Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent) [2006] SGHC 172

Case Number : D 675/2004

Decision Date : 28 September 2006

Tribunal/Court : High Court

Coram : Andrew Phang Boon Leong J

Counsel Name(s) : Koh Geok Jen and Raymond Yeo Khee Chye (Jen Koh & Partners) for the petitioner; Randolph Khoo Boo Teck and Veronica Joseph (Drew & Napier LLC) for the respondent

Parties : Chen Siew Hwee — Low Kee Guan (Wong Yong Yee, co-respondent)

Family Law – Matrimonial assets – Gifts – Whether shares given to husband prior to marriage amounting to gift and not matrimonial asset to be divided between husband and wife upon divorce – Whether shares ceasing to be gift once converted in form to different asset – Whether new asset matrimonial asset divisible between husband and wife upon divorce – Section 112(10) Women's Charter (Cap 323, 1997 Rev Ed)

28 September 2006

Andrew Phang Boon Leong J:

Introduction

1 The present proceedings centred on ancillary matters that flowed from the divorce proceedings between the parties. The petitioner wife ("wife") and respondent husband ("husband") had been married for 17 years. This was the wife's first marriage and the husband's second marriage. There were no children from the marriage, although the husband had a son from his first marriage (who is currently 25 years old).

2 The wife filed for divorce on 3 March 2004. The decree *nisi* was granted on 28 September 2004.

3 The wife is 48 years old and does not work.

4 The husband is 50 years old and is retired.

5 In so far as ancillary matters are concerned, the wife applied for interim maintenance of $24,000 per month. The learned district judge awarded her $10,000 maintenance per month instead (with effect from 1 February 2004). On appeal, the learned judge ordered that the wife be paid interim maintenance of $12,000 per month (also with effect from 1 February 2004).

6 The proceedings before the present court related not only to the issue of maintenance but also to the division of matrimonial assets.

The present proceedings

7 It is appropriate to set out my principal holdings first.

8 In so far as the division of matrimonial assets was concerned, I held, first, that the following items were *not* within the pool of matrimonial assets, having regard to the definition of "matrimonial asset" in s 112(10) of the Women's Charter (Cap 353, 1997 Rev Ed) ("s 112(10)"):

(a) All assets derived from the 3,066 shares given to the husband in Eng Cheong Peng Kee Pte Ltd, and as set out in Annex A of the husband's submissions to the court.

(b) All assets derived from the 1,700 shares given to the husband in Low Peng Boon Pte Ltd, and as set out in Annex A of the husband's submissions to the court.

(c) The husband's Singapore Island Country Club membership.

9 I note that the assets derived from the shares referred to in (a) and (b) above (which shares I will hereafter refer to, collectively, as "the shares") constituted the bulk of the assets which were in dispute in the present proceedings. Indeed, as it turned out, these assets became the principal focus of the present judgment.

10 I further held that the remaining assets fell within the pool of matrimonial assets, which I divided in the proportion of 35 per cent to the wife and 65 per cent to the husband.

11 However, in so far as the husband's Central Provident Fund moneys were concerned, I held that only post-marriage amounts formed part of the pool of matrimonial assets.

12 I further ordered that the parties were to itemise those assets within the pool of matrimonial assets that required a fixed value to be placed upon them (this would include, for example, the matrimonial home). I also ordered that these assets be valued by an independent assessor appointed by agreement between the parties and, if the parties could not agree, then by an independent assessor to be appointed by the court from names furnished by the parties.

13 In so far as maintenance of the wife was concerned, I ordered that the husband pay the wife a monthly sum of $12,000.

14 I ordered, further, that the husband pay to the wife a sum of $10,000, being the cost of the private investigators' services.

15 Finally, I ordered that costs were to be agreed, or taxed if not agreed.

16 The wife was dissatisfied with my decision and filed a notice of appeal against part of my decision. There were in fact two main points of dissatisfaction. There was a third, where the wife asserts that she is entitled to the costs of the proceedings in respect of the ancillary matters as well as the appeal. At least in so far as the former (*viz*, the costs of the proceedings in respect of the ancillary matters) are concerned, I had in fact ordered that costs be agreed, or taxed if not agreed. Unfortunately, whilst the parties were ultimately able to agree with regard to the issue of maintenance, they could not resolve the issue of the costs of the proceedings in respect of the ancillary matters. At the hearing to record the terms of settlement with respect to the issue of maintenance, I reserved the issue with respect to the costs of the hearing of the ancillary matters. Counsel for the wife wrote in subsequently (by letter of 16 August 2006) for an audience in order to make the necessary submissions on the issue with respect to the costs of the proceedings in respect of ancillary matters. Both parties in fact made their submissions on costs on 1 September 2006. However, because of the nature of the submissions, I adjourned the matter until the Court of Appeal hands down its decision in this appeal. I note that the present law is embodied in the Singapore Court of Appeal decision of *Tham Khai Meng v Nam Wen Jet Bernadette* [1997] 2 SLR 27 at [49] and [50], which holds that as the hearing of the ancillary matters is a continuation or a part of the hearing of the divorce petition, the party who is awarded the costs of the petition (the wife in the present proceedings) is also entitled to the costs of the hearing of the ancillary matters. It seems to me, with

respect, however, that although it is true that the hearing of the ancillary matters is, in a sense, a continuation of the hearing of the divorce petition, in *reality*, the hearing of the ancillary matters is a discrete set of proceedings which may not always result in a decision in favour of the party who has been awarded the costs of the petition. Indeed, the present proceedings, at least in so far as the issue relating to the division of matrimonial assets is concerned, constitute a good illustration. It is hoped that the Court of Appeal might be able to clarify the situation in this regard, bearing in mind the fact that the award of costs is also a discretionary exercise. Absent any modification of the existing law, I am, of course, bound by the principle laid down in the Court of Appeal's decision in *Tham Khai Meng v Nam Wen Jet Bernadette*.

17 Leaving aside the issue of costs, the wife's first point of dissatisfaction related to my holding to the effect that the shares were to be excluded from the pool of matrimonial assets. The wife wishes to argue, on appeal, that these shares should be deemed to be matrimonial assets and that she should be entitled to 35 per cent thereof or, alternatively, to a fair and just share as the appellate court deems fit.

18 The second point of dissatisfaction related to my order with regard to maintenance. The wife originally wished to argue, on appeal, that the husband should pay her a monthly sum of $20,000 or, alternatively, a fair and just sum as the appellate court deems fit or, in the further alternative, a lump sum of a fair and just amount as the appellate court deems fit.

19 However, shortly after the notice of appeal had been filed, as noted above, the parties managed to resolve the second issue (with regard to maintenance). I recorded the terms of settlement on 5 July 2006.

