

DIVORCE--FROM BED AND BOARD--ISSUE OF EXCESSIVE USE OF ALCOHOL OR DRUGS.<sup>1</sup>

The (*state number*) issue reads:

"Did the defendant become an excessive user of [alcohol] [drugs] so as to render the plaintiff's condition intolerable and life burdensome?"

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, two things:

First, that the defendant became an excessive user<sup>2</sup> of [alcohol] [drugs].

Second, that the defendant's excessive use of [alcohol] [drugs] rendered the plaintiff's condition intolerable and life burdensome. Whether the excessive use of [alcohol] [drugs] by one spouse renders the other spouse's condition intolerable and life burdensome depends upon the facts and circumstances in each case. Factors you may consider include, among other things, the status of the parties and their sensibilities, social position, refinement, intelligence, temperament, state of health, habits and

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<sup>1</sup>N.C.G.S. §50-7(5).

<sup>2</sup>*Best v. Best*, 228 N.C. 9, 44 S.E.2d 214 (1947) (habitual drunkenness for three years is sufficient to constitute "excessive use").

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feelings, as well as the character and nature of the acts alleged.<sup>3</sup>

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 the defendant became an excessive user of [alcohol] [drugs] so as to render the plaintiff's condition intolerable and life burdensome, 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.

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<sup>3</sup>*Sanders v. Sanders*, 157 N.C. 229, 72 S.E. 876 (1911).