

# The definition of bad character law general essay

Law



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2198 words excluding footnotes and bibliography The issue to be determined is whether the prosecution admits bad-character evidence of Dan (D), Aida (A) and Brian (B) respectively and it is necessary to examine as to whether each piece of evidence is met with the definition of bad-character evidence. Bad character is defined in section 98 of the Criminal Justice Act (CJA) 2003 as evidence of a disposition towards misconduct[1]. Misconduct is further defined in section 112 as the commission of an offence or other reprehensible behavior[2].

### **Dan's Bad Character – section 101(1) gateway (d)**

Previous convictions come within the definition of bad character under section 98 and therefore would be admissible under one of the gateways in section 101 of CJA 2003. D has convicted (1) rape ten years ago and D has also convicted (2) assault occasioning actual bodily harm. These may be admissible under section 101(1) (d) that it is relevant to an important matter in issue between the defendant and the prosecution[3]. Section 103 indicates 'an important matter in issue' including the question whether the defendant has a propensity to commit offences of the kind with which he is charged, or a propensity for untruthfulness[4]. Section 103(2) states that an important matter in issue can be established by evidence of previous conviction of the same description or the same category[5]. Here, D's previous conviction for rape is the same description as the present charge. Hughes LJ in *Chopra* maintains 'there must in each case be an examination of whether the evidence really does tend to establish the relevant propensity[6]. There will have to be sufficient similarity to make it more

likely that each allegation is true. This would seem applicable to the situation here as it is prima facie same description of offence with previous offence (rape), and the propensity to convict rape makes it more likely that the defendant had committed the offence charged. However Rose LJ in Hanson emphasized that establishing merely that offences are of the same description or the same category as the offence charged is in 'insufficient' to show propensity, and proposed a set of three questions to determine admissibility: 1) Does the history of conviction establish a propensity to commit offences of the kind charged? 2) Does the propensity make it more likely that the defendant committed the offence charged? 3) Would it be unjust to rely on convictions of the same description or category; and would the proceedings be unfair if those convictions were admitted?[7] Here, first two questions are clear, but we should consider as to whether or not admissibility of D's previous conviction is unjust in the light of question 3. Also section 103(3) states that 103(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 particular case[8]. Court of Appeal in Hanson emphasized that as a general rule, the fewer the previous convictions, the less likely that propensity will be established[9]. That is, a single conviction of the same description or category will often not show 'propensity'. For D, he may allege that it does not show the propensity likely to convict offence as only 'one' offence took place 'ten years ago' and it would be unjust for bad character evidence to be admissible at trial. Court of Appeal in Hanson also gives guidance as to admissibility of single conviction committed long times ago by holding that a single conviction committed using an identical modus <https://assignbuster.com/the-definition-of-bad-character-law-general-essay/>

operandi may be highly relevant to establishing both propensity and the probative value of previous convictions[10]. Furthermore, in Woodhouse, it was held that the court of appeal that a single previous incident, which resulted in a caution 10 years previously, was admissible as bad character because the circumstances were so similar[11]. We are told that the circumstances of previous rape offence were that he forced his girlfriend to have sexual intercourse with him. Naturally, the judge should consider as to whether circumstances of previous offence are considerably similar to those of offence charged presently and if the circumstances were so similar, the bad character of previous conviction may be admissible under the decision in Woodhouse. Here, it seems to me that circumstances are not similar. Firstly, when it comes to previous conviction, D committed offence because he was likely to be driven by jealousy and revengeful thoughts after his girlfriend told him she was leaving him for another man. Unlike previous offence, current charged offence occurred in different circumstances where there was not special relationship between D and plaintiff and there was not motivation to commit an offence. In this sense, the decision under Woodhouse cannot apply here, so gateway (d) may not trigger the admissibility of D's bad character. With regard to the offence of assault occasioning actual bodily harm would fall into the same category, as D attacked A by pushing her face on to the ground before raping her. Both previous offence of assault and offence D is charged[12]are offences under the Offences against Persons Act (OAPA) 1861 and therefore in the same category. It is unlikely that the two previous convictions can be considered as evidence showing a propensity for untruthfulness to the CJA 2003. In Hanson, the court held that propensity for untruthfulness is not equivalent to dishonesty[13]. However, in Ellis, previous

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offences relevant to deception can show propensity for untruthfulness in certain circumstances[14]but this decision cannot apply here as there are not relevant convictions with deception. The defence (D) may ask the judge to exercise his discretion under section 101(3) to exclude the evidence of the allegation against the defendant on the ground that its admission would have adverse effect on the fairness in the proceedings[15]. In exercising discretion under 101(3), the court must consider the time interval between the matters to which the evidence relates and matters which form the subject of the offence charged[16]under section 101(4) together with the decision in R v. M[17]. Similarly, D may rely on section 78 PACE 1984 so as to exclude his bad character in proceeding, but rule under the section 101(3) is preferable as the court ‘ must’ exclude evidence whilst the court ‘ may’ exclude such evidence under section 78(1). Further, in terms of identification evidence, exclusion may be the consequence under the section 78 PACE 1984 where major breaches of Code D have occurred[18].

