**CHAPTER 19**

1.  The prosecution would seek admission of Aaron’s previous conviction under s. 103(1)(a) CJA 2003. It is relevant to an important matter in issue in that it is deemed to establish a propensity to deal in drugs. It makes Aaron’s defence less credible in the circumstances. The defence should oppose its admission. The defence could argue that one previous conviction does not amount to a propensity and that the circumstances surrounding the earlier offence do not indicate a propensity to supply on a commercial basis and that it would therefore be unfair to admit the evidence. The scenario is in fact taken from the case of R v Atkinson [2006] EWCA Crim 1424 in which the Court of Appeal concluded the evidence ought not to have been admitted as it did not disclose a propensity on A’s part.

2(a)  The prosecution could argue that Brian’s previous conviction for unlawful sexual intercourse is an offence in the same category (see Secretary of State’s Order in relation to child sex offences) and that it shows a predisposition on Brian’s part towards a sexual interest in young girls giving him a motive for the commission of this offence. The conviction is relatively recent.

Would the defence advocate apply to have the earlier conviction deemed inadmissible? The defence advocate ought to. In what sense does Brian’s earlier conviction show a predisposition on his part towards rape? Rape implies the use of force. It is not suggested that Brian is predisposed towards the use of violence. It is not suggested that he used violence in relation to his earlier offence. Having been charged and convicted of unlawful sexual intercourse, the sexual acts would have taken place with his victim’s consent. Arguably the conditions of s. 101(1)(d) CJA 2003 are not met, and even if they are, the defence would strongly argue that the probative value of such a previous conviction in this context would be outweighed by its prejudicial effect (s. 101(3) CJA 2003). It would be pertinent to ask how old Brian was when he committed the offence of unlawful sexual intercourse. If he was a young man, the point made by the prosecution that it shows he has a sexual interest in young girls is not entirely accurate.

The criteria for admission under s. 101(1)(d) CJA 2003 is whether the evidence is relevant to an important matter in issue. The matter in issue is whether Brian’s victim consented. The question the advocate should require the court to ask itself is: Does the earlier previous conviction make it more likely that Brian is guilty of the current charge? The answer the defence advocate will be seeking in this instance is—no.

2(b)  The prosecution would strongly argue that it should be. It is an offence of the same description and it arguably shows a predisposition on Brian’s part to the use of sexual violence against females. It is relevant to a crucial fact in issue, namely whether the victim did consent. Equally, the prosecution could argue that Brian’s previous conviction shows a propensity to be untruthful as his defence was disbelieved on an earlier occasion.

In this instance, the defence would have to stress the prejudicial effect such knowledge would have on the jury. The circumstances of each rape would need to be very carefully examined and an important consideration would be the strength of the prosecution’s case without the evidence of bad character (applying Hanson).

3.  An accused person cannot be forced to give evidence in support of his defence. If he chooses not to give evidence without good cause, an adverse inference can be drawn against him under s. 35 CJPOA 1994. Given the nature of Tina’s defence, there is an argument for suggesting that Barry needs to give evidence in order to advance his account. Barry stands to have his previous convictions exposed under s. 101(1)(e) as defined by s. 104 CJA 2003, irrespective of whether he chooses to give evidence or not. Tina’s advocate would argue that Barry’s previous convictions have substantial probative value in relation to an important matter in issue, namely who inflicted the injury to the child and who is more likely to be telling the truth. Given the inevitable prejudice to Barry, the trial judge would have to be satisfied that his previous convictions do have substantial probative value in the context of the case. It would be entirely up to the jury what inference they choose to draw from the knowledge of Barry’s previous convictions if they are admitted.

4. Based on *Hunter* [2015], Danielle falls into the ‘absolute good character’ category and is entitled to a good character direction in accordance with the decision in R v Vye. It is relevant to the likelihood of her having committed the offence and, if she gives evidence on oath, it is also relevant to her credibility as a witness. The evidential effect of good character would have to be made clear to the jury in the judge’s direction.

**R v LENNY WISE**

You will recall that Lenny Wise faces an allegation of burglary, which he denies. His defence is mistaken identity. Lenny has several previous convictions for burglary and theft-related offences. Under s. 101(1)(d) CJA 2003 the prosecution could argue that Lenny’s previous convictions show a propensity on his part to commit offences of a dishonest nature and a propensity to be untruthful. They place Lenny in a class of people more likely to have been in Mrs Kennedy’s back garden at the relevant time than the average member of the public. Lenny’s propensity gives context to his defence.

The defence would need to argue that propensity evidence is simply not relevant to the facts in issue in this case, namely whether the evidence of identification is correct. Even if they assume some relevance, their admission would have such an adverse effect on the fairness of the proceedings (s. 101(3) CJA 2003) that they should be excluded. The defence will want to place reliance on Hanson. The defence will need to examine the circumstances of Lenny’s earlier offences and whether he pleaded guilty or was found guilty having given evidence at trial. A relevant consideration would be the strength of the prosecution’s case. Hanson stipulates that bad character evidence should not be admitted tobolster a weak prosecution case. The question of admissibility would be determined at the pre-trial hearing. Lenny’s case illustrates the potential danger of the new law. If Lenny’s previous convictions are admitted, his chances of being convicted are greatly increased.