PRESUMPTIONS. G.S. 8C-1, Rule 301.

When To Use This Instruction: This instruction applies to presumptions governed by Rule 301 of the North Carolina Rules of Evidence. It does not apply to either of the following:

(A) "Conclusive presumptions," or irrebuttable presumptions, such as the presumption that a child under the age of seven is not capable of contributory negligence. These "presumptions" are actually rules of substantive law;

(B) "Permissive presumptions," such as the "presumption" of receipt of a letter duly mailed. Such "presumptions" are nothing more than permissible inferences or prima facie evidence.

Rule 301, and this instruction, apply to so-called "mandatory" presumptions, which are factual presumptions that arise from the proof (or stipulation, admission, or judicial notice) of some basic fact, and which are taken as conclusive unless rebutted. Brandis on North Carolina Evidence, § 215 (1982).

Here are some examples of mandatory presumptions. The basic facts giving rise to the presumption are listed in the left column, the presumed facts--arising from proof of the basic facts--are listed in the right-hand column.

	Basic Fact	Presumed Fact
(1)	seven years' absence	death
(2)	fiduciary relationship	fraud
(3)	registration of deed	due execution
(4)	destruction of will	will revoked
(5)	violent death from external means	accident (not suicide)

This instruction covers four situations. The first situation occurs if the basic fact is established (as by stipulation), and no evidence rebutting

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the presumption has been introduced. In such a case, the jury must be told that the presumed fact has been conclusively established.

The second situation occurs if the basic fact is in issue, but no evidence has been offered to rebut the presumption. For example, there may be an issue as to whether or not a testator destroyed a will, but no evidence to the effect that, if he did destroy the will, he did so without any intention to revoke it. In this situation the jury is told that if the basic fact (destruction of the will) is established, then the presumed fact (revocation) is likewise established.

The third situation occurs if the basic fact is established (as by stipulation), but evidence is introduced to rebut the presumption. This might occur when it is stipulated that a deed was registered, but there is some evidence the alleged grantor did not sign it. Here, the jury is told that they may infer that the deed was duly executed, but they are not compelled to do so.

The fourth situation occurs if the basic fact is in issue, and rebuttal evidence has been received. For example, evidence might be offered that a person left his home and has remained away for seven years without being heard from by those who would normally expect to hear from him. The witnesses so testifying might be substantially impeached, as by prior inconsistent statements. Thus the basic fact (seven years absence) is in issue. Further, a rebuttal witness might offer some evidence that the absent person is still alive, or testify that the reputation among his friends is that he is still alive. Therefore, even if the jury finds the basic facts, they are told that

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there is only an inference as to the presumed fact, and they may accept or reject that inference.

Finally, under Rule 301, when rebuttal evidence has been introduced, the question arises as to which party has the ultimate burden of proof--the risk of nonpersuasion. Rule 301 places that burden on the original party. Thus the burden does not shift to the party against whom the presumption is directed. However, Rule 301 contains an exception; if statute or case law provides that the burden does shift--as in the case of consideration in support of a contract being presumed from the use of the seal--then such statute or case decision controls. Therefore, part III and part IV of this instruction contain alternatives as to the burden of persuasion. The first alternative is for presumptions governed by Rule 301; the second, for presumptions where a statute or judicial decision provides that the burden shifts.

I. Basic fact judicially established; no rebuttal evidence.

Members of the jury, it is [admitted] [stipulated] [established] that *(describe basic fact)*. I charge you that when *(describe basic fact)*, the law presumes that *(describe presumed fact)*. Therefore, you will accept as conclusive and binding on you that *(describe presumed fact)*.

II. Basic fact in issue; no rebuttal evidence:

Members of the jury, if you find *(describe basic fact)*, then the law presumes that *(describe presumed fact)*. I charge you that this presumption is binding on you. This means that if you find *(describe basic fact)*, then you must also find *(describe presumed fact)*.

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On the other hand, if you fail to find *(describe basic fact)*, then there would be no presumption that *(describe presumed fact)*.

III. Basic fact judicially established; rebuttal evidence received:

It has been [admitted] [stipulated] [established] that *(describe basic fact)*. When it is established that *(describe basic fact)*, the law permits the jury to find, that *(describe presumed fact)* but you are not compelled to do so. The [plaintiff] [defendant] contends you should find *(describe presumed fact)*. On the other hand, the [defendant] [plaintiff] disagrees and contends that you should not so find, and has offered evidence to the contrary. Therefore, I charge you that you may infer that *(describe presumed fact)*, but you are not compelled to do so. It is your duty to consider all of the evidence in the case.

Note Well: Choose the first alternative below unless statute or case decision shifts the burden, in which case you should choose the second paragraph below.

[In any event, the burden remains upon *(identify party having original burden of proof)* to prove by the greater weight of the evidence that *(state what the party must prove)*.]

[However, it having been [admitted] [stipulated] [established] that *(describe basic fact)*, the burden would shift to *(identify party opposing presumption)* to prove [by the greater weight of the evidence] [*(specify other applicable standard)*] that *(state the negative of the presumed fact)*.]

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IV. Basic fact in issue; rebuttal evidence received:

The [plaintiff] [defendant] has offered evidence that *(describe basic fact)*. The [defendant] [plaintiff] has offered evidence that *(describe negative of basic fact)*. The burden is on the [plaintiff] [defendant] to prove, by the greater weight of the evidence that *(describe basic fact)*. I instruct you that when it is established that *(describe basic fact)*, the law permits the jury to infer that *(describe presumed fact)*, but you are not compelled to do so. It is your duty to consider all of the evidence in the case. The [plaintiff] [defendant] contends that you should find *(basic fact)*, and that you should infer therefrom, after considering all of the evidence in the case, that *(presumed fact)*. On the other hand, the [defendant] [plaintiff] contends that you should not find *(basic fact)*, but that even if you do find *(basic fact)*, that you should not infer therefrom that *(presumed fact)*, and *he* has offered evidence tending to show *(describe negative of presumed fact)*.

I charge you that if the [plaintiff] [defendant] has proved, by the greater weight of the evidence that *(basic fact)*, the law permits you to infer *(presumed fact)*, but you are not compelled to do so. On the other hand, if you fail to find *(basic fact)* by the greater weight of the evidence, then there is no such inference of *(presumed fact)*.

Note Well: Choose the first alternative below unless statute or case decision shifts the burden, in which case you should choose the second paragraph below.

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[In any event, the burden remains upon *(identify party having original burden of proof)* to prove by the greater weight of the evidence that *(state what the party must prove)*.]

[However, if you do find *(describe basic fact)*, the burden would shift to *(identify party opposing presumption)* to prove [by the greater weight of the evidence] [*(specify other applicable standard)*] that *(state the negative of the presumed fact)*.]