## CONTENTS

Online R	lesource	Centre contents	xiv
Foreword	to the f	first edition	XV
Preface			xvi
Acknowl	edgemer	nts	xix
Guided t	our of th	ne book	XV   XVI   XXI   XXI   XXI   XXI   XXI   XXI   XXI   XXI   XXI   XXXI   XXXI
Guided t	our of th	ne Online Resource Centre	xxii
Table of	cases		xxiv
Table of	statutes		xxvii
Table of	statutor	y instruments	xxxiii
Table of	codes of	practice and professional conduct rules	
Part I	INTR	ODUCTION TO CRIMINAL LITIGATION	1
	1	Introduction	3
	1.1	Introduction	4
	1.2	Philosophy of Criminal Litigation	5
	1.3	Online Resource Centre	6
	1.4	Looking ahead—reform	7
	1.5	Research sources	8
	1.6	Classifying criminal offences	9
	1.7	Personnel and organisations within the criminal justice system	10
	1.8	The criminal courts and personnel	11
	1.9	The European Convention on Human Rights 1950 (ECHR 1950)	
	1.10	Criminal Procedure Rules (Crim PR)	
	1.11	Professional conduct—an introduction	17
	2	An Introduction to the Law of Criminal Evidence and Advocacy	33
	2.1	Introduction	33
	2.2	The purpose of the law of criminal evidence	
	2.3	Facts in issue	
	2.4	Core concepts	
	2.5	Procedure for deciding the admissibility of disputed evidence	
	2.6	Assessing the evidence—the prosecuting solicitor's role	
	2.7	Assessing the evidence—the defence solicitor's role	
	2.8	Types of evidence	
	2.9	Clarifying the evidential issues	
	2.10	Concluding remarks on criminal evidence	
	2.11	Advocacy	39
Part II	INVE	ESTIGATION AND THE DECISION TO CHARGE	45
	3	The Powers to Stop, Search and Arrest	47
	3.1	Introduction	47
	3.2	Stop and search before arrest	48
	3.3	Stop and search at common law	48
	3.4	Statutory powers to stop and search in a public place before arrest	
	3.5	Specific powers to stop and search before arrest	
	3.6	The consequences of an unlawful stop and search	50

3.7	Powers of arrest	51
3.8	Street bail	56
3.9	Searching the suspect's person and/or property upon arrest	56
3.10	The European Convention on Human Rights 1950	60
4	Detention and Interrogation	63
4.1	Introduction	64
4.2	The rights of a volunteer at the police station	65
4.3	Action immediately following arrest	65
4.4	The role of the custody officer	65
4.5	Detention without charge	67
4.6	Reviewing a suspect's detention	69
4.7	The suspect's right to intimation and/or legal advice	71
4.8	Other rights and safeguards enjoyed by the suspect whilst in detention	74
4.9	The treatment of vulnerable suspects	74
4.10	Interviewing the suspect	75
4.11	The requirement to caution	76
4.12	What constitutes a fair interview?	76
4.13	How should an interview be recorded?	77
4.14	Charging a suspect	77
4.15	Concluding remarks	80
5	The Right to Silence at the Police Station	82
5.1	Introduction	82
5.2	What are the risks associated with s. 34 CJPOA 1994?	83
5.3	Drawing inferences from a failure to account under ss. 36 and 37	
	CJPOA 1994	87
5.4	The practical aspects associated with remaining silent	89
6	Challenging Unlawfully and Unfairly Obtained Evidence	93
6.1	Introduction	93
6.2	What is unlawfully or unfairly obtained evidence?	94
6.3	What is a confession?	94
6.4	A suspect's rights at the police station	95
6.5	Challenging the admissibility of a confession under ss. 76 and 78 PACE 1984	96
6.6		99
6.7	The procedure for determining the admissibility of a confession	99
6.8	Editing a confession	99
6.9	Evidence obtained in consequence of an inadmissible confession  Challenging the admissibility of other non-confession prosecution	99
0.9	evidence	100
6.10	Common law discretion	100
6.11	Discretion under s. 78 PACE 1984	100
6.12	Abuse of process	103
6.13	Illegally/unfairly obtained evidence—practical considerations	103
7	Obtaining Identification Evidence	108
7.1	Introduction	108
7.1	The dangers of eye-witness identification	109
7.2	How is eye-witness identification obtained?	109
7.3	Distinguishing between known and unknown suspects	109
7.5	When must an identification procedure be held?	110
7.6	Is a formal identification procedure a mandatory requirement?	112
7.7	The formal identification procedures	113
7.8	The consequences of failing to comply with Code D	114
1.0	The consequences of family to comply with code D	114

