

CONTENTS

<i>Table of Cases</i>	xxv
<i>Table of Legislation</i>	xxxiii
<i>List of Editors and Contributors</i>	xxxvii
<i>Editors' Curricula Vitae</i>	xli

Introduction	1
<i>The Editors</i>	
A. Setting the Scene	Int.01
B. The Objective of Witness Testimony in Sexual Cases	Int.11
C. The Role of Memory Science within Witness Testimony	Int.17
D. The Structure and Content of the Book	Int.20
E. Clarifying Terminology	Int.32
F. Controversies Not Addressed	Int.35
G. The Inter-disciplinary Nature of the Law	Int.37

PART I. EVIDENTIAL PERSPECTIVES

1. Witness Testimony: Vulnerabilities, Context, and Issues	11
<i>Pamela Radcliffe and Gisli H. Gudjonsson CBE</i>	
A. Introduction	1.01
B. Witness Testimony, Vulnerable Witnesses, and Context	1.06
C. Attrition and Conviction Rates and False Allegations	1.30
D. Conclusion	1.44
2. Prosecuting Sexual Offences in England and Wales	25
<i>Diane Birch and John Price QC</i>	
A. The Decision to Prosecute and the Merits-Based Approach	2.01
B. The Choice of Charge and the Merits-Based Approach	2.08
C. Credibility, Complainants, and the Merits-Based Approach	2.12

D. Holding Prosecutors to Account	2.22
E. Non-recent Offences and the Effect of Previous Stays	2.28
3. Disclosure Issues in the Investigation and Trial of Allegations of Sexual Assault	39
<i>Anthony Heaton-Armstrong, HHJ Seán Enright, David Wolchover, and Paul Keleher QC</i>	
A. Introduction	3.01
B. Getting the Mindset Right	3.06
C. How Problems Arise	3.09
D. Sources of Disclosable Material and their Potential Significance to the Prosecution and Defence	3.27
E. Proactive Defence Involvement in the Disclosure Process	3.49
F. The Future	3.57
G. Conclusion	3.61
4. Abuse of Process and Delayed Prosecutions	57
<i>Andrew L.-T. Choo</i>	
A. Introduction	4.01
B. Why the Abuse of Process Doctrine is the Chief Mechanism for Protecting Defendants Charged with Sexual Offences	4.02
C. The Abuse of Process Doctrine: General Principles	4.05
D. The Abuse of Process Doctrine and Delayed Prosecutions	4.08
E. Care Warnings	4.14
F. Conclusion	4.16
5. Two Aspects of the Statutory Restriction on Introducing a Complainant's Sexual History	69
<i>Nevada McEvoy-Cooke, David Wolchover, and Anthony Heaton-Armstrong</i>	
A. Introduction and Background	5.01
B. Section 41 of the Youth Justice and Criminal Evidence Act 1999	5.05
C. Understanding 'Relevance'	5.10
D. False Complaints and Bad Character	5.19
E. Conclusion	5.35

6. Bad Character Provisions and their Application to Sexual Offences	89
<i>David Ormerod QC, HHJ Martin Picton, and Andrew Roberts</i>	
A. Introduction	6.01
B. Bad Character Evidence which is Relevant to an Important Matter in Issue between Prosecution and Defence	6.15
C. Cross Admissibility	6.38
D. Co-defendant's Use of Evidence of the Defendant's Bad Character	6.52
E. Admissibility of Evidence of a Defendant's Bad Character where an Attack has been Made on the Character of Another Person	6.55
F. Bad Character Evidence as Important Explanatory Evidence	6.59
G. Conclusion	6.66
7. Expert Evidence in Trials of Sexual Offences	115
<i>Paul Roberts and Tony Ward</i>	
A. Expert Evidence and Scientific Proof of Sexual Offences	7.01
B. Admissibility and Judicial Directions	7.05
C. DNA (and Other Forensic Science) Probabilities	7.16
D. Expert Evidence of Witness Credibility	7.21
E. Conclusion	7.30
8. Defending Serious Sexual Assault: Ethical and Effective Advocacy	131
<i>Pamela Radcliffe</i>	
A. Introduction	8.01
B. Criticisms	8.05
C. Recent Reforms and New Guidance	8.11
D. Advocate Training and the Adversarial Trial	8.24
E. Paving the Way for Ethical and Effective Advocacy	8.33
F. Cross-examining the Adult Complainant	8.56
G. Cross-examining Children and Vulnerable Witnesses	8.65
H. Conclusion	8.66
9. Sexual Allegations against Medical Professionals	151
<i>Brendan Finucane QC, Fiona Horlick, and James Leonard</i>	
A. Introduction and Overview	9.01
B. Investigations	9.04