### **Brian’s Bad Character & Aida’s Bad Character (section 100)**

B is an important prosecution witness as he is able to give D’s alibi which may have pivotal evidence to demonstrate whether D has convicted or not. However, prosecution may challenge B’s credibility by seeking to admit his bad character evidence on the basis of his previous conviction that he has one conviction for theft. Under section 100 of the CJA 2003, a non-defendant’s bad character is admissible if it falls into one of the three gateways and gateway (b) would be relevant to this situation[19]. However, leave of the court is required before evidence can be admitted under (a) or

(b). It may be argued that the evidence of B's bad character (theft) has substantial probative value as to a matter in issue in the proceedings. Here, B's bad character may be of substantial probative value in relation to his credibility as a witness is on the pivotal question as to whether a rape committed by D had actually taken place[20](see also Osbourne). They should also demonstrate that it is of substantial importance in the context of the case as a whole. Here, if the prosecution admits and relies on B's evidence then his credibility can be of substantial important and if D's case is that B is lying then his previous conviction becomes relevant. Section 100(3) identifies factors that must be included in deciding whether evidence has 'substantial probative value'. The fact that the evidence relates to only one conviction is significant as the court will consider the nature and number of the events in question and one conviction does not suggest persistent dishonesty[21]. Here, B has one conviction for theft, and therefore it may be excluded by the judge when applying the section 100(3) factors even if the prosecution is likely to suggest a propensity for untruthfulness. With regard to A's bad character, same gateway under section 100 applies to A (non-defendant). A's bad character may be of substantial value in relation to her credibility as she is on the vital question as to whether she was attacked and raped by D. In order to decide the probative value the court will consider the factors in section 100(3). The fact that the evidence related to 'several' 'recent' convictions for theft suggest persistent dishonesty by considering following factors - 1) nature and number of the events in question and 2) when the events are alleged to have occurred[22]. Therefore, it appears that A's bad character would be admissible if the prosecution finds out A's previous conviction.

## **D's Bad Character – Section 101(1) gateway (g)**

Section 101(1) (g) allows for the admission of evidence of bad character where a defendant has made an attack on another person's character[23]. Section 101(1) (g) admits bad character evidence where an attack is made on any person while the previous law permitted the admission of previous convictions only where imputations were made against the prosecutor, a prosecution witness or the dead victim of an offence[24]. Here, Dan's defence team is considering seeking leave to cross-examine her about her previous convictions, and this is likely to trigger this gateway, as he (legal representative – defence team) asks questions in cross-examination that are intended to elicit such evidence, or are likely to do so (section 106(1)(b)) [25]. Also, defence team emphasized A has convicted several theft and drugs possession and this would be satisfied with section 106(2) (a)[26](see also Lamaletie and Royce[27])In this sense, D's defence's attack on another person's character (A) may fall into gateway (g), and leave the defendant open to his own previous convictions being presented in evidence[28](Singh) and the evidence of any conviction may be admitted to undermine the credibility of the defendant. When once triggered, gateway (g) potentially admits the whole of the defendant's bad character evidence[29]. Moreover, once the evidence is admitted, it may be relevant to propensity to commit offences of the kind with which the defendant is charged as well as defendant's credibility (Highton)[30]. However, section 101(1) (3) provides a discretion to exclude evidence under section 101(1) (g) where its admission would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it. D may argue that his convictions should be excluded under section 101(3) due to potential prejudicial effect. However, it <https://assignbuster.com/the-definition-of-bad-character-law-general-essay/>

may be admitted on the basis that the jury were entitled to be made aware of them in light of the sustained attack on another person Aida[31] (Edwards). It should be noted that section 101(3) requires the judge to conduct a balancing exercise and it appears that the probative force of the evidence sought to be adduced will be relevant[32]. (Weir)

## **Unsatisfactory law as to Bad Character Evidence?**

Prior to the criminal justice act (CJA) 2003, the criminal evidence act 1898 provided a 'shield' with defendant against bad character evidence being referred to during cross-examination. In detail, bad character evidence was confined largely to challenging a defendant's credibility (McLeod), and character evidence is likely to be used to propensity if its probative value is far outweighs its prejudicial effect[33]. However, criminal justice act 2003 expands the scope of character evidence which can be admitted in proceedings by giving seven gateways and wider definition of bad character evidence under section 98. Especially, gateway (d) allows in evidence which is not limited to previous convictions of the same description or same category and this can be seen in the case *Isichei*. Here, previous offence which defendant was unlawfully involved in the importation of cocaine was admitted as bad character evidence for robbery as it underpins witness's visual identification[34]. Also, previous convictions in foreign jurisdiction may be admitted which gives rise to the potential for prejudicial effect[35]. Law Commission suggests that the danger of prejudice is extremely high in current law position as there is no standard degree to use of convictions[36]. Section 101(3) has pivotal role as a safeguard in preventing bad character evidence under the gateway (d) and (g) which has less probative value and



leads to adverse effect on fairness from being admissible. However, it seems to me that this safeguard is not efficient as it depends on judge's discretion and leads to inconsistent approaches. For instance, in Sully two convictions for sexual assault on children committed 30 years ago were admitted[37] whilst conviction for possessing a sawn off shotgun was held to have been wrongly admitted[38] in Michael. When it comes to gateway (g), this can be problematic in itself. Old law regarding bad character constrained the equivalent of gateway (g) (casting imputations on a prosecution witness under section 1(3) (ii) criminal evidence act 1898) to going to defendant's credibility, whilst, in Highton, the trial judge's decision to give a propensity direction for gateway (g) was upheld[39]. It is technically able to go to not only credibility but also propensity in spite of lack of logical link with propensity[40]. It seems to me that bad character is more prejudicial than probative, so present rules on admissibility prejudice a defendant's right to fair trial. In this sense, present rules as to admissibility of bad character evidence under CJA 2003 poses risk to the defendant's right to fair trial under the article 6 of the ECHR. Law Commission suggests that a person's character no more should be revealed than is necessary for the interests of justice to be served[41]. Therefore, admissibility of person's bad character should be admitted within the scope necessary for the interests of justice and does not lead to prejudicial effect.