	7.9	Recognition by police officers from photographic and CCTV images	115
	7.10	Voice identification	115
	7.11	Dock identifications	116
	7.12	Forensic identification procedures	116
	7.13	DNA evidence	118
	7.14	Facial mapping	119
	7.15	The practical issues associated with identification evidence	119
	8	The Decision to Prosecute and the Prosecution's Duties of Disclosure of Evidence	122
	8.1	Introduction	123
	8.2	Statutory charging under the CJA 2003	124
	8.3	CPS prosecuting policies	128
	8.4	The threshold test	128
	8.5	The selection of charges—section 6, Code for Crown Prosecutors	129
	8.6	Alternatives to prosecution	129
	8.7	The defence solicitor influencing the decision to charge	132
	8.8	The CPS and the Criminal Case Management Framework	133
	8.9	Pre-trial disclosure of evidence—an introduction	133
	8.10	Used and unused material	134
	8.11	Disclosure obligations on the police/investigator	134
	8.12	The CPS obligation to disclose 'used' material—'IDPC'	
		(initial details of the prosecution case)	136
	8.13	CPS obligations to disclose unused material (Crim PR, Part 22)	137
	8.14	Disclosing information held by third parties	139
	8.15	Withholding relevant evidence	139
	8.16	Further information on disclosure	140
Part III	FRO	M CHARGE TO TRIAL	147
	9	Funding of Criminal Defence Services and First Appearance Process	149
	0.1		150
	9.1	Introduction	150
	9.2	Legal aid—a human right?	150
	9.3	Legal Aid Agency	150
	9.4	Pre-charge advice and assistance	150
	9.5	Funded representation in court	151
	9.6	Representation orders	152
	9.7	The interests of justice test (CRM14)	155
	9.8	Means testing (CRM15)	156
	9.9	The means test as applied to cases tried in the magistrates' court  The means test in cases triable on indictment	158
	9.10		160
	9.11	What work can be done under a representation order?	160
	9.12	Disbursements	161
	9.13	Acquitted defendants and Defendants' Costs Order	161
	9.14	Wasted costs	161
	9.15	The future of public funding	162
	9.16	First appearance before the magistrates' court	165
	9.17	Preparing for the first appearance before the magistrates' court	
	10	The Law and Practice Relating to Court Bail	<b>169</b> 169
	10.1	Introduction	170
	10.2	What is bail?	170
	10.3	A right to bail?	170

