

## The *Ferguson* based “Equitable Division” process

It is initially assumed by the law that, once a *Hemsley* analysis has characterized and defined the marital estate of divorcing spouses, the marital estate subject to division has been produced as the result of equal contribution of both spouses, whether that contribution is financial or in uncompensated effort supportive of the ends of the marriage. Next it becomes necessary to consider the factors set out in *Ferguson*, one at a time, to decide whether the initial presumption should change from equal to unequal, and if so, to what extent. The factors set out in *Ferguson* which must be considered in equitable division of marital property are:

1. Substantial contribution to the accumulation of the property, to include:
  - a. direct or indirect economic contribution, and/or
  - b. contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family duties and duration of the marriage, and/or
  - c. contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets
2. The degree to which each spouse has expended, withdrawn, or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise;
3. The market value and emotional value of the assets subject to distribution;
4. The value of the assets not ordinarily, absent equitable factors to the contrary, subject to distribution, such as property brought to the marriage by the parties and the property acquired by inheritance or inter vivos gift by or to an individual spouse;
5. Tax and other economic consequences to third parties, of the proposed distribution;
6. The extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties;
7. The needs of the parties for financial security with due regard to the combination of assets, income, and earning capacity; and
8. Any other factors, which in equity, should be considered.

*Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994).