Wan Lai Cheng *v* Quek Seow Kee and another appeal and another matter [2012] SGCA 40

Case Number	: Civil Appeals Nos 17 and 21 of 2011, and Summons No 2864 of 2011
Decision Date	: 31 July 2012
Tribunal/Court	: Court of Appeal
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Luna Yap (Luna Yap & Company) for the appellant in Civil Appeal No 17 of 2011 and the respondent in Civil Appeal No 21 of 2011; Randolph Khoo, Jonathan Chan and Tan Yanying (Drew & Napier LLC) for the respondent in Civil Appeal No 17 of 2011 and the appellant in Civil Appeal No 21 of 2011.
Parties	: Wan Lai Cheng — Quek Seow Kee

Family Law

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2011] 2 SLR 814.]

31 July 2012 Judgment reserved.

Andrew Phang Boon Leong JA:

Introduction

1 These are two related appeals filed by the husband, Quek Seow Kee ("the Husband"), and the wife, Wan Lai Cheng ("the Wife"), respectively, against the decision of the High Court judge ("the Judge") in *Wan Lai Cheng v Quek Seow Kee* [2011] 2 SLR 814 ("the Judgment") with regard to: (a) the division of matrimonial assets, and (b) the maintenance for the Wife. Civil Appeal No 17 of 2011 ("CA 17/2011") is filed by the Wife, and Civil Appeal No 21 of 2011 ("CA 21/2011") is filed by the Husband. Summons No 2864 of 2011 ("SUM 2864/2011") is an application taken out by the Husband in relation to CA 21/2011.

Facts

Parties to the dispute

2 The parties were married in Singapore on 31 October 1972 when they were both 26 years old. The marriage lasted for 36 years. The Husband comes from a wealthy family and is self-employed. The Wife was a teacher until her retirement in 2008. The parties are both currently 66 years old.

3 There are two children of the marriage (Darren and Daniel), who are both in their 30s, and for whom no provision has to be made in the divorce proceedings.

Background to the dispute

4 On 26 July 2007, the Wife filed for divorce (in the Judgment, the date of commencement of the divorce proceedings is stated as 27 July 2007 (see, *inter alia*, [33] of the Judgment), but the correct date is actually 26 July 2007). The fact relied on to prove the irretrievable breakdown of the marriage was that the Husband had behaved in such a way that the Wife could not reasonably be expected to

live with him. The interim judgment was granted by the Family Court on 20 August 2008.

5 Currently, both parties continue to stay at No 2 Draycott Park #03-01 Hampton Court ("the Matrimonial Home"), which is one of 12 units within a condominium development called "Hampton Court".

6 Hampton Court is constructed on land which belonged to the Husband's late grandfather, Mr Quek Bak Song, who was the chairman of the now defunct Overseas Union Bank. This land was inherited by the Husband and his brothers from their late father, who had, in turn, inherited it from Mr Quek Bak Song. The Husband received three units in Hampton Court, comprising the Matrimonial Home and two smaller units, *viz*, #02-01 and #03-02 of Hampton Court. On the advice of Ernst & Young, the Husband incorporated Hawick Property Investment Pte Ltd ("Hawick") to hold #02-01 of Hampton Court and Kelso Property Investment Pte Ltd ("Kelso") to hold #03-02 of Hampton Court.

7 A third company, Skeve Investment Pte Ltd ("Skeve"), was incorporated to hold a condominium apartment, #24-06 of The Riverwalk ("the Riverwalk property"), which was purchased by the Husband in 1983. [note: 1] Hawick, Kelso and Skeve will be collectively referred to as "the Three Companies". As I will make clear later in my judgment (see below at [61], [62] and [74]), the difference between the origins of the properties held by Hawick and Kelso on the one hand and the origins of the property held by Skeve on the other is crucial.

8 The Wife became a shareholder and director of Hawick and Kelso in 1992, and of Skeve in 1983. The Wife is currently the registered owner of 40% of the shares in Hawick, 40% of the shares in Kelso and 10% of the shares in Skeve (the Wife's shares in Hawick and Kelso will hereafter be referred to as "the Hawick and Kelso shares", and her shares in Skeve as "the Skeve shares"). The Wife did not pay for the Hawick and Kelso shares and the Skeve shares (collectively, "the Shares"), and was never in possession of the share certificates.

9 There was a dispute in the court below as to whether the Shares belonged to the Wife beneficially or whether she held them on trust for the Husband. This is a significant issue as each of the Three Companies holds (as noted above) a unit of valuable residential property. The Judge found that the Shares had been transferred by the Husband to the Wife absolutely (see the Judgment at [18]). This finding is *not* contested by the Husband on appeal. The present appeals thus proceed on the basis that the Shares were an inter-spousal gift from the Husband to the Wife.

10 Throughout the marriage, the Husband had sole control of the Three Companies to the exclusion of the Wife, and he made all the financial decisions in the marriage. The rental income from the properties held by the Three Companies and from a fourth property at No 9 Rhu Cross #10-08 Costa Rhu ("the Costa Rhu property") was collected by the Husband. The Costa Rhu property was purchased by the Husband in 1995. [note: 2]

11 The Wife's contributions to the marriage were largely indirect and non-financial. She played a supportive and passive role in the marriage. She has never owned a property in her name.

The decision below

12 The Judge made the following findings in the court below:

(a) On a finding of fact, the Shares were gifts made by the Husband to the Wife (see the Judgment at [18]).

(b) Inter-spousal gifts were "gifts" for the purposes of s 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the current Act"), and were thus not matrimonial assets unless there was evidence that the gifts had been substantially improved during the marriage by the donor spouse or by both parties to the marriage (see the Judgment at [28]–[29]).

(c) There was no claim or evidence that the Husband (the donor spouse in the present case) had substantially improved the value of the Shares, whether by himself or together with the Wife. Therefore, the Shares were not matrimonial assets but were instead the Wife's assets (see the Judgment at [19] and [30]).

(d) Section 112(2)(*h*) and s 114(1)(*a*) of the current Act, read together, required a court, when dividing matrimonial assets, to have regard to, *inter alia*, the property of each of the parties to the marriage. As the Shares were the Wife's property, they would be taken into consideration in determining her share of the matrimonial assets (see the Judgment at [30]–[31]).

(e) The Wife was awarded 35% of the net asset value ("NAV") of the Matrimonial Home, which was to be taken as at the date of commencement of the divorce proceedings (*ie*, 26 July 2007), or, alternatively, rounded off to 31 July 2007 if that did not prejudice the Husband (see the Judgment at [36] and [39]).

