

Memorandum 63-42

Subject: Study No. 34(L) - Uniform Rules of Evidence (Article VI.
Extrinsic Policies Affecting Admissibility)

URE Article VI --Rules 41-45--deals with extrinsic policies affecting admissibility. Each of the rules in this Article is set out in the attached exhibit (yellow pages).

Professor Chadbourn's study of this Article is divided into five parts, each of which you will receive with this memorandum. Page references mentioned herein refer to the applicable portions of the study.

RULES 41 AND 44

Rule 41 deals with the admissibility of evidence for the purpose of testing the validity of verdicts and indictments. This rule is closely connected with Rule 44, which deals with the admissibility of jurors' testimony. Note that Rule 41 deals with the purpose for which evidence may be admitted, while Rule 44 deals with a particular type of evidence that may be admitted for such purpose.

Rule 41

This rule excludes evidence "to show the effect of any statement, conduct, event or condition upon the mind of a juror" as influencing a juror to assent to or dissent from a verdict or indictment or in any way concerning the mental processes by which the verdict or indictment was determined. The rule does not, however, exclude evidence regarding the existence of such statement, conduct, condition or event.

Should this dual nature of the rule be made clear? This could be accomplished by adding a second sentence to the rule to read as follows:

"This rule shall not be construed to exclude evidence otherwise admissible of the existence of such statement, conduct, event or condition." Professor Chadbourn suggests (see Study, page 6) the addition of this clarifying language.

So far as verdicts are concerned, this rule states the present California law. There appears to be no California case specifically in point regarding a similar treatment of indictments. The identical treatment of verdicts and indictments in Rule 41 stems from the single policy that it seems "unwise to explore jurors' minds except as revealed by the verdict [or indictment]." Logically, therefore, the treatment should be the same.

Rule 44

Subdivision (a). Under Rule 44(a), "except as expressly limited by Rule 41" (i.e., except as to evidence regarding the effect of a particular occurrence), a juror may testify as a witness regarding "occurrences either within or outside of the jury room having a material bearing on the validity of the verdict or the indictment," "if the law of the state permits." By inclusion of the language, "if the law of the state permits," it appears to be the view of the Uniform Commissioners to continue in effect the present law in each particular jurisdiction that considers the Uniform Rules.

The majority rule, followed in California, is that testimony of the jurors themselves is to be excluded, even when such evidence would not be excluded under Rule 41 (i.e., even as to the existence of an occurrence that may affect a verdict or an indictment).

California recognizes at least two exceptions to this general rule of disqualification. The Legislature has provided that a jury's "resort to the determination of chance" "may be proved by the affidavit of any one of the jurors." Cal. Code Civ. Proc. § 657(2). The courts have developed another

exception where a juror has misrepresented bias or knowledge on voir dire. Williams v. Bridges, 140 Cal. App. 537, 35 P.2d 407 (1934) (juror wrongfully withheld on voir dire information regarding personal knowledge of the case).

Approval of Rule 44(a) would result in retaining the present general rule of disqualification of jurors. The policy question presented is: Should jurors be permitted to testify concerning the existence of a statement, conduct, condition or event? (Note that Rule 41 would make inadmissible testimony as to the effect such statement, conduct, condition or event had on the jury.)

Wigmore has severely criticized the majority rule, and New Jersey has repudiated it by judicial decision. The New Jersey Court Committee recommends the deletion of Rule 44, thus continuing the present New Jersey law permitting jurors to testify. "The reason originally given for this artificial rule was that jurors should not be allowed to expose themselves to criminal prosecution for what would, in most cases, be a criminal offense. Later American cases have been based on a policy to discourage tampering with or harrassing jurors and other undesirable practices." (N.J. Rule 41 Comment.) Since jurors are themselves the most competent persons to give testimony in regard to the existence of an occurrence or an event that may have influenced them in arriving at their verdict or indictment, there is considerable merit to the New Jersey approach--contrary to the present California law.

Subdivision (b). In principle, Rule 44(b) appears to be declarative of present California law. Thus, a grand juror may disclose matters heard before the grand jury "when required in the due course of judicial proceedings." Cal. Penal Code § 911. There is, however, an implied time sequence in the

present law not contained in the Uniform Rule. Thus, a grand juror who "wilfully discloses the fact of an information or indictment" for a felony "until the defendant has been arrested" is guilty of a misdemeanor. Cal. Penal Code § 924. Being subject to a possible violation of a criminal statute, however, does not deter from the merit of affirmatively removing any disqualification from competence to testify. Hence, the general statement in Rule 44 (b) is consistent with the present law in regard to the competence of grand jurors as witnesses. Cal. Code Civ. Proc. § 1879.

