CHAPTER 15

QUESTION 1

The general rule in a criminal case is that the prosecution bears the burden of proving a defendant’s guilt beyond reasonable doubt. It is known as the legal burden of proof and it requires the prosecution to prove the essential elements of the offence charged. The principle is enshrined in *Woolmington v DPP* [1935] AC 463 and is consistent with the presumption of innocence safeguarded by Article 6(2) ECHR.

QUESTION 2

Reverse onus clauses refer to those instances in which a legal burden of proof is cast on a defendant to effectively prove his innocence. A statutory section may impose a legal burden of proof on a defendant expressly or by implication. A number of different statutes impose a legal burden of proof on a defendant. For this reason, it is always important to research the elements of the offence which your client is suspected of or with which the client is charged.

QUESTION 3

The current guidelines are contained in the Court of Appeal's judgment in *Attorney-General's Reference (No. 1 of 2004)* [2004] 1 WLR 2111. Relevant factors include:

- the definition of the offence and the elements the prosecution must prove;
- the ease with which a defendant can establish a particular defence;
- whether the offence is of a regulatory nature;
- the severity of the penalty that conviction carries;
- whether the imposition of a legal burden of proof is proportionate to the aim of the legislation and if it is not, whether it can be read down to impose an evidential burden of proof only.