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PHIPSON
ON EVIDENCE



菲普森
论证据

(第17版)



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[英] 霍奇·M. 马利克 主编

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PUBLISHERS' NOTE

In order to keep the seventeenth edition of this work up to date and thus make it of greater value to readers, we will issue cumulative supplements as necessitated by changes and development in the law. Prices will be fixed at the time of publication.

FOREWORD

Publication of the new 17th Edition of *Phipson* is an occasion for welcome and congratulation. There are few topics in the law of so wide a reach, of such importance, and yet so demanding of illumination. *Phipson* is equal to its task. Its breadth is breathtaking. Where else can one find teaching of such quality in relation to the criminal law, the law relating to opinion evidence and to experts and the evidential role and use of statistics?

In particular, this new edition properly acknowledges the impact on the process of criminal trials of the reforms introduced by the Criminal Justice Act 2003. Perhaps Lord Walker of Gestingthorpe, in his foreword to the previous edition, was prescient in his hint that *Phipson* underestimated the impact of the changes relating to the admission of evidence of misconduct, other than evidence to do with the allegations, misleadingly described by s.98 of the 2003 Act as “bad character” evidence. Those changes are, as the authorities to which *Phipson* refers demonstrate, of far wider scope than the title to that Chapter suggests. The rules against hearsay seek to introduce a measure of good sense into the arcane and ridiculous.

No criminal practitioner can afford, now, to leave *Phipson* behind for his civil colleagues. The rules of evidence have, perhaps, always had a greater impact on the outcome of a criminal trial than those of relevance only in the civil jurisdiction; they affect liberty. *Phipson*, in its fresh references to the Human Rights Act 1998 recognises the role of evidence in the preservation of rights enshrined in the Convention.

Helpful, clear, accurate and comprehensive, what more could be demanded of a textbook? All these qualities are fulfilled by Hodge Malek Q.C. and his co-editors.

Alan Moses
Lord Justice of Appeal
November 13, 2009

PREFACE

In October 2009 came into effect the 50th set of amendments to the Civil Procedure Rules introduced in 1999. This included some amendments to the expert evidence provisions in CPR Pt 35, none of great importance, but illustrative of the fact that even 10 years on the rules continue to develop. However, it is fair to say that the Civil Procedure Rules have more or less bedded down.

The Criminal Procedure Rules introduced in 2005 have also been updated and have plenty of scope for development. They reflect that in the criminal sphere the courts are expected to exercise effective case management. This is not an easy task given the large workload criminal judges are expected to deal with. The burden on counsel has also increased as they are expected to settle notices and counter-notices as with hearsay and bad character evidence.

It is in the field of hearsay and bad character evidence that there has been the most significant developments since the 16th edition in 2005. The bad character provisions in the Criminal Justice Act 2003 have generated a plethora of case law. The Court of Appeal regularly hears appeals where bad character evidence and its treatment in the trial court is the main focus on appeal. In a jury system where a verdict is reached with no reasons given, the focus on the appeal tends to be on the admissibility of evidence and the content of the directions given to the jury by the judge in summing up. As reflected in Peter Mirfield's chapters whilst the legislative intent behind the Criminal Justice Act 2003 may have been to expand the situations in which bad character evidence may be given, the courts have shied away from permitting bad character evidence from being admitted as a matter of routine. As any experienced practitioner knows, the admission of previous convictions can have a highly prejudicial effect.

In this edition the opportunity has been taken to reduce the treatment of some subjects which only rarely come up in practice, but to expand or add those areas which are important. Courts not infrequently have to grapple with statistical evidence. It is all too easy to be blinded by figures and draw unsafe conclusions as a result as shown by the shaken syndrome cases, now regarded as miscarriages of justice. Chapter 34 contributed by Déirdre Dwyer provides a useful survey of this field (if not mine-field).

With a work so established as *Phipson* those who edit it can only be regarded as temporary custodians. Since the 16th edition some of the contributors have changed. Daniel Hochberg, who has significantly contributed to the book over many years, has stepped down, and Déirdre Dwyer and Saima Hanif have been added as contributors. Acting as a contributor can be a burdensome commitment, particularly in areas where there has been a large amount of legislative change and new case law, as with bad character and expert evidence. The treatment of Human Rights in Chapter 1 has been expanded as the impact of the Human Rights Act 1998 and the incorporation of the ECHR has at the very least added an additional element into arguments as to the admissibility of evidence. Tony Oakley has developed extensively Chapter 5 on estoppels, as has Rosemary Pattenden with her various chapters. On the other hand in some areas there has

PREFACE

been little change in recent years, such as with judicial notice. This book like the law of evidence itself, is like a tree which has branches which grow and develop as well as having those which need heavy pruning to ensure that it continues to reflect modern practice. Looking back on the last few editions it is interesting to note how much has in fact changed and in which areas.

Phipson continues to be regularly used in court as reflected in its frequent citation in judgments all over common law jurisdictions. The current work is up to date until August 2009, although a few additional cases since then have been squeezed in at the proofs stage. Supplements will be issued on an annual basis. As with the last edition, every chapter has been checked by one contributor in addition to the person allocated to that chapter. In addition I have reviewed all the chapters.

It is my pleasure to thank those at Sweet and Maxwell for their help in producing this edition in particular Kacey Mann and Greg Smith. The patience of Greg Smith who has been responsible for overseeing this edition has no doubt been tested and his efforts in enticing us all in producing the manuscript on time were ultimately successful. I am also very grateful to Ann Kavanagh and Kathy Stewart for the great amount of time spent on typing and amending the various drafts of chapters.

HODGE M. MALEK Q.C.
Gray's Inn
November 16, 2009

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