

The Magnolias

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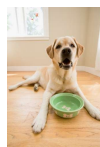
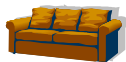
Very quick overview

EQUITABLE DISTRIBUTION

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Equitable Distribution

Legal process for dividing
property and debt between
divorcing spouses



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Tasks for the Judge

- **Classify** Property and Debt Owned/Owed on the Date of Separation
- **Value** Marital/Divisible Property and Debt
- **Distribute** Marital/Divisible Property and Debt

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Fundamental Principles

- Marriage is an **Economic Partnership**
- Marital property should be divided **equitably** upon divorce
- **Title** is not controlling
- **Separate property** should remain with the owner

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Classification

- Identification of property and debt subject to the court's authority
 - Process for creating the 'pie' to be divided between the parties
 - If property is not marital or divisible, court has **no authority** to do anything with it



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Key Classification Terms

- Marital Property
- Separate Property
- Marital Debt
- Divisible Property
- Divisible Debt

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Marital Property G.S. 50-20(b)(1)

- All real and personal property
- Acquired by either or both spouses
- Between date of marriage and date of separation
- Owned by either or both spouses on date of separation
 - Legal or equitable ownership



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Separate Property GS 50-20(b)(2)

- Acquired before the date of marriage
- Acquired by "a" spouse by gift or bequest during the marriage
- Acquired in exchange for separate property during the marriage
- Passive increase in value of or income from separate property during marriage
- Nontransferable Licenses

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Burden of Proof in Classification

- Party seeking marital classification goes first
 - Property acquired during marriage before the date of separation
 - By either or both parties
 - Owned by either or both parties on date of separation
 - Value on date of separation
- Entire date of separation value presumed marital
- Burden shifts to party seeking separate classification

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Mixed Property

- Separate property is protected
 - Mixing marital and separate does not result in separate property 'transmuting' to marital
- Source of Funds doctrine applies to classification
 - Value of an asset on date of separation is classified according to the source of the value
 - Both the marital and the separate estates are entitled to an interest in the property "in the ratio its' contribution bears to the total investment in the property."

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Classification process

1. What is the property interest to be classified?
2. Was it owned in whole or in part by either or both parties on the date of separation?
3. What was the value of that property interest on the date of separation?
4. Where did that value come from?

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Marital Debt



- Incurred during the marriage by either or both spouses
- Owed on the date of separation
- Incurred for the *joint benefit of the parties*

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Divisible Property: Post Separation



- *Passive* changes in value of marital property
- *Passive* income from marital property
- Property/cash earned as result of marital effort
- Increases/decreases in marital debt
 - After October 1, 2013: only *passive* increases and decreases

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Classification

- A legal conclusion
- Must be supported with findings of fact
- Minimum findings:
 - Date property/debt acquired
 - Who acquired it and how
 - Date of marriage
 - Date of separation
 - (Value on date of separation for marital property/debt)
 - (Value on date of trial for divisible property/debt)

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Valuation

- Every asset or debt identified as marital must have a date of separation value
 - No value = No distribution
- New exception:
 - GS 50-20.1(d)
 - Defined benefit plan (traditional pension) that is equally distributed by deferred distribution (in future by percentage) does not have to be valued

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Distribution

- The place to do “equity”
 - Consider distribution factors
- Equal presumed equitable
 - Only need one factor to award unequal
- In-kind division presumed equitable
 - Distributive award allowed when in-kind is not practical

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Magnolia Leasing, LLC Classification

- Marital property
 - Total DOS value acquired during the marriage
 - Owned on the DOS
 - Not separate property

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Magnolia Leasing, LLC

Value

- Court must “reasonably approximate the net value” of business on DOS
- Value must be based upon “sound methodology”
- “Expert”: a witness qualified by knowledge, skill, experience, training, or education to assist the trier of fact

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Magnolia Leasing, LLC

Classification

- Divisible property: GS 50-20(b)(4)(a)
 - Postseparation depreciation of marital property that is not the result of the actions of a spouse
- Decrease is a distribution factor if caused by postseparation actions of one spouse.
 - *Hay*, 148 NC App 649 (2002)

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Distributions

- General rule: property acquired after separation is not marital property
- Passive income earned from marital property is divisible property
 - GS 50-20(b)(4)(c)

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Distributions

- Distributions from an LLC are passive income
 - *Blair v. Blair*, 260 NC App 474 (2018)
- Salary of a spouse for postseparation actions is not divisible property
 - *Montague v. Montague*, 238 NC App 61 (2014)

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Residence

- Mixed asset: both marital and separate
- Each estate is entitled to an interest in the property in the ratio its contribution bears to the total investment in the property
 - *Wade*, 72 NC App 372
- Need to account for contributions from each estate
 - *McIver*, 92 NC App 116

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Mishler 90 NCAPP 72 “formula”

$$\text{Marital Property} = \frac{\text{Total Marital Contribution}}{\text{Total Contribution}} \times \text{DOS Net Value}$$

