**The concept of reverse burden of proof, and whether this represents an interference of the presumption of innocence.**

The concept of 'reverse burden' shifts the burden of proof to the defendant, requiring that he or she establishes if a particular issue exists or does not. It contradicts the presumption of innocence by placing a defendant in a situation of trying to prove innocence. It is imperative to note that under normal circumstances, the prosecution has the duty to prove the facts beyond a reasonable doubt in a given issue. When the burden shifts to the defendant, his or her innocence is put to question to the detriment of his right to be presumed blameless[[1]](#footnote-1). The shift of 'burden of proof' to the defendant interferes with the right to be presumed innocent[[2]](#footnote-2). However, as noted by Lord Steyn in his dissenting opinion in *R v Lambert [2001]* ‘…interference with the presumption of innocence requires justification and must not be greater than is necessary.’ This is a clear indication that reverse burden of proof interferes with a presumption of innocence, hence should only apply where necessary and to a limited degree[[3]](#footnote-3). Although reverse burdens interfere with the presumption of innocence, it is necessary to get the defendant to prove the truth of the statements or information he or she uses in defense. For instance, in *R v Lambert [2001],* the defendant was required to prove that he did not know of drugs found on him in a bag after denying knowledge of them. On a balance of probabilities, he was convicted for failing to prove that he had no knowledge of the drugs on him.

Is there a clear guide on circumstances under which the reverse burden of proof can be used?

Bibliography

Regina v Lambert; Regina v Ali; Regina v Jordan: CACD 14 Sep 2000.

section 3 of Human Rights Act 1998.

R v Lambert [2001] UKHL 37.

1. Regina v Lambert; Regina v Ali; Regina v Jordan: CACD 14 Sep 2000. [↑](#footnote-ref-1)
2. section 3 of Human Rights Act 1998. [↑](#footnote-ref-2)
3. R v Lambert [2001] UKHL 37. [↑](#footnote-ref-3)