

HASTINGS INTERNATIONAL AND COMPARATIVE LAW *Review*

Volume 39, No. 1 — WINTER 2016

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THE BURDEN OF PROOF IN INTERNATIONAL COMMERCIAL
ARBITRATION: ARE WE ALLOWED TO ADJUST THE SCALES?

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This work discusses the possibility of the parties to change the burden of proof rules in international commercial arbitration and the powers of the arbitral tribunal in this regard, concluding that the parties are entitled to alter the referred rules subject to some limitations, such as the principle of fair and equal treatment, mandatory rules and considerations of public policy and good faith. In addition, we observed that even though arbitrators have broad powers to determine the burden of proof, they are generally obliged to respect the agreements reached by the parties in relation with that burden.

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The standard Commercial General Liability coverage form obligates an insurer to indemnify the insured for bodily injury and property damages caused by an “occurrence” during the policy period. The form defines “occurrence” as “an accident, ...”

such a continuous injury begins. The question of whether the resulting injury is covered under a given insurance policy, or, whether the insurance policy has been “triggered,” vexes courts in the United States and the United Kingdom alike.