

LECCIÓN 9ª

LA PRUEBA.

Concepto y objeto.- Elementos típicos de la prueba penal: A) La presunción de inocencia: a) Prueba con todas las garantías; b) Existencia de prueba de cargo; c) Prueba suficiente; B) Carga de la prueba; C) Valoración libre de la prueba.- Procedimiento probatorio: A) Proposición; B) Admisión; C) Práctica.- Prueba con violación de derechos fundamentales: A) Derechos que se protegen; B) Ineficacia. Declaración del acusado. Prueba de testigos. Prueba pericial. Otras pruebas para conformar la convicción judicial.

1. CONCEPTO Y OBJETO.

La actividad probatoria es fundamentalmente un acto de parte, en concreto la parte acusadora. El acusado, en principio, no necesita probar nada, de manera que la falta de prueba de los hechos y de la responsabilidad imputada por la acusación comporta una sentencia absolutoria (Pº de inocencia). El órgano jurisdiccional que ha de dictar sentencia no puede convertirse en investigador, si bien, no es incompatible con la posibilidad de que el juzgador acuerde de oficio la práctica de medios de prueba.

El objeto de la prueba viene referido a realidades fácticas, los hechos delimitados por los acusadores en sus calificaciones provisionales (si bien, el procedimiento abreviado permite cambios concediendo un aplazamiento de la sesión hasta el límite de diez días). También en el proceso penal las máximas de la experiencia pueden ser objeto de la prueba.

2. ELEMENTOS TÍPICOS DE LA PRUEBA PENAL.

2.1. La presunción de inocencia.

Se trata de una garantía procesal, el juzgador debe alcanzar la certeza de la culpabilidad del acusado para dictar sentencia condenatoria y esta certeza debe ser resultado de las pruebas practicadas. La falta o la insuficiencia de las mismas conlleva la absolución del acusado.

El efecto de este principio, es la innecesaridad de prueba por el acusado (lo que no le impide la misma), correspondiéndole al acusado la prueba de cargo.

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VM Jensen



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