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## Is There a Need for Equitable Distribution of Property upon Divorce in North Carolina: Leatherman v. Leatherman

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## NOTES

### Is There a Need for Equitable Distribution of Property upon Divorce in North Carolina?: *Leatherman v. Leatherman*.

In *Leatherman v. Leatherman*,<sup>1</sup> the North Carolina Supreme Court considered whether, upon divorce, a wife, who had performed book-keeping and other supportive services for her husband's land clearing business, was entitled to have a constructive or resulting trust imposed in her favor upon one-half of the capital stock of the husband's business. The stock was held in his name and the corporation was capitalized with funds from a joint bank account consisting entirely of the proceeds from the husband's sole proprietorship business. The court, in line with traditional common law principles and North Carolina case law,<sup>2</sup> held that no trust should be imposed. The justices, however, failed to recognize alternative equitable principles of postmarital property distribution that are presently being adopted and employed in similar situations by other jurisdictions.<sup>3</sup>

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1. 297 N.C. 618, 256 S.E.2d 793 (1979).

2. In North Carolina, a resulting trust arises when one gives valuable consideration for property but places legal title in the name of another. This type of transaction gives rise to an inference that the transferor had no intent to award the transferee a beneficial interest in the property. *Bowden v. Darden*, 241 N.C. 11, 84 S.E.2d 289 (1954); *Teachey v. Gurley*, 214 N.C. 288, 199 S.E. 83 (1938). A constructive trust arises irrespective of the intent of the parties. It is an involuntary trust which is imposed in circumstances when property has been acquired through misconduct, fraud, or breach of a confidential relationship, and when the holder of legal title would be unjustly enriched if allowed to retain the beneficial interest. *Wilson v. Development Co.*, 276 N.C. 198, 171 S.E.2d 873 (1970); *Fulp v. Fulp*, 264 N.C. 20, 140 S.E.2d 708 (1956); 241 N.C. at 11, 84 S.E.2d at 289; 214 N.C. at 288, 199 S.E. at 83. See generally N. WIGGINS, WILLS AND ADMINISTRATION OF ESTATES IN NORTH CAROLINA §§ 295-96 (1964).

3. See generally Note, *Domestic Relations: The Role of Joint Industry in the Determination of What is Jointly Acquired*, 32 OKLA. L. REV. 214 (1979); Heyman, *Illinois Marriage and Dissolution of Marriage Act: New Solutions to Old Problems*, 12 J. MAR. J. PRAC. & PROC. 1 (1978); Krauskopf, *Marital Property at Marriage Dissolution*, 43 MO. L. REV. 157 (1978); Agatstein, *Dissolution of Marriage Act—Property Rights and Wrongs*, 34 J. MO. B. 451 (1978); Krauskopf, *A Theory of "Just" Division of Marital Property in Missouri*, 41 MO. L. REV. 165 (1976); Comment, *Divorce Law—Equitable Distribution of Property in New Jersey*, 28 RUTGERS L. REV. 447 (1974); Note, *Divorce—New Jersey Courts Make First Equitable Distribution Under New Divorce Act*, 4 SETON HALL 311 (1972).

Some recent authorities state that North Carolina recognizes equitable distribution of property upon the dissolution of marriage only when the courts make such division in lieu of alimony. Foster & Freed, *Divorce in the Fifty States: An Outline*, 11 FAM. L.Q. 307, 307-08 (1977). More specifically, N.C. GEN. STAT. § 50-16.7(a) (1976) provides that "[a]limony or alimony pendente lite shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property or any interest therein, or a security interest in or possession of real property, as the court may order. . . ." This statute allows the court to order the payment of alimony in