20 In short, this leaves only the first point (at [17] above), and I now give my detailed grounds for my decision on this particular issue. The first port of call, so to speak, must necessarily be s 112(10) itself.

Section 112(10) of the Women's Charter

21 The resolution, in these proceedings, of the issue relating to whether or not the shares should be included in the pool of matrimonial assets turns on the proper interpretation of the definition of a "matrimonial asset" under s 112(10); the provision itself reads as follows:

> (10) In this section, "matrimonial asset" means —
>
> (*a*) any asset acquired before the marriage by one party or both parties to the marriage —
>
> (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
>
> (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
>
> (*b*) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,
>
> *but does not include any asset (not being a matrimonial home) that has been acquired by one*

party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

[emphasis added]

22 One of the key arguments tendered by Ms Koh Geok Jen, counsel for the wife, was that the italicised words in s 112(10), as reproduced in the preceding paragraph, qualified *only para (*b*)* of the provision. Hence, so the argument went, the shares, having been acquired by the husband *before* the marriage, fell within the pool of matrimonial assets to be divided by this court under *para (*a*)*, not being "encumbered", as it were, by the italicised words just referred to.

23 Not surprisingly, Mr Randolph Khoo, counsel for the husband, argued to precisely the opposite effect. He argued that the italicised words at [21] above qualified *both* paras (*a*) *and* (*b*) of s 112(10). Hence, the shares, although potentially falling within the ambit of para (*a*) rather than para (*b*), had *also* to satisfy the conditions embodied in the qualifying (and italicised) words located right at the end of the provision itself. Mr Khoo argued, further, that these conditions had *not* been satisfied by the wife. In particular, he argued that the shares, not being a matrimonial home and having been acquired by the husband by way of a *gift*, had *not* been "substantially improved during the marriage" either by the wife or by both parties to the marriage. In the circumstances, therefore, the shares did *not* fall within the pool of matrimonial assets within the meaning of s 112(10) (in particular, para (*a*) thereof).

24 It was clear that in order to make out his argument (as briefly set out in the preceding paragraph), Mr Khoo had to surmount two cumulative hurdles. He had to demonstrate, first, that the italicised words in s 112(10) as set out at [21] above ("the qualifying words") qualified *both* s 112(10)(*a*) *and* s 112(10)(*b*). This was because the shares, having been acquired by the husband *before* the marriage, could only, if at all, qualify as a "matrimonial asset" if it fell within the ambit of s 112(10)(*a*). If, therefore, s 112(10)(*a*) was not affected by the qualifying words, the shares would necessarily fall within the pool of matrimonial assets, provided they fell within one or both limbs of s 112(10)(*a*).

25 However, demonstrating that the qualifying words applied to s 112(10)(*a*) as well did not necessarily conclude the matter in favour of the husband. The husband had, secondly, to prove that the factual matrix in the present proceedings was such as to come within the ambit of the qualifying words, thus resulting in the shares being excluded from the pool of matrimonial assets.

26 I turn now to consider both these related issues.

27 An even cursory examination of the language of s 112(10) would suggest – and strongly, in my view – that the qualifying words apply to *both* paras (*a*) *and* (*b*) therein. Whilst not conclusive, the *physical layout or format* of the provision itself suggests that this is so. In particular, the qualifying words themselves are to be found flush with the leftmost part of the provision whilst paras (*a*) and (*b*) are, on the other hand, indented. Further, a space occurs between para (*b*) itself and the qualifying words. If the qualifying words had been intended to apply to and qualify para (*b*) only, they would, in my view, have followed directly after the words in para (*b*) or would, at least, not have been rendered flush with the leftmost part of s 112(10), leaving para (*b*) indented.

28 There are, in addition, *weightier* reasons as to why, in my view, the qualifying words were intended to apply to, as well as qualify, *both* paras (*a*) *and* (*b*). Let me elaborate.

29 If Ms Koh is correct in her argument that the qualifying words apply only to para (*b*), it would follow that it would, potentially at least, be easier for a gift given *before* the marriage to become part

of the pool of matrimonial assets compared to a gift given during the marriage itself. This will be the case simply because the qualifying words, which make it more onerous for a gift to become part of the pool of matrimonial assets, would (as we have just seen) apply only to para (*b*), which pertains to assets acquired during the marriage (para (*a*), of course, pertains to assets acquired before the marriage). I would add, however, that the phrase "potentially at least" was used at the outset of this paragraph because, as we shall see, *even assuming* that Ms Koh's argument is accepted, the *end result* would, on *these* facts, be the *same* (see below at [45]–[48], especially at [48]).

30 Returning to Ms Koh's argument, in my view, the distinction drawn in the preceding paragraph is neither logical nor fair.

31 It is illogical because there is no rational reason why such a distinction should be drawn. In particular, there is no reason to subject gifts given before, or prior to, the marriage to a less stringent test than gifts given during the marriage itself. This leads to a second (and related) point centring on fairness.

32 The second point from fairness has at least two aspects. The first – and more general – aspect is this: The rationale underlying the qualifying words, which impose conditions on the circumstances under which an asset acquired by way of gift or inheritance may fall within the pool of matrimonial assets, is both clear and fair, and centres on *the recognition of the donor's intention as well as the concomitant need to prevent unwarranted windfalls accruing to the other party to the marriage*. Put simply, if I give a gift to someone, I do not, *ex hypothesi*, intend his or her spouse to have a share in it. If I did in fact intend that last-mentioned person to have a share in my gift, I would indicate clearly that this was the case. It will be seen that, in so far as gifts or inheritances conferred *prior* to the marriage are concerned, the argument just considered applies in an *a fortiori* fashion. Logically, it could not have been the donor's intention to have conferred the donee's spouse with a share in the gift or inheritance concerned even before the marriage takes place. Indeed, in most instances (such as the present), the spouse concerned is not even in the contemplation of the donor in the first instance. In the present case, for example, the husband's father gave the husband the shares by way of a gift *well before* the latter even met his wife. Indeed, it should be further noted that this was the husband's *second* marriage. It was, therefore, clearly *not* the husband's father's intention for the wife in the present proceedings to have any interest in the shares. Nor was there any such intention indicated subsequent to the conferment of these shares to the husband as gifts. But, it may be asked, should there be circumstances under which a party to the marriage (such as the wife in the present proceedings) ought to have a share in the gift or inheritance conferred on his or her spouse? This brings me to the second – and more specific – aspect of fairness.

