

13-304. Burden of proof; greater weight of the evidence; clear and convincing evidence.

A party seeking a recovery [or a party relying upon a defense] has the burden of proving every essential element of the claim [or defense] by the greater weight of the evidence.

To prove by the greater weight of the evidence means to establish that something is more likely true than not true. [When I say, in these instructions, that the party has the burden of proof on _____ (*theory(ies) of recovery by name*), I mean that you must be persuaded that what is sought to be proved is more probably true than not true. Evenly balanced evidence is not sufficient.]

On _____ (*fraud, etc.*), however, a higher degree of proof is required. Plaintiff has the burden of proving _____ by clear and convincing evidence.]

USE NOTE

This instruction should be given in every civil case. The bracketed portion of the second paragraph is always used where an appropriate burden of proof is by the greater weight of the evidence. That bracketed portion of the second paragraph is omitted when the only appropriate burden of proof is by clear and convincing evidence. The third paragraph is used only where an appropriate burden of proof is by clear and convincing evidence.

If the defendant is not relying upon a defense other than a general denial, then the bracketed portions of the first paragraph should not be used.
[As amended, effective November 1, 1991; March 1, 2005.]