Presumption Of Innocence Burden Of Proof In Cases Without

This book arises from a three-year study of Preventive Justice directed by Professor Andrew Ashworth and Professor Lucia Zedner at the University of Oxford. The study seeks to develop an account of the principles and values that should guide and limit the state's use of preventive techniques that involve coercion against the individual. States today are increasingly using criminal law or criminal law-like tools to try to prevent or reduce the risk of anticipated future harm. Such measures include criminalizing conduct at an early stage in order to allow authorities to intervene; incapacitating suspected future wrongdoers; and imposing extended sentences or indefinate on past wrongdoers on the basis of their predicted future conduct - all in the name of public protection and security. The chief justification for the state's use of coercion is protecting the public from harm. Although the rationales and justifications of state punishment have been explored extensively, the scope, limits and principles of preventive justice have attracted little doctrinal or conceptual analysis. This book re-assesses the foundations for the range of coercive measures that states now take in the name of prevention and public protection, focussing particularly on coercive measures involving deprivation of liberty. It examines whether these measures are justified, whether they distort the proper boundaries between criminal and civil law, or whether they signal a larger change in the architecture of security. In so doing, it sets out to establish a framework for what we call 'Preventive Justice'.

Illicit Enrichment by Andrew Dornbierer provides a comprehensive guide to illicit enrichment laws and their application to target unexplained wealth and recover proceeds of corruption and other crimes. The book covers both criminal and civil-based laws from around the world. Investigators, prosecutors, legislators and academics alike will benefit from the clear descriptions and practical guidance on different approaches to targeting unexplainable increases in wealth, how to establish cases in court, and common legal challenges to illicit enrichment laws. Features: Extensive analysis of jurisprudence and cases around the world Tables, flow charts and graphics explaining key concepts Discussion of common questions and challenges A collection of laws from 103 jurisdictions, also as an online database A step-by-step guide to financial investigation and source and application analysis to support illicit enrichment cases Illicit Enrichment was developed and published by the Basel Institute on Governance through its International Centre for Asset Recovery, with research support from the NYU School of Law

The transnational gathering and use of criminal evidence is a complex and sensitive matter that affects basic principles inherent in national criminal justice systems. Replacing the mutual assistance regime (letters rogatory) by a mutual recognition regime intends to facilitate the admissibility of evidence obtained from the territory of another Member State. How much harmonization of criminal procedure is needed to guarantee the free movement of criminal evidence in the EU? Do we have to develop common procedural safeguards in the EU, or can we build in human rights clauses or procedural public order clauses by which respect for fundamental rights can be a ground for the non-recognition, non-execution or postponement of the order from the issuing state? John Vervaele is Professor in Economic and Financial Criminal Law at

the University of Utrecht and Professor in European Criminal Law at the College of Europe of Bruges. The main topics in his research field are: enforcement of Union law; standards of due law, procedural safeguards and human rights; criminal law and procedure an regional integration; comparative economic and financial criminal law. He has realized a lot of research in these areas, both for Dutch Departments and European Institutions and also worked as a consultant for them.

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's Impact Assessment accompanying the above proposal which was transmitted in November 2013. In the Council Resolution on a Roadmap for strengthening procedural rights, adopted in November 2009, the Commission was invited to submit proposals covering a number of specific measures. Three Directives have since been adopted covering the right to interpretation and translation, the right to information, and the right of access to a lawyer and the right to communicate. The proposed measures related to the strengthening of the presumption of innocence are part of a package which includes two other proposals, one on procedural safeguards for children suspected or accused in criminal proceedings and a second on the right to provisional legal aid. The principle of the presumption of innocence is overarching, representing a fundamental principle of criminal law and a key element to fair trial. The European Court of Human Rights (ECtHR) has clearly set out the three key requirements of this principle: (i) public authorities, including judiciary authorities, must not presume that the accused has committed the offence he is charged with; (ii) the burden of proof is on the prosecution and any doubt must benefit the accused; and (iii) the prosecution must inform the suspect or the accused of the case against him. It is complementary to other procedural rights, such as the right not to incriminate one-self, the right not to co-operate, the right to silence and the right to be released pending trial. The right to information, and the right to be released pending trial are not covered in the IA, as initiatives to protect these rights have already been taken. Article 82 of the TFEU states that the principle of mutual recognition of judgements and judicial decisions should be facilitated by means of minimum rules on procedural rights.