## LEATHERMAN V. LEATHERMAN

The Leathermans were married for twenty-eight years. From the inception of the land clearing business until the incorporation of Leatherman, Inc., a period totaling approximately fifteen years, nearly all profits from the business were kept in the joint checking account of the parties. During this time, both parties made deposits while funds from the account were used to pay household and business expenses. The couple placed all additional funds in joint savings accounts. Yet, neither party received a formal salary for their respective duties in the business. Upon incorporation, nine hundred thirty shares of Leatherman, Inc. stock were issued to the defendant, Mr. Leatherman, and assets totaling \$32,382.02 were transferred from the joint accounts into a corporate account. The plaintiff, Mrs. Leatherman, continued to perform bookkeeping and other substantial supportive services for the corporation, just as she had previously done in the land clearing business. During her twenty-three years of service, the plaintiff spent up to forty hours per week working in her husband's business while raising a family of three children. Prior to divorce, the plaintiff often requested compensation for her work in the defendant corporation; however, she succeeded in gaining a salary only during her last three years of employment. Following their separation, the Leathermans mutually agreed to all postmarital matters except for the plaintiff's ownership interest in Leatherman, Inc. The plaintiff demanded compensation for the twenty years of service in her husband's business prior to the final period when she received a formal salary; however, the defendant refused. Consequently, the plaintiff commenced this action claiming one-half ownership in Leatherman, Inc. and requesting one-half its capital stock. Mr. Leatherman and the defendant corporation jointly denied the claim, stating that Leatherman, Inc. was formed from a sole proprietorship and that the "plaintiff lacked any ownership interest in the joint bank accounts from which funds were taken to capitalize the corporation."<sup>4</sup> The superior court held for the plaintiff, imposing a constructive trust upon the defendant's stock in Leatherman, Inc. in the amount of \$16,191.01.<sup>5</sup> The Court of Appeals reversed,<sup>6</sup> ruling that the record revealed no contract which would allow the plaintiff to claim an ownership interest in the joint accounts used to capitalize the defendant corporation. The North Carolina Supreme Court affirmed.

Justice Britt, writing for the court, acknowledged that both construc-

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personal property of the supporting spouse or establish a lien on his real property. These are payment devices for alimony necessary for protection of the dependent spouse. *Taylor v. Taylor*, 26 N.C. App. 592, 593 (1975); *Spillers v. Spillers*, 25 N.C. App. 261, 264 (1975).

4. 297 N.C. at 619, 256 S.E.2d at 794.

5. Specifically, the superior court found that the plaintiff owned a one-half interest in the joint accounts used to capitalize the defendant corporation. *Id.* at 621, 256 S.E.2d at 795.

6. 38 N.C. App. 696, 248 S.E.2d 764 (1979).

tive and resulting trusts can arise by operation of law,<sup>7</sup> but the party seeking to impose an equitable trust must first prove that he has been deprived of a beneficial interest in property to which he is entitled.<sup>8</sup> If this threshold inquiry is not met, neither equitable doctrine may be invoked. Alternatively, if such inquiry is satisfied, the court will apply the appropriate formula. The test for a resulting trust is whether one pays valuable consideration for property while placing legal title in the name of another.<sup>9</sup> A constructive trust arises when the person with legal title to property is subject to an equitable duty to convey it to another by virtue of some actual or presumptive fraud on his part, and when the defendant would be unjustly enriched if allowed to retain the property.<sup>10</sup>

The threshold question, whether Mrs. Leatherman had an enforceable interest in the joint bank accounts which would entitle her to an interest in the stock, was the major point of division among the respective courts.<sup>11</sup> Justice Britt accepted the Court of Appeals' position that the trial court incorrectly applied the law to the facts presented at trial,<sup>12</sup> and that the funds in the joint accounts belonged to the husband. Further, he stated that if the law had been applied accurately,

7. 297 N.C. at 621, 256 S.E.2d at 795.

8. The trial court recognized, as a finding of fact, that Mrs. Leatherman had been deprived of a beneficial interest in the corporate stock because the funds transferred from joint accounts to the corporate account were the property of both the plaintiff and the defendant. *Id.* at 622, 256 S.E.2d at 796. The Court of Appeals reversed this finding as error; however, they failed to acknowledge that such was a finding of fact not reviewable on appeal. Ultimately, the North Carolina Supreme Court set the record straight by stating that the beneficial interest issue was a mixed question of law and fact reviewable on appeal. The court then proceeded to reach the same result as the Court of Appeals and reversed the finding of the trial court.

9. *Id.* at 625, 256 S.E.2d at 798.

10. *Id.* at 626, 256 S.E.2d at 798.

