

BURDEN OF PROOF

PROVING A CASE

“The person who mobilizes the legal machinery has the obligation to demonstrate the correctness of any assertions.”

LEGAL BURDEN

You went to the court, so you prove the case.

You want a judgment in your favour, so you bear the burden and prove the case.

PROVING A FACT

“The party who pleads a fact has to prove that particular fact.”

EVIDENTIARY BURDEN

Advancing enough evidence to persuade the judge to find for them on any particular issue.

ONUS PROBANDI

TASK OF PROVING

WHOEVER DESIRES Plaintiff or Defendant
Petitioner or Respondent
Prosecution or Accused
Complainant or Accused.

COURT TO GIVE JUDGEMENT Legal Right or Liability

Dependent on existence of Facts ... Party Asserts.

MUST PROVE THE EXISTENCE OF THOSE FACTS.

Burden of proof lies on that party bound to prove the existence of a fact. (S.104)

EI QUI AFFIRMAT NON EI QUI NEGAT, INCUMBIT PROBATIO.

“He who affirms, not he who negates must prove.”

“A is dead”

“A is not alive”

RULE OF ASSERTION

BRINGING EVIDENCE

Ø PARTY THAT FAILS (S.105)

Ø IF NO EVIDENCE AT ALL WERE GIVEN ON EITHER SIDE.

FAILURE TEST

Ø If he does not want to fail, he has to bring evidence. It is in his interest.

Burden of proof is shifting in character

PROVING A FACT

Ø PARTICULAR FACT (S.106)

“Party that wishes the court to believe”. In the existence of that particular fact.
Unless otherwise prescribed.

Ø NECESSARY FACT (S.107)

“Party giving evidence of a fact necessitates proof of another fact first.
One fact depends on another fact.

Ø EXCEPTION FACT (S.108)

General or special exception under BNS

Presumption of absence of such circumstances.

Party claiming the exception should prove the supporting facts.

Ø EXCLUSIVE KNOWLEDGE (S.109)

Fact especially within the knowledge of party.

“Party in whose especial knowledge the fact is must prove.”

EVIDENTIARY PRESUMPTIONS

PRESUMPTION

NOT DEFINED IN IEA OR BNS OR GCA

Ø A legal concept arising as a result of common experience, human reasoning and observation.



Ø It is a legally permissible inference that a fact exists based on the proven existence of some other facts.

Ø It is from facts known or proven, the existence of the fact presumed.

Ø “Something that is thought to be true or probable.”

PRESUMPTION

Word 'presume' means probable consequences

Sate of Maharashtra v Som Nath Thapa AIR 1996 SC 1744.

"A presumption of any fact is, properly an inferring of that fact from other facts that are known; it is an act of reasoning"

Abbot CJ, R V Burdett. (1820) 106 ER 873

"Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter, all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt."

Ruma Pal J,

Hiten P Dalai v Bratindranath Banerjee, AIR 2001 SC3897

JUDICIAL

PRESUMPTION

“An inference, affirmative or disaffirmative, of some fact drawn by a judicial tribunal, by a process of probable reasoning, from some matter of fact....”
(Best)

“An inference of fact drawn from other known or proved facts” (Sarkar)

“A rule of law that courts and judges shall draw a particular inference from a particular fact, or from particular evidence unless and until the truth of such inference is disproved.” (Stephen)

JURISTIC

VKESHAV



PRESUMPTIONS

BSA DEFINES IN S.2

Ø **May Presume**

Ø **Shall Presume**

Ø **Conclusive proof**



Conclusive proof

MAY PRESUME

Court may
either regard a fact as proved
until & unless
it is disproved or may call for proof of it.

Discretion of Judge
Evidence produced & required.
Facts of the case



Call for additional evidence
Rebuttable

SHALL PRESUME



Court **shall**
regard a fact as proved
unless and until
it is disproved.

