

354 PRESUMPTIONS: CONFLICT AS TO EXISTENCE OF BASIC FACT; NO EVIDENCE INTRODUCED FROM WHICH NONEXISTENCE OF PRESUMED FACT COULD BE INFERRED

The law provides (state the presumption).

There is a conflict in the evidence as to whether or not (state the basic fact). There is evidence from which you may conclude that (state the basic fact); on the other hand, there is evidence from which you may conclude (state the contrary of the basic fact). You must resolve this conflict.

If you find that (state the basic fact), you must find that (state the presumed fact).

COMMENT

This instruction was approved by the Committee in 1977. The comment was revised in 1991.

This instruction is designed for the case in which there is conflict as to the existence of the basic fact, and no evidence to the contrary of the presumed fact; in this situation, the jury must determine whether the basic fact exists.

If the evidence of the basic fact is uncontradicted and there is no evidence to the contrary of the presumed fact, the judge will find the presumed fact or instruct the jury to find the presumed fact.

There is no need for this instruction in the situation where the presumed fact is not in issue. For example, in a negligence action, where plaintiff represents a deceased driver, if the defendant has put in no evidence of deceased driver's contributory negligence, there is no need for the plaintiff to prove that the deceased driver was not negligent, and hence no need for the presumption which leads to deceased driver's nonnegligence. (If death, then deceased not negligent.) Conversely, if the plaintiff must prove an element of the case, such as receipt of a letter by the defendant, the instruction on the presumption is necessary, even if the defendant has put in no proof of nonreceipt of the letter, because the plaintiff must establish some way, for the record, the fact of receipt of the letter.