Essay from the year 2013 in the subject Law - Criminal process, Criminology, Law Enforcement, grade: 60, University of Wales, Aberystwyth, course: LLB, language: English, abstract: The purpose of this essay is to critically examine the impact of the Human Rights Act 1998 on the operation of the burden of proof and on the area of law concerned with the exclusion of evidence obtained by illegal or improper means. From the text: Presumption of innocence; Human Rights Act; Evidential Burden; Legal Burden.

Containing original articles on timely topics, full reports of important cases, and a digest of all recent criminal cases, American and English.

In this long-awaited book, Antony Duff offers a new perspective on the structures of criminal law and criminal liability. His starting point is a distinction between responsibility (understood as answerability) and liability, and a conception of responsibility as relational and practice-based. This focus on responsibility, as a matter of being answerable to those who have the standing to call one to account, throws new light on a range of questions in criminal law theory: on the question of criminalisation, which can now be cast as the question of what we should have to answer for, and to whom, under the threat of criminal conviction and punishment; on questions about the

criminal trial, as a process through which defendants are called to answer, and about the conditions (bars to trial) given which a trial would be illegitimate; on questions about the structure of offences, the distinction between offences and defences, and the phenomena of strict liability and strict responsibility; and on questions about the structures of criminal defences. The net result is not a theory of criminal law; but it is an account of the structure of criminal law as an institution through which a liberal polity defines a realm of public wrongdoing, and calls those who perpetrate (or are accused of perpetrating) such wrongs to account.

A critical evaluation of the latest reform in Chinese law that engages legal scholarship with research of Chinese legal historians.

Presumption of Guilt examines the excessive use of pretrial detention: the practice of jailing criminal defendants without trial. Around the world, millions of people who should be presumed innocent are held in pretrial detention for months or even years while they await trial. Many pretrial detainees are held in appalling conditions, tortured, denied medical care and access to a lawyer, and exposed to disease; they can lose their homes, jobs, and even families. The excessive use of pretrial detention is a massive, globalbut overlookedhuman rights violation.

To be convicted of a crime in the United States, a person must be proven guilty “beyond a reasonable doubt.” But what is reasonable doubt? Even sophisticated legal experts find this fundamental doctrine difficult to explain. In this accessible book, James Q. Whitman digs deep into the history of the law and discovers that we have lost sight of the original purpose of “reasonable doubt.” It was not originally a legal rule at all, he shows, but a theological one. The rule as we understand it today is intended to protect the accused. But Whitman traces its history back through centuries of Christian theology and common-law history to reveal that the original concern was to protect the souls of jurors. In Christian tradition, a person who experienced doubt yet convicted an innocent defendant was guilty of a mortal sin. Jurors fearful for their own souls were reassured that they were safe, as long as their doubts were not “reasonable.” Today, the old rule of reasonable doubt survives, but it has been turned to different purposes. The result is confusion for jurors, and a serious moral challenge for our system of justice.

This book first underlines the actual meaning and effects of the presumption of innocence, and subsequently considers its interpretation and application by the International Criminal Court, in four key respects: 1.Standards of proof; 2.Statements of public officials and media reports; 3.Pre-conviction detention; 4.Rights of Victims. It is argued that the presumption of innocence means the right of persons to be treated as innocent until proven guilty by the Prosecutor, who solely bears the burden of proof. Consequently, unless it is applied and interpreted as such, it is most unlikely that the International Criminal Court and thus any other criminal court will secure a fair trial for the accused.

