

**Extract from Indian Evidence Act, 1875 with respect to Burden of Proof for IBBI  
Valuation Examination**

Compiled by CA. Ankit Goel, Registered Valuer (SFA) for CEV IAF RVO

**PART III  
PRODUCTION AND EFFECT OF EVIDENCE  
CHAPTER VII  
OF THE BURDEN OF PROOF**

**Burden of proof.**

**101.** 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.

*Illustrations*

(a) A desires a 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.

(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.

**On whom burden of proof lies.**

**102.** 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.

*Illustrations*

(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.

(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.

**Burden of proof as to particular fact.**

**103.** The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

*Illustrations*

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

(b) B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

**Burden of proving fact to be proved to make evidence admissible.**

**104.** The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

*Illustrations*

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

**Burden of proving that case of accused comes within exceptions.**

**105.** When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

*Illustrations*

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c) Section 325 of the Indian Penal Code (45 of 1860), provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

**Burden of proving fact especially within knowledge.**

**106.** When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

*Illustrations*

(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.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

**Burden of proving death of person known to have been alive within thirty years.**

**107.** When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

**Burden of proving that person is alive who has not been heard of for seven years.**

**108.** Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

**"May presume" .**

**4 .** Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it :

**"Shall presume".**

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved :

**"Conclusive proof".**

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.