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Mishler 90 NCAPP 72 “formula”

$$\text{Marital Property} = \frac{\$80,000}{\$135,000} \times \$435,000$$

Roughly 60%
marital - \$256,650

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Residence

- Mixed Asset:
 - Separate Contribution: \$55,000
 - Marital Contribution: \$80,000
- Apply *Mishler* formula to \$435,000 DOS Net Value:
 - Marital: \$256,650 (approximately 60%)
 - Separate: \$178,350 (approximately 40%)

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Residence

- Divisible property. GS 50-20(b)(4):
 - (a): Postseparation appreciation not caused by actions of a spouse
 - Payments generally are ‘actions’
- But general rule: do not consider payments made pursuant to **alimony or child support order** in ED case. GS 50-20(f)
 - *Morris*, 90 NC App 94

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Residence

- Postseparation appreciation is divisible property
 - \$22,000 total (ignore payments)
- But, only to extent it is attributable to marital property
- Possible method: Apply *Mishler* “formula” to postseparation appreciation

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Mustang

- Gift between spouses during marriage is marital property unless contrary intent stated in conveyance.
 - *Friend-Novorska*, 131 NC App 508 (1998)
- Fair Market Value?
 - Blue book: \$32,000 marital asset
 - Purchase price: \$38,000 marital asset

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Mustang

- Divisible property. GS 50-20(b)(4)(a):
 - Postseparation decreases not caused by postseparation actions of a spouse
 - Presumed divisible
 - *Wirth v. Wirth*
- \$4,000 decrease caused by Wilma's actions?

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Car Loan

- Marital debt defined as debt:
 - Incurred during the marriage
 - Existing on the DOS
 - Incurred for the joint benefit of the parties
- Joint benefit: debt encumbers a marital asset? See *Glaspy*, 143 NC App 435 (2001)

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Car Loan

- **Divisible debt:** GS 50-20(b)(4)(d)
 - Interest and finance charges on marital debt
 - Decreases in marital debt
 - Payments made between 10/11/02 and 10/1/13)
 - Only *passive* changes in debt after 10/1/13
- Here:
 - \$3,000 decrease in loan balance
 - (\$1,200) interest and finance charges

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Joint Account

- Deposit into joint account does not establish gift to the marriage
- But: account is **presumed marital** because acquired during the marriage
- Henry has burden of tracing separate part of DOS value
 - *Minter*, 111 NC App 321 (1993)

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37-acre Tract

- Gift to “a” spouse is separate property
- Gift to both spouses is marital property
- Burden on Wilma to prove donor’s intent to make gift to her alone
 - See *Hunt*, 86 NC App 484 (1987)

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IRS Debt

- Marital if incurred for joint benefit of the parties
 - See *Glaspy*, 143 NC App 435 (2001)
- Is postseparation decrease in marital debt divisible property?
 - Payments between 10/11/02 and 10/1/13 result in divisible debt if reduce debt
 - After 10/1/13, only passive changes are divisible
 - GS 50-20(b)(4)(d)

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Collectibles

- Marital because acquired during the marriage
- Wilma has burden to prove DOS value
 - See *Grasty*, 125 NC App 736 (1997)
- Methodology not needed for personal property

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Collectibles

- Postseparation dissipation of marital assets
 - Distribute missing property to spouse that took it. *Sharp*, 84 NC App 128 (1987), or
 - Include property acquired with the missing property in marital estate. *Mauser*, 75 NC App 115 (1985)
- Both methods require a value?

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Henry's 401(k)

- Deferred comp is marital property to the extent it is earned during marriage.
- GS 50-20.1(d1) – Defined contribution accounts
 - “The court shall determine the marital portion of the benefit by determining the amount of the account balance that is due to contributions made or earned during the marriage and before separation, together with the income, gains, losses, appreciation, and depreciation accrued on those contributions.”

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Henry's 401k (a defined contribution account)

- Source of Funds
 - \$20,000 separate
 - Rest presumed marital
 - Henry to prove passive appreciation of the \$20,000 investment
- Divisible property
 - Postseparation appreciation of marital portion not caused by one spouse
 - Here ?

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Henry's 401(k)

- If insufficient evidence to classify by source of funds:
- The “coverture fraction” is used to determine marital portion of a defined contribution account and is the required method for classifying defined benefit plans
 - Years earning the pension while married over total years earning pension.
 - GS 50-20.1(d)

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Henry's 401(k)

- 4/5ths marital (20 out of 25 years)
 - \$120,000 marital
- Divisible property
 - Postseparation appreciation of marital portion not caused by one spouse
 - Here - \$4,000

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Henry's 401(k)

- Pre-separation dissipation (no marital asset to distribute)
- A distribution factor if marital funds spent for non-marital purpose “contemporaneous with marital breakdown or in anticipation of separation.”
 - See *Fountain*, 148 NC App 329 (2002)

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Wilma's 401(k)

- All marital on DOS
- Divisible property: (\$2,000)
 - Postseparation decrease in marital property not caused by the actions of one spouse

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Credit Cards

- DOS balance marital if incurred for joint benefit
 - See *Riggs*, 124 NC App 647 (1996)
- Postseparation increase in balance?
 - Divisible to extent represents interest and finance charges on marital debt
 - Otherwise, a distribution factor
- Postseparation payments?
 - Divisible if decrease marital debt (payments 10/11/02 through 10/1/13)
 - 'Consider' payments after 10/1/13

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