In 1992 the National Research Council issued DNA Technology in Forensic

Science, a book that documented the state of the art in this emerging field. Recently, this volume was brought to worldwide attention in the murder trial of celebrity O. J. Simpson. The Evaluation of Forensic DNA Evidence reports on developments in population genetics and statistics since the original volume was published. The committee comments on statements in the original book that proved controversial or that have been misapplied in the courts. This volume offers recommendations for handling DNA samples, performing calculations, and other aspects of using DNA as a forensic tool--modifying some recommendations presented in the 1992 volume. The update addresses two major areas: Determination of DNA profiles. The committee considers how laboratory errors (particularly false matches) can arise, how errors might be reduced, and how to take into account the fact that the error rate can never be reduced to zero. Interpretation of a finding that the DNA profile of a suspect or victim matches the evidence DNA. The committee addresses controversies in population genetics, exploring the problems that arise from the mixture of groups and subgroups in the American population and how this substructure can be accounted for in calculating frequencies. This volume examines statistical issues in interpreting frequencies as probabilities, including adjustments when a suspect is found through a database search. The committee includes a detailed discussion of what its recommendations would mean in the courtroom, with numerous case citations. By resolving several remaining issues in the evaluation of this increasingly important area of forensic evidence, this technical update will be important to forensic scientists and population geneticists--and helpful to attorneys, judges, and others who need to understand DNA and the law. Anyone working in laboratories and in the courts or anyone studying this issue should own this book.

The presumption of innocence is universally recognized as a fundamental human right and a core principle in the administration of criminal justice. Nonetheless, statutes creating criminal offences regularly depart from the presumption of innocence by requiring defendants to prove specific matters in order to avoid conviction. Legislatures and courts seek to justify this departure by asserting that the reversal of the burden of proof is necessary to meet the community interest in prosecuting serious crime and maintaining workable criminal sanctions. This book investigates the supposed justifications for limitation of the presumption of innocence. It does so through a comprehensive analysis of the history, rationale and scope of the presumption of innocence. It is argued that the values underlying the presumption of innocence are of such fundamental importance to individual liberty that they cannot be sacrificed on the altar of community interest. In particular, it is argued that a test of 'proportionality', which seeks to weigh individual rights against the community interest, is inappropriate in the context of the presumption of innocence and that courts ought instead to focus on whether an impugned measure threatens the values which the presumption is designed to protect. The book undertakes a complete and systematic review of the United

Kingdom and Strasbourg authority on the presumption of innocence. It also draws upon extensive references to comparative material, both judicial and academic, from the United States, Canada and South Africa.

Number of Exhibits: 1 Court of Appeal Case(s): H006642

Requirements for the defendant to actively participate in the English criminal process have been increasing in recent years such that the defendant can now be penalised for their non-cooperation. This book explores the changes to the defendant's role as a participant in the criminal process and the ramifications of penalising a defendant's non-cooperation, particularly its effect on the adversarial system. The book develops a normative theory which proposes that the criminal process should operate as a mechanism for calling the state to account for its accusations and request for official condemnation and punishment of the accused. It goes on to examine the limitations placed on the privilege against self-incrimination, the curtailment of the right to silence, and the defendant's duty to disclose the details of his or her case prior to trial. The book shows that, by placing participatory requirements on defendants and penalising them for their non-cooperation, a system of obligatory participation has developed. This development is the consequence of pursuing efficient fact-finding with little regard for principles of fairness or the rights of the defendant. Against a backdrop of a dysfunctional criminal justice system, the authors bring an avalanche of legal and empirical material to question the legitimacy of the relationship between judges, lawyers, politicians and defendants in modern Britain. Examinin

Presents theories, practices and critiques alongside each other to engage students, scholars and professionals from multiple fields. This title is also available as Open Access on Cambridge Core.

The right to be presumed innocent until proven guilty has been described as the 'golden thread' running through the web of English criminal law and a "fundamental postulate" of Irish criminal law which enjoys constitutional protection. Reflecting on the bail laws in the O'Callaghan case, Walsh J. described the presumption as a 'very real thing and not simply a procedural rule taking effect only at the trial'. The purpose of this book is to consider whether the reality matches the rhetoric surrounding this central precept of our criminal law and to consider its efficacy in the light of recent or proposed legislative innovations. Considerable space is devoted to the anti-crime package introduced by the government in the period of heightened concern about crime which followed the murder of journalist Veronica Guerin. Described by the Bar Council as "the most radical single package of alterations to Irish criminal law and procedure ever put together, " the effect of the package was an amendment of the bail laws and the introduction of preventative detention; a curtailment of the right to silence for those charged with serious drugs offences and the introduction of a novel civil forfeiture process to facilitate the seizure of the proceeds of crime, a development which arguably circumvents the presumption. Given these

developments, the question posed in the book is whether we can lay claim to a presumption that is more than merely theoretical or illusory.

