

# Who Has The Burden Of Proof?

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There are various rules which apply to a case when a case is filed in court. Such rules result in all parties in the case abiding by the same rules as the case makes its way through the judicial process. Arguably, then, there should be no surprises as the case develops and the lawyers for the plaintiff and the defendant adhere to these rules with the hopes of winning the case for their client.

One very important rule in a case is the burden of proof. The burden of proof requires that a party affirmatively prove the allegations set forth in the complaint or petition or charge. It consists of two parts: the burden of persuasion and the burden of production. (1)

The burden of proof that must be met depends upon the type of case that is filed. If you as a nurse file a case before the state board of nursing in order to prove that you are sufficiently rehabilitated to have your license reinstated, for example, you must convince the board of this by a preponderance of the evidence. The same is true if you file a case against your roofer whom you allege negligently repaired your roof. The judge or jury must be convinced that you proved your case with at least slightly more than half the evidence (or, put another way, you presented stronger evidence, however slight) than that presented by the defendant.(2)

Conversely, if the board of nursing files a case against you to suspend your nursing license, its burden of proof is a higher one, that of clear and convincing evidence. Clear and convincing evidence must convince the administrative hearing officer that the allegations or issues at hearing are "highly probable or reasonably certain". (3) In some states, this standard of proof is also used in civil cases, such as the one you file against your roofer.

The highest burden of proof is that of beyond a reasonable doubt. It is used in criminal trials where the defendant's constitutional liberties, such as life or freedom, will be affected if the allegations or charges against the defendant are proven. This burden of proof has been characterized in many ways. One way it is put is when a juror has "a moral certainty" that the person is guilty. Another description is when, after hearing all of the evidence presented, a juror has reasonable doubt if he or she is not "comfortable" with a conviction. Yet another description is that there is no reasonable alternative to the evidence presented that the defendant committed the crime of which he or she is accused. (4)

The burden of persuasion aspect of the burden of proof deals with a party being able to convince the jury or judge to view the facts and evidence presented in the case in a way that favors that party. If the party succeeds in convincing the jury or judge in this manner, the party has met his or her burden of proof.

The burden of production, also part of the burden of proof, is the requirement of the party producing enough evidence to support the allegations or issues involved so that the jury or judge determines the outcome of the case rather than the case being dismissed or the case be subject to pre-hearing or pre-trial motions that seek to resolve the matter in favor of the other party.

Remember that in a criminal case, the burden of proof is never shifted to the defendant. The state always has the burden of proof. In civil or administrative hearing cases, the defendant may try and disprove what the other party has put into evidence that meets its burden of proof.

The defendant, may, as an example have an affirmative defense that raises new facts and arguments that, if true, defeat the other party's allegations, even if the latter are true. (5) Examples of affirmative defenses include contributory negligence and duress.

The next time you watch a movie or video that depicts a court room scene, see if you can determine who has the burden of proof and if that party met its burden (of proof). Look for any affirmative defenses raised as well.

## **FOOTNOTES**

(1). Bryan A. Garner (2001). Blacks Law Dictionary. 2nd Pocket Edition. St. Paul, MN: West Group, 80.

(2). Id., at 547.

(3). Id., at 250.

(4). "Beyond A Reasonable Doubt". Located

at:<http://legaldictionary.thefreedictionary.com/Beyond+A+Reasonable+Doubt>. Accessed December 1, 2011.

(5). Black's Law Dictionary, supra note 1, at 186.

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