RULES 42 AND 43

These rules prohibit testimony by the presiding judge upon the objection of any party (Rule 42) and testimony by a trial juror (Rule 43). They are considered together because of the similarity of subject matter.

Rule 42

This rule prohibits testimony by the presiding judge only upon the objection of a party. Failure of a party to object presumably waives the judge's disqualification.

Should Rule 42 be approved? The rule is predicated upon the belief that it is "bad policy" for the presiding judge to testify as a witness, even as to formal matters. (See Study, pages 1-2.) Wigmore and Professor Chadbourn reject as being unreal the reasons given for the so-called "bad policy" involved in permitting a presiding judge to testify and suggest that it properly may be left to the judge's discretion to avoid them when the danger arises by securing another judge. (See Study, page 2.) Wigmore's view is in accord with the present California law, which gives

the judge discretion as to whether to testify during a trial. Cal. Code Civ. Proc. § 1883. Professor Chadbourn recommends the continuance of the present California law and, therefore, recommends against adoption of Rule 42.
Rule 43

Rule 43, similar to Rule 42, prohibits the testimony of a trial juror. Unlike Rule 42, however, the exclusion is absolute in that a juror may not testify whether or not a party has objected. If this rule were to be adopted, consideration might be given to making the disqualification dependent upon affirmative objection by a party.

Should Rule 43 be approved? The policy enunciated in this rule is contrary to the present California law. Code of Civil Procedure Section 1883 provides that a juror may be called as a witness by either party (but, as in the case of a judge-witness, the court has discretion to order the trial postponed or suspended and to take place before another judge (in the case of a judge-witness) or another jury (in the case of a juror-witness)). Similarly, Penal Code Section 1120 provides that if a juror has any personal knowledge respecting a fact in controversy, he must declare the same in open court during the trial. If such fact comes to light after retirement of the jury, the jury must return to the court and disclose such matters to the court. "In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties." Cal. Penal Code § 1120.

As in the case of testimony by the presiding judge, Professor Chadbourn commends the Wigmore-California approach and, thus, recommends against adoption of Rule 43.

RULE 45

Rule 45 deals with the discretionary power of a judge to exclude certain admissible evidence upon the conditions named in the rule, namely, that admission of the evidence would (a) "necessitate undue consumption of time," or (b) "create a substantial danger of undue prejudice" or "of confusing the issues" or "of misleading the jury," or (c) "unfairly and harmfully surprise a party who has not had reasonable opportunity to anticipate that such evidence would be offered."

Generally speaking, as Professor Chadbourn has noted, Rule 45 merely states more explicitly the substance of what probably is present California law. The rule, however, would improve the form of the substance of California law by making explicit that which is now implicit in the present law. Thus, Code of Civil Procedure Section 2044 permits the court to stop the production of further evidence upon a particular point "when the evidence upon it is already so full as to preclude reasonable doubt." This language appears to erect a somewhat more stringent standard than Rule 45's "necessitate undue consumption of time." However, both are intended to exclude cumulative evidence. Code of Civil Procedure Section 1868 permits the court to exclude collateral evidence. This statement appears to be more inclusive than "confusing the issues" or "misleading the jury," in the precise language of Rule 45. The effect, however, appears to be the same. Under the present law also, a judge has discretion to exclude evidence having an unduly prejudicial effect.

Should the policy of Rule 45 be approved? It should be noted that there are sharp differences of opinion regarding Rule 45. On the one hand, it is thought that the rule permits a trial judge too wide a discretion to exclude relevant evidence solely upon his finding that it would be collateral, remote,

cumulative, and the like. On the other hand, proponents of the rule call this "a rule of necessity" in that it merely sanctions the sort of thing which the trial judge does everyday in actual practice.

If the policy of Rule 45 is approved, does the rule provide adequate standards for excluding evidence? As Professor Chadbourn notes, the differences of opinion on Rule 45 probably stem from the confusion as to the exact meaning of the language used in Rule 45. Briefly stated, that meaning most fairly appears to be similar to present California practice. It is for this reason that Professor Chadbourn recommends adoption of Rule 45.

