

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

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.<sup>2</sup>

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)*].<sup>3</sup>

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.

---

<sup>1</sup>See 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.

<sup>2</sup>This 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.

<sup>3</sup>In 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.

