



UNIFORM EVIDENCE LAW GUIDEBOOK

JOHN ANDERSON AND ANTHONY HOPKINS

CHAPTER 10: DISPOSITION EVIDENCE I: CREDIBILITY AND CHARACTER

ADVICE FOR STUDENTS – TRIAL OF JAMES SWIFTY

Witness: Johnny Parkbench

- Read the instructions in the text at the end of Chapter Ten carefully. You must keep the facts in issue squarely in your mind. At this stage, for the purpose of the criminal trial thread scenario, you are expected to be able to understand and apply the following sections of the Evidence Act: 28, 37, **43**, 55, 56, **59, 60, 101A, 102, 103, 108**, 137, 141, 142, 189 & **192**.
- You have been asked to make submissions in relation to specific sections and specific cases. Whilst other sections and cases will undoubtedly be important, you must ensure that you are on top of focus legislative provisions and cases. This means you must be ready for basic questions such as:
 - What were the facts in that case? What were the facts in *issue*?
 - Why was it the subject of appeal?
 - How did the relevant section(s) come into play?
 - What part of the relevant section(s) came into play?
 - How were the sections construed?
 - What considerations or factual circumstances were taken into account by the judge or judges?
- Once you have understood the relevant legislative provisions and focus cases, you should analyse the witness statement of Johnny Parkbench. You should repeatedly ask yourself questions about the relevance of the evidence, how it supports or undermines your case, and whether its

probative value is outweighed by its prejudicial effect? In addition, you must now closely consider the material going to Parkbench's credit on Page 229 and consider whether it can be adduced, and if so, how? You must prepare arguments to support your contentions about admissibility.

- You will not have long to make submissions so get right to the point. This exercise is likely to involve repeated short arguments rather than lengthy submissions.

- **Specific Questions** that may be asked by judges in this exercise include?
 - Why do you object to this question put in cross-examination?
 - Does this evidence go to credibility alone? Is it admissible for some other purpose? Is it caught by the definition in s 101A?
 - How could the evidence have a 'substantial affect on the assessment of the witness's credibility'?
 - In what circumstances can past convictions meet this test? What about prior inconsistent statements?
 - Is defence counsel claiming a fabrication or invention? If so, at what point in time is it claimed that the fabrication or invention took place?
 - Is there a prior consistent statement? How, if at all, does this statement rebut the suggestion of fabrication or recent invention if such a suggestion is being made? On what basis is it said to be admissible?

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