10.5	Course de for refreing bail	171
10.5 10.6	Grounds for refusing bail Grounds for denying bail for an indictable imprisonable offence (Sch. 1 Part 1 para. 2 BA 1976)	171
10.7	Substantiating the grounds for opposing bail—the statutory factors (Sch. 1 para. 9 BA 1976)	174
10.8	Grounds for denying bail for a summary-only imprisonable offence (Sch. 1 Part 1A)	175
10.9	Grounds for denying bail for a non-imprisonable offence (Sch. 1 Part II)	175
10.10	Bail conditions	176
10.11	Bail in practice	178
10.12	Procedure at a contested bail hearing	180
10.13	Remand periods	181
10.14	How many bail applications can be made?	182
10.15	Where bail is refused	182
10.16	Appeal by the prosecution	183
10.17	Reconsidering bail	183
10.18	Varying bail conditions	183
10.19	Where an accused fails to surrender to bail	184
10.20	Bail granted by the Crown Court	184
10.21	Bail and the High Court	185
10.22	Human rights and bail	185
10,23	Bail—the practical considerations	185
11	Prosecuting an Either-Way Offence	<b>191</b> 191
11.1	Introduction	191
11.2	Plea before venue	193
11.3	The allocation hearing—ss. 17–20 MCA 1980 (as amended)	/ 193
11.4	The reasons for electing trial in the magistrates' court or in the Crown Court	197
11.5	The special procedure in criminal damage cases	200
11.6	Special rules relating to certain either-way offences	200
11.7	Sending an either-way offence to the Crown Court	200
11.8	Post-allocation matters where case is to be sent to the Crown Court	202
11.9	Application for dismissal of the either-way offence sent to the	203
11.10	Crown Court Changing the allocation decision	203
12	Prosecuting Summary Offences	207
12.1	Introduction	207
12.2	Commencing a prosecution for a summary-only matter	208
12.3	Pleading guilty by post	208
12.4	Defendant unaware of court proceedings	209
12.5	Joinder of offences and defendants in the information	209
12.6	The early stages of a summary-only/either-way offence	210
12.7	Preparing for trial (defence perspective)	213
12.8	Preparing for trial (prosecution perspective)	216
12.9	Rights of audience before magistrates' court and terms of address	216
12.10	Failure of the defendant to attend trial	217
12.11	The procedure at a summary trial on a not guilty plea	217
13	Crown Court Proceedings Pre-Trial	221
13.1	Introduction	222
13.2	The defendant's first court appearance for an indictable-only offence—s. 51 Crime and Disorder Act 1998	222
13.3	Preliminary hearing before the Crown Court	224

	13.4	Preparatory steps in the early stages of an indictable-only offence	225
	13.5	Disclosing 'used' material in indictable-only cases	225
	13.6	Disclosing 'unused' material—CPIA 1996	226
	13.7	What if the pre-trial disclosure of evidence reveals a weak prosecution case?	231
	13.8	Pre-trial hearings in the Crown Court	231
	13.9	Preparing for trial	234
	14	Trial Before the Crown Court	238
	14.1	Introduction	239
	14.2	The indictment	239
	14.3	Supporting the advocate at trial	242
	14.4	Last-minute checklist	243
	14.5	First day of the trial	243
	14.6	Plea bargaining	244
	14.7	Arraignment and pleas	244
	14.8	During the trial	245
	14.9	The prosecution case	246
	14.10	The course of trial—presenting evidence	247
	14.11	Defence submission of no case to answer	249
	14.12	The defence case	249
	14.13	The closing speeches	250
	14.14	The summing-up	251
	14.15	The verdict	252
	14.16	The procedure after the jury's decision	253
	14.17	Acquitted defendants	253
	14.17	The prosecution's right of appeal	254
	14.19	Judge-only trials on indictment	254
	14.17	Juage-only thats on materinem	/
Part IV	PROV	/ING THE CASE—THE RULES OF CRIMINAL EVIDENCE	257
	15	The Burden of Proof	259
	15.1	Introduction	259
	15.2	The legal burden of proof—the general rule	259
	15.3	Exceptions to Woolmington—reverse burden clauses	260
	15.4	The standard of proof required to discharge the legal burden	261
	15.5	The evidential burden	261
	15.6	Discharging the legal and evidential burdens of proof—an example	262
	15.7	Challenges to reverse burden clauses under Article 6 European	
	13.7	Convention on Human Rights 1950 (ECHR 1950)	262
	15.8	Formal admissions—s. 10 CJA 1967	263
	15.9	Burdens of proof—practical considerations	264
	16	Witness Evidence	266
	16.1	Introduction	266
	16.2	Dealing with witnesses before testifying	267
	16.3	Witness evidence—the preliminary issues	267
	16.4	Testifying under a special measures direction	270
	16.5	Types of special measures	271
	16.6	The practical issues of witness evidence	274
	16.7	Taking the oath or affirming	275
	16.7	Examination-in-chief	275
	16.9	Cross-examination	278
	16.10		283