11. See note 8 *supra*.

12. Although the trial court found that the joint bank accounts were the property of both parties and could have been withdrawn by either at anytime, there exists certain presumptions in North Carolina that were not correctly applied by the lower court in reaching this conclusion. *Id.* The first presumption is that absent a special contract to the contrary, services rendered by a wife in her husband's business are gratuitous. *Smith v. Smith*, 255 N.C. 152, 120 S.E.2d 575 (1961); *Sprinkle v. Ponder*, 233 N.C. 312, 64 S.E.2d 171 (1951); *Dorsett v. Dorsett*, 183 N.C. 354, 111 S.E.2d 541 (1922). The second is the presumption that a man who deposits his money in a joint account of husband and wife is not making an inter vivos gift to the wife because to constitute such a gift there must be an intent to give and a proper delivery to the transferee with loss of dominion over the property. 255 N.C. at 157, 120 S.E.2d at 578; *Hall v. Hall*, 235 N.C. 711, 716, 71 S.E.2d 471, 474 (1952); *Buffaloe v. Barnes*, 226 N.C. 313, 318, 38 S.E.2d 222, 227 (1946); *Nannie v. Pollard*, 205 N.C. 362, 362, 171 S.E. 341, 341 (1933); *Jones v. Fullbright*, 197 N.C. 274, 278, 148 S.E. 229, 231 (1929); *Thomas v. Houston*, 181 N.C. 91, 94, 106 S.E. 466, 467 (1921). Justice Britt recognized these principles and stated that Mrs. Leatherman had failed to overcome these presumptions at trial. 297 N.C. at 622, 256 S.E.2d at 798.

Compare the above principles to another existing common law principle in North Carolina: "[W]hen real property is conveyed to a husband and wife a tenancy by the entirety is created and upon divorce each party usually receives a one-half interest in the property." 2 R. LEE, NORTH CAROLINA FAMILY LAW §§ 112, 120 (1963).

the trial court never would have reached the equitable trust issue. The dissenters, however, in an opinion written by Chief Justice Sharp, accepted the trial court's result that a constructive trust should be imposed.<sup>13</sup> In their view, the plaintiff had an enforceable interest in the joint bank accounts. The dissenting justices based their conclusion on the partnership theory of marriage as stated in *Eggleston v. Eggleston*,<sup>14</sup> a North Carolina case similar to *Leatherman* on its facts. In *Eggleston*, a small family gas station developed into a thriving business within fifteen years. This success was attributable to the joint efforts of husband and wife. Mrs. Eggleston performed strikingly similar services to those performed by Mrs. Leatherman in the land clearing operation and both wives contributed services only to their respective husband's business. Thus, Chief Justice Sharp felt that *Eggleston* was controlling and that the Court of Appeals' decision should be reversed.<sup>15</sup> Conversely, the majority denied the plaintiff an enforceable interest in the joint accounts, viewing the partnership theory as inapplicable because there was no evidence of an implied contract between the Leathermans providing for the wife's compensation. In making this determination, the court stated:

There are instances where there is not only a matrimonial partnership between a husband and wife, but a financial or business partnership; also, where the wife is to receive compensation from her husband for services rendered, but in all such cases the business partnership, or the liability of the husband to the wife for compensation, must arise out of an agreement, not out of the martial relation. . . .<sup>16</sup>

The majority concluded this analysis by distinguishing *Eggleston*,<sup>17</sup>

13. She went further than the trial court, stating that the imposition of a resulting trust would also have been proper. 297 N.C. at 636, 256 S.E.2d at 803.

14. 228 N.C. 668, 47 S.E.2d 243 (1948).

15. Chief Justice Sharp felt that Mrs. Leatherman was a full partner in her husband's business. She quoted the *Eggleston* court regarding intermarital partnerships as follows:

A contract, express or implied, is essential to the formation of a partnership. . . . But we see no reason why a course of dealing between the parties of sufficient significance and duration may not, along with proof of the fact, be admitted as evidence tending to establish the fact of partnership provided it has sufficient substance and definiteness to evince the essentials of the legal concept, including of course, the necessary intent . . . . 'Partnership is a legal concept but the determination of the existence or not of a partnership, as in the case of a trust, involves inferences drawn from an analysis of all the circumstances attendant on its creation and operation.'

Not only may a partnership be formed orally but it may be created by the agreement or conduct of the parties, either express or implied; . . . voluntary association of partners may be shown without proving an express agreement to form a partnership; and a finding of its existence may be based upon a rational consideration of the acts and declarations of the parties, warranting the inference that the parties understood that they were partners and acted as such.