33 It might be argued that if the gift or inheritance constitutes *the matrimonial home*, it would be just and fair for that particular asset to constitute part of the pool of matrimonial assets. After all, it has been pertinently pointed out that "[t]he matrimonial home is the cradle of the family": see *Halsbury's Laws of Singapore* vol 11 (LexisNexis, 2006 Reissue, 2006) ("*Halsbury's Laws of Singapore*") at para 130.788. It is significant that this particular exception has indeed been incorporated both within s 112(10)(*a*)(i) and (even more explicitly and importantly) within the qualifying words themselves. Indeed, one could argue, on a *general* level, that notwithstanding the fact that the matrimonial home originated as a gift, the very fact that it was given in order to be utilised as the matrimonial home *itself* results in the property concerned being *transformed* into a matrimonial asset. This may, admittedly, be putting the point too strongly, although an analogous approach has apparently been adopted by the Legislature inasmuch as it has (as we have just noted) been statutorily embodied as a recognized category of matrimonial assets within s 112(10)(*a*)(i) as well as in the form of an exception to the qualifying words themselves. I should add, though, that, strictly speaking, in order for an asset to come within the purview of s 112(10)(*a*)(i), that asset (even if it

constitutes a gift) *must* have been "ordinarily used and enjoyed" in the manner stated therein. For example, if a donor gives a house to one of the spouses intending it to be used as the matrimonial home but, for some reason or other, that purpose does not materialise, that house would not, strictly speaking, come within the purview of s 112(10)(*a*)(i), although it might come within the purview of the qualifying words. However, this may well, in substance, be a distinction without a difference since if such a house is *not used* as a matrimonial home, it could be persuasively argued that the house is *not* in fact "a matrimonial home" as envisaged by the qualifying words.

34 Another argument from justice and fairness might centre on a situation where the asset concerned has been *substantially improved* by the other party (*ie*, the spouse on whom the asset was *not* conferred by way of gift or inheritance). If, after all, the efforts of that particular spouse contributed to the substantial enhancement of the asset concerned, it is at least arguably just and fair for that party to have a share in it even if the original intention of the donor of the asset was not to benefit that party. In the circumstances, there is, in my view, a strong argument for *including* an asset under *such circumstances* in the pool of matrimonial assets. Significantly, such a situation *is* indeed incorporated within *the qualifying words* as well as within s 112(10)(*a*)(ii).

35 Another closely related situation arises where the other party (*ie*, the spouse on whom the asset was *not* conferred by way of gift or inheritance) contributed, *together with his or her spouse* (*ie*, the donee of the asset by way of gift or inheritance), to the *substantial improvement* of the asset itself. Although such *joint* improvement presents a less compelling reason for inclusion in the pool of matrimonial assets as compared to the situation set out in the preceding paragraph, it might be argued that there nevertheless remains a strong reason for such inclusion simply because there was not only a contribution to such substantial improvement by the other party but also because *both parties* were, by virtue of their *collaborative and combined contribution*, *actually demonstrating that they both regarded the asset concerned as being part of the communal (here, matrimonial) pool of assets*. Significantly, once again, such a situation *is also* incorporated within *the qualifying words* as well as within s 112(10)(*a*)(ii).

36 A vitally important conclusion may, in my view, be drawn at this juncture. *All the three* situations mentioned above (at [33]–[35]) which justify an *exception* being made to the general rule that assets acquired by one of the parties by way of gift or inheritance should not constitute part of the pool of matrimonial assets, *are in fact all contained within the qualifying words*. Such situations are grounded, I should re-emphasise, in considerations of *justice and fairness which stem from the inherent nature of the asset in question as a gift* (and which I have sought to elaborate on briefly above). Considerations of justice and fairness are, *by their very nature*, applicable in a *general or universal* manner. In other words, they are *objective* values that undergird the rule or rules concerned. Looked at in this light, it is clear that the approach *set out in the qualifying words* must therefore apply to *all* situations where an asset by way of gift or inheritance has been conferred by the donor on one of the parties to the marriage – *regardless of* whether or not that asset was conferred *before or during the marriage*. To adopt a contrary approach would be to embrace or endorse a distinction which is both arbitrary as well as unjust and unfair.

37 In summary, *both* form *and* substance are consistent with the view that the qualifying words apply to *both* paras (*a*) *and* (*b*) of s 112(10). From the perspective of *form*, the physical layout clearly indicates that such an approach ought to be adopted (see [27] above). From the perspective of *substance*, various reasons centring on both logic as well as justice and fairness also support (and strongly, in my view) that such an approach ought to be adopted (see generally [28]–[36] above).

38 I should point out, at this juncture, however, that a leading local author in this field, Prof Leong Wai Kum, has suggested a somewhat different approach. She is of the view that there

could be a possible alternative argument to the effect that the qualifying words apply *only* to *para (*b*)* of s 112(10): see *Halsbury's Laws of Singapore* ([33] *supra*) at para 130.807.

39 The learned author commences by observing, correctly in my view, that "[a] long statutory definition like this [*viz*, the definition of "matrimonial asset" in s 112(10)] can be problematic" (see *Halsbury's Laws of Singapore* ([33] *supra*) at para 130.799). In my view, this is certainly an understatement, as can be seen from the analysis required above.

40 More significantly, and coming to the difference in approach adopted, the learned author *assumes* that the qualifying words are an integral part of s 112(10)(*b*) *only*, although she also notes that the qualifying words "are presented in a neat paragraph separated from the first two sentences of part (b)" (see *Halsbury's Laws of Singapore* ([33] *supra*) at para 130.807). This last-mentioned point supports the point I made above to the effect that the actual formatting of s 112(10), particularly in relation to the qualifying words, in fact suggests that the qualifying words are *not* an integral part of s 112(10)(*b*) (see [27] above).

41 The learned author also points to the following (see *Halsbury's Laws of Singapore* ([33] *supra*) at para 130.807):

> [T]he definition [in the qualifying words] identifies [the property embodied in the qualifying words] *by time of acquisition differently* from the property in the first two sentences [*ie*, para (*b*) of s 112(10)]. *While the first two sentences of part (b)* [viz, para (*b*) of s 112(10)] *are of property 'acquired during the marriage', in respect of property acquired by gift or inheritance in this separate paragraph* [*viz*, comprising the qualifying words] *the equivalent phrase is 'acquired … at any time'. It is therefore possible to read the definition not as separating property into two parts depending simply on whether they were acquired before marriage or during marriage but into three parts: namely property acquired before marriage, property acquired during marriage and property acquired any time by gift or inheritance.* [emphasis added]

42 The upshot of the conclusion in the quotation in the preceding paragraph is that the separate timeframes referred to in para (*a*), para (*b*) as well as the qualifying words, which are all within the definition of "matrimonial asset" in s 112(10), entail the consequent separation of property into *three* instead of two parts. Such an approach (which, significantly, the learned author herself describes (in *Halsbury's Laws of Singapore* ([33] *supra*) at para 130.807) as being both "possible" as well as "defensible") in fact reinforces the proposition to the effect that the qualifying words are intended to cover *both* paras (*a*) *and* (*b*) of s 112(10), with the caveat or qualification that this "third part" is not really a separate and distinct part with its own separate meaning as such but is, rather, one which applies to (or, rather, qualifies) *both* paras (*a*) *and* (*b*) of s 112(10). Indeed, it is *only logical and natural* for the qualifying words to utilise the phrase "at any time" as they would, as I have argued, apply to property acquired *both* before *and* during the marriage.

