

VOIDABLE MARRIAGE (ANNULMENT)--ISSUES OF MARRIAGE OF PERSON UNDER 16, MARRIAGE OF PERSON BETWEEN 16 AND 18, IMPOTENCE AND LACK OF SUFFICIENT MENTAL CAPACITY AND UNDERSTANDING--DEFENSE OF RATIFICATION.

The (*state number*) issue reads:

"Did (*name person*) ratify his marriage to (*name other person*)?"

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 person*) ratified his marriage to (*name other person*) [after reaching the age of sixteen years and with the consent of (*name appropriate parent or guardian*)]¹ [after reaching the age of eighteen years] [after discovering that (*name other person*) was impotent] [after gaining sufficient mental capacity and understanding to marry].

A person ratifies his marriage by continuing to live with the other person as husband and wife, accepting the benefits of the marital relationship and behaving in a way that signifies his affirmation of that relationship [after reaching the age of sixteen years and with the consent of (*name appropriate parent or guardian*)] [after reaching the age of eighteen years] [after

¹See *Koonce v. Wallace*, 52 N.C. 194 (1859) (cohabitation after the parties had reached the age of consent described as "confirmation" of the marriage); *State v. Parker*, 106 N.C. 711 (1890) (defendant in a bigamy prosecution claimed her first marriage was void--she married at the age of thirteen. The Court said she "ratified" the marriage by living with her first husband for 20 years and bearing children). See also *Sawyer v. Slack*, 196 N.C. 697, 146 S.E. 864 (1929) for the proposition that when a marriage is "voidable" it can be ratified. As to what constitutes appropriate parental or guardian consent, see N.C.P.I.--Civil 815.23, fn. 3.

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discovering that the other spouse is impotent]² [after gaining sufficient mental capacity and understanding to marry].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 person*) ratified *his* marriage to (*name other person*), 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.

²*Donati v. Church*, 80 A.2d 633 (1951) and *Kirschbaum v. Kirschbaum*, 111 A. 697 (1911) are cases in which the court discusses ratification of a marriage in which one party is impotent. In *Donati*, the court says that ratification consists of acts from which the inference ought to be drawn that, with knowledge of the facts and law, a party has affirmed the marriage or has taken advantage of and derived rights from the marriage as, for example, by living together as husband and wife and engaging in those acts of sexual intimacy possible under the circumstances. If the plaintiff seeks an annulment based on his own condition of impotency, this phrase should be modified appropriately throughout the instruction.

³In *Watters v. Watters*, 168 N.C. 411, 84 S.E. 703 (1915) the court described the process of ratification by a spouse who was, at the time of the marriage, not mentally capable of contracting as being an acquiescence in the marriage relationship at a time when "full knowledge and capacity" had been regained.