(f) The Wife was further awarded 25% of all the other matrimonial assets, excluding the Matrimonial Home and the remainder of the shares in the Three Companies that were not registered in her name, subject to the following (see the Judgment at [43]–[45]):

(i) the NAV of the Costa Rhu property was to be calculated in the same way as the NAV of the Matrimonial Home;

(ii) the bank balances of each party were to be taken as at the date of commencement of the divorce proceedings;

(iii) the boat "Delightful Dream" registered in the name of the Husband and held on trust for Skeve was not to be included in the division; and

(iv) the Renault car registered in the name of the Husband and given as a wedding present to Daniel was not to be included in the division.

(g) The Matrimonial Home and the Costa Rhu property were to be valued and sold, or, alternatively, transferred by sale to the sole name of either of the parties. If the parties could not reach an agreement, either party could apply to the court for directions (see the Judgment at [47]).

(h) The Husband was ordered to pay the Wife monthly maintenance of $2,000 (see the Judgment at [52]).

Issues on appeal

13 The following issues were raised on appeal:

(a) whether inter-spousal gifts are "gifts" for the purposes of s 112(10) of the current Act (referred to hereafter as either "s 112(10)" *per se* or "the current s 112(10)", as may be appropriate to the context), and are thus not matrimonial assets unless there is evidence that

the gifts have been substantially improved during the marriage by the donor spouse or by both parties to the marriage ("Issue 1");

(b) if Issue 1 above is answered in the affirmative, whether the inter-spousal gift in this case, *ie*, the Shares, had been substantially improved by the Husband (the donor spouse) or by both parties during the marriage, and thus brought into the pool of matrimonial assets for division ("Issue 2");

(c) what the appropriate operative date for determining the NAV of the Matrimonial Home and the Costa Rhu property (and by implication, the NAV of any other property included in the pool of matrimonial assets for division) is ("Issue 3");

(d) whether the division of matrimonial assets made by the Judge was just and equitable within the meaning of s 112 of the current Act ("Issue 4"); and

(e) whether a lump sum maintenance should have been awarded in the court below instead of monthly maintenance, and, if so, what the lump sum should be ("Issue 5").

14 I turn now to consider each of the above-mentioned issues *seriatim*.

My decision

Issue 1

Overview

15 As noted above, what has to be ascertained with regard to Issue 1 is whether inter-spousal gifts are "gifts" for the purposes of s 112(10), and are thus not matrimonial assets unless there is (as stipulated in s 112(10)) evidence that the gifts have been substantially improved during the marriage by the donor spouse or by both spouses.

The Husband's case

16 The Judge's decision that inter-spousal gifts were "gifts" under s 112(10) and were excluded from the pool of matrimonial assets (unless the inter-spousal gifts had been substantially improved during the marriage by the donor spouse or by both spouses) had the effect that the Shares were the Wife's assets and not matrimonial assets. Apropos this ruling, counsel for the Husband, Mr Randolph Khoo ("Mr Khoo"), argues – apparently contrarily to the express language of s 112(10) – that inter-spousal gifts *are* matrimonial assets. Mr Khoo notes that this was the legal position prior to the amendments made on 1 May 1997 to the then equivalent of the current Act (*viz*, the Women's Charter (Cap 353, 1985 Rev Ed) ("the 1985 Act")), and contends that the said amendments ("the 1997 Amendments") did not change the law in this regard. He raises four specific arguments in support of his case, as follows:

(a) Firstly, it is argued that the Judge construed s 112(10) in a way that altered the common law position on inter-spousal gifts as it stood at the time of the 1997 Amendments, and this contravened the applicable principle of statutory interpretation (as embodied within decisions such as *Ying Tai Plastic & Metal Manufacturing (S) Pte Ltd v Zahrin bin Rabu* [1983–1984] SLR(R) 212 at [19] and *Ng Boo Tan v Collector of Land Revenue* [2002] 2 SLR(R) 633 at [79]) in so far as the then equivalent of s 112(10) had not utilised language that pointed unmistakably to that conclusion.

(b) Secondly, it is argued that there is material that points in the opposite direction from the Judge's view, and that this material should be used as an aid to the interpretation of s 112(10). In particular, Mr Khoo highlights the following material:

(i) *Report of the Select Committee on the Women's Charter (Amendment) Bill (Bill No 5/96)* (Parl 3 of 1996, 15 August 1996) ("the Select Committee Report on Bill 5/96"), which opined (at para 5.5.5) that "the body of case law built up over the years would not be disregarded by judges, but would be used to guide the judges in their [judgments]"; and

(ii) the statement by Mr Abdullah Tarmugi, the then Minister for Community Development, on 27 August 1996 during the third reading of the Women's Charter (Amendment) Bill 1996 (Bill 5 of 1996) ("Bill 5/96"), *ie*, the Bill that led to the enactment of (*inter alia*) the provision which is now s 112 of the current Act, that "it [was] not the intention for the body of case law built up over the years to be cast aside, but that it should continue to serve as a guide to judges in their decisions" (see *Singapore Parliamentary Debates, Official Report* (27 August 1996) vol 66 at col 527).

(c) Thirdly, Mr Khoo cites the following views of Prof Leong Wai Kum ("Prof Leong") in her book, *Elements of Family Law in Singapore* (LexisNexis, 2007) (at p 602):

> The Court of Appeal in [*Yeo Gim Tong Michael v Tianzon Lolita* [1996] 1 SLR(R) 633], even under the former section 106 of the Women's Charter [*viz*, the 1985 Act], decided that ***when a property is given by one spouse to the other it should not be regarded as a gift but should be liable to division*** , unless it were given to the spouse as a highly personal gift or its value were so low as to be *de minimis*. This decision is rational because ***a gift between the spouses depletes the wealth of the marital partnership so that in fairness significant gifts ought to be returned to the pool and be liable to be divided*** . [emphasis in bold italics added in the Husband's written case for CA 21/2011] [note: 3]

(d) Fourthly, it is argued that at least two cases decided *after* the 1997 Amendments (*viz*, *Yow Mee Lan v Chen Kai Buan* [2000] 2 SLR(R) 659 ("*Yow Mee Lan*") and *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 ("*Yeo Chong Lin*")) demonstrate that the Singapore courts continue to regard inter-spousal gifts as matrimonial assets.

The Wife's case

17 Counsel for the Wife, Ms Luna Yap ("Ms Yap"), submits that the Judge's ruling that inter-spousal gifts are not matrimonial assets for division accords with a plain reading of s 112(10). In the alternative, Ms Yap argues (and this is also in response to the Husband's fourth argument) that *Yow Mee Lan* and *Yeo Chong Lin* can be distinguished from the instant case.