43 The learned author does argue, however, that if three categories or parts (instead of two) were intended, then "three categories *should have required a part (c) or, at least, the third category would have been expected to be introduced with either 'provided' or a 'proviso'*" [emphasis added] (see *Halsbury's Laws of Singapore* ([33] *supra*) at para 130.807, note 3). As alluded to in the preceding paragraph, a separate para (*c*) in s 112(10) would have been inappropriate since this would have connoted the statutory recognition of a *separate* category of matrimonial assets that was *independent* of paras (*a*) and (*b*) – which would have been the very *antithesis* of what was intended, *viz*, the qualification, in fact, of *both* paras (*a*) *and* (*b*) in the context of gifts and inheritances. The phrase "provided that" or its equivalent was also, in my view, unnecessary, since the language at the commencement of the qualifying words ("but does not include") is clear and serves the same

function.

44 Indeed, if one examines para (*a*) of s 112(10) closely, it will be seen that the overall scope of assets that would fall within the ambit of "matrimonial asset" within the meaning of s 112(10) if acquired *before* the marriage by one or both parties to the marriage is *more constrained* than that which exists with respect to assets acquired *during* the marriage pursuant to para (*b*) of s 112(10). This is logical since there is *no* presumption that assets acquired *before* the marriage are *naturally or ordinarily* intended to be part of the pool of matrimonial assets as there was, *ex hypothesi*, no marriage in existence at the time of the acquisition of the assets themselves. This reinforces, once again, the argument made above (at [29]) to the effect that it would be anomalous to make it easier for a gift given to one of the spouses *before* the marriage to form part of the pool of matrimonial assets. This point is in fact driven home by a closer examination of the *substance* of s 112(10) itself.

45 Indeed, it is at least arguable that s 112(10)(*a*) (reproduced above at [21], and which, it will be recalled, applies to assets acquired *before* the marriage) does, in *substance*, *already incorporate much* of what would be covered by an application of the qualifying words. Let me elaborate.

46 Section 112(10)(*a*)(i) (reproduced above at [21]) refers to "any asset acquired before the marriage by one party or both parties to the marriage" which is "ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes". This would include the matrimonial home, but would also include more than just the matrimonial home. Herein lies a difference between the application of this particular provision and the application of the qualifying words, as the latter only exempts gifts used as the matrimonial home from the requirement of "substantial improvement". Section 112(10)(*a*)(i) on the other hand, *also* exempts assets *other than* the matrimonial home from the requirement just mentioned. That s 112(10)(*a*)(i) is not subject to the requirement of "substantial improvement" set out in s 112(10)(*a*)(ii) is clear from the disjunctive word "or" which separates both these sub-paragraphs. It has, in fact, been suggested that the concept of *substantial* use be introduced both with respect to s 112(10)(*a*)(i) and the reference to the matrimonial home in the qualifying words (see *Halsbury's Laws of Singapore* ([33] *supra*) at paras 130.810 and 130.814). There is no need for, and I therefore do not make, any final pronouncement on this last-mentioned issue, save to observe that a plain reading of both these parts of s 112(10) does not suggest that substantial use is required and (more importantly, for our present purposes) that even if the concept of substantial use were introduced, there would nevertheless remain the difference noted above between the scope of s 112(10)(*a*)(i) and the qualifying words. If, indeed, the qualifying words also apply to s 112(10)(*a*)(i), whilst assets that are "ordinarily used or enjoyed by both parties or one or more of their children" might ordinarily fall within the pool of matrimonial assets, such assets (other than the matrimonial home) which in fact originate as *gifts* would *not, unless* they have been substantially *improved* during the marriage by one party or both parties to the marriage, fall within the meaning of the qualifying words. Accordingly, even if the requirement of "substantial use" is accepted as part of s 112(10)(*a*)(i), inconsistency would still result if the qualifying words are regarded as applying solely to para (*b*), and not para (*a*), of s 112(10). Notwithstanding the element of "substantial use", such an interpretation would still make it *easier* for gifts or inheritances acquired before the marriage to fall within the pool of matrimonial assets. For instance, where a gift is conferred on one party *before* the marriage, it would qualify as a matrimonial asset if it has been ordinarily (and substantially) used by both parties for recreational purposes. In contrast, a gift conferred on one party *during* the marriage would not qualify as a matrimonial asset notwithstanding its ordinary (and substantial) use for such purposes if it has not additionally been *substantially improved* by the other party or by both parties to the marriage.

47 Turning to s 112(10)(*a*)(ii) (reproduced above at [21]), this particular provision refers to "any

asset acquired before the marriage by one party or both parties to the marriage … which has been substantially improved during the marriage by the other party or by both parties to the marriage". This would result, in the context of gifts, in the *same* result as the application of the qualifying words.

48 In more than one sense, therefore, the application of the qualifying words to para (*a*) of s 112(10) would make no real difference to the results that would obtain by an application of this particular provision *sans* the qualifying words. This *would*, in fact, be the result in the *present* case *even if* the qualifying words did not apply. The shares did not fall within the purview of s 112(10)(*a*)(i) inasmuch as they were *not* "ordinarily used or enjoyed by both parties or one or more of their children while the parties [were] residing together for shelter or for transportation or for household, education, recreational, social or aesthetic purposes". Neither were the shares "substantially improved during the marriage by the other party or by both parties to the marriage" within the meaning of s 112(10)(*a*)(ii) (see, especially, [50] and [51] below). *However*, as already noted above (at [46]), the application of the qualifying words *might*, under certain *other* circumstances, generate a *different result*, particularly *vis-à-vis* circumstances falling within s 112(10)(*a*)(i). Hence, it is not true to state that the qualifying words are wholly redundant in so far as para (*a*) of s 112(10) is concerned. This was certainly not the argument made in the available case law or scholarly literature. On the other hand, given the form *and* substance of s 112(10) itself, there are, as I have elaborated upon in more detail above (at [27]–[37] and [46]), very persuasive reasons as to why the qualifying words ought to apply to para (*a*) *as well as* to para (*b*) of s 112(10).