297 N.C. at 634, 256 S.E.2d at 801, quoting 228 N.C. at 674, 47 S.E.2d at 247. See Note, *The Implied Partnership: Equitable Alternative To Contemporary Methods of Postmarital Property Distribution*, 26 U. FLA. L. REV. 221 (1974); *Hogan v. Hogan*, 234 Ark. 383, 352 S.W.2d 184 (1961).

16. 297 N.C. at 622, 256 S.E.2d at 796, quoting 183 N.C. at 358, 111 S.E. at 543 (1922).

17. The court distinguished *Eggleston* based on the fact that the Egglestons filed a partner-

even though the case indicated that conduct as well as course of dealing between husband and wife may be probative of an implied agreement for compensation.<sup>18</sup>

The *Leatherman* decision illustrates the problems, as well as the inequitable results, which often arise in a common law system of postmarital property distribution.<sup>19</sup> Under the North Carolina common law system, separate property of a husband and wife will remain such, and the only questions that arise are those pertaining to the postmarital ownership of property acquired by husband and wife as co-owners.<sup>20</sup> Such ownership is affected by constructive and resulting trusts and gifts between husband and wife.<sup>21</sup> Application of these principles, usually makes it difficult to establish equitable ownership, and in most postmarital disputes the spouse holding legal title prevails,<sup>22</sup> often at the expense of fairness to the other party.<sup>23</sup>

Presently, thirty-three states and the District of Columbia have provided for equitable postmarital distribution of property.<sup>24</sup> These states

ship income tax return each year. This fact was deemed "evidence from which the jury could infer that there was an implied agreement or contract between the parties providing for the wife's compensation." The court stated that no similar circumstances existed in *Leatherman*. 297 N.C. at 623-24, 256 S.E.2d at 797.

18. 297 N.C. at 623, 256 S.E.2d at 797.

19. The common law property states that generally have no equitable statutory power to distribute property upon divorce are Florida, Mississippi, Rhode Island, Pennsylvania, Tennessee, Virginia, West Virginia, and New York. The common law states of Maryland and South Carolina can equitably distribute personal property only. North Carolina, Alabama, Georgia, and Ohio can equitably distribute property only when the distribution is in lieu of alimony. Foster & Freed, *supra* note 3.

20. See generally 2 R. LEE §§ 121-27.

21. *Id.* at § 113.

22. Marschall, *Proposed Reforms in North Carolina Divorce Law*, 8 N.C. CENT. L.J. 45 (1976).

23. *Fisher v. Wirth*, 38 A.D.2d 611, 326 N.Y.S.2d 308 (1971). In this case, for twenty-two years the spouses pooled assets, and the wife managed the accounts and invested excess funds. Later, they decided that the husband's salary would be invested for both parties' future while the wife's earnings would be used for family support. The husband took title to all investments and upon divorce the New York courts refused to impose a constructive trust in the wife's favor. Thus, after forty years of marriage, raising two children, and working to support the family, the wife was cut out of any interests in the marital investments.

The wife, however, has not always been the recipient of the inequitable result. In a 1975 case, a husband emerged from a marriage of twenty-nine years with only one-half of the personal property. *Larue v. Larue*, 216 Kan. 242, 531 P.2d 84 (1975). In *Larue* the dissenting justice's view is well worth noting:

It occurs to me that the defendant has received scant consideration from a bad tempered old lady who met him at the door with a shotgun upon his return from a sojourn in the hospital. She now emerges from the twenty-nine year old marriage with a farm worth at least \$62,000, plus one-half in value of the personal property acquired over the years, while Mr. Larue comes out at the short end of the horn with the other half of the value of the personality or \$10,000. The equities of the situation escape me.

*Id.* at 251, 531 P.2d at 94.

24. The common law property states where the courts can make equitable distribution in at least some instances are Alabama (as alimony only), Alaska, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Georgia (as alimony only), Hawaii, Illinois, Indiana, Iowa, Kan-

have combined a major community property concept<sup>25</sup> and the modern common law rules of equitable ownership and gifts to create fair distributions between husband and wife. Under equitable distribution systems, the courts no longer are concerned with who holds legal title to property.<sup>26</sup> Instead, they have relied on certain key factors to determine how property should be distributed.<sup>27</sup>

Of the states enacting equitable distribution statutes, several merely granted their courts discretionary powers to apportion marital property in an equitable and just manner.<sup>28</sup> These provisions are based on the

