

# PRESUMPTION OF INNOCENCE

The presumption of innocence is the legal principle that the prosecution must prove guilt. The accused does not have to prove innocence and is considered to be innocent until proven guilty.



## KEY PRINCIPLES

All people are considered **innocent**.  
This means all people, no matter their race, gender, religion or association are considered good, honest and free from blame.

It is a **presumption**  
and imposes on the accuser the burden of proving an assertion as correct.

Excluding or modifying the presumption should **never be easy**.

Where one's freedom and livelihood are at stake, society should be very careful to protect a person's presumption of innocence.

Whilst it is included in the Universal Declaration of Human Rights it is not an enforceable legal right. It can (and often is) excluded or modified at any time by an Act of Parliament.

## IMPLICATIONS

1 It is better for a crime to go **unpunished** than an innocent person be condemned- even if the crime is heinous.

2 The **onus of proof** is on the accuser to prove guilt.

This protects the accused and ensures they are:

- informed of the charge and any relevant evidence
- provided the right to defence in an open court
- protected from coercion (or torture) where their testimony might incriminate them (right to silence)
- not disadvantaged where the accuser has greater financial resources and power, and
- tried for a specific crime that is against the law and not for their race, religion, association or crime of another person

This also provides checks and balances on the accuser to stop them from misusing their power.

3 A person cannot be convicted unless there is **satisfactory legal evidence** that relates to the accusation and not merely vague, unsubstantiated stories or evidence.



# Presumption Of Innocence

**Basil S Markesinis, Hannes Unberath**

## **Presumption Of Innocence:**

*Taming the Presumption of Innocence* Richard L. Lippke, 2016-02-01 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.

*The Presumption of Innocence in International Human Rights and Criminal Law* Michelle Coleman, 2021-03-03 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.

*Presumption of Innocence* Pamela-Jane Schwickard, 1999 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.

*The Presumption of Innocence Before the International Criminal Court* Theodore Ngoy Ilunga Wa Nsenga, 2012 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. The Presumption of Innocence Andrew Stumer, 2010-06-14. 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.

**The Presumption of Innocence in Irish Criminal Law** Claire Hamilton (Barrister), 2007. 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.

**Presumption of Innocence in Peril** Anthony Gray, 2017-11-08. This book explains the historical significance and introduction of the presumption of

innocence into common law legal systems It explains that the presumption should be seen as reflecting notions of moral comfort around judgment of others Specifically when one is asked to make a judgment about the guilt or otherwise of a person accused of wrongdoing the default position should be to do nothing This reflects the very serious consequences of what we do when we decide someone is guilty of wrongdoing and is not a step to be taken lightly Traditionally decision makers have only taken it when they are morally comfortable with that decision It then documents how legislators in a range of common law jurisdictions have undermined the presumption of innocence through measures such as reverse onus provisions allowing or requiring inferences to be made against an accused redefining offenses and defenses in novel ways to minimize the burden on the prosecutor and by dressing proceedings as civil when they are in substance criminal Courts have too easily acceded to such measures in the process permitting accused persons to be convicted although there is reasonable doubt as to their guilt and where they are not guilty of sufficiently blameworthy conduct to attract criminal sanction It finds that the courts must be prepared to re assert the prime importance of the presumption of innocence only permitting criminal sanctions to be imposed where they are morally certain that the accused did that of which they have been accused and morally comfortable that the conduct being addressed is worthy of the kind of criminal sanction which prosecutors seek to impose Courts must be morally comfortable about the finding of guilt and the imposition of the criminal penalty in a given case They have lost sight of this moral underpinning to criminal law process and substance and it must be regained

**The German Law of Torts** Basil S Markesinis, Hannes Unberath, 2002-06-10 This edition has been extensively rewritten and enlarged and is an ideal tool for those interested in comparative torts and comparative methodology

*Judicial Reasoning under the UK Human Rights Act* Helen Fenwick, Gavin Phillipson, Roger Masterman, 2007-09-06 Judicial Reasoning under the UK Human Rights Act is a collection of essays written by leading experts in the field which examines judicial decision making under the UK's de facto Bill of Rights The book focuses both on changes in areas of substantive law and the techniques of judicial reasoning adopted to implement the Act The contributors therefore consider first general Convention and Human Rights Act concepts statutory interpretation horizontal effect judicial review deference the reception of Strasbourg case law since they arise across all areas of substantive law They then proceed to examine not only the use of such concepts in particular fields of law privacy family law clashing rights discrimination and criminal procedure but also the modes of reasoning by which judges seek to bridge the divide between familiar common law and statutory doctrines and those in the Convention