49 Having determined that the qualifying words apply to *both* paras (*a*) *and* (*b*) of s 112(10), it follows that in the context of the present proceedings, I have to consider whether or not the qualifying words apply to the specific assets potentially falling within *para (*a*)*, since the shares were given to the husband *before* his marriage to the wife. In other words, leaving aside the question of whether the shares fall within the assets identified in s 112(10)(*a*)(i) or s 112(10)(*a*)(ii), they would, in any event, form part of the pool of matrimonial assets *only if* the wife could bring herself within one or more of the situations embodied within the qualifying words. I should add, however, that applying s 112(10) strictly, I should ascertain, first, whether the shares fell within the purview of s 112(10)(*a*) to begin with. As I have noted above (at [48]), they clearly did *not*. This, in fact, concludes the present proceedings in favour of the husband. In other words, Ms Koh's assumption (at [22] above) that the shares would have fallen within the purview of s 112(10)(*a*) *but for* the qualifying words was not, with respect, a valid one to begin with. However, as much argument by counsel for the parties turned (as we have seen) on the relationship (if any) between the qualifying words on the one hand and paras (*b*) and (especially) (*a*) on the other, I turn now to consider briefly the application of the qualifying words to s 112(10)(*a*), in the light of my finding on the law above.

50 It is clear that the shares do *not* constitute the "matrimonial home". I turn, next, therefore, to consider whether or not the shares had been "substantially improved during the marriage" by either the wife *or* by both the wife and the husband. It is patently clear that there had been no such improvement to the shares.

51 I should note that Ms Koh did in fact attempt to argue that the shares had been "substantially improved" by the wife during the subsistence of the marriage through her indirect financial contributions. I rejected this argument for the simple reason that there was *no direct causal connection whatsoever* between these contributions and the shares (see the Singapore Court of Appeal decisions of *Hoong Khai Soon v Cheng Kwee Eng* [1993] 3 SLR 34 ("*Hoong Khai Soon*") at 38, [11] and *Lee Yong Chuan Edwin v Tan Soan Lian* [2001] 1 SLR 377 ("*Lee Edwin*") at [36]). This is obviously a question of fact (see *Hoong Khai Soon* at 38, [11]). Indeed, in the context of the present proceedings, there was *no substantial improvement of the shares to begin with* (see also the Singapore Court of Appeal decision of *Shi Fang v Koh Pee Huat* [1996] 2 SLR 221). Though Ms Koh

cited the Singapore Court of Appeal decision of *Koh Kim Lan Angela v Choong Kian Haw* [1994] 1 SLR 22, this particular decision is readily distinguishable from the situation in the present proceedings. In that case, the wife concerned *did* in fact *actually assist* the husband *in the business* which had been given to him (the husband) by his father. Mr Khoo cited, on the other hand, the Singapore High Court decision of *Chow Hoo Siong v Lee Dawn Audrey* [2003] 4 SLR 481 ("*Chow Hoo Siong*"), where S Rajendran J observed thus (at [13]–[15]):

> 1 3 ***The wife was not a director, shareholder, employee of or advisor to any of the companies in the group: her only link was that she was the wife of the husband.*** That being so, the affairs of the Teo companies, even if fully disclosed by the husband to the court, would not have revealed any contributions by the wife: ***even the wife did not claim that she had made any direct contribution to the Teo Shares.*** Any "indirect" contribution she may have made – such as looking after the welfare of the family – would not appear in the records of the Teo companies. There was therefore no basis for the district judge to have made the inference from the husband's conduct that had he made full disclosure the wife's contribution would have been revealed.
>
> 14 Apart from the adverse inference that the district judge drew from the husband's conduct, ***the district judge enumerated the following "indirect contributions" by the wife towards the "improvement" of the Teo Shares:***
>
> > It was pertinent to note that the Respondent's admission that his salary in ESC [Eng Seng Cement Products – a company controlled by the Teo companies] remained the same "since graduation. I am the lowest paid because I'm youngest in the generation hierarchy". Clearly Chow has enhanced the shares through his employment in ESC. By accepting no increment in salary over 13 years of service to the company, he has in fact enhanced the profits of the company and in turn the value of the shares of the companies. *His sacrifice would also affect the lifestyle of his wife who, according to the Respondent, was required to share in the family expenses. She also had contributed financially towards the household and hence had participated towards the acquisition of the asset by her efforts towards the family life*. [emphasis added]
>
> ***These "contributions" were, in my view, far too remote and far too insignificant to justify the conclusion that the district judge arrived at that the Teo Shares have been improved by the contributions of the wife during the marriage.***
>
> 15 As the wife had not on her own or together with the husband contributed in any way to the improvement of the Teo Shares, these shares should not be included in the pool of matrimonial assets available for division between the parties.
>
> [emphasis added in bold italics]

This decision supports, in my view, the proposition to the effect that *indirect financial* contributions *alone* are *too vague and remote* to justify a finding that the spouse concerned had helped to substantially improve an asset within the meaning of s 112(10). This is *not* to state that indirect financial contributions can *never* justify such a finding (*cf Hoong Khai Soon* at 38, [10] and [11]). But even so, and as I have already pointed out, a *direct causal connection* needs to be proved between the contributions and the improvement of the asset. This was clearly *not* proved on the facts of the present case. It is also important to note that indirect financial contributions would, in any event, *be taken into account* in *ascertaining the proportion* of the matrimonial assets that ought to be given to the spouses concerned and hence otherwise serve an important function.

52 Given my analysis as set out in the preceding paragraph, I do not have to consider the further issue as to whether or not, despite the clear language in s 112(10), the court ought nevertheless to take into account efforts at substantial improvement even by the spouse who in fact acquired the property in the first instance (*cf Halsbury's Laws of Singapore* ([33] *supra*) at paras 130.793, 130.801, 130.811 and 130.813). However, the better view would appear to be that the clear language of the provision should be adhered to. Indeed, this is the position adopted in *Chow Hoo Siong* ([51] *supra*), especially at [11] (and which was also acknowledged, critically but without critique, in *Halsbury's Laws of Singapore*, *id*). It has also been suggested that if the rationale is not to undermine the recognition of a marriage as being an "equal co-operative partnership of *efforts*" [emphasis added] (see *Halsbury's Laws of Singapore* at para 130.801), a more flexible approach ought to be adopted by the court. With respect, however, if the focus is, as it must be, on the co-operative *efforts* of the spouses, it is not surprising that Parliament drafted the provision in the manner it did. After all, as a logical starting-point, a *gift* is (by its *very nature*) *not* acquired by *any effort* as such on the part of the donee and, *a fortiori*, on the part of *his or her* spouse. This is not to state that the concept of effort as such is irrelevant once one enters the realm of assets acquired by way of gift; far from it. Indeed, if there has in fact been *effort* by the spouse (who is *not* the donee of the gift) which results in *substantial improvement* to the gift, then he or she ought to have a share – and s 112(10) itself expressly provides for this. On the other hand, as will be seen from the discussion below, if the *donee* of the gift has, by his or her *efforts*, "*converted*" the gift into a different asset, then the new asset, if it has *ex hypothesi lost* its quality as a gift, can then be treated as part of the pool of matrimonial assets provided that it satisfies either para (*a*) or para (*b*) of s 112(10).