16.11	Re-examination	283
16.12	Cross-examining the complainant in a sexual offence	284
17	Corroboration, the 'Turnbull Guidelines' and Opinion Evidence	289
17.1	Introduction	289
17.2	What is meant by corroboration?	290
17.3	Corroboration required as a matter of law	290
17.4	Corroboration and the exercise of judicial discretion	290
17.5	The requirements of corroborative evidence	292
17.6	The 'Turnbull guidelines'	292
17.7	Opinion evidence	296
17.8	Facts personally perceived by the witness	296
17.9	Expert witnesses	296
17.10	Expert evidence—practical considerations	298
18	Hearsay Evidence	301
18.1	Introduction	301
18.2	Hearsay evidence—the general rule	302
18.3	Identifying hearsay evidence	302
18.4	The statutory exceptions to the hearsay rule	304
18.5	Hearsay evidence under the CJA 2003	305
18.6	The unavailable witness—s. 116 (first-hand hearsay)	305
	Business documents—s. 117	307
18.7	Hearsay admissible under the preserved common law	
18.8	rules—s. 118 CJA 2003	308
18.9	Admitting hearsay by agreement—s. 114(1)(c) CJA 2003	310
18.10	The 'safety-valve'—s. 114(1)(d) and s. 121 CJA 2003	310
18.11	Miscellaneous hearsay provisions	311
18.12	Important safeguards when admitting hearsay evidence	311
18.13	Procedure for admitting hearsay evidence—Crim PR, Part 34	313
18.14	Hearsay evidence and the ECHR 1950	313
18.15	Hearsay evidence—trial considerations	315
19	Character Evidence and the Accused as a Witness at Trial	317
19.1	Introduction	317
19.2	The accused as a competent defence witness	318
19.3	The course of the defendant's evidence	318
19.4	Adverse inferences from the defendant's silence at trial—s. 35 CJPOA 1994	319
19.5	Disclosing evidence of the defendant's character	321
19.6	Admitting evidence of the defendant's bad character	322
19.7	Gateways to admission	323
19.8	Bad character admitted between co-defendants—s. 101(1)(e) CJA 2003	332
19.9	Bad character to correct a false impression given by the defendant—s. 101(1)(f) CJA 2003	334
19.10	404(4)(1) 074 2002	335
19.11	6 1 6 1 6 1 6 1 6 1	
19.11	bad character	337
19.12		338
19.13	Miscellaneous matters	339
20	Private Privilege	342
20.1	Introduction	342
20.2	Legal professional privilege in criminal cases	343
20.3	The purpose of legal professional privilege	344

	20.4	Legal professional privilege and the courts	344
	20.5	Waiving/losing legal professional privilege	345
	20.6	Powers of search and legal professional privilege	345
	20.7	The privilege against self-incrimination	345
Part V	POST	-CONVICTION: SENTENCING AND APPEALS	349
	21	Sentencing Procedure and the General Principles of Sentencing	351
	21.1	Introduction	351
	21.2	New developments—warning	352
	21.3	The role of the CPS on sentence	352
	21.4	The procedure on sentencing	352
	21.5	Hierarchy of sentences	354
	21.6	Sentencing aims	355
	21.7	The basis of sentencing under the CJA 2003	355
	21.8	Sentencing Council for England and Wales	356
	21.9	Sentencing guidelines in the Crown Court	359
	21.10	How does the defence solicitor assess the seriousness of an offence?	359
	21.11	Magistrates' Court Sentencing Guidelines (MCSGs)—a structured	
		approach to sentencing	359
	21.12	Personal offender mitigation	361
	21.13	Discount for timely guilty pleas	361
	21.14	What constrains sentencing?	361
	21.15	The Crown Court's sentencing powers	363
	21.16	What informs the process of sentencing?	364
	21.17	Victim impact statements	364
	21.18	Taking other offences into consideration	365
	22	Specific Types of Sentence and the Plea in Mitigation	370
	22.1	Introduction	371
	22.2	When can a discretionary custodial sentence be imposed?	371
	22.3	Custody between the ages 18 and 21	372
	22.4	Length of custodial sentence	372
	22.5	Suspended sentence of imprisonment	373
	22.6	Concluding remarks on discretionary custodial sentences	374
	22.7	Fixed-length sentences	374
	22.8	Sentencing dangerous offenders	374
	22.9	Community sentences	378
	22.10	Community sentences under the CJA 2003	379
	22.11	The requirements	380
	22.12	Guilty plea credit and community orders	383
	22.13	Enforcement of community orders under the CJA 2003—Sch. 8	383
	22.14	Deferring sentence—ss. 1 and 2 PCC(S)A 2000	383
	22.15	Fines	384
	22.16	Compensation orders	386
	22.17	•	387
	22.18		387
	22.19	Bind over	387
	22.20	Ancillary orders	388
	22.21	The plea in mitigation	390
	22.22	Structuring a plea in mitigation	392
	22.23	Advocacy and the plea in mitigation	395
	22.24	Professional conduct	395

