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Burden of proof – Austrian Perspective

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Standard of proof

- In dispute for quite a while
- „Modern“ prevailing opinion on the general standard of proof:
 - **Austria:** high likelihood
- Modifications of the general standard of proof:
 - **Increase:** Utmost likelihood
 - **Decrease:** Predominant likelihood

Burden of allegation and burden of proof

- In order for the court to apply a legal rule, necessary facts need to be
 - **introduced into the proceeding** and
 - (if necessary) **proven**
- Rules for the consequences of not doing so
 - **Burden of allegation**
 - **Burden of proof**

Burden of allegation

- **Objective – subjective burden of allegation**
 - **Austria**
 - **Objective burden of allegation**
 - General requirement to assert all facts necessary to apply a legal rule
 - **Subjective burden of allegation**
 - Distributes the obligation among the parties and settles the consequences for neglecting this duty
 - **Germany**
 - **Subjective burden of allegation**
 - Party's (procedural) duty to assert all facts that are required
 - **Objective burden of allegation**
 - Distributes the negative consequences of the omission to assert those facts

Burden of proof I

- Determines the **consequences of the nonproduction of necessary evidence**
- **Objective – subjective burden of proof**
- **Part of Austrian literature**
 - **Objective burden of proof**
 - General requirement of a necessary fact to be proven
 - **Subjective burden of proof**
 - Distributes the consequences of being unable to produce the necessary evidence
- **German and other part of Austrian literature**
 - **Subjective burden of proof**
 - Party's (procedural) duty to produce the necessary evidence
 - **Objective burden of proof**
 - Distributes the negative consequences of the inability to produce all necessary evidence

Burden of proof II

- **Design of the burden of proof**
 - **General rule**
 - A party has to prove the existence of all factual requirements for the legal rule favorable to him
 - Not explicitly laid down in Austrian and in German procedural law
 - **Deviant rules**
 - Legal assumptions
 - Reversals of the burden of proof



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**Thank you for
your attention!**