

815.06 VOID MARRIAGE - ISSUE OF MARRIAGE TO CLOSE BLOOD KIN.<sup>1</sup>

*NOTE WELL: If one of the parties to the marriage has died, also give N.C.P.I.-Civil 815.30.<sup>2</sup>*

The (*state number*) issue reads:

"Are (*name person*) and (*name other person*) close blood kin?"

On this issue the burden of proof is on the plaintiff.<sup>3</sup> This means that the plaintiff must prove, by the greater weight of the evidence, that (*name person*) and (*name other person*) are close blood kin. Close blood kin means that one is related by blood to the other as a [father] [mother] [grandfather] [grandmother] [uncle] [aunt] [brother] [sister] [son] [daughter] [grandson] [granddaughter] [double first cousin].

(Double first cousins are people whose parents are two pair of siblings. [When two brothers marry two sisters, children born of those marriages are double first cousins.] [When a brother and sister each marry a woman and man who themselves are sister and brother, the children born of those marriages are double first cousins.]

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 close blood kin, 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. § 53-1 provides that ". . .[a]ll marriages between two persons nearer of kin than first cousins, or between double first cousins . . . shall be void." 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

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GENERAL CIVIL VOLUME  
JANUARY 1999  
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S.E.2d 236 *cert. denied*, 310 N.C. 744, 315 S.E.2d 702 (1984).

2. Although a marriage between close blood kin is considered void, it is nonetheless subject to N.C. Gen. Stat. § 51-3 which provides that no marriage followed by cohabitation and the birth of issue shall be declared void after the death of either of the parties to the marriage except in cases of bigamy. *Ivery v. Ivery*, 258 N.C. 721, 129 S.E.2d 457 (1963) and *Baity v. Cranfill*, 91 N.C. 293 (1884). If a party to the marriage has died, the instruction on the defense of lack of cohabitation and birth of issue (N.C.P.I.-Civil 815.30) should be given.

3. 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.