**CHAPTER 5**

SCENARIO 1

If the jury concludes it was reasonable for Karl to have mentioned he acted in self-defence while being questioned at the police station, he is at risk of an adverse inference being drawn under s. 34 CJPOA 1994 against him at his trial.

SCENARIO 2

Although Shania has put forward facts in support of a possible defence at trial, she failed to mention the possibility that she acted in self-defence. This is a fact she now relies on at court in her defence. If the jury finds she could reasonably have been expected to mention this fact, this could weaken her defence of self-defence (s. 34 CJPOA 1994).

SCENARIO 3

Jason is at risk of a double adverse inference. Providing the circumstances set out in s. 36 CJPOA 1994 are met, he risks an adverse inference in that he has failed to give an explanation for scratch marks visible on his face. The marks are on his person. The arresting constable or other investigating officer must reasonably have believed the presence of the marks might have been attributable to Jason’s participation in a crime. The officer must have made Jason aware of his belief before requesting Jason to give an account, explaining in ordinary language the risk he faces from his failure to do so. In addition, Jason risks an adverse inference under s. 34 CJPOA 1994.

SCENARIO 4

In this instance Rio too is at risk of an adverse inference under s. 36 CJPOA. 1994 Subsection 36(3) makes it clear that the section applies to the condition of clothing as it does to footwear.

SCENARIO 5

Providing the conditions set out in s. 37 CJPOA 1994 are met, Jane risks an adverse inference being drawn against her, in that she has failed to give an explanation for her presence near the scene of a crime. The arresting constable or other investigating officer must reasonably have believed Jane’s presence might have been attributable to her participation in a crime. The officer must have made Jane aware of her belief before requesting her to give an account, explaining in ordinary language the risk she faces from her failure to do so. Under s. 37 CJPOA 1994 a ‘place’ is widely defined and includes buildings, vehicles and vessels. By refusing to give evidence at her trial, Jane risks an adverse inference being drawn against her under s. 35 CJPOA 1994.

SCENARIO 6

The fact that Carley remained silent on the advice of her solicitor does not immunise her against the jury drawing an adverse inference. In order to persuade the jury not to draw an adverse inference, Carley is best advised to waive legal professional privilege and explain her reasons for not putting her defence at the police station. This could be done in a number of different ways:

• Carley’s solicitor could have explained his reasons on the tape-recorded interview;

• Carley may give evidence of the reasons herself;

• there may be evidence from the solicitor (either in person or in agreed written hearsay form).

The reasonableness or otherwise of Carley’s decision to remain silent will be a matter for the jury. If this were a Crown Court trial, the judge would be required to carefully direct the jury on s. 34 CJPOA 1994, in accordance with the requirements in R v Argent and the Directions in Part 1: Jury and Trial Management and Summing Up, Crown Court Compendium (2017) at

https://www.judiciary.gov.uk/wp-content/uploads/2016/06/crown-court-compendium-pt1-jury-and-trial-management-and-summing-up-nov2017-v3.pdf