C. Working Environments	9.08
D. Records	9.09
E. Disclosure of Records	9.14
F. Experts	9.16
G. Disclosure	9.18
H. Professional Guidance	9.19
I. Case Studies Regarding GPs	9.20
J. Conclusion	9.24
10. Sexual Allegations and Evidence Gathering in the Family Court	165
<i>Alex Verdan QC, Sam King, Cleo Perry, and Rebecca Foulkes</i>	
A. Introduction	10.01
B. The Written Evidence	10.08
C. The Oral Evidence	10.22
D. Expert Evidence	10.34
E. Conclusion	10.39
11. International Case Studies	177
<i>Canada: Justice Bruce Durno and Amy J. Ohler</i>	
<i>New Zealand: Judge Gerard Winter</i>	
<i>South Australia: Robert Kane</i>	
<i>Part I: Canada</i>	11.01
A. Witness Testimony in the Multicultural and Constitutional Context	11.01
<i>Part II: New Zealand</i>	11.19
A. Introduction	11.19
B. Tom and Tama	11.21
C. Could We Do Better?	11.29
D. Reforms	11.33
E. Conclusion	11.39
<i>Part III: South Australia R v Maiolo: Collusion, Concoction and the Elephant(s) in the Room</i>	11.41
A. Introduction	11.41
B. <i>R v Maiolo</i>	11.46
C. Conclusion	11.58

12. Institutional Abuse Inquiries	193
<i>Robert R. Spano, Jon F. Sigurdsson, and Gisli H. Gudjonsson CBE</i>	
A. Introduction	12.01
B. Institutional Abuse Inquiries and Investigations	12.05
C. Breidavik	12.08
D. The Breidavik Committee	12.11
E. Conclusion	12.26

**PART II. INVESTIGATIVE AND
SCIENTIFIC PERSPECTIVES**

13. Analyzing and Improving the Testimony of Vulnerable Witnesses Interviewed under the ‘Achieving Best Evidence’ Protocol	207
<i>Graham Davies, Ray Bull, and Rebecca Milne</i>	
A. Introduction	13.01
B. The Evolution of <i>Achieving Best Evidence</i>	13.02
C. The 2007 Revision of <i>ABE</i>	13.09
D. The 2011 Revision of <i>ABE</i>	13.10
E. Impact of the Relaxation of the ‘Primary Rule’	13.11
F. Common Interviewer Failings	13.15
G. Conclusion	13.20
14. Investigative Practice	221
<i>Gavin E. Oxburgh and Ian Hynes</i>	
A. Introduction	14.01
B. The Investigative Process	14.03
C. Interviewing Strategies and the PEACE Model of Interviewing	14.08
D. Special Investigative Challenges	14.19
E. Dealing with Inconsistencies and Re-interviews of Witnesses	14.23
F. Conclusion	14.28
15. Providing for the Needs of Witnesses	235
<i>Bridget Pettitt, Lina Wallace, Amanda Naylor, and Mark Castle OBE</i>	
A. Introduction	15.01

C. Support Available for Victims and Witnesses	15.23
D. Good Practice in Supporting Witnesses	15.30
E. Barriers to Effective Support	15.41
F. Conclusion	15.44
16. Understanding What Children Say: Avoiding the Pitfalls of Child Testimony	251
<i>Harry Zeitlin</i>	
A. Introduction	16.01
B. Understanding the Complex Nature of Child Witness Testimony	16.05
C. Child Memory	16.12
D. Developmental Status	16.18
E. Mental Health Status	16.21
F. Child Awareness or Otherwise of Significance of Adult Behaviour	16.24
G. Parent Misinterpretations (Motivated)	16.27
H. Psychological Stress on Vulnerable Children	16.30
I. Interviewer Misinterpretation	16.35
J. Time Sequence and Constructing a Timeline	16.41
K. Media Impact on Children	16.46
L. A Protocol for Using Child Evidence	16.51
M. Conclusion	16.57
17. Forensic Science, Forensic Medicine, and Sexual Crime	265
<i>Jason Payne-James, Mary A. Newton, and Christine Bassindale</i>	
A. Introduction	17.01
B. Types and Incidence of Sexual Crime	17.02
C. Principles of Forensic Science and Forensic Medicine	17.05
D. Examination of Complainants and Suspect	17.08
E. The Examination	17.14
F. Consent	17.16
G. History Taking	17.18
H. Physical Examination	17.22
I. Anogenital Examination	17.28
J. Forensic Sampling	17.34
K. Presentation of Evidence	17.42
L. Conclusion	17.43

