Abstract

Thesis title: **Burden of proof in civil procedure**

This paper deals with burden of proof. The aim of this thesis is to provide a broader framework for this burden, since it is absolutely crucial in order to form a proper understanding of this topic.

The first chapter mentions principles that are common to all legal procedures and those that are applicable only within civil procedure. These general procedural principles need to be interpreted in accordance with the European Convention on Human Rights, which is binding upon Czech law. They also serve as a tool for a deeper integration of European law. The principles that are only applicable within civil procedure are usually presented in pairs consisting of principles of opposite meaning and are never really used in their pure form.

The second chapter deals with basic rules of Evidence. It mentions the definition of Evidence, it makes a clear distinction between logical methods of proving and procedural ones, followed by definition of the purpose of Evidence. It also mentions topics that do not need to be proven, since there is some type of presumption governing these issues or they are somehow known to the court. This chapter emphasizes tools that simplify the process of proving. It also defines basic terms of Evidence. It does not try to be a complex overview of Evidence, since it would not be possible due to its page limitation. It only chooses parts of Evidence that are indispensable to the burden of proof.

The third chapter is an introductory one into the realm of procedural duties imposed upon procedural parties, and procedural burdens. It does not try to be complex, it rather tries to focus on those that are important to form a proper understanding of burden of proof. It spends some time analyzing the difference between procedural duties and burdens. The most important part of this chapter is the burden of production, since it can be subdivided in a very similar way as burden of proof. ¨

The fourth chapter includes the main topic of this thesis, the burden of proof. It defines the burden of proof, divides it into the objective and subjective part, while the latter

one can be subdivided into abstract and concrete. It also mentions the shifting of burden of proof, which is often misunderstood.

The last chapter analyzes historical theories describing the allocation of burden of proof, because of their importance towards the only one which is considered to be useful in present day, since it was heavily inspired by its processors. It also mentions the current prevailing theory of allocation of burden of proof.