

815.00 VOID MARRIAGE - ISSUE OF LACK OF PERSONAL CONSENT.¹

The (*state number*) issue reads:

"Did (*name person*)² marry (*name other person*) without *his* consent?"

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, that (*name person*) did not consent to be married to (*name other person*).

A person consents when *he* acts of *his* own free will and is not made to act by force, threat, compulsion or duress. [A marriage induced by false statements of material fact made with the intent³ to deceive is without consent.]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*) did not consent to be married to (*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.

1. N.C. Gen. Stat. § 51-1 states that a marriage is "valid and sufficient" only if, *inter alia*, it is based on the "consent" of the parties. Absent consent, the marriage is absolutely void. *Taylor v. White*, 160 N.C. 38, 75 S.E. 941 (1912). A "void" marriage is considered a nullity *ab initio*, with no rights flowing therefrom. *Redfern v. Redfern*, 49 N.C. App. 94, 270 S.E.2d 606 (1980). A "voidable" marriage, by contrast, 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).

2. Void marriages are subject to collateral attack. *Redfern v. Redfern*, 49 N.C. App. 94, 270 S.E.2d 606 (1980). Thus, the plaintiff need not be one of the parties purportedly married.

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3. For an instruction on intent, see N.C.P.I.-Civil 101.46.

4. A marriage brought about by force or fraud is void. *Scroggins v. Scroggins*, 14 N.C. 535 (1832). In cases where a marriage is procured by a misrepresentation of pregnancy, see N.C. Gen. Stat. § 51-3.