

DIVORCE--ABSOLUTE--ISSUE OF ONE YEAR'S SEPARATION--DEFENSE OF
MENTAL IMPAIRMENT.

The (*state number*) issue reads:

"Before the plaintiff and the defendant were separated one year, did the defendant become mentally impaired?"

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

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 before the plaintiff and the defendant were separated one year, the defendant became mentally impaired.

A person is mentally impaired when he does not understand what he is doing or the nature and consequence of his acts.¹

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 before the plaintiff and the defendant were separated one year, the defendant became mentally impaired, 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.

¹*Scott v. Scott*, 336 N.C. 284, 442 S.E.2d 493 (1994); *Moody v. Moody*, 253 N.C. 752, 117 S.E.2d 724 (1961).