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sas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, North Carolina (as alimony only *see, e.g.*, Foster & Freed, *supra* note 3), North Dakota, Ohio (as alimony only), Oklahoma, Oregon, South Dakota, Tennessee, Utah, Vermont, Wisconsin, and Wyoming. Foster & Freed, *supra* note 3. *See, e.g.*, ALA. CODE tit. 30, § 30-2-51 (Supp. 1979); ALASKA STAT. § 09.55.210 (1973); ARK. STAT. ANN. § 34-1214 (Supp. 1979); COLO. REV. STAT. ANN. § 14-10-113 (Supp. 1979); CONN. GEN. STAT. ANN. § 46b-81 (West Supp. 1979); DEL. CODE ANN. tit. 13, § 1527 (1974); D.C. CODE ENCYCL. ANN. § 16-910 (West Supp. 1978); GA. CODE ANN. § 30-209 (Supp. 1979); HAWAII REV. STAT. § 580-47 (Supp. 1979); ILL. ANN. STAT. ch. 40, § 503 (Smith-Hurd Supp. 1979); IND. ANN. STAT. § 31-1-11.5-11 (Burns Supp. 1979); IOWA CODE ANN. § 598.21 (West Supp. 1979); KAN. STAT. ANN. § 60-1610 (Supp. 1979); KY. REV. STAT. ANN. § 403.190 (1972); ME. REV. STAT. ANN. tit. 19, § 722-A (Supp. 1979); MASS. ANN. LAWS, ch. 208, § 34 (Supp. 1980); MICH. COMP. LAWS ANN. § 552.103 (1967); MINN. STAT. ANN. § 518.58 (West Supp. 1979); MO. ANN. STAT. § 452.330 (Vernon 1977); MONT. CODE ANN. § 48-321 (Supp. 1977); N.C. GEN. STAT. § 50-16.7 (1976); NEB. REV. STAT. § 42-365 (1978); N.H. REV. STAT. ANN. § 458:19 (1968); N.J. STAT. ANN. § 2A:34-23 (West Supp. 1979); N.D. CENT. CODE § 14-05-24 (1971); OHIO REV. CODE ANN. § 3105.18 (Page 1980); OKLA. STAT. ANN. tit. 12, § 1278 (Supp. 1979); ORE. REV. STAT. § 107.105 (1977); S.D. CODIFIED LAWS § 25-4-44 (1976); TENN. CODE ANN. § 36-825 (1977); UTAH CODE ANN. § 30-3-5 (Supp. 1979); VT. STAT. ANN. tit. 15, § 751 (1974); WIS. STAT. ANN. § 247.255 (Supp. 1979); WYO. STAT. ANN. § 20-2-114 (1977).

25. Generally, the community property states require the postmarital division of joint property to be made fifty-fifty between a husband and wife. Eight states and Puerto Rico have this system. These states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. H. BASS & M. REIN, *DIVORCE OR MARRIAGE A LEGAL GUIDE* 73-74 (1976) 2 R. LEE at § 122. *See, e.g.*, P.R. LAWS ANN. tit. 31, § 381 (Supp. 1977); ARIZ. REV. STAT. ANN. § 25-318 (Supp. 1979); CAL. CIV. CODE § 4800 (West Supp. 1979); IDAHO CODE ANN. § 32-712 (Supp. 1979); LA. CIV. CODE ANN. art. 155 (West Supp. 1979); NEV. REV. STAT. § 125.150 (1975); N.M. STAT. ANN. § 40-4-7 (1978); TEX. FAM. CODE ANN. tit. 1, § 3.63 (Vernon 1975); WASH. REV. CODE ANN. § 26.09.080 (Supp. 1979).

26. H. BASS & M. REIN, *supra* note 25, at 73.

27. In a 1970 case, years before Wisconsin adopted an equitable distribution statute, the Wisconsin Supreme Court stated:

Such relevant factors certainly include the length of the marriage, the age and health of the parties, their ability to support themselves, liability for debts or support of children, general circumstances, including grievous misconduct, although a division is not a penalty imposed for fault. Whether the property award is in lieu of or in addition to alimony payments is a material factor.

Other factors considered important were whether the property was brought to the marriage or whether the property was acquired during marriage. *Lacey v. Lacey*, 45 Wis. 2d 378, 383-86, 173 N.W.2d, 142, 145 (1970).