53 I find, therefore, that the shares do *not* form part of the pool of matrimonial assets within the meaning of s 112(10). On a more general level, I should add that, given the infelicity of the language of s 112(10) itself, it might not be inappropriate for Parliament to consider an amendment to that provision to clarify, once and for all, the operation of the provision in general and the scope of the qualifying words in particular.

5 4 *However*, this does not conclude the case in favour of the husband because Ms Koh had another string to her legal bow. In particular, Ms Koh argued that *even if* the qualifying words extend to both paras (*a*) and (*b*) of s 112(10), these words are nevertheless inapplicable to the present facts since the assets in question were not "acquired…*by gift*" within the meaning of the qualifying words. In particular, Ms Koh argued that the assets derived from the shares *no longer* constituted gifts because *changed circumstances had transformed the initial character of the shares*.

55 Ms Koh's argument raised, in turn, at least two related issues. The first was an obvious issue: When does a gift cease to be a gift? The second issue (which is in effect a more specific offshoot of the first) is whether or not when a gift is "converted" into something else (for instance, by selling the original gift and using the proceeds of sale to acquire a different asset), the court is entitled to *trace* the source of funds for the purchase of the new asset back to *the original gift* and, if so, whether, *under those circumstances*, it can be argued (provided such tracing can be effected) that the new asset *continues* to be in the nature of a gift. I turn, now, to consider both these issues *seriatim*.

When does a gift cease to be a gift?

56 Both Mr Khoo and Ms Koh were candid. They admitted that there was no clear test which enabled the court to ascertain when a gift ceased to be a gift. Such a concession was particularly telling in view of the fact that both counsel are experienced family lawyers. In fairness, however, this was perhaps not unexpected. After all, there was, in the nature of things, a myriad of possibilities corresponding (in turn) to a myriad of possible gifts as well as an equal number of possibilities

pertaining to the circumstances under which such gifts are conferred. Although one ought, in my view, to strenuously avoid the aphorism "it all depends on the facts", this is (unfortunately) one such situation when it rings true (though *cf per* Choo Han Teck J in the Singapore High Court decision of *Ngee Ann Development Pte Ltd v Nova Leisure Pte Ltd* [2003] SGHC 168 at [6] and [7]; but *cf*, in turn, the analysis following). There is a sense in which such an approach is not wholly disappointing or unjustified. The law deals with, and sets out (in the main), *normative* rules and principles. However, at a certain point in the practical world, normative rules and principles have to be reduced to a certain level of specificity by applying them to given facts. At this particular juncture, the line between the normative or prescriptive on the one hand and the descriptive on the other becomes blurred. I would myself prefer the rubric of "interaction" instead. Returning to the present proceedings, it is clear that at the juncture when the court has to consider whether or not *a particular asset* is in the nature of a gift, it has, in effect, moved from the normative sphere into the descriptive or factual sphere. At this point, therefore, the precise factual matrix becomes of paramount importance. There appears, nevertheless, to be at least one specific guideline. This brings me to the second issue which centres on a form of "tracing".

57 According to Judith Prakash J in the Singapore High Court decision of *Ang Teng Siong v Lee Su Min* [2000] 3 SLR 55 ("*Ang Teng Siong*") at [11], where a spouse receives an asset by way of gift or inheritance during the course of the marriage, "the owner of the gifted asset would have to show that it *originated from the generosity of a third party* in order to prevent it from being divided upon divorce" [emphasis added]. Inherent in this statement is the ancillary question of *how far back* one should go in order to decide whether the asset in question "originated from" (see *id*) or was "acquired … by gift" within the meaning of the qualifying words. In the context of the precise factual matrix in the present proceedings, it is clear, in my view, that the assets derived from the shares, albeit assuming different forms from the original gift, *ie*, the shares, nevertheless retained the essential quality of being gifts. It would be quite a different situation if the husband had utilised proceeds from the shares to purchase *gifts for the wife or to otherwise utilise such proceeds for and on behalf of the family*. This is clearly *not* the situation here. The husband has, at no time, indicated (in a clear and unambiguous fashion) that the shares (whether in their original or present forms) have ceased to be gifts from his father and have become part of the pool of matrimonial assets. Indeed, as we shall see, the gift made to the husband by his father has remained intact, albeit in spirit but not in strictly the same *physical* form. I should point out, at this juncture, that, *because of the court-ordered liquidation of the companies concerned (which the husband had no say in, let alone control over)*, the shares *could not possibly have remained in their original form in the first instance* (for related proceedings in this regard, see *Re Eng Cheong Peng Kee Pte Ltd* [1998] 3 SLR 1; *Re Eng Cheong Peng Kee Pte Ltd (No 2)* [1998] 3 SLR 61; and (in particular) *Low Peng Boon v Low Janie* [1999] 1 SLR 761). Hence, it does not assist the wife to argue that the shares have, under *these* circumstances, been transformed in that they have been exchanged for different assets; such "transformation" was both *merely literal and*, as I have just mentioned, "*forced*". The wife had to go further. In particular, she had to demonstrate that there was *a real and unambiguous intention on the part of the husband that the present assets which had their original source in the shares were to constitute part of the pool of matrimonial assets*. Any other approach would afford the wife an unjustifiable windfall that is completely at odds with the original rationale behind the exclusion of gifts from the pool of matrimonial assets in the first instance and to which I have referred briefly above (at [32]). Put another way, any other approach would offer the wife in these proceedings an illegitimate "backdoor" to a claim for the shares based on *a dry and literalist approach* towards the entire concept of transformation or conversion (here, of the shares). In other words, the question of whether an asset originally given as a gift (here, the shares) has subsequently ceased to be a gift is *not* dependent *solely* on its *literal* transformation as such; rather, the correct approach to be adopted should be to inquire whether or not such *literal* transformation was *accompanied by a voluntary intention on the part of the donee of the gift (here, the husband) that such transformation or conversion of the gift was for the purpose*

of integrating the gift into the pool of matrimonial assets. If so, then the *literal* transformation would become a *legal* one as well. Looked at in this light, it is clear to me (as I have already mentioned above) that the husband did *not* possess, let alone manifest, such an intention. Indeed, the husband was *in effect forced by circumstances beyond his control to transform or convert the proceeds from the shares owing to the court-ordered liquidation of the companies concerned*. It is true that he might have kept these proceeds in a bank account. This in fact took place for part of the proceeds. *However*, no reasonable or prudent person would merely do this. But is the husband then to be penalised for doing what he had no choice but to do and/or what a reasonable or prudent person would have done? The answer is obvious. In the circumstances, therefore, I find that, *notwithstanding* the *literal* transformation of the shares (or, more accurately, the proceeds therefrom), the gift of the shares (and its exchange products) have *not* thereby ceased to be in the nature of a gift made to the husband.

