

#34(L)

9/4/64

Memorandum 64-65

Subject: Study No. 34(L) - Uniform Rules of Evidence (Evidence Code--
Division 9--Extrinsic Policies Affecting Admissibility)

The division on extrinsic policies was revised prior to printing to reflect the several actions taken when this division was last considered by the Commission at the July meeting.

We have received no additional comments on this division and have only one question of policy to raise for Commission consideration.

Section 1100 is based on Revised Rule 46 and states that any otherwise admissible evidence (including opinion testimony, reputation evidence, and evidence of specific instances of conduct) is admissible to prove character when character "is itself an issue" in the action. Section 1100 is intended to deal with character as an ultimate issue in the action. There appears to be a possibility of confusion, however, in regard to the relationship of Section 1100 to the chapter dealing with the credibility of a witness (Chapter 6 (commencing with Section 780) of Division 6). This is partly caused by the negative implication arising from subdivision (c) of Section 1101, which states that nothing in Section 1101 affects the admissibility of evidence relating to credibility.

The staff believes this does not present a very real problem. However, to avoid the possibility of any confusion, the Commission might consider the following as a substitute for Section 1100:

1100. Except as otherwise provided by statute, any otherwise admissible evidence (including testimony in the form of an opinion, evidence of reputation, and evidence of specific instances of such person's conduct) is admissible to prove a person's character or a trait of his character.

The suggested revision would automatically cover the situation now covered by Section 1100 and would result in no ambiguity regarding its relationship to proving credibility. Section 787 specifically excludes specific instances of conduct to show credibility (i.e., character for truthfulness) and Section 1101 excludes specific instances of conduct to show character for conduct. Reputation and opinion evidence presently are admissible for both these purposes under Section 351. Hence, the suggested revision might solve a question of interpretation that could arise under the present draft of Section 1100.

Respectfully submitted,

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DIVISION 9. EVIDENCE AFFECTED OR EXCLUDED
BY EXTRINSIC POLICIES

CHAPTER 1. EVIDENCE OF CHARACTER, HABIT, OR CUSTOM

1100. Character itself in issue: Manner of proof.

1100. When a person's character or a trait of his character is itself an issue, any otherwise admissible evidence (including testimony in the form of opinion, evidence of reputation, and evidence of specific instances of such person's conduct) is admissible when offered to prove only such person's character or trait of character.

1101. Character evidence to prove conduct.

1101. (a) Except as provided in this section and in Sections 1102 and 1103, evidence of a person's character or a trait of his character (whether in the form of opinion, evidence of reputation, or evidence of specific instances of his conduct) is inadmissible when offered to prove his conduct on a specified occasion.

(b) Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident) other than his disposition to commit such acts.

(c) Nothing in this section affects the admissibility of evidence offered to support or attack the credibility of a witness.

1102. Opinion and reputation evidence of character of criminal defendant to prove conduct.

1102. In a criminal action, evidence of the defendant's character or a trait of his character in the form of opinion or evidence of his reputation is not made inadmissible by Section 1101 if such evidence is:

(a) Offered by the defendant to prove his conduct in conformity with such character or trait of character.

(b) Offered by the prosecution to rebut evidence adduced by the defendant under subdivision (a).

1103. Evidence of character of victim of crime to prove conduct.

1103. In a criminal action, evidence of the character or a trait of character (in the form of opinion, evidence of reputation, or evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is not made inadmissible by Section 1101 if such evidence is:

(a) Offered by the defendant to prove conduct of the victim in conformity with such character or trait of character.

(b) Offered by the prosecution to rebut evidence adduced by the defendant under subdivision (a).

1104. Character trait for care or skill.

1104. Except as provided in Sections 1102 and 1103, evidence of a trait of a person's character with respect to care or skill is inadmissible to prove the quality of his conduct on a specified occasion.

1105. Habit or custom to prove specific behavior.

1105. Any otherwise admissible evidence of habit or custom is admissible to prove conduct on a specified occasion in conformity with the habit or custom.

CHAPTER 2. OTHER EVIDENCE AFFECTED OR EXCLUDED BY
EXTRINSIC POLICIES

1150. Evidence to test a verdict.

1150. Upon an inquiry as to the validity of a verdict, any otherwise admissible evidence may be received as to statements made, or conduct, conditions, or events occurring, either within or without the jury room, of such a character as is likely to have influenced the verdict improperly. No evidence is admissible to show the effect of such statement, conduct, condition, or event upon a juror either in influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined.

1151. Subsequent remedial conduct.

1151. 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 inadmissible to prove negligence or culpable conduct in connection with the event.

1152. Offer to compromise and the like.

1152. (a) 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, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his liability for the loss or damage or any part of it.

(b) This section does not affect the admissibility of evidence of:

(1) Partial satisfaction of an asserted claim on demand without questioning its validity when such evidence is offered to prove the validity of the claim; or

(2) A debtor's payment or promise to pay all or a part of his pre-existing debt when such evidence is offered to prove the creation of a new duty on his part or a revival of his pre-existing duty.

1153. Offer to plead guilty or withdrawn plea by criminal defendant.

1153. Evidence of a plea of guilty, later withdrawn, or of an offer to plead guilty to the crime charged or to any other crime, made by the defendant in a criminal action is inadmissible in any action or in any proceeding of any nature, including proceedings before agencies, commissions, boards, and tribunals.

1154. Offer to discount a claim.

1154. 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, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove the invalidity of the claim or any part of it.

1155. Liability Insurance.

1155. 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 to prove negligence or other wrongdoing.

1156. Records of medical study of in-hospital staff committee.

1156. (a) In-hospital medical staff committees of a licensed hospital may engage in research and medical study for the purpose of reducing morbidity or mortality, and may make findings and recommendations relating to such purpose. The written records of interviews, reports, statements, or memoranda of such in-hospital medical staff committees relating to such medical studies are subject to Sections 2016 and 2036 of the Code of Civil Procedure (relating to discovery proceedings) but, subject to subdivisions (b) and (c), shall not be admitted as evidence in any action or before any administrative body, agency, or person.

(b) This section does not affect the admissibility in evidence of the original medical records of any patient.

(c) This section does not exclude evidence which is relevant evidence in a criminal action.