

## **R v ARGENT [1996] EWCA 172**

## **R v ARGENT [1997] 2 Cr. App. R 27**

The appellant's criticism of the judge's ruling in this case rests on two main grounds

First, it is said that the police had failed to make such full disclosure of the case against the appellant as they could and should have made; and secondly that in the absence of such full disclosure the appellant's solicitor was right to advise him not to answer questions and that advice was in strict compliance with guidance given by the Law Society to solicitors acting in such a situation.

As counsel summarised the crucial question is whether the police gave sufficient information to enable the solicitor to advise his client. If not, the solicitor was entitled to advise his client to say nothing and the judge should have excluded evidence of the interview in the *voire dire*

“Under the Codes they had no obligation to make disclosure and they may well have had reasons for limiting the disclosure which they made”

“The second observation we would make is that, under section 34, the jury is not concerned with the correctness of the solicitor's advice, nor with whether it complies with the Law Society guidelines, but with the reasonableness of the appellant's conduct in all the circumstances which the jury have found to exist...”

In **R v Argent** [1997] 2 Cr.App.R. 27, Lord Bingham set out the six formal conditions that must be satisfied before an adverse inference can be drawn:

- 1 There must be proceedings against a person for an offence;
- 2 The alleged failure to mention a fact at trial must have occurred before charge, or on charge;
- 3 The alleged failure must have occurred during questioning under caution. (Refer to Archbold 15-484 to 15-486 on the question of when a suspect should be cautioned.);
- 4 The questioning must have been directed to trying to discover whether or by whom the alleged offence was committed;
- 5 The alleged failure of the accused must have been to mention any fact relied on in his defence in those proceedings;
- 6 The alleged failure must have been to mention a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned

Point 6 – *‘The alleged failure must have been to mention a fact in the circumstances existing at the time the accused could reasonably have been expected to mention when questioned.’*

*‘In the circumstances’* – has been construed to include when relevant, the time of day, defendants age, experience, mental capacity, state of health, sobriety, tiredness, knowledge, personality and legal advice may be relevant (R v Howell 2003).

*The interpretation and comments made within this document are not to be considered as legal advice.  
Reference should always be made to the original case.*