

# LAW SCHOOL NOTES

SUBJECT TITLE:

## **BURDEN OF PROOF**

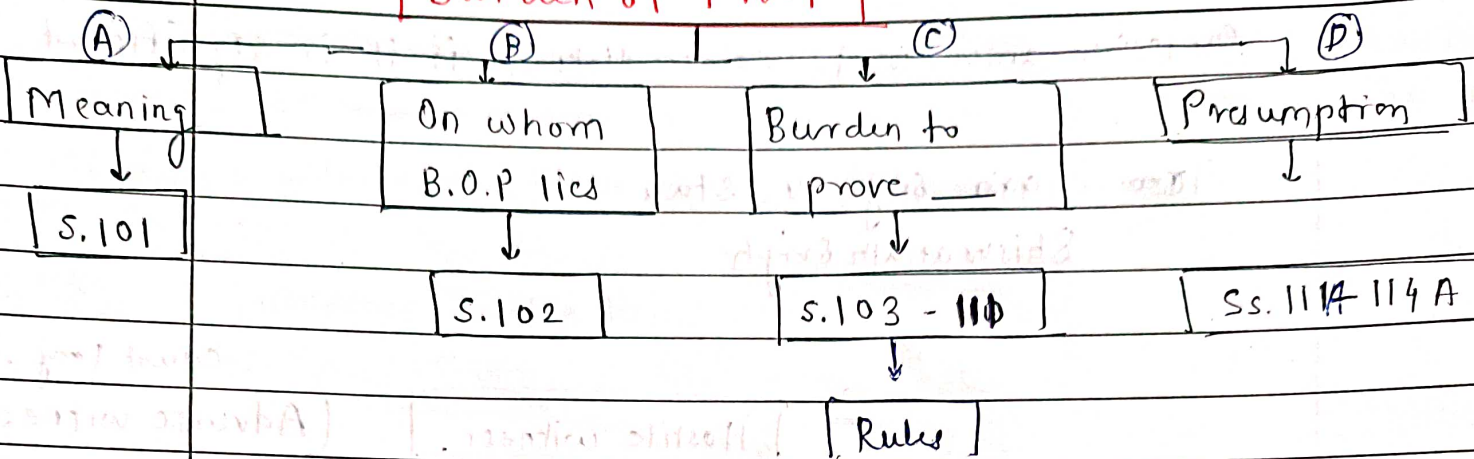
PRINCIPLES AND PRACTICE



Prepared by Adv. Govinda S. Zalte | For educational use only  
Contact: +91 77987 90378 | Email: govindazalte2001@gmail.com

# Burden of Proof

Date: / /



## (A) Meaning

- it means obligation to prove a fact.
- 'onus probandi' - if no evidence is given by party on him burden of proof lies, issue must be found against him
- Two meanings:
  - 1) Burden of establishing the case (Sec. 101)
    - It is settled question of law
    - The one who desires must prove it.
  - 2) Burden of introducing evidence
    - unstable, may shift from one party to another [see 102, 103]
    - Onus of proof (rule)

\* B.O.P never shifts unlike O.O.P.

S. 101

The person who wants the court to give judgment on his any right or liability which he asserts then he will have to prove existence of such facts

- \* Bhagwat Sharan through LR V. Punushottam & Ors.
  - It was held that B.O.P is on the person who alleges that prop. is a joint prop. of H.U.F.

Date: / /

\* Savithri v. Karthyayi Amma AIR (2008)

→ There was suspicious circumstances regarding execution of will also there was allegation of coercion, Court held B.O.P lies on the one who alleges.

S.102

→ B.O.P lies on the person who would fail in case no evidence is given on either side.

(B)

- It lies on party who affirms a fact rather than denies

103

→ B.O.P. as to particular fact.

- lies on person who wants court to believe its existence

- exception - provided by law.

- One who asserts have to prove it.

- S.101 - only affirmative fact

- S.103 - Particular fact & its may true or -ve.

(B) Rules of Burden of Proof.

①	to make evidence admissible (104)	A	भारि
②	that accused comes with exception (105)	E	एक बार
③	fact especially within knowledge (106)	K	
④	death of person alive with 30 yrs (107)	D	उसे जी
⑤	that person is alive (108)	A	
⑥	as to relationship (109)	R	
⑦	as to ownership (110)	O	
⑧	Good faith (111)	G	

① S.104 → B.O.P. to make evidence admissible

- is on person who wish to give such evidence

Mahboob Sab v. U.O.I AIR (2001)

→ Passenger fall & died from Railway. They asserted he was not beside Defendant who ticket. It was Court held it was upto Railway to prove

② B.O.P. that case of accused comes with exception

Exception includes

① General Exception of IPC

② Special Exception

③ proviso

} in same code of other

→ B.O.P. is accused once guilt is est. (Special burden).

→ General presumption accused is guilty applies (this never shifts)

③ B.O.P. to prove fact specially with knowledge

- Except to S.101.

- B.O.P. is on such person

- means pre-imminently or exceptionally within his knowledge

- Application - plead of Alibi, custodial death, down deaths

④ Principle - Res Ipsa Loquitur

④ B.O.P death of person known to have been alive within 30 yrs

→ on person who affirm he is dead

⑤ on person who affirms it

→ s. Eliamma Simon v. Seven Seas Transport Ltd. (2002)

Court can presume death U/s. 108 but not the exact date

It has to be proved like any other fact.

⑥ B.O.P. as to relationship in case of partner, landlord & tenant, principal & agent

→ the B.O.P. they are not is on person who affirms it against each other

Date: / /

- ⑦ B.O.P. as to Ownership.
- If person is in possession of anything he is presumed to be owner
  - the one who denies must prove it.
  - possession - is not judicial but actual present possession

- ⑧. Proof of good faith in transaction
- it is on person/party who is in position of active confidence.

(Rel<sup>n</sup> of trust & confidence) person has power to influence will of other

\* Presumpt<sup>n</sup> as to B.O.P (S. 111A - 114A)

① Certain offences (S. 111-A)

② Legitimacy of child (S. 112)

③ Proof of cession of territory (S. 113)

④ Abetment of suicide by married woman (S. 113-A), (with 7yrs)

S. 304-B ⑤ Downy death (S. 113-B) [subject to harassment, demand of dowry]

⑥ Existence of certain facts. (S. 114)

⑦ In Rape cases (S. 114-A)

- ① → in certain offences like conspiracy against govt. in disturbed areas
- burden of proof of innocence is on that person.

② → foll. 3 cond exist<sup>n</sup> as to presump<sup>n</sup> of legitimacy of child

i) during continuance of marriage

ii) within 280 day after dissolution of marriage.

iii) mother remaining ~~un~~ unmarried

→ Conclusive proof

→ Exemption - to prove parties had no access to each other when such child was begotten

Date: / /

Lacunae in S. 112.

① → do not take into consideration PNA Test.  
(Narayan Dutt Tiwari v. Rohit Shethar (2012))  
distinction b/w paternity & legitimacy.

③ → to exclude court of justice to inquire into validity