

## CHAPTER 4 - RELEVANCY AND ITS LIMITS

### 401. DEFINITION OF "RELEVANT EVIDENCE"

#### Rule 401. DEFINITION OF "RELEVANT EVIDENCE"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

### 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE

#### Rule 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE

All relevant evidence is admissible except as otherwise provided by these Rules. Evidence which is not relevant is not admissible.

### 403. EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME

#### Rule 403. EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

### 404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

#### Rule 404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

a. Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

1. Character of accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

2. Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;
  3. Character of witness. Evidence of the character of a witness, as provided in rules 607, 608, and 609.
- b. Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

#### 405. METHODS OF PROVING CHARACTER

##### Rule 405. METHODS OF PROVING CHARACTER

- a. Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.
- b. Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

#### 406. HABIT, ROUTINE PRACTICE

##### Rule 406. HABIT; ROUTINE PRACTICE

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

#### **407. SUBSEQUENT REMEDIAL MEASURES**

##### **Rule 407. SUBSEQUENT REMEDIAL MEASURES**

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

#### **408. COMPROMISE AND OFFERS TO COMPROMISE**

##### **Rule 408. COMPROMISE AND OFFERS TO COMPROMISE**

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

#### **409. PAYMENT OF MEDICAL AND SIMILAR EXPENSES**

##### **Rule 409. PAYMENT OF MEDICAL AND SIMILAR EXPENSES**

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

#### **410. INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS**

##### **Rule 410. INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS**

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

1. a plea of guilty which was later withdrawn;
2. a plea of nolo contendere;
3. any statement made in the course of any proceedings under Rule 205(c) of the Oneida Indian Nation Rules of Criminal Procedure.
4. any statement made in the course of plea discussions with the Nation Prosecutor which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

#### 411. LIABILITY INSURANCE

##### Rule 411. LIABILITY INSURANCE

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

#### 412. SEX OFFENSE CASES; RELEVANCE OF ALLEGED VICTIM'S PAST SEXUAL BEHAVIOR A SEXUAL PREDISPOSITION

##### Rule 412. SEX OFFENSE CASES; RELEVANCE OF ALLEGED VICTIM'S PAST SEXUAL BEHAVIOR OR ALLEGED SEXUAL PREDISPOSITION

- a. Evidence generally inadmissible. The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):
  1. Evidence offered to prove that any alleged victim engaged in other sexual behavior.
  2. Evidence offered to prove any alleged victim's sexual predisposition.
- b. Exceptions:
  1. In a criminal case, the following evidence is admissible, if otherwise admissible under these rules:

- A. evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury or other physical evidence;
  - B. evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and
  - C. evidence the exclusion of which would violate the constitutional rights of the defendant under the Indian Civil Rights Act.
2. In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.
- c. Procedure to determine admissibility.
- 1. A party intending to offer evidence under subdivision (b) must
    - A. file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and
    - B. serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.
  - 2. Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

#### **413. EVIDENCE OF SIMILAR CRIMES IN SEXUAL ASSAULT CASES**

##### **Rule 413. EVIDENCE OF SIMILAR CRIMES IN SEXUAL ASSAULT CASES**

- a. In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.
- b. In a case in which the Nation intends to offer evidence under this rule, the Nation prosecutor shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.
- c. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.
- d. For purposes of this rule and Rule 415, "offense of sexual assault" means a crime under Nation law that involved:
  - 1. any conduct proscribed by the Penal Code of the Oneida Indian Nation;
  - 2. contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;
  - 3. contact, without consent, between the genitals or anus of the defendant and any part of another person's body;
  - 4. deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or
  - 5. an attempt or conspiracy to engage in conduct described in paragraphs (1)-(4).

#### **414. EVIDENCE OF SIMILAR CRIMES IN CHILD MOLESTATION CASES**

##### **Rule 414. EVIDENCE OF SIMILAR CRIMES IN CHILD MOLESTATION CASES**

- a. In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

- b. In a case in which the Nation intends to offer evidence under this rule, the Nation prosecutor shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.
- c. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.
- d. For purposes of this rule and Rule 415, "child" means a person below the age of fourteen, and "offense of child molestation" means a crime that involved:
  - 1. any conduct proscribed by the Penal Code of the Oneida Indian Nation, that was committed in relation to a child;
  - 2. contact between any part of the defendant's body or an object and the genitals or anus of a child;
  - 3. contact between the genitals or anus of the defendant and any part of the body of a child;
  - 4. deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child; or
  - 5. an attempt or conspiracy to engage in conduct described in paragraphs (1)-(4).

**415. EVIDENCE OF SIMILAR ACTS IN CIVIL CASES CONCERNING SEXUAL ASSAULT OR CHILD MOLESTATION**

**Rule 415. EVIDENCE OF SIMILAR ACTS IN CIVIL CASES CONCERNING SEXUAL ASSAULT OR CHILD MOLESTATION**

- a. In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in Rule 413 and Rule 414 of these rules.
- b. A party who intends to offer evidence under this Rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

- c. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.