

Justifications for the woolmington principle law general essay

Law



Ans. The Woolmington principle is often considered to be one of the foundations upon which the law of evidence and its rules operate. In order to assess the extent to which the principle has been eroded, an examination of the rule's implications and principal justifications shall be made. This shall be followed by surveying the law for instances where the principle has been departed from in order to confirm whether such departures actually do breach the purported justifications for the rule. Additionally, a broader perspective shall be laid out to determine whether apparent departures actually amount to "erosion" or are in fact part of the very rule itself. Finally, an attempt will be made at reconciling the wealth of case-law on the Woolmington principle to see whether clear principles and/or exceptions can be discerned. The Woolmington principle primarily asserts that in criminal cases the burden of proof shall lie with the prosecution. It has been championed in and by courts as the golden thread of the English legal system, receiving classic formulation^[1] in the case of *Woolmington v DPP*^[2]. Viscount Sankey put it in the following words that surface time and again in judgments and journals: "Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt..."^[3]. In essence, this establishes that the burden of proof shall lie with the prosecution to prove its case; in the same case the standard of proof required from the prosecution was also reiterated - i. e. one satisfying the jury beyond reasonable doubt that the defendant is guilty. The Woolmington principle is more or less ubiquitous insofar as its content is found in almost every jurisdiction that respects one's right to a fair trial. Two connected points must be stressed at the outset: firstly, even in

Woolmington v DPP it was acknowledged that there were situations where the burden of proof may in fact lie on the defendant[4]; and secondly, instances of departure from the Woolmington principle in and of themselves do not necessarily mean that the principle has "eroded"; if the principle's underlying rationale remains intact and is seen to be observed in criminal procedure, one cannot conclusively say that the Woolmington principle has been eroded. Keeping this in mind, there are a number of justifications for the application of the Woolmington principle. The most significant aspect of criminal law that it underlines is that of the presumption of innocence, often described as the bedrock of English criminal procedure: the accused shall be presumed to be innocent until proved guilty by the prosecution. This remains true especially after the enforcement of the Human Rights Act (HRA) 1998 whereby Article 6(2) of the European Convention on Human Rights (ECHR) is now part of the considerations that weigh on a judge hearing a criminal case and directing the jury on points of law. One of the most eloquent justifications for the presumption of innocence was provided by Lord Bingham when he said: "The underlying rationale of the presumption of innocence...is that it is repugnant to ordinary notions of fairness for a prosecutor to accuse an accused of a crime and for the accused then to be required to disprove the accusation on pain of conviction and punishment if he fails to do so." [5] This dicta provides a compelling precursory justification for the Woolmington principle and it should be borne in mind whenever one faces what are now becoming notorious "exceptions" to the same. The justifications for the presumption of innocence thus translate into the justifications for maintaining the burden of proof on the prosecution. In this

respect Stumer argues that the presumption of innocence serves a dual purpose: the first is to protect innocent people from unsafe and wrongful convictions; and the second is to ensure the rule of law, which can be reduced to the proposition that "no one should be convicted unlawfully"[6]. Abandoning the presumption of innocence jeopardizes the rule of law and Stumer makes a very convincing argument to this effect. Equally importantly - particularly in the European context - the presumption of innocence is a principal tenet of an individual's right to a fair trial. Article 6 of the ECHR - which expressly recognizes the presumption of innocence - has become a major source of case-law with respect to individuals challenging the UK in Strasbourg in a number of instances when the presumption has been done away with by virtue of a reverse onus. Were the position otherwise, criminal law would become procedurally odious. It stands to reason that whenever an individual is charged, it is the accuser who can reasonably be expected to back the charge with positive evidence. As opposed to the individual, the state is far better equipped with resources to collect and process evidence. In light of these considerations, it makes good sense to adhere to the Woolmington principle at least as a starting and default position (and a factor borne in mind throughout as Viscount Sankey's suggested 'golden thread')[7]. Yet, the law has developed in a manner whereby one can point to instances where the presumption has been compromised. As pointed out earlier, it has been accepted that although the general rule requires the prosecution to prove the defendant's guilt, the onus may be reversed if the defendant pleads the defence of insanity or if there is an express or implied statutory exception requiring the defendant to prove something[8]. The

former is the only common law exception to the Woolmington principle while the latter has led to some insightful case-law over the past decade. It is crucial to note though that the standard of proof expected from the defendant in cases of reverse burdens of proof is that of a balance of probabilities[9] which is a lower standard than what the prosecution has to discharge. It bears to note another cautionary aspect of the Woolmington principle. At times all that is "reversed" in terms of the burden of proof is the "evidential" burden as opposed to the legal burden. It is submitted that an evidential burden of proof - i. e. one that merely requires the accused to adduce sufficient evidence to raise an issue regarding the existence of a matter[10]- ought not to be viewed as an erosion of the Woolmington principle. This is because unlike the legal burden, the evidential burden does not carry with it the assumption of the same sort of risk of an unsafe/wrongful conviction as the legal burden. When does erosion occur? For one, it arguably started to occur the moment the European Court of Human Rights (ECtHR) accepted that Article 6(2) of the ECHR does not involve an absolute right[11]. The presumption of innocence can indeed be qualified provided that the reverse onus was in pursuance of a legitimate aim and proportional to the achievement of that legitimate aim. Both Strasbourg and English courts seem to accept this criteria for qualifying the presumption of innocence, although the latter have had considerable difficulty in applying this criteria in a systematic manner as was evinced by the mounting tension between the Court of Appeal and the House of Lords[12] at one stage. Furthermore, the courts seemed satisfied in resolving to the position that each case of reverse onus would be treated individually,