18. The Interpretation of Clinical Signs of Sexual Abuse in Children	279
<i>Jacqueline Yek-Quen Mok</i>	
A. Introduction	18.01
B. Diagnosis of Child Sexual Abuse	18.04
C. Normal Anatomy	18.09
D. How do Doctors Diagnose Sexual Abuse?	18.15
E. Abuse or Accident?	18.43
F. Case Studies	18.44
G. Conclusion	18.55
19. Child and Adolescent Sexual Assault Examinations: Good Practice and Key Issues	295
<i>Mary Pillai and Jean Price</i>	
A. Introduction	19.01
B. What is Normal?	19.03
C. Professional Guidance	19.04
D. Training Issues	19.08
E. Aims of the Forensic Medical Examination	19.11
F. Context and Timing of the Examination	19.16
G. The Examination Position	19.19
H. Photo-documentation	19.22
I. The Significance of Normal Findings	19.24
J. Interpreting What Children Say	19.25
K. Evaluating the Reliability of Medical Evidence	19.26
L. Cases	19.28
M. Conclusion	19.38
20. Common Psychiatric, Psychological, and Learning Disorders and Treatment	309
<i>Harry N.W. Wood and Keith Rix</i>	
A. Introduction	20.01
B. The Limitations of Psychiatric Diagnosis	20.04
C. The Main Areas of Mental Disorder	20.08
D. Prescribed Drugs	20.49
E. Conclusion	20.54

21. Neurological Memory Disorders	325
<i>Nigel North and Simon B.N. Thompson</i>	
A. Introduction	21.01
B. The Neuroanatomical Basis of Memory	21.02
C. The Psychology of Memory	21.09
D. Common Memory Disorders and How They May Manifest Themselves in an Individual	21.22
E. Unusual Memory Disorders	21.41
F. Cognitive Assessment	21.44
G. Impact of Mood on Memory	21.54
H. Neurological Conditions Affecting Memory	21.65
I. Insight and Awareness of Deficit	21.78
J. Helping a Witness with Memory Problems	21.81
K. Conclusion	21.83
22. Memory and Reliability: Developments and Controversial Issues	343
<i>R. Christopher Barden</i>	
A. Introduction	22.01
B. Science and Law are Essential Elements of Modern Civilization	22.04
C. Controversial Theories of Memory: Terminology and Methodological Limitations	22.05
D. <i>Daubert-Kumho</i> Hearings Assess the Relevance, Validity, and Admissibility of Controversial Memory Theories	22.09
E. Multidisciplinary, Science-litigation Teams	22.10
F. Selecting Expert Witnesses from the Relevant Scientific Community	22.13
G. Science-Litigation-Policy Teams Reformed the US Emergency Medical and Mental Health Systems	22.15
H. Science-Litigation Teams ended Criminal Prosecutions Based upon Uncorroborated 'Recovered Memories', 'RRM-MPD', and Related Controversial Notions	22.20
I. Science-Litigation Teams ended the Rebirthing-Coercive Holding-Attachment Therapy Industries	22.22
J. The Current Opinion of the Relevant Scientific Community Regarding RRM-MPD and Related Controversial Theories of Memory	22.23

K. Disease Classification Systems do not Provide Evidence of Validity or Error Rates for RRM-MPD or Other Controversial Theories of Memory	22.25
L. Public Statements from Professional Associations Document Controversy but no General Acceptance for RRM-MPD Theories	22.26
M. Misinformation on the Nature of Memory Remains Widespread	22.27
N. Professionals are Often Unreliable 'Lie Detectors'	22.28
O. Tested, Valid, and Reliable Interview Protocols (NICHD) are Available to Avoid Improperly Contaminating Children's Memories	22.29
P. False Memories may be Errors, not Lies	22.32
Q. Conclusion	22.33
23. How Misconceptions about Memory may Undermine Witness Testimony	361
<i>James Ost and Christopher C. French</i>	
A. Introduction	23.01
B. Common Misconceptions about Memory and Remembering	23.03
C. The Reconstructive Nature of Autobiographical Memory	23.07
D. Counter-intuitive Findings about Memory Relevant to Legal Proceedings	23.13
E. Conclusion	23.24
24. Pathological Lying	375
<i>Charles C. Dike and Reena Kapoor</i>	
A. Introduction	24.01
B. Definition and Characteristics	24.04
C. Etiological Considerations	24.08
D. Epidemiology	24.10
E. Treatment	24.11
F. Pathological Lying and Sexual Abuse Allegations	24.13
G. Evaluation of Pathological Lying in Sexual Abuse Cases	24.27
H. Conclusion	24.36
25. Conclusion	389
<i>The Editors</i>	
A. Witness Testimony in Sexual Cases: Aims and Objectives	25.01

Contents

C. Identifying Vulnerable Witness Needs	25.16
D. The ABE Interview and Early Considerations	25.18
E. The Charging Decision	25.23
F. The Importance of Timely Disclosure	25.27
G. Pre-trial Legal Issues	25.31
H. Facilitating Good Quality Witness Testimony at Trial	25.37
I. Trial Safeguards in Respect of Unreliable Evidence	25.38
J. Conclusion	25.43
 <i>Index</i>	 401