The definition of "matrimonial asset"

18 The definition of "matrimonial asset" in the current s 112(10) 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]

19 The words italicised in the quotation in the preceding paragraph will hereafter be referred to as "the Exclusion Clause". It must be noted that the *literal* language of the Exclusion Clause does not, on its face, distinguish between inter-spousal gifts and gifts from third parties, but appears to exclude *all* gifts from the definition of "matrimonial asset". Hence, in order to answer Issue 1, it is necessary to look not only to the plain words of s 112(10), but also to the *legislative history and context* of s 112(10).

The legislative history and context of s 112(10)

(1) The law *prior to* the 1997 Amendments

20 Prior to the 1997 Amendments, the provision which governed the division of matrimonial assets was s 106 of the 1985 Act ("the former s 106"), which reads as follows:

106.—(1) The court shall have power, when granting a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.

(2) In exercising the power conferred by subsection (1) the court shall have regard to —

(*a*) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;

(*b*) any debts owing by either party which were contracted for their joint benefit; and

(*c*) the needs of the minor children (if any) of the marriage,

and, subject to those considerations, the court shall incline towards equality of division.

(3) The court shall have power, when granting a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.

(4) In exercising the power conferred by subsection (3) the court shall have regard to —

(*a*) the extent of the contribution made by the other party who did not acquire the assets

to the welfare of the family by looking after the home or by caring for the family; and

(*b*) the needs of the minor children, if any, of the marriage,

and, subject to those considerations, the court may divide the assets or the proceeds of sale in such proportions as the court thinks reasonable; but in any case the party by whose effort the assets were acquired shall receive a greater proportion.

(5) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

As can be seen, the former s 106 did not expressly exclude gifts from the pool of matrimonial assets to be divided. In fact, the provision made *no reference whatsoever* to gifts, whether inter-spousal or from third parties. It also did not contain any definition of "matrimonial asset".

21 Turning now to the relevant case law, in the decision of this court in *Yeo Gim Tong Michael v Tianzon Lolita* [1996] 1 SLR(R) 633 ("*Yeo Gim Tong Michael*"), the court had to decide whether a gift from the husband to the wife could be taken into account in the division of matrimonial assets under the former s 106. The court observed thus:

12 … In considering the issue of a gift in the division of matrimonial assets under s 106 [*ie*, the former s 106], the starting point is whether the subject matter of the gift is property originally acquired during the marriage through the sole effort of the donor or the joint efforts of the donor and his or her spouse, the recipient. If the property was so acquired during the marriage, it falls within sub-s (1) or (3) (as the case may be) of s 106, and *depending on the circumstances would be taken into account in the division of matrimonial assets, notwithstanding that it was a gift from one spouse to the other*. The spouse who made the gift would have no doubt expended moneys in acquiring it. The fact that the gift was contemporaneously or immediately thereafter or later transferred to the other spouse does not affect the original acquisition of that gift. Such a gift was nonetheless acquired by the donor and not the recipient, and if it was acquired during the marriage it would fall within the class of assets covered by s 106. However, *where the subject matter of the gift is itself a gift from a third party*, for instance from a parent of the donor, *then the gift is not property acquired by the donor by any effort on his part and it follows that that property would not fall within s 106. Gifts emanating from third parties to a spouse during his marriage have been held not to be assets acquired by him within the meaning of s 106*: *Cheng Kwee Eng v Hoong Khai Soon* (D 1911/89) (unreported).

13 For practical purposes, minor items of gift such as dresses and even jewellery of no substantial value, are normally considered as *de minimis* and are not taken into account. *There is no reason why gifts of substantial value, such as a motor car, landed property and investments, which were acquired by one spouse during the marriage and given to the other should not be taken into account in the division, as they fall within s 106*. …

[emphasis added]

2 2 *Yeo Gim Tong Michael* therefore drew a distinction between assets acquired as: (a) inter-spousal gifts, and (b) gifts from third parties, the legal position in respect of which may be summarised as follows:

(a) With regard to inter-spousal gifts, where the gift was of substantial value, it came within

the class of assets covered by the former s 106, and could be taken into account in the division of matrimonial assets. Whether an inter-spousal gift was to be regarded as a matrimonial asset was dependent on the facts of each case. No special considerations applied to inter-spousal gifts which were treated as matrimonial assets beyond the considerations listed in the former s 106. For practical purposes, inter-spousal gifts of *de minimis* value were not taken into account in the division of matrimonial assets.

(b) With regard to gifts from third parties, these were outside the class of assets covered by the former s 106 and were thus not considered for division. The only assets countenanced by the former s 106 as divisible were those acquired either: (i) by the joint efforts of the spouses, or (ii) by the sole effort of one of the spouses, and gifts from third parties fell into neither category.

23 In the present appeals, the Husband and the Wife both agree that *Yeo Gim Tong Michael* is an accurate statement of the position prior to the 1997 Amendments as to whether or not gifts (be they inter-spousal gifts or third-party gifts) form part of the pool of matrimonial assets for division. This view was also shared by the Judge.

(2) The 1997 Amendments

24 The Select Committee set up to consider amendments to the 1985 Act ("the Select Committee") received proposals from, *inter alia*, Prof Leong and the Law Reform Committee of the Singapore Academy of Law ("the Law Reform Committee") as to how "matrimonial asset" could be statutorily defined.

25 Prof Leong's proposed definition of "matrimonial asset" *included* inter-spousal gifts (which Prof Leong distinguished from third-party gifts) and was crafted as follows (see the Judgment at [25]):

(1) "matrimonial asset" includes:

…

(*d*) an asset which was acquired by one party as a gift from the other; and

(*e*) an asset which was acquired by one party as a gift or an inheritance which has been used by both parties or the parties and their children as an asset of the household or which has been substantially improved during the marriage by the party who had not acquired it or by both parties.

26 The Law Reform Committee's proposed definition of "matrimonial asset" likewise distinguished between inter-spousal gifts (to be treated as matrimonial assets) and gifts from third parties (*prima facie* not to be treated as matrimonial assets), and suggested that a matrimonial asset (see the Judgment at [26]):

… does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift (other than a gift by one party to the other during the marriage) or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage …

27 The salient paragraphs of the Select Committee Report on Bill 5/96 state as follows in respect of the definition of "matrimonial asset":

5.5.6 … A suggestion was … made for the inclusion of *any* gift or inheritance received that have been ordinarily used or enjoyed by the family regardless of whether these have been improved upon by the other party as part of the definition while another suggestion was for *any* gift given by one party to the other to be included.

