

*Criminal Evidence*, 14<sup>th</sup> Edition  
Instructor's Guide and Test Bank

## Chapter 2: Burden of Proof

### Objectives

Case law decided by the Supreme Court of the United States clearly indicates that the burden of proof rests with the government in all criminal cases and in juvenile cases where the act would have been a crime if done by an adult. A prosecutor will not take a criminal case to trial unless he or she is convinced that the evidence available demonstrates that there is a good chance that all the elements of a crime or crimes are likely to be proved beyond a reasonable doubt. A prosecutor will only consider moving the case toward a trial when law enforcement agencies have assembled sufficient admissible evidence. When the prosecutor believes that the burden of proof cannot be established beyond a reasonable doubt, the prosecutor will decline the case or will suggest that the law enforcement agencies take a second look at assembling evidence that will meet the criminal burden of proof.

Although defendants do not have a burden of proof in most criminal cases, this chapter emphasizes that after the prosecution has proven a *prima facie* case, defendants will have a burden of producing evidence to rebut prosecution evidence in order to avoid a conviction. However, in cases where defendants have pleaded affirmative defenses such as self-defense, alibi, or mistake of fact or law, an individual defendant may have a burden of proof limited to establishing the affirmative defense by a preponderance of the evidence or, in some cases, by clear and convincing evidence. The objective of this chapter is first to examine and to define burden of proof; second, to disclose the important role of those involved in the criminal justice system in regard to establishing proof; and third, to discuss some of the specific areas where the burden of proof is particularly important in criminal cases.

*The objectives of this chapter:*

1. Be able to discriminate between the civil burden of proof and the burden of proof in a criminal case.
2. Define the terms *burden of proof*, *burden of going forward*, and *burden of persuasion* and explain how they differ.

3. Explain the concepts of *preponderance of the evidence*, *clear and convincing evidence*, and *beyond a reasonable doubt*.
4. Understand that the case of affirmative defenses, as a general rule, the burden of proof can be allocated to the defendant by a preponderance of the evidence or by clear and convincing evidence.
5. Comprehend the quantum of evidence that a defendant must present in order for a trial judge to instruct a jury concerning a particular affirmative defense.
6. State the rationale and explain the theory that requires the prosecution to prove each and every element of a crime beyond a reasonable doubt in order to meet due process requirements.
7. Examine and explain the general rules relating to the burden placed upon the defendant in a criminal case.
8. Emphasize the decisions of the Supreme Court that hold that no burden to prove innocence can be placed upon a criminal defendant.
9. Define the concept of “affirmative defenses” and state the rules necessary to establish the existence of such defenses.
10. Discuss the legal burdens on the prosecution and defense when the defendant raises the affirmative defense of alibi.
11. Explain the burden of proof necessary to prevail when asserting the affirmative defense of insanity.
12. Distinguish between the two different rules regarding the degree of evidence or proof required to rebut the presumption of sanity.
13. Understand the burden of proof that may be placed upon a defendant by the state concerning the affirmative defense of self-defense and that some jurisdictions merely require that the defendant raise the defense and present some evidence.

### **Highlighting Instructional Objectives Using the Available PowerPoint Slides**

1. The instructor may choose to use the PowerPoint slides that have been developed as a method of emphasizing the substantive highlights of each section and subsection of Chapter 2.

2. The instructor may determine that only some of the PowerPoint slides meet the instructor's particular pedagogical methodology and may delete or add slides or otherwise modify the existing PowerPoint slides to make them more relevant to the students' learning processes and the instructor's teaching style.

## **Discussion Outline**

- §2.1 Introduction
- §2.2 Definitions and Distinctions
  - A. Burden of Proof
  - B. Burden of Going Forward
  - C. Burden of Persuasion
- §2.3 Preponderance of the Evidence
- §2.4 Clear and convincing Evidence
- §2.5 Beyond a Reasonable Doubt
  - A. Definition of Reasonable Doubt
  - B. Reasons for the Reasonable Doubt Requirement
  - C. Instructions on Reasonable Doubt
- §2.6 Burden on the Prosecution
- §2.7 Burden to Prove All Elements of the Crime
- §2.8 Burden on the Accused
- §2.9 Burden of Proving Affirmative Defenses—General
- §2.10 —Alibi
- §2.11 —Insanity
- §2.12 —Self-defense
- §2.13 Sufficiency of Evidence
- §2.14 Summary

