

## Abstract

In the proceeding of the cases for proving whether a defendant is committed a crime or innocent, an evidence for proving facts shall be used. In addition, such evidence shall be worth for proving the fact in the case and shall be related to any issue in a case. Thus, as for the fact regarding to characters and behaviors, other offences, and the fact which is as same as method or specific form of the defendant's offences, in some cases, such evidence can be accepted as direct evidence. For instance, the offence which the component is repetitive commission occurred normally or customarily is considered as direct evidence. Or, in some cases, circumstantial evidence can be accepted in deduction of the fact such as a proof for motivated cause when a defendant commits a crime.

The facts concerning characters or behavior, and sexual behavior of injured person are not considered as direct evidence. However, if it is worth for proving the case and support the fact finding such as consideration of causes under the criminal code whether such act is done because of protection, necessity, becoming angry, giving a consent, the claimant of such cause shall prove that he or she does not involve in the cause of such offence or it shall prove that there is any circumstance showing the injured person consenting to the act of the defendant. With this regard, the evidence is very useful for considering the condition of proof on cause under the mentioned law.

As for the fact concerning characters or behavior of a person who is a witness of any party, generally it is not the fact concerning the direct issue for proving guilt of the defendant, but it concerned the weight of reliability of the said witness on whether the witness has made a statement in what he or she has seen or not.

However, to accept the fact concerning characters or behavior and sexual behavior of a person in criminal case as evidence, it shall both be worth for proving the case and provide some prejudices in such fact. Therefore, the amendments of the Criminal Procedure Code (No.28) B.E.2551, Section 226/2 and 226/4 are enacted in order to support the mentioned type of evidence.

In this thesis, the researcher had studied problems on whether the provision in Thailand shall exclude the mentioned evidence or not under the reason of protecting the

personal right of a person relating to the criminal case from being embarrassed when adducing the fact by abusing publicly or satirizing. Conversely, the problems in the case that the mentioned fact of a person relating to the criminal case can be used as circumstantial evidence in order to deduct the fact for supporting the direct evidence. However, if it is not in the exemption of the said law by excluding the evidence from the evidence to be considered by the court, the system for searching the fact shall not fully be achieved and cannot find an offender to be penalized. In addition, the nature of problems when an inquiry official gathers the fact regarding background and normal behavior of an alleged offender shall not be consistent with the fact in the trial prohibiting the court to accept the evidence concerning other offences or bad behavior of the defendant and problems on interpretation of meanings and definitions in Section 226/2 and Section 226/4.

The study result found that Thailand has applied a mix proceeding system which is oriented towards an inquiry system for fact finding in the criminal case. Therefore, the exclusion of the mentioned type of evidence which is too strict shall affect the proof on whether a defendant is committed a crime or innocent, as well as, may cause inconvenience of the judge when considering accepting the evidence. Another reason is in Thailand a person who makes a decision on a question of fact or of law is a professional judge. This issue therefore differs from that of the common law-used country where a jury who is a group of people from natural person and has no legal knowledge is a decision maker. Thus, such consideration shall strictly exclude the evidence as mentioned above in order to get rid of bias. Since Thailand has such kind of evidence exclusion, it is not consistent with Thailand's proceedings of the cases.