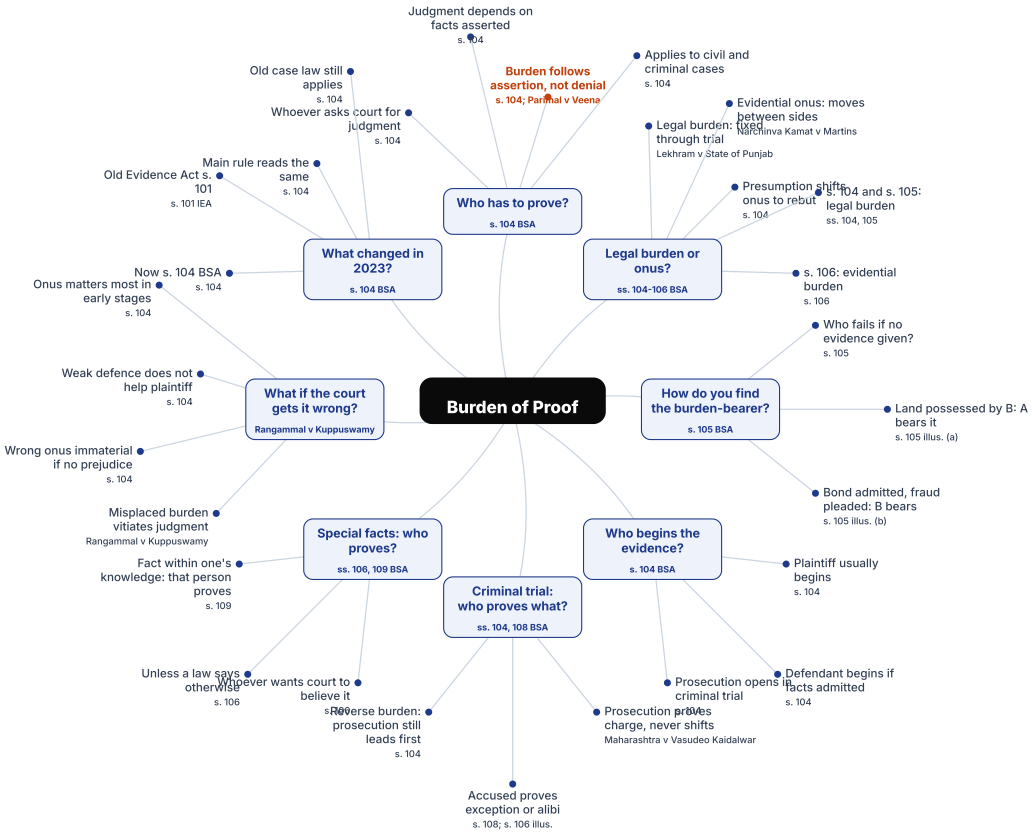
Burden of Proof: Mind Map

CONCEPT MAP

Revise Burden of Proof in two minutes. The highlighted point is the one examiners test most.
Read the full explainer: Burden of Proof explained.



Remember: Exam trap: burden is fixed, onus moves; and in a criminal case the legal burden never shifts to the accused.

- Who has to prove? (s. 104 BSA)
  - Whoever asks court for judgment (s. 104)
  - Judgment depends on facts asserted (s. 104)
  - **Burden follows assertion, not denial** (s. 104; Parimal v Veena)
  - Applies to civil and criminal cases (s. 104)
- Legal burden or onus? (ss. 104-106 BSA)
  - Legal burden: fixed through trial (Lekhram v State of Punjab)
  - Evidential onus: moves between sides (Narchinva Kamat v Martins)
  - Presumption shifts onus to rebut (s. 104)
  - s. 104 and s. 105: legal burden (ss. 104, 105)
  - s. 106: evidential burden (s. 106)
- How do you find the burden-bearer? (s. 105 BSA)
  - Who fails if no evidence given? (s. 105)
  - Land possessed by B: A bears it (s. 105 illus. (a))
  - Bond admitted, fraud pleaded: B bears (s. 105 illus. (b))
- Who begins the evidence? (s. 104 BSA)
  - Plaintiff usually begins (s. 104)
  - Defendant begins if facts admitted (s. 104)
  - Prosecution opens in criminal trial (s. 104)
- Criminal trial: who proves what? (ss. 104, 108 BSA)
  - Prosecution proves charge, never shifts (Maharashtra v Vasudeo Kaidalwar)
  - Accused proves exception or alibi (s. 108; s. 106 illus.)
  - Reverse burden: prosecution still leads first (s. 104)
- Special facts: who proves? (ss. 106, 109 BSA)
  - Whoever wants court to believe it (s. 106)
  - Unless a law says otherwise (s. 106)
  - Fact within one's knowledge: that person proves (s. 109)
- What if the court gets it wrong? (Rangammal v Kuppuswamy)
  - Misplaced burden vitiates judgment (Rangammal v Kuppuswamy)
  - Wrong onus immaterial if no prejudice (s. 104)
  - Weak defence does not help plaintiff (s. 104)
  - Onus matters most in early stages (s. 104)
- What changed in 2023? (s. 104 BSA)
  - Now s. 104 BSA (s. 104)
  - Old Evidence Act s. 101 (s. 101 IEA)
  - Main rule reads the same (s. 104)
  - Old case law still applies (s. 104)

Burden of proof starts with section 104 BSA: whoever asks a court for judgment on facts he asserts must prove those facts, and a plain denial carries no burden. The legal burden stays fixed through the trial, while the evidential onus can move between the sides, for example when a presumption arises. Section 105 gives the test of who would fail if no evidence were led, section 106 covers a particular fact, and section 109 covers facts especially within one person's knowledge. In a criminal trial the prosecution carries the legal burden, and the accused carries the onus only for a general or special exception under section 108, a plea of alibi, or a fact the law places on him. A court that misplaces the burden of proof vitiates its judgment, though a wrongly placed onus is immaterial if no party is prejudiced.

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