“Provocative and entertaining. ... A powerful and damning diatribe on Simpson’s acquittal.”—People Here is the account of the O. J. Simpson case that no one dared to write, that no one else could write. In this #1 New York Times bestseller, Vincent Bugliosi, the famed prosecutor of Charles Manson and best-selling author of Helter Skelter, goes to the heart of the trial that divided the country and made a mockery of justice. He lays out the mountains of evidence; rebuts the defense; offers a thrilling summation; condemns the monumental blunders of the judge, the “Dream Team,” and the media; and exposes, for the first time anywhere, the shocking incompetence of the prosecution.

Beginning with the premise that the principal function of a criminal trial is to find out the truth about a crime, Larry Laudan examines the rules of evidence and procedure that would be appropriate if the discovery of the truth were, as higher courts routinely claim, the overriding aim of the criminal justice system. Laudan mounts a systematic critique of existing rules and procedures that are obstacles to that quest. He also examines issues of error distribution by offering the first integrated analysis of the various mechanisms - the standard of proof, the benefit of the doubt, the presumption of innocence and the burden of proof - for implementing society's view about the relative importance of the errors that can occur in a trial.

This book provides a comprehensive analysis of the presumption of innocence from both a practical and theoretical point of view. Throughout the book a framework for the presumption of innocence is developed. The book approaches the right to presumption of innocence from an international human rights perspective using specific examples drawn from international criminal law. The result is a framework for understanding the right that is grounded in human rights law. This framework can then be applied across different national and international systems. When applied, it can help determine when the presumption of innocence is being infringed upon, eroded, violated, and ensure that the presumption of innocence is protected. The book is an essential resource for students, academics and practitioners working in the areas of human rights, criminal law, international criminal law, and evidence. The themes also have a more general application to national jurisdictions and legal theory.

Criminal procedure in the common law world is being recast in the image of human rights. The cumulative impact of human rights laws, both international and domestic, presages a revolution in common law procedural traditions. Comprising 16 essays plus the editors' thematic introduction, this volume explores various aspects of the 'human rights revolution' in criminal evidence and procedure in Australia, Canada, England and Wales, Hong Kong, Malaysia, New Zealand, Northern Ireland, the Republic of Ireland, Singapore, Scotland, South Africa and the USA. The contributors provide expert evaluations of their own domestic law and practice with frequent reference to comparative experiences in other

jurisdictions. Some essays focus on specific topics, such as evidence obtained by torture, the presumption of innocence, hearsay, the privilege against self-incrimination, and 'rape shield' laws. Others seek to draw more general lessons about the context of law reform, the epistemic demands of the right to a fair trial, the domestic impact of supra-national legal standards (especially the ECHR), and the scope for reimagining common law procedures through the medium of human rights. This edited collection showcases the latest theoretically informed, methodologically astute and doctrinally rigorous scholarship in criminal procedure and evidence, human rights and comparative law, and will be a major addition to the literature in all of these fields.

This book considers how legislatures have undermined the presumption of innocence and how courts have largely accepted it. It argues criminal law needs to return to notions of moral comfort as the basis for determining whether a person is guilty, and only impose criminal sanctions when there is sufficient, moral blame.

The notion that an individual accused of a crime is presumed innocent until proven guilty is one of the cornerstones of the American criminal justice system. However, the presumption of innocence creates a number of practical and theoretical issues, particularly regarding pre-trial and post-trial processes. In Taming the Presumption of Innocence, Richard L. Lippke argues that the presumption of innocence should be contained to the criminal trial. Beyond the realm of the trial, legal professionals, investigators, and the general public should carry out their respective roles in the criminal justice process without making any presumptions about guilt or innocence whatsoever. Rather than eschewing the significance of the presumption of innocence, the book defends its role within its proper context, the criminal trial. According to Lippke, other aspects of the criminal justice system such as investigation, lawmaking, and treatment of ex-offenders should be conducted in such a way that reflects the fallibility and unpredictability of the system without involving the issue of presumed guilt or innocence. Lippke dispels the idea that the presumption of innocence can be used to remedy some of the current issues in the practice of criminal justice, and instead proposes engaging in deeper, more substantive reforms of the American criminal justice system. The first monograph dedicated exclusively to the presumption of innocence, Taming the Presumption of Innocence will be an ideal text for students and scholars of criminology, criminal justice, and legal theory.

