



UNIFORM EVIDENCE LAW GUIDEBOOK

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CHAPTER 11: DISPOSITION EVIDENCE II: TENDENCY AND COINCIDENCE

ADVICE FOR STUDENTS – TRIAL OF JAMES SWIFTY

Witness: Jill Ted

- Read the instructions in the text at the end of Chapter Eleven 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, 94, 95, **97, 98**, 99, 100, **101**, 137, 141, 142, 189.
- **You should assume that notice requirements have been complied with.**
- 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 Jill Ted. 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 not consider the admissibility of the evidence of the past robbery as tendency and/or coincidence evidence.

- You will not have long to make submissions so get right to the point.

- **Specific Questions** that may be asked by judges in this exercise include?
 - How is the evidence relevant to the facts in issue in the trial?
 - Is admission sought on the basis of tendency **and/or** coincidence reasoning? What is the difference?
 - Does the evidence have 'significant probative value'?
 - Are considerations of 'similarity', or 'striking similarity' relevant?
 - What other considerations are relevant here?
 - What was the test for admissibility at common law?
 - What is the test for admissibility under s 101 EA?
 - What is the 'prejudicial effect' of the evidence?
 - What is the 'probative value'?
 - Does the court have to take into account other evidence in the trial?
 - How stringent is the test under s 101 EA?
 - Is this a case in which the no rational explanation test should be applied?

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