5.5.7 The [Select] Committee has considered the various suggestions made and *decides that there is no need to amend the definition in the Bill* [*viz*, Bill 5/96] *as it stands*. … The Bill's provisions are fair and protect the interest of the non-contributing party and children where the marriage has been of a long duration while at the same time it safeguards the interest of the other party. *The provisions also exclude gifts and inheritance not improved by the other party and therefore safeguards the interests of the party who acquired the assets* especially in marriages of short duration.

[emphasis added]

28 The former s 106 was amended via the Women's Charter (Amendment) Act 1996 (Act 30 of 1996), which came into effect on 1 May 1997. In the amended version of the former s 106 ("the new s 106"), Parliament enacted the following definition of "matrimonial asset":

106. …

…

(10) For the purposes of 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.

29 As can be seen, the wording of the new s 106 is identical in all material aspects to that of the current s 112(10), the only difference being that the phrase "For the purposes of this section" in the new s 106(10) was subsequently amended (by the Statutes (Miscellaneous Amendments) (No 2) Act 2005 (Act 42 of 2005)) to read as "In this section" in s 112(10) of the Women's Charter (Cap 353, 1997 Rev Ed), which is the immediate predecessor of the current s 112(10).

30 Both the new s 106 and the current s 112(10) contain the Exclusion Clause, which expressly excludes assets (except the matrimonial home) obtained by gift or inheritance from the pool of matrimonial assets for division. The Exclusion Clause contains an exception for assets (acquired by gift or inheritance) that have been "substantially improved" during the marriage either by the "other"

spouse, *ie*, the spouse who was the non-recipient of the gift or inheritance ("the non-recipient spouse"), or by both spouses (hereafter referred to as "the 'substantial improvement' exception"). Where the "substantial improvement" exception is satisfied, the gift or inheritance in question falls within the statutory definition of "matrimonial asset". Thus, on the face of the wording of both the new s 106 and the current s 112(10), all gifts and inherited assets are to be excluded from the pool of matrimonial assets for division, unless the "substantial improvement" exception is satisfied.

31 Accordingly, on a literal reading of s 112(10), it appears that the Judge was correct in holding that inter-spousal gifts were excluded from the definition of "matrimonial asset". In the court below, the Judge opined as follows (see the Judgment at [27]):

> … [I]t can be seen that attention was drawn by Prof Leong and the Law Reform Committee to the possibility of drawing a distinction between inter-spousal gifts and third-party gifts, but the definition of matrimonial asset enacted did not reflect these views. It cannot be supposed that the Select Committee or Parliament overlooked and did not consider the views of authoritative parties [such] as Prof Leong and the Law Reform Committee. It is much more probable that the views were considered, but were rejected. If that was the case, *the rejected definitions should not be applied to the enacted provision*. [emphasis added]

32 In the circumstances, the Judge held that the definition of "matrimonial asset" in s 112(10) did not support the interpretation that inter-spousal gifts were matrimonial assets. The 1997 Amendments had, in his view, changed the law.

33 With the legislative background set out briefly above in mind, I turn now to address the respective parties' arguments as well as give my decision with regard to Issue 1.

My analysis and decision

34 As noted above, a plain reading of s 112(10) supports the Judge's decision in the court below that inter-spousal gifts are "gifts" and are thus *not* matrimonial assets for the purposes of this provision, unless the "substantial improvement" exception is satisfied. I turn now to consider the four arguments raised by Mr Khoo on behalf of the Husband as to why this plain reading of s 112(10) is wrong.

35 In my view, the first and third arguments proffered by Mr Khoo are, with respect, not very helpful.

36 Turning to the first argument (see above at sub-para (a) of [16]), whether or not s 112(10) unmistakably abrogated the position existing at common law prior to the 1997 Amendments is precisely the issue that has to be decided in the present appeals. In order to arrive at a conclusion on that issue, this court has to decide whether or not the ostensibly plain language of s 112(10) is not so plain in the final analysis. The mere invocation by Mr Khoo of a principle of statutory interpretation (*viz*, the principle that a statute should not be construed as effecting any fundamental changes in the common law unless it uses words which point unmistakably to that conclusion) does not, in and of itself, aid this court in this particular regard, for the issue at hand cannot be decided in the abstract.

37 The third argument (see above at sub-para (c) of [16]) is based on Prof Leong's views in her book (*viz*, *Elements of Family Law in Singapore*), which, in turn, reiterates her proposal to the Select Committee (as set out above at [25]). In the circumstances, this particular argument is, at best, neutral, for much would turn on whether or not the Select Committee accepted – either directly or

indirectly – Prof Leong's proposal. In my view, there was clearly no direct adoption of the proposal (see paras 5.5.6–5.5.7 of the Select Committee Report on Bill 5/96), although there could arguably have been indirect adoption, which, in substance, constitutes the basis of Mr Khoo's second argument – to which my attention must now turn.

38 In respect of Mr Khoo's second argument (see above at sub-para (b) of [16]), *viz*, that neither the Select Committee nor Parliament intended to abrogate the legal principles embodied in the existing body of case law at the time of the 1997 Amendments, it appears to me that this argument, whilst not wholly without merit, would need to be undergirded by general principles of both logic as well as common sense in order to be sustainable. In particular, was there a rational basis for the court in *Yeo Gim Tong Michael* to distinguish, as it did, between inter-spousal gifts on the one hand and gifts from third parties on the other (see above at [21] and [22])? If there was such a basis, then it is clear that there is nothing, not even in the literal language of the current s 112(10), which *clearly* contradicts such a distinction on the premise that (in accordance with Mr Khoo's second argument) neither the Select Committee nor Parliament intended the word "gift" in the then equivalent of the current s 112(10) to have any broader meaning than that which existed at the time that provision was enacted, which was that the word "gift" referred *solely* to a gift *from a third party* (and *not* to an *inter-spousal* gift). If there is indeed a rational basis to distinguish between inter-spousal gifts and third-party gifts, this would explain why the Singapore courts have continued to regard inter-spousal gifts as falling within the pool of matrimonial assets for division on at least two occasions *after* the 1997 Amendments (*viz*, in *Yow Mee Lan* and *Yeo Chong Lin*), which is, of course, Mr Khoo's fourth argument (see above at sub-para (d) of [16]).