	23	Appeals	401
	23.1	Introduction	401
	23.2	Reopening a case—s. 142 MCA 1980	402
	23.3	Appeal to the Crown Court—s. 108 MCA 1980 (Crim PR, Part 63)	402
	23.4	Appeal by way of case stated—s. 111 MCA 1980 (Crim PR, Part 64)	403
	23.5	Judicial review	405
	23.6	Appeal from the Crown Court (Crim PR, Part 68)	405
	23.7	Appeal against sentence from the Crown Court	407
	23.8	Appeal to the Supreme Court (Crim PR, Part 74)	408
	23.9	Attorney-General's References (Crim PR, Part 70)	408
	23.10	Criminal Cases Review Commission	408
	23.11	Does the prosecution enjoy a right to appeal?	409
Part VI	YOU.	TH JUSTICE	413
	24	Youth Justice—Introduction	415
	24.1	Introduction	415
	24.2	The terminology of youth justice	416
	24.3	The youth justice organisations	417
	24.4	The statutory aims of the youth justice system	418
	24.5	Parental responsibility	419
	24.6	Police station detention and the young person	419
	24.7	Dealing with a young client—a defence perspective	421
	24.8	Preventing juvenile offending	421
	24.9	The decision to prosecute	424
	24.10	The procedure upon charge	424
	24.11	Funding the young person's right to legal representation	425
	25	Prosecuting Young Offenders	426
	25.1	Introduction	426
	25.2	The young person's first court appearance	427
	25.3	Where will the young person be tried?	429
	25.4	Safeguarding the young person's right to a fair trial in the Crown Court	435
	25.5	Trial of a young person in the adult magistrates' court	436
	25.6	Proceedings in the youth court	437
	26	Sentencing Young Offenders	440
	26.1	Introduction	441
	26.2	Sentencing procedure in the youth court	443
	26.3	Deferring sentence—s. 1 PCC(S)A 2000	443
	26.4	Referral order—ss. 16 and 17 PCC(S)A 2000 (as amended by s. 79 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012))	443
	26.5	Fine—Part VI PCC(S)A 2000	445
	26.6	Conditional discharge—s. 12 PCC(S)A 2000	445
	26.7	Absolute discharge—s. 12 PCC(S)A 2000	446
	26.8	Reparation order—ss. 73–75 PCC(S)A 2000	446
	26.9	Youth Rehabilitation Order (YRO)	446
	26.10	Detention and Training Order—ss. 100–107 PCC(S)A 2000	449
	26.11	Endorsement or disqualification of the juvenile's driving licence/record	450
	26.12	Compensation order—ss. 130–135 PCC(S)A 2000	450
	26.13	Parenting orders—ss. 8–10 CDA 1998	451
	26.14	Parental bind over—s. 150(1) PCC(S)A 2000	451
	26.15	Anti-Social Behaviour Order (ASBO)	451

	26.16	Sentencing the young offender in the adult magistrates' court	451
	26.17	Sentencing the young offender in the Crown Court	452
	26.18	Sentencing a 'dangerous' young offender	452
	26.19	Crossing a significant age threshold between commission of an offence and	
		sentence	454
(1)	APPENDIX 1: Ad	ditional Chapters	456
	APPENDIX 2: Ex	tracts from R v Lenny Wise	457
	APPENDIX 3: Ex	tracts from Magistrates' Court Sentencing Guidelines	532
	Index		559