RULES 46, 47, 48, 49, 50 AND 55

For purposes of discussion, these rules are treated together because they form a unified scheme for the treatment of evidence relating to "character" (Rules 46-48 and 55) and "habit" (Rules 49 and 50). Note, however, that these rules are not concerned with character evidence for purposes of impeachment. This subject is covered in the article on witnesses. (See Article IV, Rules 20-22.)

At the outset, it is appropriate to distinguish the terms "character," "reputation," and "habit" or "custom" as they are used in the Uniform Rules. "Character" refers to actual disposition. "Reputation" refers only to a form of evidence as to what such actual disposition is. "Habit" or "custom" means the regular response to a repeated specific situation.

Rule 46

This rule deals with the permissible methods of proving character when such character is itself an ultimate issue. The rule permits proof of character by

evidence in the form of (1) opinion, (2) reputation, and (3) specific conduct. While the present California law is not entirely clear with respect to the permissible use of these types of proof of character, each has been used on occasion. The normal means of proving character is by evidence of reputation, though there appears to be some doubt as to the availability of reputation evidence when character itself is in issue. (See Study, page 7 at notecall 22.) Although specific acts traditionally have been held inadmissible to prove character generally, such evidence is admissible where character is itself in issue. The courts almost invariably exclude opinion evidence as proof of character when character is not the ultimate fact in issue, but there is some authority for the admission of opinions where character is itself in issue. (See Study, page 7 at notecall 20.) This rule, then, seems to be generally in accord with the present California law and is recommended by the consultant for adoption.

Rule 47

Unlike Rule 46, which is concerned solely with character as an ultimate issue in the case, this rule is concerned with character to prove conduct. In other words, this rule concerns character evidence as a basis for an inference by the trier of fact either (a) that a person engaged in conduct consistent with the character shown, or (b) that a person did not engage in conduct inconsistent with the character shown. Subject to Rule 48 (making character evidence regarding care or skill inadmissible for purpose of showing conduct on a specified occasion), the methods of proving character to prove conduct are the same as in Rule 46, subject to an exception which excludes evidence of specific conduct (other than conviction for a crime that tends to prove the trait to be bad). These permissible methods of proof create several differences in substance

between Rule 47 and the present California law. These differences may be illustrated by briefly noting the types of situations in which the problem arises, i.e., whether in a civil or criminal case and, if in a criminal case, whether offered by the defendant or by the prosecution (in chief or in rebuttal).

(1) Criminal Cases--Character of Defendant.

Under present California law, as under Rule 47, the prosecution may not offer evidence of the defendant's character in its case in chief. Under present law, as under Rule 47, the defendant may offer evidence of his character, with the additional assurance under Rule 47 (b)(i) that the court has no discretion to exclude such evidence under its general discretionary powers granted by Rule 45. Under present law, as under Rule 47, the prosecution may offer evidence in rebuttal as to defendant's character, i.e., only after defendant has introduced evidence of his character. Thus, so far as the defendant's character is concerned, Rule 47 is in accord with present California law with respect to the order of proof of character.

With regard to the methods of such proof, however, the rules are somewhat divergent. Both rules permit proof of character to prove conduct by evidence of reputation. However, under present California law, a defendant ordinarily may not present testimony in the form of opinion as to his character. (But cf. People v. Jones, 42 Cal.2d 19, 266 P.2d 38 (1954)(expert opinion by a psychiatrist on results of a "truth serum" test of an alleged sexual psychopath held admissible)). Rule 47 would make such opinion evidence admissible. Similarly, under present California law, the prosecution in rebuttal cannot offer opinion evidence as to defendant's character. Rule 47 would change this by making such opinion evidence admissible. Specific instances of conduct are

inadmissible under Rule 47, except that the prosecution in rebuttal can offer evidence showing defendant's conviction of a crime indicative of specific bad character, i.e., to show a bad character trait for the purpose of proving specific bad conduct involving the same character trait. Whether this would change existing California law is uncertain. It has been held that where the defendant has placed his character in issue, the prosecution in rebuttal may prove specific conduct constituting a crime. People v. Hughes, 123 Cal. App.2d 767, 769 (1954) [Not clear from opinion that defendant convicted of prior assault].

