

Equitable Distribution  
Classification Practice  
Answers

1. Wife bought a house shortly before the marriage for a purchase price of \$75,000. She made a down payment of \$10,000 and financed the rest with a mortgage and deed of trust. On the date of marriage, the house still had a value of \$75,000 and a mortgage in the amount of \$65,000. After the marriage, the parties lived in the home but title remained in wife's name. Further, she made all mortgage payments with income she earned from her job as a nurse. By the date of separation, she had paid off the mortgage and the house had appreciated in value to \$150,000.

a. Classify the house.

**Answer:** Mixed asset, with majority of date of separation value being marital.

Source of Funds Rule provides that property is "acquired" as it is paid for. *Smith v. Smith*, 111 N.C. App. 460 (1993); *McLeod v. McLeod*, 74 N.C. App. 144 (1985). Here only \$10,000 of the property was "acquired" before marriage. The rest was acquired by wife during marriage and therefore marital property. See 50-20(b)(1)(Property acquired by either or both during marriage is marital, regardless of title). Funds used to pay mortgage were marital funds because earned during the marriage.

Source of funds also provides that each estate is entitled to return on investment. *Wade v. Wade*, 72 N.C. App. 372 (1987)(each estate is entitled to an interest in the property in the ratio its contribution bears to the total investment in the property). One way to figure separate component provided in *Mischler v. Mischler*, 90 N.C. App. 72 (1988):

(total separate contribution)	\$10,000	multiplied by \$150,000 = Approximately \$20,000
(total contribution)	\$75,000	

Marital portion is \$130,000.

b. Would classification be different had wife placed title to property in both husband and wife as tenants by the entirety?

**Answer:** Yes. Entire asset would be marital. Conveying title to both as tenants by the entirety creates rebuttable presumption that she intended to make a gift to her spouse. *McLean v. McLean*, 323 N.C. 543; *McLeod v. McLeod*, 74 N.C. App. 144 (1985); *Draughon v. Draughon*, 82 N.C. App. 738 (1987)(and numerous other cases). Can only rebut presumption by greater weight of the evidence that there was no gift.

c. Assume that after separation and before the date of trial, the house appreciated in value by \$25,000. Classify the appreciation.

House titled as tenancy by the entirety: The increased value will be divisible property if it was not the result of the effort of wife following the date of separation. Latest case from court of appeals held that postseparation appreciation of marital property is presumed to be divisible property. See *Wirth v. Wirth*, 668 S.E.2d 603 (N.C. App., November 18, 2008). So wife would have the burden to show the increase was the result of her efforts. If she can meet her burden of proof, the increased value would be a distribution factor.

If the house had not been transferred to tenancy by the entirety, only that portion of increase attributable to the marital portion of the house can be divisible property. So assuming all the appreciation was passive, approximately 86% of the appreciation (\$21,500) can be divisible property because 86% of the total DOS value of the house was marital property.

2. Wife presented evidence of a judgment entered against both husband and wife two years prior to the date of separation which establishes a debt owed to Wall Lumber Company in the amount of \$1,500. Wife asks that the debt be classified as marital.

a. Is the debt marital?

**Answer:** Without further evidence, the debt cannot be classified as marital. Marital debt is debt incurred during the marriage and before the date of separation for the joint benefit of the parties. However, party seeking marital classification has burden of proving that debt was incurred before separation for the joint benefit of the parties. In this case, *Miller v. Miller*, 97 N.C. App. 77 (1990), the court held that fact that debt was in name of both husband and wife was not enough to show that debt was incurred for the joint benefit of the parties. If the party seeking marital classification fails to present sufficient proof to meet this burden, debt cannot be distributed. See *Fox v. Fox*, 114 N.C. App. 125 (1994).

In Miller, no effort was made to show how the debt was incurred.