

# **1 California Evidence (4th), Burden Of Proof And Presumptions**

## **I. THE TWO BURDENS**

- A. [§1] In General.
- B. [§2] Burden of Producing Evidence.
- C. [§3] Burden of Proof.

## **II. ALLOCATION OF BURDENS IN CIVIL CASES**

- A. [§4] Burden of Producing Evidence.
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  - 1. [§5] Former Rule.
  - 2. Evidence Code.
    - (a) General Rule: Facts Essential to Claim or Defense.
      - (1) [§6] Theory of Rule.
      - (2) [§7] Facts Essential to Claim.
      - (3) [§8] Facts Essential to Defense.
      - (4) [§9] Negative Averments.
    - (b) Factors Calling for Altered Burden.
      - (1) [§10] Bases for Exceptions.
      - (2) [§11] Knowledge of Party.
      - (3) [§12] Availability of Evidence.
      - (4) [§13] Proof of Causation.
  - 3. Burden on Specific Issues.
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    - (b) [§15] Failure To Exercise Due Care.
    - (c) [§16] Insanity.
    - (d) [§17] Eminent Domain Proceedings.
    - (e) [§18] Ownership of Motor Vehicle.
    - (f) [§19] Land Patented or Granted by State.

## **III. ALLOCATION OF BURDENS IN CRIMINAL CASES**

- A. Presumption of Innocence and Prosecution's Burden of Proof.
  - 1. [§20] Constitutional Basis.
  - 2. [§21] Statutory Restatement.
  - 3. Instructions to Jury.
    - (a) [§22] Proper Instructions.
    - (b) [§23] Improper Variations.
    - (c) [§24] Right to Presence of Counsel During Instruction.
- B. [§25] Burden of Producing Evidence on Certain Defenses.
- C. Burden of Proof on Certain Defenses.
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  - 2. [§27] Insanity.
  - 3. [§28] Whether Witness Was Accomplice.
  - 4. [§29] Other Special Defenses.
- D. [§30] Burden of Proving Incompetence.

- E. [§31] Burden in O.R. Release of Arrestee.
- F. [§32] Burden in Eyewitness Identification.

#### **IV. BURDENS IN DETERMINING PRELIMINARY FACTS**

- A. [§33] In General.

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- A. [§34] Requisite Degree of Belief: In General.

- B. Civil Cases.

- 1. Preponderance of Evidence.
  - (a) [§35] In General.
  - (b) [§36] Proof of Crime or Fraud.
  - (c) [§37] Proof in Dependency Hearing.
- 2. Clear and Convincing Evidence.
  - (a) [§38] Nature of Requirement.
  - (b) [§39] Issues Requiring Such Proof.
- 3. [§40] Beyond Reasonable Doubt.

- C. Criminal Cases.

- 1. Prosecution's Burden.
  - (a) [§41] Beyond Reasonable Doubt.
  - (b) [§42] Preponderance of Evidence.
  - (c) [§43] Other Standards.
- 2. Defendant's Burden.
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  - (c) [§46] Other Issues Relating to Guilt.
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- A. Former Law.

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- 2. [§49] Presumptions and Inferences as Evidence.
- 3. [§50] Presumption or Inference Dispelled.

- B. [§51] Model Code, Uniform Rules, and Federal Rules.

- C. Evidence Code.

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- 2. Classification in Civil Cases.
  - (a) [§53] In General.
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    - (1) [§54] Nature.
    - (2) [§55] Effect.
  - (c) Presumptions Affecting Burden of Proof.
    - (1) [§56] Nature.
    - (2) [§57] Effect.
- 3. Presumptions Establishing Element of Crime.
  - (a) Nature and Effect of Presumption.

- (1) [§58] Purpose: Policy or Convenience.
- (2) [§59] Effect.
- (3) [§60] Presumption Construed as Inference.
- (b) [§61] Rational Connection Test.
- (c) Illustrations.
  - (1) [§62] Miscellaneous Offenses.
  - (2) Drugs.
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    - (bb) [§64] Marijuana.
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- B. [§68] Money Delivered Was Due.
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- D. [§70] Obligation Delivered to Debtor.
- E. [§71] Possession of Own Order.
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- H. [§74] Ownership of Things Possessed.
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- B. [§87] Legal and Beneficial Title.
- C. [§88] Ceremonial Marriage Valid.
- D. [§89] Official Duty Regularly Performed.
- E. [§90] Ordinary Consequences of Voluntary Act.
- F. [§91] Jurisdiction of Court.
- G. Death Presumed From 5 Years' Absence.
  - 1. [§92] Nature of Presumption and Proof of Absence.
  - 2. [§93] Presumption of Life During Period.
- H. [§94] Unlawful Intent From Unlawful Act.
- I. [§95] Negligence Per Se.
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  - 2. [§115] Theory of Probability of Negligence.
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    - (a) [§116] As a Factor Justifying Application.
    - (b) [§117] Not a Condition.
- B. [§118] Codification of Doctrine.
- C. Effect of Doctrine.
  - 1. [§119] Plaintiff's Burden of Proof.
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    - (a) [§120] Rule and Test.
    - (b) Illustrations.
      - (1) [§121] Presumption Overcome.
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1. [§126] BAJI Forms.
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  2. [§129] Motor Vehicles.
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    - (b) [§137] Illustrations.
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  10. [§141] Other Situations.
- G. Limitations on Application of Doctrine.
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      - (1) [§145] Bursting Bottles.
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- A. [§158] In General.

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1. [§165] In General.

2. [§166] Parentage.