**Basic Concepts of Criminal Law** George P. Fletcher, 1998-09-03 In the United States today criminal justice can vary from state to state as various states alter the Modern Penal Code to suit their own local preferences and concerns In Eastern Europe the post Communist countries are quickly adopting new criminal codes to reflect their specific national concerns as they gain autonomy from what was once a centralized Soviet policy As commonalities among countries and states disintegrate how are we to view the basic concepts of criminal law as a whole Eminent legal scholar George Fletcher

acknowledges that criminal law is becoming increasingly localized with every country and state adopting their own conception of punishable behavior determining their own definitions of offenses Yet by taking a step back from the details and linguistic variations of the criminal codes Fletcher is able to perceive an underlying unity among diverse systems of criminal justice Challenging common assumptions he discovers a unity that emerges not on the surface of statutory rules and case law but in the underlying debates that inform them Basic Concepts of Criminal Law identifies a set of twelve distinctions that shape and guide the controversies that inevitably break out in every system of criminal justice Devoting a chapter to each of these twelve concepts Fletcher maps out what he considers to be the deep structure of all systems of criminal law Understanding these distinctions will not only enable students to appreciate the universal fundamental ideas of criminal law but will enable them to understand the significance of local details and variations This accessible illustration of the unity of diverse systems of criminal justice will provoke and inform students and scholars of law and the philosophy of law as well as lawyers seeking a better understanding of the law they practice *Due Process and Victims' Rights* Kent Roach,1999-01-01 A critical examination of the dramatic changes in criminal justice over the last two decades and the first full length study of the law and politics of criminal justice in the era of the Charter and victims rights **Chinese Law** Jianfu Chen,2008 This book examines the historical and politico economic context in which Chinese law has developed and transformed focusing on the underlying factors and justifications for changes It attempts to sketch the main trends in legal modernisation in China and by doing so it is hoped that the main features of contemporary Chinese law can be outlined and the nature of contemporary Chinese law can be better understood from a developmental perspective This book offers a comprehensive coverage of topics such as legal culture and modern law reform constitutional law legal institutions law making administrative law criminal law criminal procedure law civil law property family law contracts law on business entities securities bankruptcy intellectual property law on foreign investment and trade and implementation of law **Encyclopedia of the United States Constitution** David Andrew Schultz,2010-05-18 Covers the people court cases historical events and terms relating to one of the most studied political documents in schools across the country the United States Constitution

**The Judicial System and Reform in Post-Mao China** Yuwen Li,2016-03-03 This comprehensive study examines the development and changing characteristics of the judicial system and reform process over the past three decades in China As the role of courts in society has increased so too has the amount of public complaints about the judiciary At the same time political control over the judiciary has retained its tight grip The shortcomings of the contemporary system such as institutional deficiencies shocking cases of injustice and cases of serious judicial corruption are deemed quite appalling by an international audience Using a combination of traditional modes of legal analysis case studies and empirical research this study reflects upon the complex progress that China has made and continues to make towards the modernisation of its judicial system Li offers a better understanding on how the judicial system has transformed and what challenges lay ahead

for further enhancement This book is unique in providing both the breadth of coverage and yet the substantive details of the most fundamental as well as controversial subjects concerning the operation of the courts in China **Human Rights in Pre-trial Detention** Chandr Mohan Upadhyay,1999 Criminal Justice in Ireland Paul O'Mahony,2002 Comprehensive overview of the Irish criminal justice system its current problems and its vision for the future Collection of essays by major office holders experienced practitioners leading academics legal scholars sociologists psychologists philosophers and educationalists *Principles of Polish Criminal Procedure* Jaroslaw Zagrodnik,Kazimierz Zgryzek,2023-12-14 Little is available in English on the procedural aspects of the Polish criminal justice system and the tenets of its criminal process This authoritative new work addresses this gap It sets out an analysis of the founding principles its main phases and of those systemic and structural components which inform it Taking an applied practical approach it surveys the process from beginning to end Pre trial trial post trial questions of evidence and remedies are all clearly addressed The authors two acknowledged experts in the field also explore the role of more general rule of law standards of law questions that are currently impacting on the law and its interpretation Comparative criminal lawyers will welcome this important new work

**Judicial and Statutory Definitions of Words and Phrases** ,1914 Money Laundering Guy Stessens,2000-08-31 This book gives a broad analysis of the legal issues raised by the international fight against money laundering It offers an extensive comparative research of the criminal and preventive law aspects from an international perspective Stessens portrays money laundering as a new criminal trend threatening both national and international societies which must be addressed multilaterally through banking practice international conventions and human rights Most of this volume is devoted to specific legal problems that spring from the international nature of the money laundering phenomenon It contains a most detailed overview on the rules and practices of international co operation in the fight against money laundering The publication gives a thorough examination of the exchange of information lifting banking secrecy and seizing and confiscating assets as well as the jurisdictional questions that inevitably arise in this context The result is a rich and detailed study of international and comparative law **Criminal Justice** George S. Bridges,Joseph G. Weis,Robert D. Crutchfield,1996-02-22 This is a solid representation of criminological articles that are important to the discipline The important material from each article has been retained yet an undergraduate won t be overwhelmed The articles are germane and flow together a certain consistency in thought is presented to the student as opposed to interesting but often semi related articles This book is accessible and in several areas very enjoyable reading A L Marsteller Drury College Also by the Editors Crime Vol 1 and Juvenile Delinquency Vol 2 Why are these edited collections THE anthologies to use for teaching Criminal Justice Criminology or Juvenile Delinquency All volumes present the field accurately and completely to students and in a way that is understandable to undergraduates and therefore teachable All include rich collections of classic and contemporary articles all of which have been carefully edited so that students can master the material All volumes contain essays written by the

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