



FACULTY OF JURIDICAL SCIENCES

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COURSE: B.B.A.LL.B. VI Semester

SUBJECT: Law of Evidence

SUBJECT CODE: BBL 604

Lecture-33



Burden of Proof:

The expression burden of proof is explained in S.101 of Indian Evidence Act as, " When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person". The question is which out of two parties has to prove a fact. The answer to this question decides the question as to burden of proof.

2) Meaning of 'Burden of Proof' -

In short, The burden of proof means the obligation to prove a fact. Every party has to establish fact which go in his favour or against his opponent and this is the burden of proof. Evidence Act lays down some principle of burden of proof of general nature.

3) Principles of Burden of Proof :

Theoretically, the basis is divided into two parts -

A) **The concept of onus probandi**

B) Factum probans

Thus together how to prove facts and who shall prove or who shall prove and to what extent? Burden of proof is constant. Onus shifts. It consists and means that what is to be proved is fixed . e.g . burden is constant and who shall prove that is to be decided.

This liabilities and responsibilities to prove the fact is known as onus (burden) which shifts from shoulder of one party to the shoulder of another party. Burden of proof is always constant because it has reference to ingredients and concepts while onus shifted from shoulder to shoulder.

The rule of burden of proof in civil and criminal cases is of different nature. In civil proceedings the party who alleges certain things must prove his case, but proving beyond doubt is not necessary. In criminal cases however the guilt of the accused is to be proved beyond reasonable doubts otherwise the accused gets benefits of doubt. Cardinal (Important) rules as to burden of proof - Section 101, 102 and S.103 of the Indian Evidence Act, Provides three types of cardinal rules as burden of proof.

S.101 of Indian Evidence Act explained Burden of Proof as under -

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence to 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 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.

Supreme Court in *Jarnail Sen vs State of Punjab A I R 1996 SC 755* that in Criminal Case, the burden of proving of the guilt of the accused beyond all reasonable doubt always lies upon prosecution, and therefore if it fails to adduce the satisfactory evidence to discharge the burden, it cannot fall back upon evidence adduced by the accused person in support of their defence to rest its solely thereupon.

S.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.

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.

(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.

This section tries to locate the party on whose burden of proof lies. The burden of proof lies upon the party whose case would fail if no evidence is given on either side.

Case law in *Triro vs Dev raj* AIR 1993 J&K 14. In this case when there was a delay in filing the suit, the defendant had taken a plea of limitation period. The plaintiff was in position to know the cause of delay. The burden of proving that the case was within prescribed limit was on the plaintiff.

S.103. Burden of proof as to particular fact

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.

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.

The principle of section 103 is that whenever a party wishes the court to believe and act upon the existence of the fact, burden lies upon him to prove that fact. If a party wishes the Court to believe that his opponent has admitted a fact, burden lies upon him to prove that the fact of admission.

Particular Cases with reference of burden of proof

These principles are called the rule of Convenience of burden of proof which are covered under section 104 to S. 113 and section 113a and 114a.

S.104. Burden of proving fact to be proved to make evidence admissible

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

B wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

Section 104 provide, the proof of fact on which evidence become admissible. where the admissibility depends upon the proof of burden of another fact the party who wants to prove it will have to prove the fact on which admissibility depends.

S.105.Burden of proving that case of accused comes within exceptions

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.

Section 105 thus provides that, if the accused claims that each case comes within any of the recognized exception the burden of proving that lies on him.

S.106.Burden of proving fact specially within knowledge

When any fact is specially 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 traveling on a railway without a ticket. The burden of proving that he had ticket is on him

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

years. — 1[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 2[shifted to] the person who affirms it.

109. Burden of proof as to relationship in the cases of partners, landlord and tenant, principal

and agent. — When the question is whether persons are partners, landlord and tenant, or principal and

agent, and it has been shown that they have been acting as such, the burden of proving that they do not

stand, or have ceased to stand, to each other in those relationships respectively, is on the person who

affirms it.