(2) Criminal Cases--Character of Another.

When the character of another is in issue as tending to prove the conduct of such person, both the present law and Rule 47 permit evidence to be introduced in appropriate cases. The differences here also relate to the methods of proving such character. Under present law, for example, specific acts may be admitted in some cases (e.g., rape, prior unchastity of prosecutrix may be shown as tending to prove consent) but not in others (e.g., homicide, prior violent acts of victim toward others inadmissible to show he was the aggressor). (See Study, pages 11-12.) Rule 47(a) excludes specific acts to show the character of another generally, but admits "evidence of conviction of a crime which tends to prove the trait to be bad."

(3) Civil Cases.

Under present California law, evidence of good character to show conduct is inadmissible in civil cases; generally, such evidence is admissible only where character itself is in issue. Code Civ. Proc. § 2053. There is some authority for the proposition that evidence of bad character is admissible in a civil case to show conduct. Valencia v. Milliken, 31 Cal.App. 533 (1916)

(evidence of want of chastity on part of rape victim held admissible on question of consent; error in not permitting evidence to be used for such purpose held nonprejudicial because defense was alibi, not consent); DeMartini v. Anderson, 127 Cal. 33 (1899) (character of inmates of a house admitted to show house was used as a house of ill-fame).

Rule 47 would permit character evidence to be introduced to prove conduct in all civil cases. It would permit character to be shown by reputation, opinion and convictions of crimes (to show bad character only) involving the trait of character involved.

(4) Summary of Rule 47--Policy Questions.

The basic provisions of Rule 47 are listed below. Should they be approved?

(a) Opinion evidence is admissible in criminal cases. (As indicated above, the extent of the change in present law is not clear since there is some authority for admission of such evidence, at least on behalf of a defendant.)

(b) Conviction of a crime tending to show a particular bad character trait as proof of conduct is admissible in all cases, but the prosecution in a criminal case may introduce such evidence only in rebuttal where defendant has put his character in issue. (As indicated above, this is declarative of the general existing law in criminal cases.)

(c) Specific instances of conduct (except conviction of a crime as in (b) above) are inadmissible. (As indicated above, this quite possibly makes inadmissible some evidence that is now admissible.)

(d) Character evidence to prove conduct is admissible in all civil cases. (As indicated above, this would change the present law in regard to evidence of good character; it may reflect existing law so far as bad character is concerned.)

Rule 48

Rule 48 makes evidence of character with respect to care or skill inadmissible to show the quality of specific conduct. This is generally in accord with present California law, with the possible exception in current law that such evidence is admissible in the absence of eyewitness testimony. (See Study, pages 26-27.) Rule 48 would change the present law in regard to this exception. Should the exclusionary effect of Rule 48 be subject to an eyewitness limitation?

Rule 55

This rule makes evidence that a person committed a crime or a civil wrong on a specified occasion inadmissible when offered to prove that he committed another crime or civil wrong on another occasion, except as such evidence is admissible under Rule 47. The rule makes it clear that such evidence is admissible, however, when relevant to prove some other material fact in issue, i.e., whenever it is not being offered as the basis for an inference that a person committed a specified crime or civil wrong on a certain occasion.

Should Rule 55 be approved? As noted in the Study (see pages 34-35), the first part of Rule 55 merely reaffirms the rule stated in Rule 47. The second part of Rule 55 is to the effect that, though such evidence is inadmissible for the purpose stated in Rule 47, it nevertheless is admissible when relevant to some other purpose. The latter part of Rule 55, therefore, is merely repetitious of that part of Rule 7 providing that all relevant evidence is admissible.

Although Rule 55 is not strictly necessary, it appears to be desirable from the standpoint of emphasis and clarity. It emphasizes, for example, that portion of Rule 47 which precludes the prosecution from attacking the character of the defendant as part of its case in chief. On the other hand, it makes clear

that nothing in the rule is intended to abrogate the presently prevailing doctrine pertaining to the admissibility of evidence of other crimes. Being a rule of precaution, Rule 55 seems to merit inclusion as a safeguard against any misunderstanding as to what the other rules actually provide.

Rule 49

Generally speaking, "custom" has acquired a somewhat different meaning than "habit" in that "custom" usually is used to refer to business activities while "habit" relates to purely personal matters. Rule 49 embraces both "habit" and "custom" and makes evidence of either as related to behavior on a specified occasion admissible as tending to prove conformity with the habit or custom.