without any general rule as such[13]. The prima facie justification for having the defendant bear the burden of proving the defence of insanity is on the basis that for the defense to be valid, the mens rea or relevant mental state of the defendant has to be established. Having the prosecution establish the defendant's mental state - which by its very nature is a factor that is best known to the defendant and the defendant alone - would not only be impractical, it would be counterintuitive[14]. Section 2(2) of the Homicide Act 1957 creates an express statutory exception where, if the defendant chooses to take the defense of diminished responsibility on a charge for murder, the legal burden for establishing it rests upon him. The same rationale for the reversal of the burden of proving on insanity applies here since diminished responsibility can only be established by proving the defendant's mens rea[15]. When it comes to potentially erosive statutory provisions, section 101 of the Magistrates Court Act 1980 is the first to appear as an issue: it states that where the defendant seeks to rely on any "exception, exemption, proviso, excuse or qualification.... the burden of proving the exception, exemption, proviso, excuse or qualification shall be on him..." The ramifications of this provision are manifold; it extended the application of imposing a reverse burden of proof by creating a category of implied statutory exceptions. It appears that Parliament's instructions are inconsistent with the Woolmington principle since the wording of section 101 appears to encourage the usage of a reverse burden of proof as the norm rather than the exception. Furthermore, under section 87 (1) of the Road Traffic Act 1988, in relation to an offence of driving otherwise than in accordance with a license the prosecution need only prove that the

defendant was driving a motor vehicle on the road and the defendant must then prove that he had a valid license[16]. In accordance with section 155(1) of the Factories Act 1961, a workplace should be as far as is reasonable be made safe for the people working in it. On an interpretation of the phrase 'so far as is reasonably practicable', the House of Lords interpreted it to mean that the plaintiff had to prove that the place was not safe and the defendant had to prove that it was not reasonable to take any more precautions[17]. These are just two examples from a number of rulings where courts have upheld reversed burdens of proof by statutory implication. In R v Hunt[18]the House of Lords expressly stated that in certain circumstances, a statute could imply an exception and stated when this would be done. They stated that if on a linguistic construction of a statute it does not clearly indicate on whom the burden should lie, the court in construing it may have regard to matters of policy, including practical considerations and the ease in which either of the parties could discharge the burden. This significantly reduced the applicability of the Woolmington principle insofar as the courts assumed greater discretion by effectively ruling that wherever Parliament's intentions as to who should bear the burden of proof are unclear, the courts would decide where it lies. The category of potential exceptions has been expanded to a level where the principle/presumption has arguably lost its status from being the " golden thread" to more like a guideline. In Attorney-General's Reference (No 4 of 2002) [2005] the House of Lords looked into the compatibility of reverse burdens in light of the ECHR. There was emphasis laid on the nature of Article 6(2) as incorporating a right that could be qualified. It was also stated that the ECHR required a balance to be struck

between the rights of an individual and the interests of the wider community. It, however, did aim to control the scenarios in which the presumption was not applied and did this by stating that for a reverse burden to be legitimate there must be a compelling reason justifying why it is fair and reasonable to deny the accused person the protection of the presumption of innocence. Their Lordships also mentioned a number of factors to be taken into account in concluding whether a reverse burden was justified. These included the severity of the sanction, the practicalities of evidence and parliament's intention in enactment of the statute. In its 11th report, the Criminal Law Revision Committee was strongly of the opinion that whenever the burden of proof is placed upon the accused it should be an evidential burden instead of a legal burden. Whilst in initial cases the Court disputed this view and refused to put it to practice, in *Attorney-General's Reference (No 4 of 2002)* [2005], it was held that where the reverse burden infringes article 6 (2) only an evidential burden should be placed upon the accused. In light of the sanctity of the Woolmington principle, this is a welcome decision. Finally, as discussed above the individual in a majority of cases lacks the resources to process the evidence, making it easier for the prosecution to bear the burden for these[19]. If a reverse burden of proof is borne by the defendant, it serves as creating a presumption of guilt to fill the void left by the presumption of innocence. This is inconsistent with the right to a fair trial, against the rule of law and incompatible with the ECHR. This is not to say that the Woolmington principle does not have any disadvantages. It does appear that in matters where the fact in issue is something peculiar to the knowledge of the defendant[20], the ease of discharging the burden lies with

the defendant but that is precisely why the exceptions exist to provide flexibility to the Woolmington principle. There appear to be clear signs of the Woolmington principle withering away and being replaced by an abstract procedure that subjects defendants to a lottery of sorts. Perhaps the more pertinent question to ask is whether courts are wary of the need to develop consistent principles in this area of law that can guide them when assessing the justifications of reverse burdens of proof. Glover provides a very unique and interesting way out of these inconsistent principles: he advocates the use of a "licensing approach" in cases involving regulatory offences: by acting unlawfully in a sphere of regulated activity, a defendant presumably accepts the imposition of a reverse legal burden of proof[21]. This is a somewhat ambitious view - given that Glover's idea of "regulatory offences" covers all major criminal offences - that fits well with "choice theory" in criminal law, but it cannot resolve the current dilemma conclusively. Artificially reading reverse burdens as merely evidential does not entirely remedy the plague of procedural unfairness that mars criminal trials when defendants are presumed guilty instead of innocent. From the foregoing discussion, the one thing that is plainly visible is the inconsistency in case-law because of which the extent of erosion cannot be conclusively determined. In another sense however, one can argue that the Woolmington principle may in fact never be eroded beyond a certain point because of the burden on trial judges when directing juries: as long as the content of directions given to juries - emphasizing that the burden of proving its case lies on the prosecution - continue to capture the essence of the presumption of innocence, it is submitted that the Woolmington principle remains immune

to total erosion. In a nutshell, there appears to be significant erosion of the Woolmington principle and this erosion is amplified by the inconsistent approaches favoured by courts, especially when interpreting statutory provisions.