2 of that Act (assault by penetration) if it was committed in relation to a person under the age of 16.

17. An offence under section 3 of that Act (sexual assault) if it was committed in relation to a person under the age of 16.

18. An offence under section 4 of that Act (causing a person to engage in sexual activity without consent) if it was committed in relation to a person under the age of 16.

19. An offence under section 5 of the Sexual Offences Act 2003 (rape of a child under 13).

20. An offence under section 6 of that Act (assault of a child under 13 by penetration).

21. An offence under section 7 of that Act (sexual assault of a child under 13).

22. An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity).

23. An offence under section 9 of that Act (sexual activity with a child).

24. An offence under section 10 of that Act (causing or inciting a child to engage in sexual activity).

25. An offence under section 14 of that Act if doing it will involve the commission of an offence under sections 9 and 10 of that Act (arranging or facilitating the commission of a child sex offence).

26. An offence under section 16 of that Act (abuse of position of trust: sexual activity with a child) if it was committed in relation to a person under the age of 16.

27. An offence under section 17 of that Act (abuse of position of trust: causing or inciting a child to engage in sexual activity) if it was committed in relation to a person under the age of 16.

28. An offence under section 25 of that Act (sexual activity with a child family member) if it was committed in relation to a person under the age of 16.

29. An offence under section 26 of that Act (inciting a child family member to engage in sexual activity) if it was committed in relation to a person under the age of 16.

30. An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice) if it was committed in relation to a person under the age of 16.

31. An offence under section 31 of that Act (causing or inciting a person with a mental disorder impeding choice to engage in sexual activity) if it was committed in relation to a person under the age of 16.

32. An offence under section 34 of that Act (inducement, threat, or deception to procure activity with a person with a mental disorder) if it was committed in relation to a person under the age of 16.

33. An offence under section 35 of that Act (causing a person with a mental

disorder to engage in or agree to engage in sexual activity by inducement, threat or deception) if it was committed in relation to a person under the age of 16.

34. An offence under section 38 of that Act (care workers: sexual activity with a person with a mental disorder) if it was committed in relation to a person under the age of 16.

35. An offence under section 39 of that Act (care workers: causing or inciting sexual activity) if it was committed in relation to a person under the age of 16.

36. An offence of-

- (a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this Part of this Schedule; or
- (b) attempting to commit an offence so specified.

ประวัติผู้เขียนวิทยานิพนธ์

นางสาวยุพดี ธรรมาภิมุขกุล เกิดเมื่อวันที่ 12 เมษายน พ.ศ.2521 ที่กรุงเทพมหานคร สำเร็จการศึกษานิติศาสตรบัณฑิต จากมหาวิทยาลัยธรรมศาสตร์ เมื่อปี พ.ศ.2543 และสอบได้ ความรู้ชั้นเนติบัณฑิต สมัยที่ 53 จากสำนักอบรมศึกษากฎหมายแห่งเนติบัณฑิตยสภา เมื่อปี พ.ศ.2544 ปัจจุบันรับราชการในตำแหน่งอัยการผู้ช่วย สำนักงานอัยการสูงสุด