CHAPTER 6: Character and credibility

1. *What do you understand by 'credibility':*
   (a)   generally in the law of evidence?
   (b)   in the specific context of a defendant who can lay claim to a good character?

This question draws attention to the fact that 'credibility', as generally used in the Law of Evidence, refers to the likelihood of a person speaking the truth when giving evidence. When a defendant is held to be of good character (on which, see now *R v. Hunter* [2015] 1 WLR 5367), 'credibility' covers not only the likelihood of giving truthful testimony but also, in cases where an accused has made a mixed statement (see *R v. Sharp* [1988] 1 WLR 7 and *R v. Aziz* [1996] AC 41, discussed in detail at paras. 10.53-10.56) which the prosecution chooses to put in evidence (see *R v. Tine* [2006] EWCA Crim 1788), 'credibility' also encompasses the likelihood of the exculpatory portions of that statement being true (*R v. Aziz* [1996] AC 41.)

2. *Trash was tried in 2000 for robbery. During the case, it emerged that, until 1993, Trash was a university lecturer in criminal law, but was dismissed from this post for persistent absenteeism, drunkenness, and solvent abuse. Trash was once fined for assaulting a policewoman in the execution of her duty on New Year's Eve, but this conviction is now spent. In his evidence, Trash has chosen to disclose that he did once plan to rob a bank in Brazil, but that, having contracted an acute bout of malaria, he was compelled to abandon this plan. Trash has also called Drool, the Dean of his former Law Faculty, who testified that Trash basically had a reputation for being a nice chap who just had a lot of personal problems, many of which were brought on by the stress of having to lecture on a subject that he did not fully understand. Trash's counsel requested that the trial judge deliver a good character direction. Ought the judge to have done so, and if so, what exactly should she have told the jury?*

Prior to the decision of the full Court of Appeal in *R v. Hunter* [2015] 1 WLR 5367, it was conceivable that T might have been entitled to a modified *Vye*/good character direction (para 6.30.) As illustrated by the Court of Appeal's decision in *R v. Durbin* [1995] 2 Cr App R 84, in determining whether an accused should be treated as someone of good character courts might overlook his/her minor offending, spent convictions and general misconduct if deemed sufficiently remote from the offence(s) charged. *Durbin*, however, was expressly disavowed in *Hunter*, which has sought to establish a sharp dichotomy between 'defendants of absolute good character' and 'defendants of effective good character' (see esp. para 6.34). It is for the judge to determine into which, if any, category, the accused falls. This question, therefore, invites you to apply the *Hunter* template to the facts and to decide whether a *Vye* direction, tailored to the circumstances of T's case, needs to be delivered.

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3. *'Particularly when there are a number of co-accused, character represents a difficult area' (*R v. Louden-Barratnew *[2004] EWCA Crim 1753* per *Kay LJ at [7]). Why should this be so?*

This question draws attention to the fact that many rules of criminal evidence work perfectly satisfactorily when there is a single accused. However, in cases where there are multiple co-accused, if accused A is of good character and entitled to a *Vye* direction and accused B is not, the judge's delivery of a direction in favour of A and the absence of comment regarding B carries an obvious implication (see para. 6.38.)