28. A model example of such a statute is:

Division of property between parties: Where a divorce is granted for all offenses of either husband or wife, the courts shall in such action have full power to make an equitable division of the property belonging to either or both, whether the title of such property is in the name of the husband or the wife. In making such division of the property the court shall have regard for equity and the circumstances of the parties.

belief that it is virtually impossible to compose a statutory list of strict criteria that would suffice in every conceivable fact situation. Moreover, states utilizing this type of statute have recognized that without rigid standards their courts are free "to make whatever distribution they choose, based on the merits of each individual case, so long as that distribution is 'equitable'."<sup>29</sup> There are, however, visible problems with the totally discretionary system that make it somewhat less practical than a more guided approach. Critics often cite the wide discretion afforded the trial courts as the system's major drawback.<sup>30</sup> Many view this problem as a potential source of arbitrary and unpredictable judicial decisions,<sup>31</sup> which, if they occur, will create additional obstacles for attorneys and marital litigants as well as for trial judges.<sup>32</sup> Another related but more subordinate criticism of the wholly discretionary method of equitable distribution, is the undue vagueness with which the statutes are drawn.<sup>33</sup> State supreme courts, however, when confronted with this issue, have upheld the constitutional validity of these statutes.<sup>34</sup> In doing so, they expressed confidence that difficulties resulting from a wide grant of discretion can be remedied by future decisions articulating permissible criteria and guidelines that lend substance to the otherwise general statutory language.<sup>35</sup>

As an alternative to the wholly discretionary system, other equitable distribution states have set forth statutorily key factors to be considered by the courts in making an equitable distribution.<sup>36</sup> This method of distribution narrows the focus of the courts while concurrently permitting the discretionary leeway necessary to deal with the great variety of property interests that must be divided. Of the states adopting the more specific statutes, many have patterned their legislation after the Uniform Marriage and Divorce Act.<sup>37</sup> One such state, Missouri, en-

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S.D. CODIFIED LAWS § 25-4-44 (1976). See IOWA CODE ANN. § 598.21 (West Supp. 1979); KAN. STAT. § 60-1610 (Supp. 1978); N.H. REV. STAT. ANN. § 458:19 (1968); N.J. STAT. ANN. § 2A:34-23 (West Supp. 1979); N.D. CENT. CODE § 14-05-24 (1971).

29. Note, *Divorce—New Jersey Courts Make First Equitable Distribution Under New Divorce Act*, 4 SETON HALL L. REV. 311, 327 (1972).

30. *Id.*

31. Comment, *Divorce Law—Equitable Distribution of Property in New Jersey*, 28 RUTGERS L. REV. 447, 463 (1974).

32. *Id.* at 463-64.

33. *Id.* at 456; see note 28 *supra*.

34. See, e.g., *Painter v. Painter*, 65 N.J. 196, 320 A.2d 484 (1974).

35. See Comment, *supra* note 31, at 456-62.

36. See, e.g., COLO. REV. STAT. ANN. § 14-10-113 (Supp. 1979); CONN. GEN. STAT. ANN. § 46b-81 (West Supp. 1979); D.C. CODE ENCYCL. ANN. § 16-910 (West Supp. 1978); HAWAII REV. STAT. § 580-47 (Supp. 1979); ILL. ANN. STAT. ch. 40, § 503 (Smith-Hurd Supp. 1979); IND. ANN. STAT. § 31-1-11.5-11 (Burns Supp. 1979); ME. REV. STAT. ANN. tit. 19, § 722-A (Supp. 1979); MASS. ANN. LAWS, ch. 208, § 34 (Supp. 1980); MINN. STAT. ANN. § 518.58 (West Supp. 1979); MO. ANN. STAT. § 452.330 (Vernon 1977); MONT. CODE ANN. § 40-4-202 (1979); NEB. REV. STAT. § 42-365 (1978); ORE. REV. STAT. § 107.105 (1977); WIS. STAT. ANN. § 247.255 (Supp. 1979).