39 For this fourth argument, it suffices to say that I have not based my decision in the present appeals on any similarity of factual background with the cases of *Yow Mee Lan* and *Yeo Chong Lin*, but have instead arrived at my decision from an examination of the *legal principles* embedded in the case law, which principles are applicable to all cases in this area of the law. In other words, my decision does not turn on whether the facts in *Yow Mee Lan* and *Yeo Chong Lin* can be distinguished from those in the present appeals. I will instead endeavour to explain the *logical basis* behind my analysis of the word "gift" in s 112(10).

40 Turning then to the point of *general principle*, it is clear, in my view (and with respect to the Judge), that *inter-spousal* gifts were *not* intended by Parliament to fall within the ambit of the word "gift" in s 112(10). Let me elaborate. An *inter-spousal* gift embodies, by *its very nature*, the *initial* effort expended by the donor spouse in, as this court put it in *Yeo Gim Tong Michael* (at [12]), "the original acquisition of [the] gift". If, therefore, such a gift were excluded from the pool of matrimonial assets, the initial effort expended by the donor spouse in the acquisition of the gift would simultaneously be denied recognition – a result which prompted this court in *Yeo Gim Tong Michael* to arrive at the decision that an inter-spousal gift ought to remain as part of the pool of matrimonial assets. This decision is, in my view, just and equitable inasmuch as the result is that whilst ownership of an inter-spousal gift resides in the donee spouse as a result of the transfer of that gift by the donor spouse, the initial effort of the donor spouse in the acquisition of the gift is nevertheless acknowledged and recognised – thus achieving a *balance*.

41 In this regard, it may be observed that as inter-spousal gifts are not "gifts" for the purposes of s 112(10), there is no need to invoke the "substantial improvement" exception in the Exclusion Clause to bring them within the pool of matrimonial assets for division. In other words, inter-spousal gifts are matrimonial assets as defined in s 112(10) without the need to satisfy any further conditions. An *inter-spousal* gift, by its very nature, is always acquired by one spouse during a marriage, and thus falls under s 112(10)(*b*) of the current Act, which encompasses assets which are acquired *by one party during the marriage* or by both parties during the marriage. Therefore, all inter-spousal gifts fall

under s 112(10)(*b*) and are matrimonial assets without the need to satisfy any further conditions (this is in contrast to s 112(10)(*a*), which stipulates stricter conditions that have to be satisfied by assets acquired prior to a marriage before they can become matrimonial assets). I add one important qualification at this point, namely, that the discussion of inter-spousal gifts here and in the preceding paragraph applies *only* to "pure" inter-spousal gifts (*ie*, inter-spousal gifts where the subject matter of the gifts are not assets acquired by the donor spouse by way of a third-party gift or an inheritance), and *not* to inter-spousal gifts which take the form of a "re-gift" of an asset acquired by the donor spouse by way of a third-party gift or an inheritance (see below at [52]–[56]).

42 While the "substantial improvement" exception in the Exclusion Clause is, for the reasons stated above at [40]–[41], inapplicable to "pure" inter-spousal gifts, it is, in my view, eminently suited to be applied *vis-à-vis* gifts from *third parties* in order to *prevent an unmerited windfall* from accruing to the non-recipient spouse. In the case of a gift from a *third party* to a particular spouse, the non-recipient spouse ought *not* to be able to avail himself or herself of a share in that gift as that would constitute *an unmerited windfall*. Besides, such a windfall would *not* accord with the *intention* of *the third-party donor*. Where, however, the non-recipient spouse satisfies the conditions set out in the "substantial improvement" exception by helping – either solely or jointly with the spouse who was the original recipient of the third-party gift – to *substantially improve* that gift, then the "substantial improvement" exception can be invoked to bring that gift into the pool of matrimonial assets. Such a result would be just and equitable as it would acknowledge and recognise the efforts of the non-recipient spouse in improving the third-party gift. In other words, the "substantial improvement" exception is intended *to prevent unmerited windfalls* from accruing to the non-recipient spouse in the situation of a third-party gift.

43 I have arrived at this interpretation of the purpose of the "substantial improvement" exception both from principled reasoning and from the structure of s 112(10). The issue of substantial improvement arises twice in s 112(10), once in the context of the Exclusion Clause, and once in the context of assets acquired before a marriage under s 112(10)(*a*)(ii). The purpose of the "substantial improvement" exception is the same in both these areas, *viz*, to prevent an unmerited windfall from accruing to "the other party … to the marriage". As noted above at [41], s 112(10)(*a*) stipulates that assets acquired before a marriage need to satisfy either the condition set out in s 112(10)(*a*)(i) or that set out in s 112(10)(*a*)(ii) before they can become matrimonial assets. The reason for this is that there is no presumption that assets acquired before a 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 those assets (see *Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)* [2006] 4 SLR(R) 605 (at [44])). Therefore, if the party who did not acquire the asset before the marriage were allowed to avail himself or herself of a share in that asset, this would constitute an unmerited windfall. To guard against such a windfall, s 112(10)(*a*)(ii) provides (in cases where the condition in s 112(10)(*a*)(i) is not satisfied) that in order for an asset acquired before a marriage to constitute a matrimonial asset, the spouse who did not acquire the asset before the marriage will have to show that during the marriage, he or she substantially improved the asset either by himself or herself or jointly with the spouse who acquired the asset before the marriage. The wording of s 112(10)(*a*)(ii) is *in pari materia* with the "substantial improvement" exception in the Exclusion Clause.

44 Returning to the Exclusion Clause, I find that while there is a need to prevent an unmerited windfall to the non-recipient spouse in respect of third-party gifts, this concern does *not* apply to *"pure" inter-spousal* gifts as the non-recipient spouse in that context is also the donor spouse, who would have expended effort in the original acquisition of the gift. As such, the "substantial improvement" exception would be rendered nugatory in the context of "pure" inter-spousal gifts, which suggests that Parliament cannot have intended the word "gift" in s 112(10) to encompass

"pure" inter-spousal gifts.

45 My interpretation of "gift" in s 112(10) as referring only to third-party gifts and *not* to "pure" inter-spousal gifts is also buttressed by the reference to an "inheritance" in the Exclusion Clause. I note that an inheritance, by its very nature, originates from a *third party*. Indeed, the same rationale just discussed (*viz*, of avoiding unmerited windfalls to the non-recipient spouse) in relation to third-party gifts would apply *equally* to an inheritance. There are two possible interpretations of why *both* the words "inheritance" and "gift" were utilised in the Exclusion Clause. Firstly, it could be argued that the reason for including separate references to a "gift" and an "inheritance" in s 112(10) is that Parliament intended to distinguish between the two by according a *wider* scope to the former as compared to the latter (namely, by including gifts that are not from third parties – *ie*, inter-spousal gifts – within the ambit of the word "gift"). Whilst this appears to be a persuasive argument at first blush, it does not address the concerns which such an interpretation would engender, as discussed above at [40] and [42]. I therefore favour the second interpretation, namely, that it was necessary to utilise *both* the word "gift" as well as the word "inheritance" in s 112(10) as each word refers to a *different* way in which a *third party* can benefit a particular spouse – an inheritance accrues to the spouse concerned only on the *death* of the (third-party) donor, whereas a gift generally accrues to the spouse concerned *whilst the (third-party) donor is still alive*. On this second interpretation, it is wholly consistent to interpret the word "gift" in s 112(10) as referring *only* to *third-party* gifts.

