

In litigation on a federal claim, the plaintiff had the burden of proving that the defendant received a notice. The plaintiff relied on the presumption of receipt by offering evidence that the notice was addressed to the defendant, properly stamped, and mailed. The defendant, on the other hand, testified that she never received the notice.

Which of the following is correct?

- A. The burden shifts to the defendant to persuade the jury of nonreceipt.
- B. The jury may find that the notice was received.
- C. The jury must find that the notice was not received, because the presumption has been rebutted and there is uncontradicted evidence of nonreceipt.
- D. The jury must find that the notice was received.

Explanation:

A **presumption** is a conclusion that can be drawn once a party proves an underlying fact or set of facts. Under the "**bursting bubble**" **approach** followed by the Federal Rules of Evidence, the opposing party in a civil suit can overcome a **rebuttable presumption** by producing **sufficient evidence** to **contradict the presumed fact**.^{*} Once this occurs, the **presumption "bursts"** and the fact finder (eg, jury) must weigh the evidence to decide the issue.

Here, the plaintiff offered evidence that the notice was addressed to the defendant, properly stamped, and mailed. This created a rebuttable presumption that the defendant received the notice. But the presumption was overcome by the defendant's testimony that she never received the notice. Since the presumption burst, the jury must weigh the evidence to decide the issue. Therefore, the jury *may* find that the notice was received (**Choices C & D**).

^{*}The bursting-bubble approach does not apply to conclusive presumptions or in federal diversity cases, where state law governs the effect of a presumption.

(Choice A) Once a party produces sufficient evidence to establish a presumption, the burden of production shifts to the opposing party to produce sufficient evidence to rebut the presumption. But the ultimate burden of persuasion—in most civil cases, proving a fact by a preponderance of the evidence—remains with the party who had it originally. So here, the burden stays with the plaintiff to persuade the jury of receipt.

Educational objective:

Under the "bursting bubble" approach, a rebuttable presumption "bursts" when the opposing party in a civil case produces sufficient evidence to contradict the presumed fact. The fact finder must then weigh the evidence to decide the issue.

References

Fed. R. Evid. 301 (presumptions in civil cases).

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“Bursting bubble” approach
(presumptions in civil cases)