Mandatory

Rebuttable

CONCLUSIVE PROOF

On Proof of one fact

Court Shall

regard another fact as proved

Mandatory

and

Irrebuttable!

shall not allow evidence

For disproving it.

Takes away

- The discretion of the Court not to draw the presumption
- The right of the party to Rebut the presumption unless permitted
- Rebuttal Evidence permissible provided in the provision declaring conclusive proof.



EVIDENTIARY PRESUMPTIONS

Absolute Proof of Fact Impossible.

Law ordains the proof to be brought

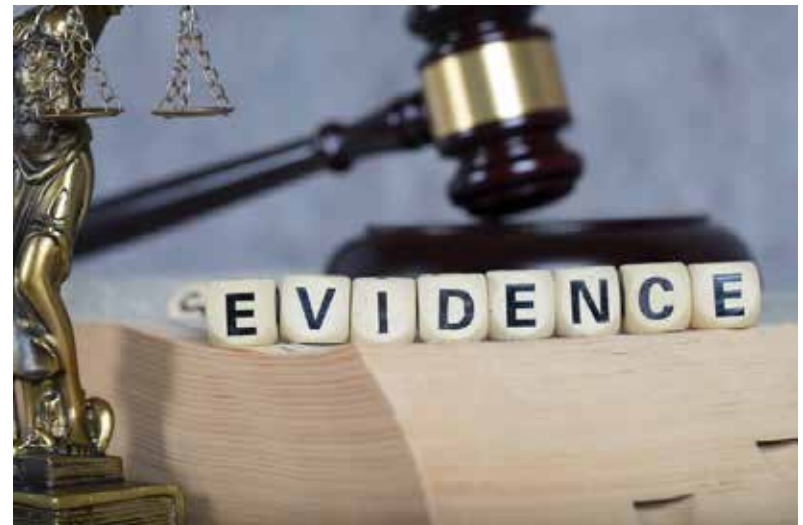
Law insists 'some' proof as prescribed.

Such proof is presented.

Fact is deemed proved.

REDUCED BURDEN

- Proof of Life (S. 110)
- Proof of Death (S.111)
- Proof of Relationship (S. 112)
- Proof of Ownership (S.113)
- Proof of Good Faith (S.114)



PRESUMPTION OF



- ✓ Inference of the existence of a certain fact arising from its necessary and usual connection with other facts which are known.
- ✓ Inference which a reasonable man would draw from certain facts which have been proved. Its basis is logic, and its source is probability.
- ✓ Logical argument from a fact to a fact; or, it is inferring a fact otherwise doubtful from a fact which is proved.
- ✓ Presumption of fact, to be valid, must rest on fact in proof.

(S.119)

PRESUMPTION OF FACTS

- ✓ Common course of natural events
- ✓ Human conduct
- ✓ Public & private business (S.119)

Case Dependent

Presumptions of fact must not be drawn automatically, or, as it were, by rule of thumb, without first considering whether in the circumstances of each particular case there were adequate grounds to justify any presumptions being raised.

ESTOPPEL

One Party

Ø Representation of a thing

Declaration, Act, Omission.

Ø Other party believes

thing to be true.

Ø Acts upon the belief

The party that represented
not allowed to deny the truth (s.121)

Sarat Chandra Dey vs Gopala Chandra Laha Case

ESTOPPEL by AGREEMENT

Tenant Estopped

- Denying title of Landlord
- To the leased property
- At the beginning of lease

Licence Estopped

- Denying Person in Possession
- Title to possess
- At the time of giving licence

ESTOPPEL by AGREEMENT

Acceptor of BOE

Estopped from denying

Drawer's authority

To Draw or Endorse

Bailee or Licencee

Estopped from denying

Bailor or Licensor authority

To Bailment or Licence

ESTOPPEL

- By conduct or *Pais*
- By Negligence
 - Central Bank of India Case
- Promissory Estoppel
 - Hightrees Case

Denying the truth vs Denying the representation

Fact vs Opinion

Dichotomy