4 6 *Therefore*,*"pure" inter-spousal gifts will constitute part of the pool of matrimonial assets for division as they are not "gifts" within the scope of s 112(10)*. *Only* gifts from *third parties* are "gifts" for the purposes of the Exclusion Clause in s 112(10) and are, accordingly, *excluded* from the pool of matrimonial assets (*unless* the conditions set out in *the "substantial improvement" exception* are fulfilled).

47 It remains for me to add that my interpretation of the word "gift" in s 112(10) is *not inconsistent* with either the Select Committee Report on Bill 5/96 or the parliamentary debates on the same. At para 5.5.6 of the Select Committee Report on Bill 5/96 (reproduced above at [27]), the Select Committee noted that the proposals which it had received regarding the "gifts" to be included in the pool of matrimonial assets were (*inter alia*):

(a) the inclusion of *any* gift or inheritance received by a spouse that had been ordinarily used or enjoyed by the family, regardless of whether or not that gift or inheritance had been improved by the other spouse; and

(b) the inclusion of *any* gift given by one spouse to the other spouse.

48 It is clear, in my view, that my interpretation of the "gifts" that may be included in the pool of matrimonial assets is narrower than that envisaged in the two proposals. For the reasons given above (in particular, at [42]), I am of the view that an inclusion of gifts on the scale of the two aforesaid proposals would be too wide. Therefore, whilst the Select Committee's statement that there was "no need to amend the definition in [Bill 5/96] as it [stood]" (see para 5.5.7 of the Select Committee Report on Bill 5/96 (reproduced at [27] above)) was a rejection of these two broad interpretations of "gift", it *does not preclude narrower interpretations of "gift"*.

49 Further, I note that the Law Reform Committee had proposed definitions of both "gift" and "matrimonial home". The Law Reform Committee had suggested defining "gift" as a gift "other than a gift by one party to the other during the marriage" (*ie*, as a gift other than an inter-spousal gift), and had suggested defining "matrimonial home" as "a property where the parties to the marriage were ordinarily residing at or immediately prior to the time when the marriage irretrievably broke down".

Neither definition was adopted by the Select Committee. A reasonable inference that can be drawn from the Select Committee's decision not to include the definition of "matrimonial home" is that there was no need to do so, given that the meaning of "matrimonial home" was clear. Perhaps, the Select Committee also decided against the inclusion of the definition of "gift" as it was clear from the case law prior to the 1997 Amendments that "gift" only included third-party gifts. As noted earlier, the Select Committee might simply have intended the word "gift" to be interpreted in accordance with the existing case law at that time (as set out in, *eg*, *Yeo Gim Tong Michael*). In this regard, my interpretation of the word "gift" accords with and affirms the approach taken by this court in *Yeo Gim Tong Michael*. I also note that the Select Committee Report on Bill 5/96 specifically mentioned (at para 5.5.7) that the reason for excluding gifts and inherited assets which had not been substantially improved by the non-recipient spouse from the definition of "matrimonial asset" was to "[safeguard] the interests of the party who acquired the assets". This rationale of protecting the party who acquires the assets points in favour of *including "pure" inter-spousal gifts* in the pool of matrimonial assets as this protects the donor spouse (*viz*, "the party who acquired the assets" referred to at para 5.5.7 of the Select Committee Report on Bill 5/96).

50 As for the parliamentary debates on the Select Committee Report on Bill 5/96, while the definition of "matrimonial asset" received scrutiny during those debates, there was no discussion as to the scope of the gifts that were to be included, if at all, in the pool of matrimonial assets. Therefore, my present interpretation of the word "gift" in s 112(10) cannot be said to be inconsistent with the views expressed during the parliamentary debates.

51 I should point out that since the final draft of this judgment was prepared, the finding that only third-party gifts are "gifts" for the purposes of the Exclusion Clause was also arrived at in the recent Singapore High Court decisions of *Tan Cheng Guan v Tan Hwee Lee* [2011] 4 SLR 1148 ("*Tan Cheng Guan*") and *Sigrid Else Roger Marthe Wauters v Lieven Corneel Leo Raymond Van Den Brande* [2011] SGHC 237.

52 However, and crucially for present purposes, while *Tan Cheng Guan* accepted that the word "gift" in the Exclusion Clause did not cover "pure" inter-spousal gifts, it also drew a *further distinction* between a "pure" inter-spousal gift on the one hand and an inter-spousal gift where the asset in question was *originally acquired by the donor spouse as a third-party gift or an inheritance* on the other, with the latter falling *outside* the pool of matrimonial assets:

> 3 … [A]n inter-spousal gift, acquired by the donor *other than as a gift or inheritance from a third party*, remains a matrimonial asset. …
>
> …
>
> 5 ... A *third party gift or inheritance*, received by the donor prior to and during the marriage, *and which the donor then gives to his spouse*, is *not* a matrimonial asset. …
>
> [emphasis added]

53 This issue is crucial as, in the present appeals, the inter-spousal gift which this court is confronted with consists partly of assets which were originally an inheritance: the Hawick and Kelso shares that the Husband gave to the Wife can be traced to the Husband's inheritance (see below at [61]). Therefore, the status of an inheritance or a third-party gift acquired by a spouse at any time (whether before or during the marriage) which is subsequently given by that spouse to the other spouse during the marriage arises for consideration. In particular, the issue arises as to whether *these* gifts (referred to hereafter as "inter-spousal 're-gifts'" where appropriate) – *ie*, inter-spousal gifts of

assets acquired by the donor spouse by way of a third-party gift or an inheritance – can be *"converted" into inter-spousal* gifts which *then* constitute *part of* the pool of matrimonial assets for distribution.

