

In a civil action for breach of an oral contract, the defendant denied having entered into a contract with the plaintiff, although he admitted that he had discussed doing so.

Which of the following standards of admissibility should the court apply to evidence proffered as relevant to prove whether a contract was formed?

- A. Whether a reasonable juror would find the evidence determinative of whether the contract was or was not formed.
- B. Whether the evidence has any tendency to make the fact of contract formation more or less probable than without the evidence.
- C. Whether the evidence is sufficient to prove, absent contrary evidence, that the contract was or was not formed.
- D. Whether the evidence makes it more likely than not that a contract was or was not formed.

Explanation:

Under Federal Rule of Evidence 401, **relevant evidence** is admissible unless it is barred by law or other evidentiary rules. Evidence is relevant if it has **any tendency** to make a **material fact** more or less **probable** than it would be without that evidence. A fact is material if it is of consequence in determining the outcome of the case.

In a breach-of-contract dispute, a material fact is the formation of a contract. Therefore, the standard of admissibility the court should apply in this case is "whether the evidence has any tendency to make the fact of contract formation more or less probable than without the evidence" **(Choice D)**.

(Choices A & C) Whether evidence is admissible is a preliminary question for the *court* to decide. If the evidence is admitted, then the *jury* must decide if the evidence is sufficient to prove or determinative of whether a contract was formed.

(Choice D) The preponderance standard—eg, whether the evidence makes it more likely than not that a contract was formed—is the **burden of proof** that juries must apply to admitted evidence in most civil cases.

Educational objective:

The test for relevancy is whether the evidence has any tendency to make a material fact more or less probable than it would be without that evidence.

References

Fed. R. Evid. 401 (test for relevant evidence).

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