## **Review Questions**

1. What is meant by the statement “The burden of proof of guilt in a criminal case is on the prosecution throughout the trial”? (§2.1)
2. Define *burden of proof*, *burden of going forward*, and *burden of persuasion*. (§2.2)
3. Explain why the *burden of going forward with the evidence* may shift from the prosecution to the defense and may even shift back to the prosecution although the burden of proof never shifts from the prosecution. (§2.2)
4. Distinguish between the concepts of *preponderance of the evidence* and *beyond a reasonable doubt*. (§§2.3, 2.5)
5. Explain the difference between *clear and convincing evidence* and a *preponderance of the evidence*. In what kind of case might the clear and convincing evidence standard be used? (§§2.3, 2.4)
6. What type of cases may use the legal standard of clear and convincing evidence and preponderance of the evidence? (§§2.3, 2.4)
7. If the trial judge fails to instruct the jury about an essential element of the crime and fails to tell the jury that it must find that element beyond a reasonable doubt, must the conviction be reversed? Explain. (§2.5)
8. What is the rationale for requiring the standard of beyond a reasonable doubt in a criminal case, and not requiring this in a civil case? (§2.6)
9. Why did the Supreme Court of the United States hold that proof beyond a reasonable doubt in a criminal case is a constitutional requirement? (§§ 2.5 and 2.13 and , *In re Winship*, Part II)
10. In a criminal case, the burden of proving guilt never shifts from the prosecution in a criminal case. Does this mean that the accused is not responsible for proving any claim? Explain. (§2.6)
11. In legal theory, to convict a person of the crime charged, each of the elements of the crime must be proved beyond a reasonable doubt. For example, in a murder case, the essential elements are: (1) there was an intentional killing of (2) one person by another person, (3) with malice aforethought. What is the result if the prosecution fails to prove one or more of the elements beyond a reasonable doubt? (§2.7, *In re Winship*, Cases Relating to Chapter 2, Part II)

12. If, in an assault case, the accused claims that he or she was not near the place where the alleged criminal act took place. Does the accused have the responsibility to prove that he or she was not at the scene? What degree of evidence is required? (§2.10)
13. If *specific intent* is an element of a crime, is it error for the judge to instruct the jury that “it is reasonable to infer that a person intends the natural and probable consequences of an act knowingly done?” Explain. (§2.8)
14. In some instances, the defendant has the burden of proving affirmative defenses. Does this violate due process? (§2.9)
15. If a defendant makes a threshold showing of proof for an affirmative defense, should the judge offer a jury instruction covering that affirmative defense? (§§ 2.8 and 2.9)
16. In some jurisdictions, courts have held that the issue of alibi is an affirmative defense, and when asserted, the burden of proof by a preponderance of the evidence rests with the defendant. What is meant by an alibi defense? Why do some states require that the defense give notice in advance to the prosecution that alibi witnesses are to be used at the trial? (§2.10)
17. If the defendant introduces evidence of insanity, must the prosecution prove sanity beyond a reasonable doubt? Discuss the various rules. (§2.11)
18. If the defendant in a criminal case pleads self-defense, what burden rests with the defense? (§2.12)
19. After the trier of fact renders a guilty verdict, can the reviewing court set aside a conviction if it finds that no rational trier of fact could logically have found the defendant guilty beyond a reasonable doubt? Explain your answer. (§2.13)
20. Although the case dealt with the burden of proof in a juvenile case where the act charged would have been a crime if committed by an adult, the case of *In re Winship* held that in either an adult or juvenile case in which the act would have been a crime if committed by the adult, the Constitution of United States and historical practice dictated that the standard of proof beyond a reasonable time was a constitutional requirement. How did the Court arrive at this conclusion? Explain. (*In re Winship*, Cases Relating to Chapter 2, Part II.)
21. In the Virginia case, *Lindsey v. Commonwealth*, store employees observed that the defendant concealed two items of merchandise under his clothing. The defendant was brought to trial for petty larceny and was convicted. While

the prosecution has the burden of proof in a criminal case, the trial judge indicated that the jury could infer that willful concealment of goods or merchandise while still on the premises of a store was evidence of an intent to convert and defraud the owner of the value of the goods or merchandise. Defendant Lindsey contended that the jury instruction amounted to a mandatory but rebuttable presumption that the defendant intended to defraud the owner of the property unless the defendant were able to convince him otherwise. The prosecution contended that the jury instruction was merely the use of an inference that the jury could adopt or refuse to adopt and therefore the jury instruction did not reverse the burden of proof and place it on the defendant. How did the reviewing court rule? What was the reviewing court's essential rationale? (*Lindsey v. Commonwealth*, Part II, Cases Relating to Chapter 2)

