Taking of evidence

Cyprus

1 The burden of proof

1.1 What are the rules concerning the burden of proof?

In general the burden of proof in civil proceedings rests upon the party that seeks relief, i.e. the plaintiff or claimant, as the case may be.

In exceptional cases, the burden may be transferred to the defendant or respondent. A typical example is that where an action is brought for negligence if it is proved that the plaintiff does not know, or does not have the means to find out, how an accident happened, the damage was caused by an object which was under the sole control of the defendant and the damage is linked to the defendant's failure to take reasonable care rather than the taking of that care, in which case the *res ipsa loquitur* (the thing itself speaks) principle applies, where the burden of proof is transferred to the defendant.

In general the plaintiff or claimant must prove by producing relevant witness evidence all the facts necessary for supporting/founding his/her claim.

The court is expected to assess the evidence and render a judgment according to conclusions drawn from the facts of the case. If, under the circumstances, the court is unable to reach conclusions on a certain fact of the case which is important for the determination of the claim, the claim raised by the party that is based on that fact should be dismissed.

1.2 Are there rules which exempt certain facts from the burden of proof? In which cases? Is it possible to produce evidence in order to prove that a specific legal presumption is not valid?

There are certain facts that need not be proved by evidence. These include certain facts which are undoubted and clear, of which the court may be deemed able to have 'judicial knowledge'. For example, these may include facts relating to units of measurement, monetary issues, the annual calendar and the time difference between countries. Other examples are facts that are common knowledge and are presumed based on human experience, such as the increase in road accidents, problems faced by a widow with underage children, etc. Similarly, historic, scientific and geographic facts are widely known and need not be proved by producing evidence.

Moreover, there are presumptions in certain cases. Presumption means a conclusion which can or must be drawn given that certain facts have been proved. These presumptions may be rebuttable or irrebuttable.

Irrebuttable are those presumptions that are made by law and cannot be rebutted by evidence to the contrary. Irrebuttable presumptions are rare. An example is included in Article 14 of the Criminal Code, which stipulates that a child under the age of 14 is presumed not to bear any criminal liability for any of its actions or omissions. Rebuttable presumptions are much more common. These can be rebutted by evidence to the contrary. For example, a child born in a legal marriage is presumed to be the husband's child unless proved otherwise.

1.3 To what extent must the court be convinced of a fact in order to base its judgment on the existence of that fact?

The standard of proof in civil cases is the 'balance of probabilities'. In other words, the court will find that a fact is established if satisfied by evidence that the fact is more likely to have occurred than not.

2 The taking of evidence

2.1 Does the taking of evidence always require an application from a party, or can the judge in certain cases also take evidence on his/her own initiative?

In civil proceedings the parties to the case will choose what witness evidence to produce to the court. Each party will summon those witnesses that are deemed useful for its case. The court does not have the power to summon witnesses on its own initiative without consent from the parties.

2.2 If the application by a party concerning the taking of evidence is approved, what steps follow?

The procedure is simple. The party wishing to summon a witness will request the court to issue a subpoena. The court will then issue the subpoena, to be served on the witness. Any person on whom such a subpoena has been served is under a legal obligation to appear before the court on such date and time as indicated in the subpoena.

2.3 In which cases can the court reject an application by a party to obtain evidence?

At the request of a party to the case, the subpoena will be issued in most cases. A party's request for a subpoena may be refused in rare and exceptional cases, if the request is proven frivolous and constitutes abuse of the court proceedings.

2.4 What different means of proof are there?

There are two types of proof: verbal witness testimony presented before the court, and written or documented evidence presented by submitting documents to the court.

2.5 What are the methods of obtaining evidence from witnesses and do these differ from the means employed to obtain evidence from expert witnesses? What are the rules in relation to the submission of written evidence and expert reports/opinions?

There are no settled rules that govern the obtaining of evidence from expert witnesses. The party producing the evidence should decide whether the expert witness will present his/her testimony in person or the evidence will be presented in written form.

2.6 Are certain methods of proof stronger than others?

There is no general rule pointing to a certain type of witness as being better or more reliable or more convincing than other types of evidence. All the evidence produced during the trial will be assessed by the court in the light of the specific circumstances at hand in each case.

2.7 In order to prove certain facts, are certain methods of proof obligatory?

No, there are no such rules.

2.8 Are witnesses obliged by law to testify?

If a subpoena is served on a person calling him/her to appear and testify before a court, he/she is obliged by law to do so. Failure or refusal to do so constitutes contempt of court and is punished accordingly.

2.9 In which cases can witnesses refuse to give evidence?

Witnesses may not refuse to give evidence. However, witnesses may, in exceptional cases, refuse to answer certain questions or withhold certain documents on the grounds of privilege, such as professional confidentiality.

2.10 Can a person who refuses to testify be sanctioned or forced to give evidence?

See the answer to subparagraph (a) above.

2.11 Are there persons from whom evidence cannot be obtained?

All persons are competent to give evidence in any civil proceedings unless the court decides that, due to youth, mental disability or other similar cause, a person is incapable of appreciating his/her obligation to tell the truth, or understanding the questions addressed to him/her, or giving rational answers to these questions (according to Article 13 of the Evidence Act).

2.12 What is the role of the judge and the parties in the hearing of a witness? Under what conditions can a witness be heard via videoconferencing or other technical means?

A witness will be examined during the main examination by the party who called him/her. Upon completion of the main examination, the witness will be cross-examined by the other party. Finally, the court may ask questions where further clarification on certain issues is deemed to be necessary.

A witness may give evidence by teleconferencing or other technical means if his/her physical presence before the court is impossible, provided that the court is capable of providing such technical facilities. Any specific conditions imposed will depend on the specific circumstances of the case at hand.

3 The evaluation of the evidence

3.1 Where evidence has not been obtained legally by a party, are there restrictions placed on the court in reaching its judgment?

Any evidence which is obtained illegally, in breach of constitutionally protected rights, will be excluded from any court proceedings, and the court may not rely on that evidence. A typical example of that is the illegal recording of a personal conversation.

3.2 As a party to the case, will my own statement count as evidence?

A statement made by a person who is a party to the case does count as evidence. The fact that such a statement comes from a person who has a direct interest in the outcome of the case is just one of the numerous facts to be taken into account by the court in assessing or evaluating the overall evidence.

Last update: 13/05/2019