With respect to habit, early California cases were in accord with the principle of Rule 49. Later cases, however, evolved the principle that such evidence is admissible only in the absence of eyewitnesses. Adoption of Rule 49 would abrogate the eyewitness rule, returning California to the earlier and (according to Professor Chadbourn) sounder decisions on this subject. Should habit evidence be subject to an eyewitness limitation?

With respect to "custom" as tending to prove behavior on a specified occasion, the California law is in accord with the principle declared in Rule 49. Hence, adoption of Rule 49 would make no change in the present law.

Rule 50

Rule 50 deals with the permissible means of proving "habit" or "custom" when either is admissible as provided in Rule 49. Rule 50 makes opinion evidence admissible to prove habit or custom and, in addition, makes evidence of specific instances of behavior admissible where there are a sufficient number of such

instances to warrant a finding of such habit or custom. The present California law appears to be in accord with Rule 50 so that adoption of this rule would make no change in present law.

Corroboration under Rules 49 and 50

Unlike California, the present New Jersey law apparently requires corroboration of evidence relating to habit or custom. Therefore, to preclude a judicial interpretation of the URE rule as requiring corroboration, the New Jersey revision of Rule 49 provides for the admission of evidence relating to habit or custom "whether corroborated or not." In other respects, the New Jersey version of this rule seems simpler and is commended to your attention.

It reads:

Evidence of habit or custom whether corroborated or not is admissible to prove conduct on a specified occasion in conformity with the habit or custom.

RULE 51

This rule makes evidence regarding subsequent remedial conduct inadmissible for the purpose of proving culpable conduct in connection with the event. This rule is in accord with the present California law and the majority of states.

RULES 52 AND 53

These rules deal with offers of compromise or settlement, Rule 52 being concerned with excluding such evidence to prove culpability and Rule 53 being concerned with excluding evidence of acceptance to prove the invalidity of a claim. In a sense, these rules complement each other in that each deals with the converse of the situation covered by the other.

Rule 52

This rule generally is in accord with the present California law. Broadly speaking, so far as excluding an offer of compromise for the purpose of proving culpability, Rule 52 states the identical policy declared in Code of Civil Procedure Section 2078, i.e., "an offer of compromise is not an admission that any thing is due." The present law, however, does not contain the specifics mentioned in Rule 52, nor does it in terms exclude evidence (offered for the purpose of proving culpability) that a person acted from humanitarian motives. With but a single possible exception (see Study, pages 8-9), however, the results reached in the California cases are in accord with this rule.

Professor Chadbourn notes a possible difference in result where an offer of compromise is admitted without objection. Under present law, a party probably cannot argue that liability is admitted merely because the evidence is in the case. This result follows from the language of Section 2078 declaring that "an offer of compromise is not an admission" He suggests a different result under Rule 52 since there is then in the case an item of relevant evidence with probative value.

Rule 53

This rule makes evidence of acceptance or overtures of acceptance inadmissible to prove the invalidity of a claim. It deals with the converse of the situation covered by Rule 52.

The present California statute dealing with compromises (Code Civ. Proc. § 2078, supra) does not expressly cover this matter, since it is concerned only with negotiations being used against an alleged wrongdoer. However, the identical policy declared in Rule 53 is presently covered by judicial decisions

which protect claimants from adverse use of their compromise attempts. (See Study, footnote 20 on page 3 (footnotes).) Hence, adoption of Rule 53 would not change the present California law.

RULE 54

This rule is declarative of the well-settled law in California that evidence regarding an alleged wrongdoer's being insured is inadmissible as tending to prove negligence or other wrongdoing.

Respectfully submitted,

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EXHIBIT I

Article VI. Extrinsic Policies Affecting
Admissibility

RULE 41. Evidence to Test a Verdict or Indictment. Upon an inquiry as to the validity of a verdict or an indictment no evidence shall be received to show the effect of any statement, conduct, event or condition upon the mind of a juror as influencing him to assent to or dissent from the verdict or indictment or concerning the mental processes by which it was determined.

RULE 42. Testimony by the Judge. Against the objection of a party, the judge presiding at the trial may not testify in that trial as a witness.

RULE 43. Testimony by a Juror. A member of a jury sworn and empanelled in the trial of an action, may not testify in that trial as a witness.

