

815.08 INVALID MARRIAGE - ISSUE OF SAME GENDER MARRIAGE.<sup>1</sup>

The (*state number*) issue reads:

"Are (*name person*) and (*name other person*) the same gender?"

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*) and (*name other person*) are the same gender.

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*) and (*name other person*) are of the same gender, 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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1. N.C. Gen. Stat. § 51-1.2 provides as follows: "Marriages, whether created by common law, contracted, or performed outside of North Carolina, between individuals of the same gender are not valid in North Carolina." As of the date of the approval of this instruction, no appellate decision has interpreted this statute. Thus, the Committee takes no position as to whether "not valid" means "void," "voidable" or something else until the statute is construed by an appellate court.