CHAPTER 1

1 (a) Lenny Wise is charged with burglary, contrary to s. 9 Theft Act 1968 which is an offence triable either way.

(b) Roger Martin is initially charged with dangerous driving contrary to s. 2 Road Traffic Act (an either-way offence), common assault contrary to s. 39 Criminal Justice Act 1988 (summary-only) and failing to stop and report an accident contrary to s. 170 Road Traffic Act 1988 (summary-only). The dangerous driving is subsequently replaced with a less serious charge of careless driving contrary to s. 3 Road Traffic Act 1988 which is a summary-only offence.

(c) William Hardy is charged with sexual activity with a child under the age of 16, contrary to s. 9(2) Sexual Offences Act 2003. As the offence involves penetration it is triable only on indictment.

2 (a) Where the value of damage in a criminal damage case is less than £5,000, the case will be tried summarily.

(b) Where the value of damage in a criminal damage case is more than £5,000, the case is triable either way.

(c) Possession of a controlled drug is an either-way offence.

(d) Careless driving is a summary-only offence.

(e) Burglary is an offence triable either way. However, there are circumstances in which burglary is triable only on indictment, including if a person(s) inside a dwelling-house was subjected to violence or threat of violence or if the accused is over 18 and has two separate convictions for domestic dwelling-house burglary committed after 30 November 1999.
(f) Affray is an offence triable either way.

(g) Theft is an offence triable either way. However, special provision (which came into force on 13 May 2014) was made for low-value shoplifting wherever the value of the goods does not exceed £200. Such an offence is triable only summarily, although s 22A MCA 1980 preserves the defendant’s right to elect trial by jury in which case the magistrates’ court must send D to the Crown Court. Scenario (g) does not indicate whether the theft could be classed as shoplifting theft.

3. A summary-only offence is an offence that starts and ends its life in the magistrates’ court. Summary-only offences are the least serious offences.

4. An indictable-only offence will be tried in the Crown Court, although the accused will make his initial appearance in connection with an indictable-only offence before a magistrates’ court. Indictable-only offences are the most serious offences.

5. An allocation hearing will be held in connection with an either-way offence to which the accused has indicated an intention to plead not guilty or refuses to give an indication of plea at the plea before venue hearing.

6. The overriding objective of the Criminal Procedure Rules is identified in Rule 1.1—requiring that all criminal cases be dealt with ‘justly’. Considerations relevant to dealing with cases ‘justly’ are identified further in Rule 1.1.
7. Section 3 Human Rights Act 1998 places an obligation on the criminal courts to interpret all legislation ‘as far as possible’ to comply with ECHR law. In determining Convention rights, the courts must apply ECHR law as decided by the general principles of law and case law of the European Court of Human Rights. The HRA 1998 does not give the courts the power to strike down legislation which is contrary to the ECHR. So, where it is not possible to give effect to the ECHR law in a case, s. 4 HRA 1998 requires the superior courts (Court of Appeal and the House of Lords) to make a declaration of incompatibility. The declaration gives Parliament the opportunity to amend the domestic provision which conflicts with Convention law.

A defence solicitor might rely on Convention rights (most obviously Article 6) in support of a legal submission to have evidence excluded in a case. It could also be relied on to challenge an aspect of procedure; to stay proceedings for an abuse of process and on appeal against conviction; challenging the admissibility of prosecution evidence or seeking the exclusion of a confession. In resisting any defence submission, the prosecutor would argue that a defendant’s rights under Article 6 had not been infringed.

8. The consequences of failing to comply with the SRA Code of Conduct can include an appearance before the Solicitors Disciplinary Tribunal for breach of the code. The SDT’s powers of punishment range from a reprimand to striking a solicitor off the Roll. In relation to non-qualified staff, it can make a direction that no firm employs that person. The lawyer may cause his firm to have a
complaint made against it to the Solicitors Regulation Authority. The lawyer may also be censured in court by the judge/Bench and by his peers.