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Proof and Fact Finding

The Nature of proof

8.3

- In both civil and criminal trials, fact gathering and presentation is left to the parties who are required to keep their efforts within some sort of reasonable bounds, regarding what is at stake

The presumption of Innocence and the Burden of proof (BOP)

8.4

- General rule: In a criminal trial the accused is presumed to be innocent and the prosecution bears the burden of proving the accused's guilt beyond reasonable doubt.
- Unless that burden is discharged the accused remains innocent

8.5

- There can be rare exceptions to the general rule
- Different standards of proof apply depending on the issue and on the party bearing the particular burden

Distinguishing evidential and legal burdens

8.6

- BOP has two distinct meanings: evidential and legal
- BOP is used when indicating which party bears the burden of raising factual hypotheses or issues for the court's consideration
- Evidential burden: 'the duty of going forward in argument or in producing evidence; whether at the beginning of a case or at any later moment throughout the trial or the discussion'
- It is argued that evidential burden of proof does not satisfy this meaning
- This can be explained by the case of *Jayasena v R* [1970] AC 618 where it was said that the evidential burden 'can be discharged by the production of evidence that falls short of proof'
- This point was affirmed by the HC case *Momcilovic v R* (2011) 245 CLR 1; [2011] HCA 34 at [665]: 'An evidential burden is not an onus of disproof'
- The term BOP is also used when indicating the party who bears the risk of non-persuasion
- In a criminal case it is usually the prosecution who bears the burden of persuading the jury 'beyond reasonable doubt'
- In a civil case the plaintiff bears the burden of persuading the jury on the balance of probabilities
- The legal burden in a case is assigned by law
- The prosecution will always bear an evidential burden and doesn't need to be discharged on a certain standard
- Division 13 of the *Commonwealth's Criminal Code* discusses the BOP

Assigning the BOP in criminal cases

The normal rule

8.8

- The prosecution bears the legal burden in criminal cases
- Uniform evidence act ss14-141: the standards of proof that parties are to achieve if they are to prove their case
- *Woolmington v DPP* sets out the common law rule that everyone is presumed innocent until proven guilty. This case stated that there are only two exceptions to the general rule that the prosecution bears the legal burden on all issues: insanity and the statutory exceptions

Woolmington v DPP [1935] AC 462

- W admitted that he had killed his estranged wife, but said it was an accidental shooting
- The trial judge directed the jury that once it is shown that the accused killed the victim, the killing 'is presumed to be murder unless W can satisfy the jury that what happened was... accidental...'
- *R v Davies* (1913) 29 TLR: where intent is an ingredient of a crime there is no onus on the defendant to prove that the act alleged was accidental.
- If at the end of and whole of the case, there is a reasonable doubt, create by the evidence given by with party, as to whether the accused killed the deceased with a malicious intention, the prosecution has not made out its case and the prisoner is entitled to an acquittal.
- When evidence of death and malice is given the accused, is entitled to show by evidence or examination of the circumstance adduced by the crown that the act on his part which caused death was either unintentional or provoked.
- If the jury are either satisfied with his explanation, or upon review of all evidence are left in reasonable doubt whether, even f his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted.

8.10

- *Griffiths v R* (1994) 125 ALR 545: The HC said the prosecution bore the onus of disproving accident. It was unable to do this, so the accused was discharged

The insanity exception

8.13

- Presumption of sanity at common law: the accused bears the legal burden when replying on the defence of insanity.
- To discharge it the accused must persuade the jury on the balance of probabilities
- General common law principle: Where the accused bears the legal burden, it can be discharged by evidence meeting the civil standards (s 141 (2) Uniform Evidence Act)

8.14

- The defence of automatism can be viewed as being distinct from the insanity defence only where the automatism is not the product of an unhealthy
- Some cases have evidence pointing to both sane and insane automatism
- The jury must look to see whether the prosecution has proved sane automatism beyond reasonable doubt