

VOIDABLE MARRIAGE (ANNULMENT)--ISSUE OF MARRIAGE OF PERSON
UNDER 16.¹

NOTE WELL: Give this instruction only where the alleged underage person was under 16 at the time of the marriage. If the alleged underage person was between 16 and 18, use N.C.P.I.--Civil 815.23.

NOTE WELL: If one of the parties to the marriage has died, also give N.C.P.I.--Civil 815.30.²

The (state number) issue reads:

"[Was] [Were] (name person(s) claimed to have been underage) less than 16 years old at the time of [his] [their] marriage [to

¹N.C.G.S. §51-3 ... provides that "all marriages ... between a male person under 16 years of age and any female, or between a female person under 16 years of age and any male ... shall be void." Nonetheless, our courts have consistently held that such marriages are voidable, not void. *Ivery v. Ivery*, 258 N.C. 721, 129 S.E.2d 457 (1963). A "voidable" marriage is valid for all civil purposes until annulled by a court of competent jurisdiction. *Geitner ex rel First Nat'l Bank v. Townsend*, 67 N.C. App. 159, 312 S.E.2d 236, cert. denied, 310 N.C. 744, 315 S.E.2d 702 (1984). By contrast, a "void" marriage is considered a nullity *ab initio*. *Redfern v. Redfern*, 49 N.C. App. 94, 270 S.E.2d 606 (1980).

Note, however, that where a female between the age of 12 and 18 is pregnant or has given birth to a child and the putative father has agreed to marry her, their marriage can be validated by the procurement of the consent of one of the persons enumerated at N.C.G.S. §51-2(a)(1)-(4). N.C.G.S. §51-2(b).

²N.C.G.S. §51-3 also provides that "no marriage followed by cohabitation and the birth of issue shall be declared void after the death of either of the parties to the marriage for any reason except bigamy." If a party to the marriage has died, an issue (N.C.P.I.--Civil 815.30) should be submitted to establish the lack of cohabitation or the birth of issue.

Also note that another defense to annulment is "ratification." See N.C.P.I.--Civil 815.32.

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(name other person)] [to each other] on *(state date of marriage ceremony)*?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that at the time of the marriage [he] [*(name other person)*] [*both he and (name other person)*] were under the age of 16.

Finally, as to this *(state number)* issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that at the time *he* and [*(name other person)*] were married [he] [*(name other person)*] [*both he and (name other person)*] [was] [were] under the age of 16, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, it would be your duty to answer this issue "No" in favor of the defendant.