

OF THE BURDEN OF PROOF

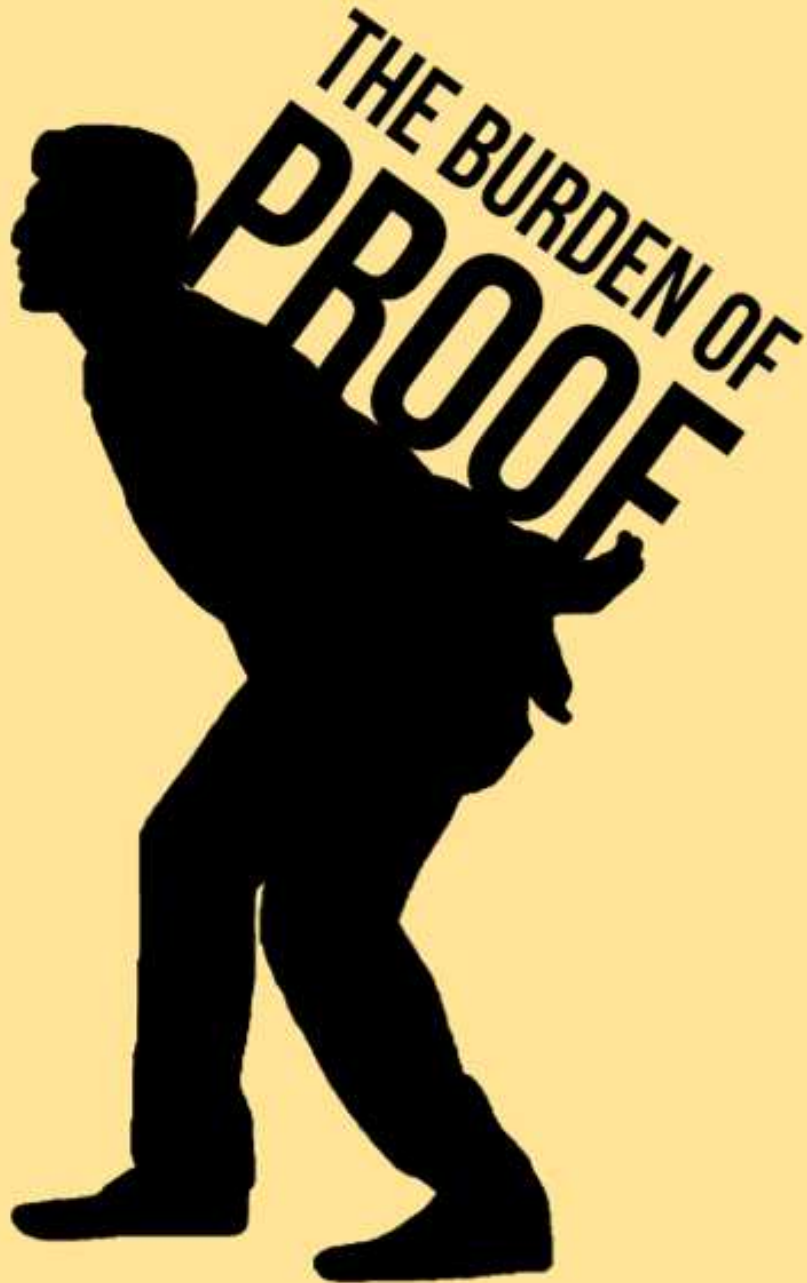
Section 101: Burden of proof:

- “Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.”
- When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.
- Illustration (a): A desires the Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.
- Illustration (b): A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts

- Section 101 IEA provides for the ‘permanent’ burden of proof – the burden of proving the case as such, will always lie on the party moving the court. This won’t shift to the opposite party. For example, if A sues B for theft, A can’t sit back arguing that now that they have sued B, B shall prove they did not steal!
- Hence, in civil cases, the burden lies on the plaintiff to prove the ‘cause of action’. Likewise, in a criminal case the prosecution needs to discharge the burden to prove the crime ‘beyond reasonable doubt’.
- While Section 101 IEA speaks of the permanent burden of proof, Section 103 IEA speaks of the kind of burden that keeps shifting between the parties.
- Section 103: Burden of proof as to particular fact
 - as to any particular fact, on the person who wishes the Court to believe in its existence
 - unless a particular law reverses the burden of proof in a particular case

Illustration – A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.
- So, Section 101 is concerned with proving the entire case, while Section 103 is concerned with proving a “particular fact”
- How do you sum up the Illustration to Section 103 in one word – what is the commonly known concept it talks about?