23. In the case of *State v. Eichelberger*, the defendant had been convicted of two counts of trafficking in stolen property in the second degree because it believed that Eichelberger sold property that he should have known had been stolen. Under the circumstances of this case, why did the reviewing court determine that a reasonable jury could have found that the evidence was sufficient to prove his guilt beyond a reasonable doubt? (§2.13, *State v. Eichelberger*, Part II, Cases Relating to Chapter 2)
24. In the case of *Martin v. Ohio*, the defendant was tried in state court for aggravated murder. What was the decision of the United States Supreme Court concerning the Ohio practice of placing on the defendant the burden of proving that she was acting in self-defense when she allegedly committed the murder? Do other states follow the same rule regarding the burden of proof when self-defense is claimed by the defendant? (§2.13, *Martin v. Ohio*, Part II, Cases Relating to Chapter 2)

### **Review Presentation Using Chapter 3 PowerPoint Slides**

1. Using the PowerPoint slides that correspond to Chapter 2, the instructor may use the slide presentations to provide the students with a substantive review of Chapter 2.
2. Alternatively, the instructor may choose to select PowerPoint slides for Chapter 2 to review only the sections that have produced some challenges to the students' understanding.

### **Examination Questions (\*indicates correct answer)**

## (§2.1)

1. In a criminal case, the state does not normally actively prosecute a case unless:
  - a. the prosecutor is absolutely certain of a conviction.
  - \*b. there is at least a strong chance that all the elements of the crime alleged can be proved beyond a reasonable doubt.
  - c. the court determines that the burden of proof beyond a reasonable doubt is on the prosecution.
  - d. the judge, in advance, indicates his or her belief that the defendant is guilty.

## (§§2.1, 2.2)

2. In a criminal case, the prosecution:
  - a. must prove the defendant guilty by a preponderance of the evidence.
  - b. need not prove each element of the crime but only the general guilt of the accused.
  - c. must prove the guilt of the accused by clear and convincing evidence.
  - \*d. must compile enough evidence to convince the jury or the judge that the accused is guilty beyond a reasonable doubt.

## (§2.2)

3. The term *burden of proof* in a criminal case means:
  - \*a. the duty of establishing the truth of a given proposition or issue.
  - b. the party has a requirement to introduce more witnesses than the other party.
  - c. the same as the burden of going forward with the evidence.
  - d. the burden to prove that the defendant is not guilty rests with the prosecution until it shifts to the defense.

## (§2.4)

4. Some civil cases call for a higher standard of proof than is usually the case for the average civil matter, and the degree of proof must be such as will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. This standard is known as:
  - \*a. clear and convincing evidence.
  - b. a preponderance of the evidence.
  - c. beyond a reasonable doubt.
  - d. clear and unequivocal.

## (§2.5)

5. In jury trials, the degree of proof referred to as *beyond a reasonable doubt*:
  - a. is the degree required in both criminal and civil cases.
  - b. is a rule of evidence but has not been made applicable to the states by the due process clause.

- \*c. does not have to be explained by the trial judge in a jury instruction in every criminal case.
- d. must, according to the U.S. Supreme Court, always be defined when the charge is made to the jury.

(§2.5)

6. Assume that state law does not require trial courts to offer a jury instruction in any particular format that describes the concept of proof beyond a reasonable doubt. If the trial court failed to offer any instructions to the jury that it must find guilt, if at all, by the standard of beyond a reasonable doubt, and a conviction resulted, an appellate court should:
  - \*a. reverse the judgment if the jury returned a guilty verdict.
  - b. not reverse the judgment because it is the duty of the defendant to request an instruction.
  - c. not automatically reverse the verdict.
  - d. not review the verdict because the judge would have offered a jury instruction on proof beyond a reasonable doubt if it had been needed.