54 The strongest argument in favour of "conversion" is that the "ring-fencing" around a third-party gift or an inheritance is removed when it is subsequently re-gifted as an inter-spousal "re-gift". Two examples will be used to illustrate this point. Firstly, I will consider the scenario where the spouse who is the original recipient of an asset acquired by way of a third-party gift or an inheritance has "ring-fenced" the asset and the other spouse has not substantially improved that asset during the marriage. It is uncontroversial that in such a situation, pursuant to the Exclusion Clause, the asset would *not* be a matrimonial asset. Secondly, I will take the scenario where the spouse who is the original recipient of an asset acquired by way of a third-party gift or an inheritance chooses to *remove* the "ring-fencing" of the asset by re-gifting it as an inter-spousal "re-gift". In this situation, arguably, the re-gifting expresses the intention that the asset which is the subject of the inter-spousal "re-gift" should become a matrimonial asset.

55 While I am sympathetic to this argument, I note that there is *no statutory basis* for such "conversion". Nothing in s 112(10) provides that the mere expression of an intention to bring non-matrimonial assets into the pool of matrimonial assets suffices to take such assets out of the ambit of the Exclusion Clause. In all likelihood, when s 112(10) was enacted, Parliament probably did not envisage the situation of a third-party gift or an inheritance being subsequently re-gifted as an inter-spousal "re-gift", thus creating a *lacuna*. Pursuant to the language of s 112(10), I am of the view that "conversion" of an inter-spousal "re-gift" into a matrimonial asset cannot take place. In other words, although an inter-spousal "re-gift" would appear, literally, to be an inter-spousal gift and, thus, form part of the pool of matrimonial assets based on the reasoning set out at [40]–[41] above, the asset which is the subject matter of an inter-spousal "re-gift" was *originally a third-party gift or an inheritance* and, thus, no effort would have been expended by the donor spouse (*ie*, the spouse making the inter-spousal "re-gift") in "the original acquisition of [the asset concerned]" (see *Yeo Gim Tong Michael* at [12]). The rationale set out at [40] above for including "pure" inter-spousal gifts in the pool of matrimonial assets for division does not, therefore, apply to inter-spousal "re-gifts". In my view, only "pure" inter-spousal gifts are intended to be excluded from the word "gift" in the Exclusion Clause. Assets which are acquired by a spouse by way of a third-party gift or an inheritance thus fall *outside* the pool of matrimonial assets even if they are subsequently re-gifted as an inter-spousal "re-gift". This is an important qualification to my discussion above (at [40]–[41]) on "pure" inter-spousal gifts.

56 I would add that the "substantial improvement" exception is, in my view, not applicable to inter-spousal "re-gifts". This is because where a third-party gift or an inheritance is made the subject of an inter-spousal "re-gift", the concept of the "other" spouse (a concept integral to the "substantive improvement" exception) takes on an entirely *different* complexion as compared to situations where a third-party gift or an inheritance is not re-gifted. Where a third-party gift or an inheritance is not re-gifted, the "other" spouse would simply be the non-recipient of the third-party gift or inheritance. However, where there is subsequent inter-spousal re-gifting of a third-party gift or an inheritance, there is a question as to who the "other" spouse is. For example, where a husband receives a third-party gift and then re-gifts it to his wife, would the husband, as the donor spouse, be the "other" spouse as he is the non-recipient of the inter-spousal "re-gift"; or would the wife be the "other" spouse as she was the non-recipient of the third-party gift which formed the subject of the inter-spousal "re-gift"? This boils down to an issue of what the legislative intent of Parliament was in enacting the "substantial improvement" exception. As I have found above that inter-spousal "re-gifts" were probably not envisaged at the time s 112(10) was enacted, this question is one for which no answer is forthcoming. Indeed (and in contrast), the concept of the "other" spouse is (as already

noted) unproblematic *only* in the situation that *was* envisaged by Parliament when it enacted s 112(10), *viz*, where a third-party gift or an inheritance is *not* re-gifted as an inter-spousal "re-gift". Therefore, I find that the only approach open to me is to hold that the "substantial improvement" exception is intended to apply *only* to third-party gifts and inherited assets, and *not* to inter-spousal "re-gifts".

57 I recognise that one potential difficulty with my approach is that a spouse who receives an inter-spousal "re-gift" (where the asset concerned, being non-matrimonial in origin, would not form part of the pool of matrimonial assets and would thus belong solely to the donee spouse) may be in a better position than a spouse who receives a "pure" inter-spousal gift (where the asset concerned, being matrimonial in origin, would form part of the pool of matrimonial assets). I am of the view that this difficulty can nevertheless be addressed in the following practical way. In cases of an inter-spousal "re-gift", the court still has the power to do justice by taking the donee spouse's non-matrimonial property into account pursuant to s 112(2)(*h*) read with s 114(1) of the current Act. Section 112(2)(*h*) of the current Act requires a court ordering a division of matrimonial assets to have regard to, *inter alia*, "the matters referred to in section 114(1) in so far as they are relevant". Section 114(1)(*a*) of the current Act provides that one such factor is:

> … the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future …

58 Hence, the court can have regard to each party's non-matrimonial property. This allows for flexibility in the division of matrimonial assets. As noted by the Judge (see the Judgment at [44]), where one party has acquired property of considerable value as a result of the divorce proceedings, this may justify that party receiving a smaller share of the matrimonial assets available for division. While I observe that a legislative reconsideration of s 112(10) may be necessary to address the apparent *lacuna* in respect of inter-spousal "re-gifts", the court, as just mentioned, can nevertheless rely, in the meantime at least, on s 112(2)(*h*) read with s 114(1)(*a*) of the current Act to achieve practical justice.

59 To summarise, my position with regard to the issue of whether gifts are matrimonial assets is as follows:

> (a) *Third-party* gifts are "gifts" for the purposes of the Exclusion Clause and are thus *not* included in the pool of matrimonial assets, unless the "substantial improvement" exception is satisfied.
>
> (b) Inter-spousal "re-gifts" are *not* included in the pool of matrimonial assets, and the "substantial improvement" exception is not applicable to inter-spousal "re-gifts". Any necessary adjustments to achieve a just and fair result on the facts can be achieved by the application by the court of s 112(2)(*h*) read with s 114(1)(*a*) of the current Act.
>
> (c) *"Pure" inter-spousal* gifts are *not* "gifts" for the purposes of the Exclusion Clause, and are thus *included* in the pool of matrimonial assets without the need to satisfy any further conditions.
>
> (d) I wish to emphasise that the *matrimonial home*, as its name suggests, is *included* in the pool of matrimonial assets for division, *even if* it was the subject of a *third-party* gift or an *inheritance*. The wording of the Exclusion Clause makes this clear.

