

Example of essay on burden and standards of proof

[Law](#), [Evidence](#)



The Burden and Standards of Proof

It is now trite knowledge that no case, civil or criminal, can fully, rationally and satisfactorily be dispensed by the courts, tribunal or arbiters without some element of persuasion from both or all the parties involved. This duty or onus on a party to persuade the arbiter; be it a jury, a tribunal, committee or an arbitrator is referred in law as standards and burden of proof. It prompts a party to a dispute to, by way of evidence, prove or disprove a fact in issue. A 'level of proof' continuum refers, therefore, to a system used to determine who between or among parties to a dispute has or have the responsibility for proving or disproving the disputed facts by way of testimony and/or other evidence and the threshold of such evidence that must be tendered or adduced in order for that party to prevail.

For the purposes of practical and in-depth understanding of the mechanics of the standard of proof as set out for both criminal and civil cases, it is imperative that this paper presents an outlay of the level of proof continuum.

The standards of proof as depicted by the said level include: Range from PC- Probable cause; to MPTN= More Probable than Not, to BYRD-Beyond Reasonable Doubt with PC and BYRD having the lowest and highest standards of proof respectively. The continuum level has been used by judicial officers including judges, Jurors, quasi-judicial committees or tribunal for times without number with some even employing its use subconsciously.

In a medical malpractice case, for instance, sufficient evidence must be adduced by the Plaintiff to show it was more probable than not that the doctor departed from sound professional judgment in his prescription of medication to him as a patient. On the other hand, in a criminal case where

someone has been charged with first degree murder, the onus is on the prosecution to, by way of evidence, convince the court, beyond any reasonable doubt-that the Accused indeed committed the offence. Both the actus reus and mens rea elements have to be established beyond a shadow of doubt. The court has to be fully convinced that the accused not only had the intention to commit murder and that he had malice aforethought, but also that the resultant death was a causation of his action and/or contribution. These two scenarios clearly bring out the stark difference and variations in threshold of standards of proof with cases. The rationale for the strict proof in criminal cases, murder in particular, being that the weight such a charge carries and the punishment arising therefrom are life-changing with some countries prescribing life imprisonment or better still others offering death sentence. The other fundamental reason why the burden of proof of guilt is higher in criminal cases as compared to civil cases is the belief that whereas civil cases are mostly between parties who, based on laissez faire principle, appear more as equals, criminal cases are normally between the state and its machineries against an individual or individuals and as such an injustice would otherwise be occasioned if the individual or individuals and the state is or are treated by the court as equals. This justification is entirely premised on the presumption that duty of prosecution in criminal cases rests solely with the state. However, due the growing reluctance with which states in many jurisdictions worldwide handle criminal cases involving persons or entities perceived to be high profile or 'untouchables', many countries have championed amendments or complete overhaul of their laws to allow or facilitate private prosecution of criminal cases where there is belief or

palpable sense of conflict of interest or favouritism on the part of government machinery and thus its ability to objectively prosecute considering the high threshold of proof.

Civil laws fundamentally refer to a branch of laws that govern, deal or are concerned with private relations between and among members of a community or a state and their private rights as such citizens and are thus non-criminal in nature. On the other hand, criminal laws loosely refer to laws that deal with the definition and punishment of crimes with crimes being any deviation, either behaviourally or procedurally, from the norms prescribed by the enacted law and which deviation the state believes offends it and the society or the state at large. The justification of state involvement in criminal offences, be they private is that such offences, though at face value appear to affect a small or a single segment of the society, are injurious to the whole state. Picture a scenario where there was only one person occupying the world. Such person would not need rules or laws to govern his conduct, wouldn't he? Even the slightest of an idea of crafting a regulation would not arise. Whose conduct will he be regulating anyway, his own? That would be utmost absurdity. However, due to large population, there is competition among humans for almost everything-from oxygen to land and if unchecked, such competition may result in serious conflict. It is thus against this backdrop that laws were and still are developed, enacted and implemented to avert such conflict by regulating human conduct. Moreover, it matters not whether the law is criminal or not their role can be summed up into one-regulation of human behaviour, conduct and relationship.

As elaborately depicted through examples hereinbefore, the burden of proof

in civil cases is 'on the balance of probability' on the continuum, the percentage for being about but over fifty. The import of this is that each party bears their own evidential burden in establishing their cause or case. It is based on the age-old concept that 'he who alleges must prove'. As such if A alleges that B's negligence led to occurrence of an accident and B, though admitting the occurrence of the said accident, denies liability on his part for the same, the onus is, on the balance of probability, with A to establish B's negligence by way of evidence. On the other hand, in a civil criminal case, the burden of proof rests with the prosecution to establish beyond a shadow of doubt that the accused indeed committed the crime he or she is alleged to have committed. It matters not whether or not the accused raises a defence or not or decides to keep mum altogether, the burden does not change and neither does it shift and it may not be surprising therefore, to find the accused acquitted despite not raising a defence. Cases will, therefore, be rife, and strangely so, that A may be charged and convicted for causing death of B, a cyclist, by dangerous driving in a criminal case but be completely absolved of blame or negligence in a civil case. Quite strange, isn't it? It is notable also that whereas a conviction of A for the said offence can be cited in the civil case against him, the same can only serve to guide the court but not bind it. This is the clearest manifestation of the level of continuum in real practice—a crystal clear depiction of the stark distinction between 'more probable than not' and 'beyond reasonable doubt'.

On the balance of probability, therefore, parties to any legal dispute, civil or criminal, before crafting their case management cause or strategy, ought to know and have an iron-clad understanding of the burden that lies with them-

is it on the basis of ' more probable than not' and ' beyond reasonable doubt'?

References

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