Chapter 5 deals with the right to silence and the privilege against self-incrimination. It considers relevant provisions of the Criminal Justice and Public Order Act 1994. These include sections 34, 36, and 37, which permit adverse inferences to be drawn from certain failures of the defendant at the pre-trial stage. Section 34, in particular, has generated a substantial body of case law. The manner in which the Court of Appeal has resolved the issue of silence on legal advice has been subjected to particular criticism. The operation of section 34 has been held to be compatible with the European Convention on Human Rights so long as a sufficiently watertight direction is given to the jury. The precise extent to which the privilege against self-incrimination applies to real evidence also remains uncertain and is an issue requiring resolution.
5. The Right to Silence and the Privilege against Self-Incrimination

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