

Chapter 4: Character

Question One

Paul, John and Gemma are charged with stealing a handbag from Carole. The prosecution case is that they took it from the back of the chair where Carole sitting in the Internet café in which she was having coffee with Terry. The prosecution claim is that Paul, John and Gemma were together on the next table and that Paul and John snatched the bag and left the café. The two were arrested some weeks later when they returned to the café and were identified from recorded video footage. Gemma was with them on this occasion also and also arrested when the police were called. Carole claims that Gemma was involved in the theft since she had come over to Carole's table to ask the time and had distracted her while Paul and John took the bag.

Paul, John and Gemma all deny the charge of theft. Paul states that Carole and Terry had made up the claim of theft in order to claim insurance. John states that it was Paul who took the bag. Gemma's defence is that she herself was not a party to the theft, that her coming over to talk to Carole was genuine and not a ploy to distract Carole.

Carole, a student, is reluctant to testify at the trial since has a plagiarism finding against her for a piece of coursework. Terry has been summonsed as a prosecution witness and is worried that his conviction for assault would be referred to in court. Paul has a conviction for theft of a mobile phone taken from a hotel where his defence was that the owner of the phone had fabricated the claim. John had made a posting on Facebook showing a video of him singing a folk-song with the title 'Anarchy is good. Property should be taken from the rich.' Gemma has no previous convictions and intends to claim at the trial that she is a volunteer with a local charity.

Advise both defence and prosecution on the admissibility of character evidence based on the above scenario.

Answer guidance

The question involves the admissibility of both good and bad character evidence and both defendant and non-defendant witnesses. It therefore requires that the structure is carefully planned and the relevant sections of the Criminal Justice Act. Note s 101(1) (b), s101(1) (d) and s101(1)(g). Relevant cases include *R v Renda* [2006] 1WLR 2948 and *R v Hansen* [2005] 1WLR 3169. In relation to an attack on a co-defendant see s101(1)(e) in such a situation the judge has no discretion on admissibility. The You- Tube video is arguably admissible as showing 'reprehensible behaviour' since it appears to give approval to theft, see *R v Bucknor* [2010] EWCA Crim 1152. The question arises whether it is an implied assertion and therefore not hearsay, see *R v Twist* [2011] 2 Cr App R 17. On admissibility of good character, see *R v Redgrave* [1981] 74 Cr App R 10 and following *R v Aziz* [1996] AC 41 the judge should give a good character direction although this will impact badly on co-defendants. For non-defendant witnesses the court has to give leave for their bad character to be admitted so cite s100 CJA. Note that the test for relevance is higher than for defendants, namely 'substantive probative value'.

Question Two

'The law of evidence classically divides material into that which is admissible by virtue of its relevance to some issue in the case, and that admissible because of its relevance to the credibility of some witness or statement.' (P. Mirfield 'Character, Credibility and Truthfulness' (2008) 124 *LQR* 1.

Discuss this statement in the light of the application of the Criminal Justice Act 2003 to character evidence.

Answer guidance

It is appropriate to refer in the introduction to the criticisms of the pre-existing law on character under Criminal Evidence Act 1898. Some academics were doubtful whether jurors were able to appreciate the distinction between credibility and propensity especially since non-dishonesty offences could be evidence of lack of credibility. The varying approaches under the CJA 2003 to address the weakness of the earlier law should be outlined in the following areas: i) the CJA refers to 'propensity to be untruthful' and takes a restrictive view of the concept of credibility under s101(1)(d) as shown in *R v Hanson* [2005] EWCA Crim 824 and *R v Campbell* [2007] EWCA Crim 1472; ii) however under s101(1)(g), in order to be evidence of lack of credibility, there does not have to be a propensity for untruthfulness see *R v Highton* [2005] EWCA 1985; iii) similarly under s101(1)(e), a section which does refer to propensity for untruthfulness, non-dishonesty offences may be referred to when one defendant attacks another, see *R v Rosato* [2008] EWCA Crim 1243. Refer also to the question whether character evidence admitted under one 'gateway' may also have evidential worth under another, *R v Highton*. Thus there are a number of different approaches under the statute to the question of evidential worth and arguably the distinction between relevance to credibility and relevance to issue is still difficult to maintain.