58 In other words, where funds derived from a gift are used to acquire a new asset, *this new asset* will qualify as an "asset … acquired … by gift" within the qualifying words *unless* it can be shown that the *donee* (here, the husband) has demonstrated an *intention* that the new asset *should* be considered part of the pool of matrimonial assets. Put in another way, the new asset will be "acquired … by gift" if the donee intends the new asset to assume the *same* nature as that of the *original* asset, *ie*, that of being a gift. At this juncture, I should however pause to highlight that *before* one can even undertake this enquiry of *whether* the nature of the original asset should be that of the new asset, it would, in all cases, be necessary to first consider whether the new asset is *traceable* to the assets which constituted the original gift (here, the shares) to begin with. If such tracing is not available, for example, where it is unclear what the *source* of funds used to acquire the new asset was, it would be *logically impossible* to additionally consider whether the "new" asset *continues* to be in the nature of a gift.

59 Ms Koh sought to argue that the case law did not support such an approach from tracing. In addition, she argued that the only decision that appeared to do so related to the matrimonial home. With respect, the weight of authority appears to suggest otherwise (see, for example, the Singapore Court of Appeal decision of *Tham Khai Meng v Nam Wen Jet Bernadette* ([16] *supra*) and the Singapore High Court decision of *Ang Teng Siong* ([57] *supra*)). These cases did in fact relate to the matrimonial home and to the specific issue of the division of matrimonial assets, but the *general principles* embodied therein are what is essential. And it is always preferable, wherever possible, to rely on first principles. This is especially appropriate, in my view, because the case law is not, in any event, unambiguously clear in so far as this particular issue is concerned. There is, in fact, no reason in logic or principle why the concept of tracing should not be applied to proceedings such as the present. Indeed, in *Ang Teng Siong*, Judith Prakash J very logically and commonsensically endorsed (at [15]) the concept of tracing the source of funds "only so far as is reasonably practicable" when the facts presented difficulties. This is clearly not the case here and, in any event, even where there are difficulties with the facts, the learned judge, as we have only just noted, would nevertheless also have endorsed tracing, albeit "only so far as is reasonably practicable". The present assets that are the subject of the present proceedings are clearly and unambiguously *traceable* to the original gifts made to the husband from his father (*viz*, the shares). In addition, the husband never expressed any intention for these new assets to now form part of the pool of matrimonial assets. They should therefore be seen as "gifts" just as the shares would have been.

60 There is, in fact, only one decision which appears to support the wife. This is the decision in *Hoong Khai Soon* (which was in fact cited earlier, at [51] above). However, the support is more apparent than real. This becomes clear when the actual context of that decision is considered. In that case, the court awarded the wife 35 per cent of her husband's half-share in the new property

which replaced their former matrimonial home. Indeed, it is significant to note at this particular juncture that the more pertinent issue was whether or not property that *replaced* the matrimonial home could be considered as part of the pool of matrimonial assets for the purposes of division. Prof Leong has argued, relying on *Hoong Khai Soon*, that this ought to be the case (see *Halsbury's Laws of Singapore* ([33] *supra*) at para 130.789). The issue that is germane for the purposes of the *present* proceedings, however, is *quite different* and relates to a different aspect of *Hoong Khai Soon*. To put it simply, the issue at hand is this: In *Hoong Khai Soon*, the husband's half-share in the new property had originated in a share of the matrimonial home which had been a *gift* to him from his parents prior to his marriage, but was nevertheless held by the court to be part of the pool of matrimonial assets. In other words, the court did not consider the husband's half-share as continuing to constitute a gift. In the words of the learned judge, Lai Kew Chai J, delivering the judgment of the court (at [17]):

> In the absence of documentary evidence or other evidence as to the figure, we are left to make a rough and ready approximation that the husband paid for half of [the property that replaced the matrimonial home] as renovated. The money came from the proceeds of sale of [the matrimonial home]. Although the latter property was a gift, we do not think that we should trace the source of funds for a purchase to its origin. It would be inimical to the concept of a matrimonial partnership if the source of funds for every asset acquired during marriage had to be shown to not originate from the generosity of a third party.

61 However, a closer analysis of this particular decision in general and the words just quoted in particular will reveal that the context and principles in *Hoong Khai Soon* are readily distinguishable from those which obtain in the present proceedings.

62 The key point of distinction may be mentioned first. And it is that the focus in *Hoong Khai Soon* was on *the matrimonial home* – or, more accurately, the replacement for the matrimonial home. We have already seen that the matrimonial home ought to be an exception to the general rule that gifts are not part of the pool of matrimonial assets and that this exception has, in any event, been statutorily embodied within s 112(10) of the Act itself (see [33] above). Hence, the concept of tracing in *Hoong Khai Soon* was immaterial as the fact that the husband's half-share in the matrimonial home was a gift did not take it out of the pool of matrimonial assets in the first instance.