Munday's Evidence provides students with a succinct yet thought-provoking introduction to all of the key areas covered on undergraduate law of evidence courses. Clear and engagingly written, this book sets out to demystify a traditionally intimidating area of law. Probing analysis of theissues, both perennial and topical, ensures that this text contains a thorough exploration of the 'core' of the subject. In addition to covering all the major topics within the law of evidence, this book examines key concepts such as relevance and the court's discretion to exclude technically admissible evidence. This edition has been carefully and

comprehensively updated to include all vital new developments in thelaw of evidence, in particular extensive consideration of the full ramifications of the Criminal Justice Act 2003. This lively, sometimes critical, and often entertaining text offers clear guidance to any student who may find evidence a slightly forbidding subject, and enough analysis to challenge those who wish to explore further.

The "unputdownable courtroom drama" (Stephen King) and riveting sequel to the landmark bestseller Presumed Innocent, in which Tommy Molto and Rusty Sabich come head-to-head in a second murder trial. Twenty years after Rusty Sabich and Tommy Molto went head to head in the shattering murder trial of Presumed Innocent, the men are once more pitted against one another in a riveting psychological match. When Sabich, now 60 years old and the chief judge of an appellate court, finds his wife Barbara dead under mysterious circumstances, Molto accuses him of murder for the second time, setting into motion a trial that is vintage Turow--the courtroom at its most taut and explosive. With his characteristic insight into both the dark truths of the human psyche and the dense intricacies of the criminal justice system, Scott Turow proves once again that some books simply compel us to read late into the night, desperate to know who did it. A New York Times Book Review Editors' Choice

In the last decade a new tool has been developed in the global war against official corruption through the introduction of the offense of "illicit enrichment" in almost every multilateral anti-corruption convention. Illicit enrichment is defined in these conventions to include a reverse burden clause which triggers an automatic presumption that any public official found in "possession of inexplicable wealth" must have acquired it illicitly. However, the reversal of the burden of proof clauses raises an important human rights issue because they conflict with the accused individual’s right to be presumed innocent. Unfortunately, the recent spate of international legislation against official corruption provides no clear guidelines on how to proceed in balancing the right of the accused to be presumed innocent against the competing right of society to trace and recapture illicitly acquired national wealth. Combating Economic Crimes therefore sets out to address what has been left unanswered by these multilateral conventions, to wit, the level of burden of proof that should be placed on a public official who is accused of illicitly enriching himself from the resources of the State, balanced against the protection of legitimate community interests and expectations for a corruption-free society. The book explores the doctrinal foundations of the right to a presumption of innocence and reviews the basic due process protections afforded to all accused persons in criminal trials by treaty, customary international law, and municipal law. The book then goes on to propose a framework for balancing and ‘situationalizing’ competing human rights and public interests in situations involving possible official corruption.

The presumption of innocence is widely accepted as a fundamental principle of criminal justice. This work is an attempt to secure consensus, and to present

some constructive solutions to the various theoretical and practical problems which exist in respect of the presumption of innocence.

Published in 1883, this three-volume account of English criminal law's development since 1200 remains a classic work of legal historical scholarship.

Rusty Sabich, a prosecuting attorney investigating the murder of Carolyn Polhemus, his former lover and a prominent member of his boss's staff, finds himself accused of the crime

An examination of international attempts to develop common principles for regulating criminal evidence across different legal traditions.

In this book the author examines the compliance of the European anti-cartel enforcement procedure with the presumption of innocence under Article 6(2) of the European Convention on Human Rights.

This report is about the directions that judges give to juries in the course of a criminal trail, and particularly at the summing up. These directions are designed to help jurors understand as much of the law and the issues that arise in the case as they need to make proper use of the evidence and to reach a verdict.