

VOIDABLE MARRIAGE (ANNULMENT)--ISSUE OF LACK OF SUFFICIENT MENTAL CAPACITY AND UNDERSTANDING.¹

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:

"Did (name person) lack sufficient mental capacity and understanding on (state date of marriage) to marry (name other person)?"

On this issue the burden of proof is on the plaintiff.³ This means that the plaintiff must prove, by the greater weight of the evidence, that at the time of [(name person's)] marriage to (name other person), he lacked the mental capacity and understanding sufficient to enter into a valid marriage.

¹A "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).

²See N.C.G.S. § 51-3 which provides that "[n]o marriage followed by cohabitation and the birth of issue shall be declared void after the death of either of the parties to the marriage, except for 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 birth of issue.

Also note that another defense to annulment based on lack of sufficient mental capacity is "ratification." See N.C.P.I.--Civil 815.32.

³Although N.C.G.S. § 50-4 provides that an annulment may be sought by "either party to a marriage contracted contrary to prohibitions [of Chapter 51]...", North Carolina permits annulments on the ground of lack of mental capacity to be sought by the person under the disability or his guardian (or after the death of such person and in the absence of cohabitation and birth of issue of the marriage, by a person whose legal rights depend on the validity of the marriage). *Ivery v. Ivery*, 258 N.C. 721, 129 S.E.2d 457 (1963); *Watters v. Watters*, 168 N.C. 411, 84 S.E. 703 (1915).

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Each person entering into a marriage relationship must have the mental capacity to understand the nature of the contract of marriage and the duties and responsibilities of a married person.

This does not mean that the person must actually know in detail the various legal consequences of a marriage, but only that the person be mentally capable of understanding that a husband and wife have duties to each other, and that the marriage will legally affect their respective property rights.⁴

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 (*name person*) lacked sufficient mental capacity and understanding on (*state date of marriage*) to marry (*name other person*), 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.

⁴See *Ivery v. Ivery*, 258 N.C. 721, 129 S.E.2d 457 (1963) for a brief discussion of the concept of lack of mental capacity.