(§§2.6, 2.8)

7. As a general rule from the cases, the burden of introducing proof rests with the:
  - a. defendant to prove that he or she did not commit the crime by introducing proof that successfully disputes the government's proof.
  - \*b. defendant in cases where the defendant has alleged an affirmative defense.
  - c. prosecution to prove all of the elements of the crime or crimes by the level of proof of *preponderance of the evidence*.
  - d. Both b and c responses indicate correct statements.

(§2.7)

8. Throughout the trial, the prosecution has the obligation to convince the jury of the accused's guilt beyond a reasonable doubt.
  - a. In so doing, circumstantial evidence is not admissible.
  - \*b. This means that each element of the offense must be proved beyond a reasonable doubt.
  - c. However, the burden of proving a defendant's innocence may shift to the defendant if the prosecution has successfully presented its case.
  - d. However, the failure of the accused to substantiate his or her defense relieves the prosecution of this burden of proof.

(§2.7)

9. Although the prosecution has the duty to prove all the elements of a charged crime beyond a reasonable doubt, the failure to clearly prove one element of a crime:



- a. may be excused as long as there is strong general evidence that the crime occurred and that the defendant was the one who committed it.
- \*b. means that the defendant should be acquitted of the crime accused due to the prosecution's failure to meet its burden of proof.
- c. allows the jury to convict for the crime charged but to give a reduced sentence.
- d. will still allow a conviction to stand if the defendant did not object to the prosecution's failure to prove the one missing element.

(§2.8)

10. In some instances, the burden of proving affirmative defenses is placed on the defendant. In this situation, the degree of proof usually is:
- a. beyond a reasonable doubt.
  - b. by clear and convincing evidence.
  - \*c. by a preponderance of the evidence.
  - d. by evidence that is uncontradicted.

(§2.8)

11. If "specific intent" is an element of a crime:
- \*a. jury instructions that have the effect of shifting the burden to the defense to produce evidence demonstrating lack of intent are improper.
  - b. the burden can be shifted to the defense since this concept operates similarly to an affirmative defense.
  - c. there is a rebuttable presumption that the defendant intended the consequences of the act that he or she set in motion.
  - d. a defendant has the responsibility of proving lack of intent.

(§2.9)

12. If the defendant in a criminal case relies upon a true affirmative defense that his or her acts come within one of the exceptions in the statute creating the offense:
- a. it is incumbent upon the prosecution to show that the exception does not apply to the defendant.
  - \*b. it is incumbent upon the defendant to show that his conduct and mental state were appropriate to meet the elements of that defense.
  - c. the burden of proving "not guilty" has been unconstitutionally shifted to the defendant.
  - d. the burden is on the prosecution to show guilt of all the elements of the crime, but then only by a preponderance of the evidence.

(§2.10)

13. The law regarding the alibi defense differs from state to state. If the defendant claims an alibi defense:

- \*a. he or she denies that he or she was at the scene of the crime.
- b. the rule in all states is that the defendant must prove the alibi defense beyond a reasonable doubt.
- c. a state law that requires the defendant to give notice to the prosecution that an alibi witness will testify is unconstitutional.
- d. the state has the burden of disproving the alibi defense by a preponderance of the evidence.

(§2.11)

14. In regard to the mental element (insanity) that may be at issue in a criminal case:

- \*a. requiring the defendant to prove the defense of insanity by clear and convincing evidence does not violate due process.
- b. there is a presumption that the defendant is not sane and the prosecution must prove sanity before introducing any other evidence.
- c. all the defendant has to do is claim insanity, thereby placing the responsibility on the prosecution to prove sanity.
- d. all courts agree that insanity is an affirmative defense that must be shown by the defendant by a preponderance of the evidence.

(§2.11)

15. In 1984, as a part of the Comprehensive Crime Control Act, Congress enacted legislation titled “Insanity Defense Reform Act of 1984.” Under this Act:

- a. insanity is no longer a defense in a federal case.
- \*b. the defendant has the burden of alleging and proving the defense of insanity by clear and convincing evidence.
- c. the defendant has the burden of proving the defense of insanity by evidence beyond a reasonable doubt.
- d. the government must prove sanity after the defendant has introduced expert testimony indicating that the defendant is mentally incompetent.

(§2.12)

16. In a homicide case, if the accused pleads self-defense:

- a. the prosecution has the burden initially of disproving self-defense.
- b. the prosecution must go forward with proof that the defendant did act in self-defense.
- c. the prosecution is relieved of proving that a person was killed because the defendant has effectively admitted the killing.
- \*d. the accused has the burden of proving that he or she was in great imminent peril and that he or she could not escape or retreat with safety without increasing that peril.