37. 9A U.L.A. MAT., FAM. & H. LAWS 91 (1979).

acted its statute in 1974.<sup>38</sup> Since that time, much of the appellate litigation arising under the provision “has involved two issues stemming from the requirement that marital property be divided: [one concerning] [t]he definition of ‘property’ and [the other regarding] the effect of variations in the process of ‘acquiring’ property.”<sup>39</sup> In dealing with these issues, the Missouri Supreme Court set forth precise guidelines<sup>40</sup> to promote predictability that can be utilized by the state trial courts in future cases and to foster uniformity. Other states have been less independent than Missouri and have chosen to adopt verbatim the property provisions of the Uniform Marriage and Divorce Act.<sup>41</sup> This act lists relevant factors to be considered by a court in making a distribution of property.<sup>42</sup> More specifically, the pertinent factors include whether the distribution is in addition to or in lieu of alimony, duration of the marriage, age, health, station, occupation, amount and sources of

38. MO. ANN. STAT. § 452.330 (Vernon 1977).

39. Krauskopf, *supra* note 3.

40. The guidelines established by the Missouri Supreme Court on the issues in question are best summarized as follows:

All tangible assets, including the proceeds of personal injury claims, and enforceable intangible interests, such as vested contract rights, are all to be included as property. All property acquired during marriage, unless within a statutory exception and not “transmuted” to separate property, is marital. Acquisition occurs at the time title is received, so that property titled in one spouse prior to marriage remains separate with the probability that reimbursement for marital funds and effort spent on it may be enforced. The court must divide marital property; it has wide powers and discretion in the manner of division.

*Id.* at 197.

41. The states that originally accepted verbatim the Uniform Marriage and Divorce Act are Arizona, Colorado, Illinois, Kentucky, and Montana. This act was promulgated by the National Conference of Commissioners on Uniform State Laws in 1970, was amended in 1971 and again in 1973 as a suggested approach for states seeking divorce reform. 9A U.L.A. MAT., FAM. & H. LAWS 91 (1979).

42. The distribution of property upon the dissolution of marriage is dealt with in § 307 of the act. This section sets forth two alternative statutes: alternative A is for common-law jurisdictions, and alternative B is for community property jurisdictions. Alternative A of § 307 provides:

(a) In a proceeding for dissolution of a marriage, legal separation, or disposition of property following a decree or dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both however and whenever acquired, and whether the title thereto is in the name of the husband or wife or both. In making apportionment the court shall consider the duration of the marriage, and prior marriage of either party, antenuptial agreement of the parties, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties, custodial provisions, whether the apportionment is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of each party in the acquisition, preservation, depreciation, or appreciation in value of the respective estates and the contribution of a spouse as a homemaker or to the family union. (b) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent or incompetent children of the parties.

UNIFORM MARRIAGE AND DIVORCE ACT (U.L.A.) § 307.

income, vocational skills, employability, size of the estate, liabilities, needs of the respective parties, contributions of each party in the acquisition or change in the value of the estate, and contributions of a spouse as a homemaker.<sup>43</sup>

Had *Leatherman* been analyzed in light of the principles of equitable distribution contained in the Uniform Marriage and Divorce Act, the initial determination would have been that the dispute involved a postmarital division of property rather than whether property should be awarded in lieu of alimony or support because alimony and support arrangements had been finalized in the *Leatherman* divorce decree. Circumstances that would have influenced the division of property are that the marriage lasted twenty-eight years, that three children were born during the period, and that the wife was the principle homemaker while working in her husband's business. Moreover, absent plaintiff's services as homemaker, the defendant would have been forced to seek such services elsewhere at personal expense. The key determinative factor, however, would have been the contribution of each party to the formation of *Leatherman, Inc.* Clearly, the plaintiff's supportive services performed in the land clearing business substantially aided the accumulation of capital in the joint accounts that resulted in the capitalization and incorporation of *Leatherman, Inc.* Thus, based on the Uniform Marriage and Divorce Act, Mrs. *Leatherman* would have been entitled to ownership rights in the defendant corporation.

In the final analysis, the fact remains that *Leatherman* was not decided upon equitable principles. It is clear from the decision that the North Carolina Supreme Court chose to avoid initiating equitable reform in the area of postmarital property distribution.<sup>44</sup> This mandate indicates that the General Assembly must act in order to prevent a re-occurrence of the *Leatherman* result. In formulating a system of equitable distribution, existing statutory models offer valuable guidance in developing a workable approach in North Carolina.

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43. *Id.*

44. The Wisconsin Supreme Court successfully initiated reform in this area that eventually led to the passage of an equitable distribution statute which codified the key factors enunciated by the court. *See* note 27 *supra*.