RULE 44. Testimony of Jurors Not Limited Except by these Rules.

These rules shall not be construed to (a) exempt a juror from testifying as a witness, if the law of the state permits, to conditions or occurrences either within or outside of the jury room having a material bearing on the validity of the verdict or the indictment, except as expressly limited by Rule 41; (b) exempt a grand juror from testifying to testimony or statements of a person appearing before the grand jury, where such testimony or statements are the subject of lawful inquiry in the action in which the juror is called to testify.

RULE 45. Discretion of Judge to Exclude Admissible Evidence.

Except as in these rules otherwise provided, the judge may in his discretion exclude evidence if he finds that its probative value is substantially outweighed by the risk that its admission will (a) necessitate undue consumption of time, or (b) create substantial danger of undue prejudice or of confusing the issues or of misleading the jury, or (c) unfairly and harmfully surprise a party who has not had reasonable opportunity to anticipate that such evidence would be offered.

C

RULE 46. Character--Manner of Proof. When a person's character or a trait of his character is in issue, it may be proved by testimony in the form of opinion, evidence of reputation, or evidence of specific instances of the person's conduct, subject, however, to the limitations of Rules 47 and 48.

RULE 47. Character Trait as Proof of Conduct. Subject to Rule 48, when a trait of a person's character is relevant as tending to prove his conduct on a specified occasion, such trait may be proved in the same manner as provided by Rule 46, except that (a) evidence of specific instances of conduct other than evidence of conviction of a crime which tends to prove the trait to be bad shall be inadmissible, and (b) in a criminal action evidence of a trait of an accused's character as tending to prove his guilt or innocence of the offense charged, (i) may not be excluded by the judge under Rule 45 if offered by the accused to prove his innocence, and (ii) if offered by the prosecution to prove his guilt, may be admitted only after the accused has introduced evidence of his good character.

RULE 48. Character Trait for Care or Skill--Inadmissible to Prove Quality of Conduct. Evidence of a trait of a person's character with respect to care or skill is inadmissible as tending to prove the quality of his conduct on a specified occasion.

RULE 49. Habit or Custom to Prove Specific Behavior. Evidence of habit or custom is relevant to an issue of behavior on a specified occasion, but is admissible on that issue only as tending to prove that the behavior on such occasion conformed to the habit or custom.

C

RULE 50. Opinion and Specific Instances of Behavior to Prove Habit or Custom. Testimony in the form of opinion is admissible on the issue of habit or custom. Evidence of specific instances of behavior is admissible to prove habit or custom if the evidence is of a sufficient number of such instances to warrant a finding of such habit or custom.

C

RULE 51. Subsequent Remedial Conduct. When after the occurrence of an event remedial or precautionary measures are taken, which, if taken previously would have tended to make the event less likely to occur, evidence of such subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event.

C

RULE 52. Offer to Compromise and the Like, Not Evidence of Liability. Evidence that a person has, in compromise or from humanitarian motives furnished or offered or promised to furnish money, or any other thing, act or service to another who has sustained or claims to have sustained loss or damage, is inadmissible to prove his liability for the loss or damage or any part of it. This rule shall not affect the admissibility of evidence (a) of partial satisfaction of an asserted claim on demand without questioning its validity, as tending to prove the validity of the claim, or (b) of a debtor's payment or promise to pay all or a part of his pre-existing debt as tending to prove the creation of a new duty on his part, or a revival of his pre-existing duty.

RULE 53. Offer to Discount Claim, Not Evidence of Invalidity.

Evidence that a person has accepted or offered or promised to accept a sum of money or any other thing, act or service in satisfaction of a claim, is inadmissible to prove the invalidity of the claim or any part of it.

RULE 54. Liability Insurance. Evidence that a person was, at the time a harm was suffered by another, insured wholly or partially against loss arising from liability for that harm is inadmissible as tending to prove negligence or other wrongdoing.

RULE 55. Other Crimes or Civil Wrongs. Subject to Rule 47

evidence that a person committed a crime or civil wrong on a specified occasion, is inadmissible to prove his disposition to commit crime or civil wrong as the basis for an inference that he committed another crime or civil wrong on another specified occasion but, subject to Rules 45 and 48, such evidence is admissible when relevant to prove some other material fact including absence of mistake or accident, motive, opportunity, intent, preparation, plan, knowledge or identity.