Section 102: On whom burden of proof lies

- “The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”
- This section deals with the *when*, while Sections 101 and 103 deal with the *who* – when the party would fail if no evidence is given by anyone, the burden of proof is said to lie on such party.
- This is also an example of a ‘shifting’ burden of proof – whenever a party gives evidence, if the other party stays silent or inactive, they are likely to lose, meaning they have the burden of proof. This burden, hence, keeps shifting.
- Illustration (a): A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B’s father. If no evidence were given on either side, B would be entitled to retain his possession. Therefore, the burden of proof is on A.
- Illustration (b): A sues B for money due on a bond.
The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.
If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.
Therefore, the burden of proof is on B.

Section 105: Burden of proving that case of accused comes within exceptions

- General Exceptions u/IPC
 - Any specific exception
 - On the person claiming the exception
 - “and the Court shall presume the absence of such circumstances”.
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- Illustrations (a) deals with a general exception: unsoundness of mind
 - Illustrations (b) and (c) deal with the specific exceptions of grave and sudden provocation. Illustration (c): S. 335 IPC specifically mentions grave and sudden provocation to the offence of causing grievous hurt under S. 325 IPC
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- The prosecution has to prove their case ‘beyond reasonable doubt’ – the defence needs to satisfy ‘preponderance of probabilities’. If they can cast a doubt on the prosecution case, then the prosecution cannot be said to have proved the offence beyond reasonable doubt.

Section 105: Burden of proving that case of accused comes within exceptions

- What is the effect of failure of the accused to prove that they are entitled to the benefit of a general exception?
- ***Vijayee Singh v State of UP, AIR 1990 SC 1459***: The general burden of establishing the guilt of the accused is always on the prosecution and it never shifts. Even in respect of cases covered by S. 105, the prosecution is not absolved of its duty of discharging its burdens ... the failure on the part of the accused to establish all the circumstances bringing his case under the Exceptions does not absolve the prosecution to prove the ingredients of the offence
- The failure to prove the defence of insanity by the accused only means that the accused has failed to rebut the presumption of sanity under Section 105 but does not mean that the basic presumption of innocence of is rebutted.
- The falsity of the plea taken by the accused cannot prove his guilt, though it may be an additional circumstance against him.

Section 105: Burden of proving that case of accused comes within exceptions

- In other words, the prosecution cannot win only on the basis of the failure of the accused under section 105 and it can win only on the basis of the merits of its own case beyond reasonable doubt.

Section 106: Burden of proving fact especially within knowledge

- “when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him”
- Illustration (a): When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him
- Illustration (b): A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is upon him.

- Unlike Section 105, Section 106 applies equally to civil and criminal cases.
- The Illustration to Section 103 introduced alibi (burden to prove a particular fact). Under Section 106 too, the burden of proving an alibi would be on the accused. Section 103 says one who alleges a particular fact must prove it. Section 106 says presence on another place might be a fact especially within the knowledge of the accused, so they should prove it.
- Section 106 does not relieve the prosecution to prove its case beyond reasonable doubt – it is only meant to apply to certain cases where some facts are within the exclusive/special knowledge of the accused and hence can only be proved by the accused (**Shambhu Nath Mehra v Ajmer**, AIR 1956 SC 404). This was also recognised in **Prithipal Singh v State of Punjab**, (2012) 1 SCC 10 at para 53 – it is impossible for the prosecution to prove certain facts especially within the accused's knowledge.
- In a suit for maintenance filed by a wife, the amount of income of the husband can only be guessed by the wife, as it maybe that the exact amount is only within the husband's knowledge. Thus, where the husband failed to disclose his income and also did not deny the amount mentioned by the wife, the Court decided to go by the wife's account (**Chitra Sengupta v Dhruba Jyoti Sengupta**, AIR 1988 Cal 98).
- When a person was prosecuted for practicing as a doctor without the required qualifications, and the qualifications displayed in their office were false, it was held that the qualifications they possessed was within their special knowledge and they must hence have the burden of proving it [**State of Kerala v C.K. Bharathan**, 1989 CrLJ 2025 (Ker)].

- When the husband locked himself up along with his wife and daughter in a room overnight and the next morning the wife was found dead when the door was opened by relatives, the SC held that “the principle laid down in Section 106 of the Evidence Act, 1872 is clearly applicable to the facts of the case”. The burden to explain this “unusual situation” lay on the accused and a failure to discharge that burden would lead to “a very strong presumption” that he murdered his wife (**State of Rajasthan v Thakur Singh**, AIR 1960 SC 1208).

The Last Seen Theory

- Section 7, read with Section 106