

Applying a Standard of Proof



Origin

semper necessitas probandi incumbit ei qui agit

the necessity of proof always lies with the person
who lays charges

Definiton

The amount of evidence which a party must present in a hearing in order to win is called the standard of proof.

Different cases require different standards of proof depending on what is at stake.

different Standards of Proof

- Balance of probabilities
- Comfortable Satisfaction
- Proof beyond a reasonable doubt

Balance of Probabilities

- also known as 'preponderance of the evidence'
- the occurrence of the event is more likely than not
- the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party
- evidence must be assessed on the basis of whether a particular fact is more likely to have happened than not
- standard when considering protests or requests for redress

Comfortable Satisfaction

- for a party to prove a case under this standard, she must show something more than it is more likely than not, but not as much as beyond a reasonable doubt
- higher standard than ‘balance of probabilities’
- requirement does not mean that all members of PC need to be so satisfied; sufficient if a majority is comfortably satisfied
- standard used by CAS, as well as in doping cases

Proof beyond a reasonable doubt

- used in criminal cases
- case must be proved to the point that the jurors have no reasonable doubts in their minds that the defendant did whatever he is charged with having done
- evidence is certain or the explanations are the only reasonably explanation
- not guilty unless proven otherwise

Protest hearings and Requests for Redress

- balance of probabilities, unless rule specifies different burden of proof
- standard of proof may have been varied by a National Prescription with the consent of World Sailing
- RRS 18.2(e) permits PC when there is a reasonable doubt, to presume facts about whether a boat obtained or broke an overlap in time; see also RRS D5.4 and D5.5
- PC thinks one parties 'story' is more probable vs. probabilities are equal

Protest hearings and Requests for Redress

- observe the general principles of experience as well as the laws of nature and thought in your assessment
- objective probability considerations can be an appropriate basis and a tool to form an opinion
- examine whether, as an experienced and conscientious assessor, you can assume that a fact is correct

Protest hearings and Requests for Redress

RRS 18.2(e)

- PC must take an active part in trying to resolve the doubt
- if still in doubt, PC may use RRS 18.2(e) to resolve the protest
- when in doubt the decision might use such words as: *'The protest committee is not satisfied that A, astern established an inside overlap before B ahead reached the zone,'* and cite rule 18.2(e).
- when satisfied by the evidence that *A astern* failed to obtain an overlap, then the words used might be: *'A astern failed to establish an inside overlap [etc.],'*

RRS 69 hearings

- RRS 69.2(g) requires that PC finds to its “comfortable satisfaction” bearing in mind the seriousness of the alleged conduct, whether or not the competitor has broken RRS 69.1(a)
- PC must answer ‘Yes’ to both of the following questions before warning or penalizing:
 - Is PC comfortably satisfied that the facts found establish that the alleged conduct occurred?
 - Is PC comfortably satisfied that the conduct that occurred was misconduct sufficiently serious to warrant the warning or penalty?

RRS 69 hearings

- fundamental principle in all disciplinary proceedings that a person must be regarded as innocent until the allegation is proven
- if you feel 'uncomfortable' with a conclusion reached or when making a decision, you are not 'comfortably satisfied'
- see Case 122
- when in doubt do not penalize
- 'Briginshaw Test': the more serious the allegation and its consequences, the higher level of proof required for a matter to be substantiated. The standard is not beyond the reasonable doubt, but the more serious the allegation, the more persuasive the proof must be.

RRS 2 „clearly established“

- A boat may be penalized under RRS 2 only if it is ‘clearly established’ that the recognized principles of sportsmanship and fair play have been violated
- Which Standard of Proof should the PC use?
 - Definitely more than balance of probabilities
 - Opinion 1: “clearly established” lies somewhere between balance of probabilities and comfortable satisfaction
 - Opinion 2: “clearly established” lies definitely above comfortable satisfaction (at least if the penalty is DNE)

RRS 2 „clearly established“

- Following the same principle that we will use for RRS 69 hearings Opinion 2 (above comfortable satisfaction) should be preferred
- Depending on the seriousness of the alleged conduct the Standard of Proof should be raised above the Standard of comfortable satisfaction, especially if the penalty may have a severe influence on the boat's score or performance at the event

Problems / Criticism

- 'comfortable satisfaction' burden is just as uncertain as any other standard that claims to be a middle ground
- Example: If you are leaving your house and you think that it might rain, what standard do you use to determine if you should take your umbrella?

Beyond a reasonable doubt?

Unlikely, because, depending on the local climate, you could always have a reasonable doubt that it might rain, thus you would always take your umbrella with you.

Problems / Criticism

‘balance of probabilities?’

It is much more likely that this is the standard the average person uses in their everyday lives.

If you check the traffic and it says that there is a 51% chance that your usual route will be slower, you will take your backup route. If it says 30% or 20%, then you probably won't take your backup route.

Problems / Criticism

Where does comfortable satisfaction lie?

Do you take your backup route if you are comfortably satisfied that it will be slower during your commute?

How is that different from a balance of probabilities? If the traffic report says there is a 51% chance of traffic on your usual route, you could easily take the backup route with the justification that you are comfortably satisfied that it will be faster than the usual route. If the report says it has a 20% or 30% chance of being slower, could you still claim to take the backup route with comfortable satisfaction?

Questions? Suggestions?

Thank you and have a great day



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