4.5: The Argumentative Burdens

One of the functions of a claim is to establish the argumentative burdens of the participants. As has been described there are two sides to an argument, the pro-side and con-side. Now we are going to look at the responsibilities or burdens of each side. The argumentative burden describes the responsibilities of each participant of the argument. The person speaking in favor of the claim or promoting the claim has different responsibilities in an argument than the person speaking against the claim and defending the current situation.

The **Burden of Proof** comes first. This means that the side or person promoting the claim, the pro side, must present compelling reasons why the status quo is inadequate and should be replaced by the claim being advocated. When this is done, the status quo is presumed to be inadequate and in need of change.

If this burden is not met, that is if a “good and sufficient” argument is not presented, then the person arguing against the claim doesn’t even have to speak. The claim is dismissed because a valid enough argument has not been presented to change the status quo and continue the argument. A person decides to fight a traffic ticket in court and the police officer who issued the ticket does not show. Since the officer is not there, the ticket, or claim, that the driver broke the law, is dismissed. The driver does not have to prove he is not guilty because the pro-side failed to meet the burden of proof.

The **Burden of Presumption** is the defense of the status quo and belongs to the side opposing the claim, the con side. this burden is based on the presumption that the status quo is desirable and should remain in force.

Only after the pro-side has met its burden of proof does the con side have to meet its burden of presumption. The con side meets its burden of presumption by giving reasons the status quo is adequate and should remain in effect.

Presenting a reasonable stand for your position is your **Burden to make a Prima Facie case**. Prima facie is a Latin expression meaning “at first sight,” used in common law to describe a case that is strong enough to justify further debate. For example, being found standing near a dead gunshot victim with a smoking gun in your hand would establish
a prima facie case for murder charges. In argumentation, prima facie is an advocate's obligation to present proof (logos, pathos, ethos) for whatever you assert. Another way of looking at this is the obligation of each person in the argument to present "good and sufficient reasons" for their position. Thus, to meet their burdens of proof and presumption respectively, each side must present a prima facie case.

The third argumentative obligation is shared by both sides. This burden is the need to respond to the arguments of the other side. This is called your **Burden of Rebuttal**. If during the argument you do not respond, you fail to meet this burden.

Your silence can indicate your approval and acceptance of the arguments advanced by your opponent. In Western law, silence can be reasonably interpreted as “implied consent.” According to Columbia Legal Encyclopedia, "In law, active acquiescence or silent compliance by a person legally capable of consenting may be evidenced by silence when silence implies concurrence."

For instance, your spouse requests that you put gas in the car before you return home from work. You hear him or her, but you do not respond. Your spouse can reasonably assume that you have agreed to the request. If you failed to fulfill the request, your spouse has a right to be upset with you. If you had initially responded to the request by saying, "I will if I have time," you would have met your burden of rebuttal. In that case, your spouse should not be angry over the unfulfilled request. Although I am guessing this could start a new argument with a new claim.