(§2.11)

17. In federal courts when a defendant pleads insanity:
- a. the burden of introducing evidence to prove insanity rests with the defendant.
  - b. to prevail in the case, the defendant must meet the affirmative burden of clear and convincing evidence.
  - c. the prosecution must prove sanity beyond a reasonable doubt in order to win the case.
  - \*d. answers a and b both state correct responses.

(§2.5, *In re Winship*, Cases Relating to Chapter 2, Part II)

17. In the case of *In re Winship*, the United States Supreme Court decided that:
- a. juvenile courts could use whatever legal standard of proof the respective state law required because juvenile courts were not subject to federal constitutional standards.
  - b. proof beyond a reasonable doubt had never been required by the Fourteenth Amendment for juvenile cases.
  - \*c. juveniles who are tried in juvenile courts had to have their cases decided by proof beyond a reasonable doubt when the acts of which they stood accused would have been crimes if done by adults.
  - d. when juveniles were charged with acts that would have been crimes if they had been done by adults, it was not required that they be adjudicated by the standard of proof beyond a reasonable doubt because a juvenile case is considered civil in nature.

(§§2.5, 2.6, *Lindsey v. Commonwealth*, Part II, Cases Relating to Chapter 2)

18. In the case of *Lindsey v. Commonwealth*, the defendant was convicted of petty larceny in a Virginia criminal court. The prosecution benefited from an instruction to the jury that indicated that where a defendant concealed personal property while on the premises of a retail store was evidence of an intent to convert and defraud the owner of the merchandise. The defendant contended that this jury instruction placed the burden of proving lack of intent on the defendant that was contrary to constitutional interpretations of the burden of proof by the U.S. Supreme Court because it had the effect of reversing the burden of proof. The reviewing court held that:
- a. a presumption that has been recognized for decades that reverse the burden of proof as to one element of a criminal case does not violate due process or fundamental fairness.
  - b. rebutting the government's proof in this case was a type of affirmative defense for which evidence the defendant must introduce if he wished to prevail and be acquitted.
  - c. placing the burden of proof for the defendant to rebut the government's case was not a violation of due process.

- \*d. the jury instruction that was given was merely a permissible inference that the jury was free to ignore if it chose to do so and it did not constitute a reversal of the burden of proof.

(§2.5, *State v. Eichelberger*, Part II, Cases Relating to Chapter 2)

19. In *State v. Eichelberger*, the defendant was tried in Washington for trafficking in stolen property. He claimed that the evidence against him was insufficient as a matter of law to support a conviction for trafficking in stolen property because there was no evidence that he knew the compact discs he found were stolen. The Washington Court of Appeals held that:
  - a. mere proof that a defendant sold stolen property that was in his possession did not indicate that he knew or should have known the property was stolen.
  - \*b. the jury was entitled to find that Eichelberger had subjective knowledge of and disregarded the substantial risk that a wrongful act would occur when he sold the CDs to the pawn shop.
  - c. under the circumstances, no reasonable trier of fact could have been convinced beyond a reasonable doubt that the property Eichelberger found was in fact stolen and that he knew it.
  - d. the proof was based upon circumstantial evidence alone, and that type of evidence, by itself, cannot reach proof beyond a reasonable doubt.

(*Martin v. Ohio*, Part II, Cases Relating to Chapter 2)

20. In the case of *Martin v. Ohio*, the defendant was tried in state court for aggravated murder. At the trial, the defendant admitted that she had killed her husband but claimed that she acted in self-defense. After the evidence was presented, the court instructed the jury that the defendant had the burden of proving the “affirmative defense” of self-defense. The United States Supreme Court held that:
  - a. it is not unconstitutional to require the defendant to prove the affirmative defense of self-defense beyond a reasonable doubt.
  - \*b. it was not a violation of the due process clause to place the burden of proving self-defense on the defendant.
  - c. as the majority of the states now assume the burden of disproving affirmative defenses, requiring the defendant to prove self-defense violated the Constitution.
  - d. the Ohio law placing the burden on the defendant to prove that she was acting in self-defense in effect relieves the prosecution of proving one element of the crime and is therefore unconstitutional.