

VOIDABLE MARRIAGE (ANNULMENT)--ISSUE OF MARRIAGE OF PERSON UNDER 16--DEFENSE OF PREGNANCY OR LIVING CHILDREN.¹

The *(state number)* issue reads:

"[Is *(name wife)* now pregnant] [Has a child who is now living been born to *(name spouses)*]?"

You will answer this issue only if you have answered the *(state number)* issue "Yes" in favor of the plaintiff.²

On this issue the burden of proof is on the defendant. This means that the defendant must prove, by the greater weight of the evidence, that [*(name wife)* is now pregnant] [a child who is now living has been born to *(name spouses)*].³

Finally, as to this *(state number)* issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence that [*(name wife)* is now pregnant] [a child who is now living has been born to *(name spouses)*], then it would be your duty to answer this issue "Yes" in favor of the defendant.

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

¹See N.C.G.S. §51-3. There is no policy reason why this defense would not also apply to an underaged person between 16 and 18 years of age. See N.C.P.I.--Civil 815.23.

²This issue is to be considered only where the issue of the marriage of a person under 16 (N.C.P.I.--Civil 815.20) has been answered affirmatively in favor of the plaintiff.

³In the event the wife has given birth to a now living child, there may be a paternity issue, in which case it will be necessary to use N.C.P.I.--Civil 815.75.