110. Burden of proof as to ownership. — When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the

person who affirms that he is not the owner.

111. Proof of good faith in transactions where one party is in relation of active confidence. —

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Where there is a question as to the good faith of a transaction between parties, one of whom stands to the

other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations

(a) any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or

(b) any area in which there has been, over a period of more than one month, extensive disturbance

of the public peace,

and it is shown that such person had been at a place in such area at a time when firearms or explosives

were used at or from that place to attack or resist the members of any armed forces or the forces charged

with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless

the contrary is shown, that such person had committed such offence.

(2) The offences referred to in sub-section (1) are the following, namely: —

(a) an offence under section 121, section 121A, section 122 or section 123 of the Indian Penal Code (45 of 1860);

(b) criminal conspiracy or attempt to commit, or abetment of, an offence under section 122 or section 123 of the Indian Penal Code (45 of 1860).]

112. Birth during marriage, conclusive proof of legitimacy. — The fact that any person was born

during the continuance of a valid marriage between his mother and any man, or within two hundred and

eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the

legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each

other at any time when he could have been begotten.

113. Proof of cession of territory. — A notification in the Official Gazette that any portion of British territory has 1[before the commencement of Part III of the Government of India Act, 1935 (26 Geo. 5, c. 2)] been ceded to any Native State, Prince or Ruler, shall be conclusive proof

that a valid cession of such territory took place at the date mentioned in such notification.

2[**113A. Presumption as to abetment of suicide by a married woman.** —When the whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of

her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court

may presume, having regard to all the other circumstances of the case, that such suicide had been abetted

by her husband or by such relative of her husband.

Explanation. — For the purposes of this section, “cruelty” shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).]

3[**113B. Presumption as to dowry death.** —When the question is whether a person has committed

the dowry death of a woman and it is shown that soon before her death such woman had been subjected

by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall

presume that such person had caused the dowry death.

Explanation. — For the purposes of this section, “dowry death” shall have the same meaning as in

section 304B of the Indian Penal Code (45 of 1860).]

114. Court may presume existence of certain facts. — The Court may presume the existence of any

fact which it thinks likely to have happened, regard being had to the common course of natural events,

human conduct and public and private business, in their relation to the facts of the particular case.

The Court may presume —

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(c) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) that a thing or state of things which has been shown to be in existence within a period shorter than

that within which such things or states of things usually cease to exist, is still in existence;

(e) that judicial and official acts have been regularly performed;

(f) that the common course of business has been followed in particular cases;

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) that if a man refuses to answer a question which he is not compelled to answer by law, the answer,

if given, would be unfavourable to him;

(i) that when a document creating an obligation is in the hands of the obligor, the obligation has been

discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it: —

as to *illustration (a)* — a shop-keeper has in his bill a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

as to *illustration (b)* — A, a person of the highest character is tried for causing a man's death by an

act of negligence in arranging certain machinery. B, a person of equally good character, who also took

part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

as to *illustration (b)* — a crime is committed by several persons. A, B and C, three of the criminals,

are captured on the spot and kept apart from each other. Each gives an account of the crime implicating

D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

as to *illustration (c)* — A, the drawer of a bill of exchange, was a man of business. B, the acceptor,

was a young and ignorant person, completely under A's influence;

as to *illustration (d)* — it is proved that a river ran in a certain course five years ago, but it is known

that there have been floods since that time which might change its course;

as to *illustration (e)* — a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

as to *illustration (f)* — the question is, whether a letter was received. It is shown to have been posted,

but the usual course of the post was interrupted by disturbances;

as to *illustration (g)* — a man refuses to produce a document which would bear on a contract of small

importance on

as to *illustration (h)* — a man refuses to answer a question which he is not compelled by law to answer,

but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it

is asked

as to *illustration (i)* — a bond is in possession of the obligor, but the circumstances of the case are such

that he may have stolen it.

1[114A. Presumption as to absence of consent in certain prosecution for rape. —In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Explanation.— In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code (45 of 1860).]