

## Evaluation of Evidence and Standard of Proof in International Commercial Arbitrations

*Reza Dalir*<sup>\*</sup>  
*Ebrahim Delshad Ma'aref*<sup>\*\*</sup>  
*Eisa Amini*<sup>\*\*\*</sup>

DOI: 10.22096/LAW.2023.531944.1894

[Received Date: 10/10/2021 Acceptance Date: 09/05/2022]

### Abstract

Without entering into the subject of standard of proof, National rules and statutes around the international commercial arbitrations prescribe the principle of freedom to determine the value of affirmative evidence and proof of facts for arbitral tribunals. The practice of arbitral tribunals has previously stemmed from intellectual backgrounds of its members and their respective legal systems. Due to the role of common law and civil law lawyers in establishment of arbitration practices and under their influences, two different criteria have been applied in standards of proof. In unification process of practices in arbitrations, the arbitral tribunals had attempted to apply a unique standard of proof and evaluation of evidence. Despite of evaluation of evidence, which has three psychological, logical, and legal aspect, the standard of proof is part of judicial epistemology and it has merely psychological and logical aspect and does not have legal element. It seems that to reach a definite standard of proof is difficult, but conviction threshold definitely has recognizable criteria. In this research, while we examine currently used

\* Ph.D. Student of Private Law, Law Department, Qom branch, Islamic Azad University, Qom, Iran.  
Email: R.dalir1362@gmail.com

\*\* Assistant Professor, Law Department, Qom Branch, Islamic Azad University, Qom, Iran.  
(Corresponding Author) Email: Edelshad1972@gmail.com

\*\*\* Assistant Professor, Faculty of Law, Central Tehran Branch, Islamic Azad University, Tehran, Iran.  
Email: Easa.amini@yahoo.com



standards of proof in international commercial arbitrations and analyzing the epistemological aspect to evaluate evidence, we try to determine a reasonable standard to evaluate evidence and examine how to apply and implement it in evaluation of evidence.

**Keywords:** Evaluation; International Commercial Arbitration; Proof; Standard.

### Bibliography

- Alozn, Ahmad E., and Abdulla Galadari. "Evidence admissibility and evaluation models in commercial arbitration." *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 10, no. 3 (2018): 1-25.
- Azarbajjani, Alireza. "Fundamentals of Evidence Evaluation in Iranian and Transnational Civil Procedure." *Law Quarterly* 39, No. 3 (2007): 1-21. [In Persian]
- Baker, Stewart Abercrombie, and Mark David Davis. *The UNCITRAL Arbitration Rules in Practice: The Experience of the Iran-United States Claims Tribunal*. New York: Springer, 1992.
- Black, Henry Campbell, B. A. Garner, and B. R. McDaniel. *Black's law dictionary* (Vol. 196). St. Paul, Minnesota: West Group 1999.
- Carreteiro, Mateus Aimoré. "Burden and standard of proof in international arbitration: proposed guidelines for promoting predictability." *Revista Brasileira de Arbitragem* 13, no. 49 (2016): 90-110.
- Hanotiau, Bernard. "Satisfying the Burden of Proof: The Viewpoint of a Civil Law Lawyer." *Arbitration International* 10, no. 3 (1994): 268-365.
- Hartnack, Justus. *Introduction to Hegel's logic*. Translated by Hossein Mafi Moghadam. Tehran: Naqd and Farhang Publications, 2017. [In Persian]
- Ho, Hock Lai. *A philosophy of evidence law: Justice in the search for truth*. Oxford: Oxford University Press, 2008.
- Katouzian, Nasser. *Proof and reason for proof*. Volume 1, 4th edition, Tehran: Mizan Publishing House, 2015. [In Persian]
- Khosropanah, Abdul Hossein. "Truth Theories." *Sadra's Guide*, No. 22 (1379): 56-66. [In Persian]
- Martin, Robert M. *epistemology*, translated by Nastern Zahiri. First edition, Tehran: Phoenix Publishing House, 2014. [In Persian]
- NG Yu Wai, Magnum. *Evidence in arbitration: The law and practice on taking of evidence in international arbitration proceedings: An eclectic approach of Common Law and Civil Law systems*. Frankfurt: VDM Verlag, 2009.
- Pardo, Michael S. "Epistemology, psychology, and standards of proof: An essay on risinger's surprise theory." *Seton Hall L. Rev.* 48 (2017): 1-31.
- Pietrowski, Robert. "Evidence in international arbitration." *Arbitration International* 22.3 (2006): 373-410.
- Pilkov, Kostiantyn. "Evidence in international arbitration: Criteria for admission and evaluation." *Arbitration the international journal of arbitration, mediation and dispute management* (2014): 146-170.

Rajski, Jerzy. *The Challenges and the Future of Commercial and Investment Arbitration*, Lewiatan Court of Arbitration, 2015.

Redfern, Allan, Claude Reymond, Andreas Reiner, Bernard Hanotiau, Edward Eveleigh, and Ian W. Menzies. "The standards and burden of proof in international arbitration." *Arbitration International* 10, no. 3 (1994): 317-364.

Sadat Maidani, Seyyed Hossein. "Rule or standard of proof of litigation in the procedure of the International Court of Justice." *Law Quarterly* 42, No.1 (2012): 161-179. [In Persian]

Shams, Abdullah. *Civil procedure*. Volume 3, first edition, Tehran: Drak Publishing House, 1385. [In Persian]

Sladic, Jorg, and Alan Uzelac. *Assessment of Evidence. Dimensions of Evidence in European Civil Procedure*. Philadelphia: Wolters Kluwer, 2016.