63 Secondly, the learned judge in *Hoong Khai Soon* was, in my view, merely cautioning against the laying down of a *general* (and, indeed, *blanket*) rule to the effect that "the *source of funds* for *every* asset acquired *during marriage had to be* shown *to not originate from the generosity of a third party*", as to do so "would be inimical to the concept of a matrimonial partnership" [emphasis added] (see [60] above). He was *not*, equally, laying down a general or blanket rule *to the contrary*. Indeed, in the subsequent (also) Singapore Court of Appeal decision of *Lim Keng Hwa v Tan Han Chuah* [1996] 3 SLR 593, L P Thean JA, delivering the judgment of the court, was of the view (at [23]) that "[a]ll that *Hoong Khai Soon* has decided is that as a matter of convenience, the court in considering the operation of [the predecessor of s 112] would *not* be concerned with an *endless* tracing of the source of funds for the acquisition of property" [emphasis added]. In fact, in the context of the *present* proceedings, to consider the assets replacing the shares as continuing to be in the nature of a gift to the husband (notwithstanding, as we have seen, their "forced" conversion into other assets) is not in the least inconsistent with the concept of a matrimonial partnership simply because the shares (and ensuing assets) were *never intended to constitute part of the matrimonial pool of assets in the first instance*; nor would *endless* tracing be involved since the proceeds from the shares could clearly be traced into these assets. As importantly, the observations of the learned judge in *Hoong Khai Soon* ought not to – and, indeed, cannot – be divorced from the specific factual context in which they were made. In *Hoong Khai Soon*, the context related to the purchase of property which was to

serve as the new matrimonial home before (unfortunately) the matrimonial situation broke down completely. Looked at in that particular light, it was clear that the source of funds for the purchase was really immaterial. Hence, the fact that the funds had come from an asset that was originally a gift was immaterial. Indeed, as I have emphasised in an earlier part of this judgment, the fact that an asset is gifted *with the specific intention that it be utilised as the matrimonial home* (and, in the specific context of s 112(10)(*a*)(i), must in fact be "ordinarily used and enjoyed by both parties or one or more of their children" as such) arguably transforms, *ipso facto*, that asset from a gift into a matrimonial asset (see [33] above; *cf* also *Halsbury's Laws of Singapore* ([33] *supra*) at para 130.789, note 3, where the learned author refers to the original asset's "origin as a gift ceasing to remain relevant" as well as *id* at para 130.796). Even if it be thought that such an argument is a little too radical, the fact remains that *Parliament* has embodied a similar approach with respect to the matrimonial home in s 112(10) itself (see, once again, [33] above). There is, however, also a suggestion to the effect that a gift might, over time, cease to be relevant "at least where not including the property might have left the homemaker sorely disadvantaged" (see *Halsbury's Laws of Singapore* at para 130.796). With respect, premising the cessation of a gift wholly or even primarily on the concept of fairness to (here) the wife is only one policy consideration; an equally important policy consideration that militates against that just mentioned and which, in my view, ought to prevail is the fact that the court ought, as far as possible, to *give effect to the intention of the donor, as well as* the (related) fact that a spouse ought *not* to obtain *an unmerited windfall* (see [32] above). The situation might be quite different where the spouse who is the donee of the gift actually incorporates that particular gift into the pool of matrimonial assets. This was clearly not the situation in so far as the present proceedings were concerned.

64 Thirdly, as I have pointed out above, it is clear that, in any event, the weight of authority suggests that tracing of a gift as it assumes the form of different assets is not only possible but also desirable in appropriate cases. The present proceedings constitute one such case. Indeed, the situation in the present proceedings is not unlike that which existed in *Lee Edwin* ([51] *supra*), which (not surprisingly) was relied upon by Mr Khoo. In that case, it was held (at [33]) that "the true nature of the gift remains intact". The factual matrix in *Lee Edwin* was, admittedly, an easy one inasmuch as the shares concerned were in fact issued to the donee spouse in exchange for shares which were given him previously by his grandparents and father. However, the situation in that case was, in *substance*, no different from that which obtains in the present proceedings. The court in *Lee Edwin* observed (at [35]) that the shares concerned continued to represent the same proportionate share in the underlying family business. The situation in the present proceedings is, in *substance*, similar even though the *literal* transformation was factually different. However, as I have already explained above, a literalist approach is to be eschewed and one that is true to the spirit and substance of the fact situation at hand ought to be adopted instead.

Conclusion

65 In summary, I find that the shares do not form part of the pool of matrimonial assets within the meaning of s 112(10); they constituted gifts which did not fall within any of the exceptions in the qualifying words that would have nevertheless enabled them to have been included within the pool of matrimonial assets. Indeed, they did not even fall within the scope of s 112(10)(*a*) in any event. I also find that the shares did not cease to be gifts despite their literal transformation into the form of other assets.

66 If, however, I am wrong and the appellate court finds that the shares do form part of the pool of matrimonial assets, the proportion of 35 per cent asked for by the wife would, in my view, be too high. When I ordered a division of the matrimonial assets (excluding the shares and the husband's Singapore Island Country Club membership) in the proportion of 35 per cent to the wife and 65 per

cent to the husband, I took into account (as is customary) several factors (including those set out in s 112 itself). It is now widely acknowledged that the court's discretion is to be exercised in broad strokes rather than by way of an unrealistic mathematical approach (see *Halsbury's Laws of Singapore* ([33] *supra*) at paras 130.757 and 130.759, citing the Singapore High Court decision of *Koo Shirley v Mok Kong Chua Kenneth* [1989] SLR 342 and the Singapore Court of Appeal decision of *Yeong Swan Ann v Lim Fei Yen* [1999] 1 SLR 651). The focus is also on achieving a fair and reasonable division (see *Halsbury's Laws of Singapore* at paras 130.760 and 130.761). All this is undoubtedly not only consistent with the existing case law but is also both logical and commonsensical. But there is no substitute for a careful consideration of all the relevant facts and factors in the case at hand. These included the fact that the husband had, on one occasion, made a will leaving 50 per cent of his assets to the wife. That will has, not surprisingly, since been revoked. I also took into account the wife's various non-financial contributions to the family over a relatively long period of 17 years (including, but not confined to, her looking after her husband's various needs as well as helping on various occasions to look after her in-laws). However, whilst I did take into account the factors just mentioned, I also took into account the fact that the various non-financial contributions by the wife were not very substantive or systemic, despite the fact that they were spread out over a relatively lengthy period of time. There were also no children of the marriage. There was some evidence that the wife did care occasionally for her step-son (the son of the husband from his first marriage), but this, again, was not very substantive or systemic. The wife's affidavits put forward, of course, a strong case. This was only to be expected, but the reality, when viewed from the perspective of what *in fact* was *substantively* done by the wife, was quite different. As Prof Leong aptly put it (see *Halsbury's Laws of Singapore* at para 130.835):

> While the marital relationship is good, spouses are likely individually to do their utmost and gladly co-operate to acquire wealth jointly. When it turns sour, a spouse *may be tempted to exaggerate his or her contribution and regard the other as having slacked throughout marriage*. [emphasis added]

This was why I ordered a division of matrimonial assets in the proportion I did.

67 However, if the shares are included, *other* factors would necessarily come into play as well. One factor is the fact that the shares were at least originally a gift to the husband and were given well before his marriage to the wife. More importantly, the enormous value of the shares coupled with the fact that the wife had done nothing to enhance their value suggest that granting her 35 per cent of the value of the shares would neither be just nor equitable.