Issue 2

60 Given my finding on Issue 1, Issue 2 does not arise for decision on the facts of the present appeals. Let me explain. As mentioned at sub-para (a) of [12] above, the Judge found that the transfer of the Shares from the Husband to the Wife took the form of a gift (see the Judgment at [18]) and this finding has not been appealed against by the Husband. The gift of the Shares is thus, *on the face of it*, an *inter-spousal* gift from the Husband to the Wife. As noted at [8] above, the Shares comprise the Hawick and Kelso shares (which constitute 40% of the shares in Hawick and 40% of the shares in Kelso) and the Skeve shares (which constitute 10% of the shares in Skeve). As will be made clear below, while the gift of the Hawick and Kelso shares on the one hand must be analysed differently from the gift of the Skeve shares on the other, the "substantial improvement" exception is applicable to neither.

61 With regard to the Hawick and Kelso shares, the main assets held by Hawick and Kelso originate from the Husband's inheritance. As noted at [6] above, the land on which Hampton Court stands was part of the Husband's inheritance from his late father. As the main assets of both Hawick and Kelso are units in Hampton Court, the shares in these two companies are traceable to the Husband's inheritance. The gift of the Hawick and Kelso shares to the Wife is thus, in effect, *an inter-spousal "re-gift" of an inheritance*, and the "substantial improvement" exception is not applicable to the same (see above at sub-para (b) of [59]). The Hawick and Kelso shares are thus *non*-matrimonial assets which solely belong to the Wife, and will be taken into account in the division of matrimonial assets under s 112(2)(*h*) read with s 114(1)(*a*) of the current Act.

62 With regard to the Skeve shares, the main asset held by Skeve, *viz*, the Riverwalk property, was purchased during the marriage, and, unlike the properties held by Hawick and Kelso, is *not* directly traceable to the Husband's inheritance. Mr Khoo also did not raise any argument that the Riverwalk property was bought with inheritance moneys. Therefore, I find that the gift of the Skeve shares by the Husband to the Wife is a "pure" inter-spousal gift and thus forms part of the pool of matrimonial assets without the need for any further conditions to be satisfied.

63 For completeness, I should add that SUM 2864/2011 (see [1] above) was filed by the Husband in connection with Issue 2. In that summons, the Husband, in essence, sought leave to adduce further evidence to show that he had substantially improved the value of the Hawick and Kelso shares for the purposes of the "substantial improvement" exception. As I have just stated, this exception is inapplicable to these shares. I thus make no order on SUM 2864/2011.

Issue 3

Overview

64 As noted above, Issue 3 concerns the determination of the appropriate operative date for ascertaining the NAV of the Matrimonial Home and the Costa Rhu property (and, by implication, any other property included in the pool of matrimonial assets for division) (these properties will hereafter be collectively referred to as "the Relevant Properties"). The significance of the time element arises as the encumbrances on the Matrimonial Home, which stood at $533,428.18 as at 31 July 2007, had increased to about $4.1m by the time of the hearing before the Judge. The Judge held that the date of commencement of the divorce proceedings should be used as the operative date for determining the NAV of the Relevant Properties. He found that there was "no claim or evidence" (see the Judgment at [36]) that the increases in the encumbrances on the Matrimonial Home after that date were taken for the benefit of both spouses, and, thus, those subsequent additional encumbrances could not be taken into account in calculating the NAV of the Relevant Properties. Strictly speaking, the date of commencement of the divorce proceedings was 26 July 2007, but the Judge accepted the Wife's choice of 31 July 2007 as the operative date. Ms Yap stated that the latter date was chosen

for ease of reference and computation in doing the valuations as the relevant bank statements were dated at the end of the month. The Judge thus held (see the Judgment at [36]) that the operative date for determining the NAV of the Relevant Properties could be rounded off to 31 July 2007 "if it [did] not prejudice the [Husband]".

The Husband's case

65 Mr Khoo submits that the effect of the aforesaid ruling by the Judge is that while the valuation of the Relevant Properties is to be done as at 14 January 2011 (the date of the Judgment), the liabilities on those properties are fixed as at 31 July 2007. He argues that there ought, instead, to be an ongoing evaluation of both the market value of and the liabilities on the Relevant Properties. Further or in the alternative, Mr Khoo argues that even if the Judge was correct in fixing the liabilities on the Relevant Properties as at 31 July 2007, the subsequent increases in those liabilities were taken for the benefit of both spouses, and a failure to take them into account in ascertaining the NAV of the Relevant Properties would lead to an unjust division. He avers that the Judge was wrong to find (at [36] of the Judgment) that there was "no claim or evidence" before him that the subsequent increases in liabilities were taken for the benefit of both spouses.

The Wife's case

66 Ms Yap, on the other hand, argues that the subsequent increases in the liabilities on the Relevant Properties after 31 July 2007 were taken for the Husband's personal benefit. She therefore argues that the Judge's determination that those liabilities be fixed as at 31 July 2007 is sound and should be upheld on appeal.

My analysis and decision

67 As a matter of principle, *once divorce proceedings are commenced* and the likelihood of the issue of dividing matrimonial assets arises, neither spouse should be allowed to dispose of or incur liabilities on those assets for his or her *sole benefit* to the detriment of the other spouse. A spouse who does so will be *solely liable* for the liabilities so incurred. For this reason, I affirm the Judge's finding (at [36] of the Judgment) that the starting point for the date for determining the liabilities on the Relevant Properties is the date of commencement of the divorce proceedings.

68 Given that the Judge stated (at [36] of the Judgment) that there was "no claim or evidence" before him that the subsequent increases in the liabilities on the Matrimonial Home after the aforesaid date were taken for the benefit of both spouses, I am entitled to infer that the Judge accepted the Wife's argument that the Husband had enhanced those liabilities for his sole benefit and was not convinced by the Husband's evidence to the contrary.

69 Even so, for the sake of completeness, I now turn to examine the evidence before this court with regard to the overdraft liabilities on the Relevant Properties. Mr Khoo argues that the Husband and the Wife have always lived on overdrafts of considerable magnitude. As evidence thereof, he produced the following table demonstrating the overdraft liabilities on the properties held by Hawick and Kelso as well as on the Matrimonial Home for the years 1995, 2006, 2007 and 2008:

Overdraft liabilities				
Property / Year	Hawick	Kelso	Matrimonial Home	Total
1995	$646,071	$755,998	$854,429	$2,256,498
2006	$660,902	$690,614	$1,464,199	$2,815,715
2007	$733,959	$741,450	$879,870	$2,355,279
2008	$852,369	$901,259	$3,347,749	$5,101,377

70 I note that while the Husband claimed in the court below that there were liabilities attaching to the Costa Rhu property and the Riverwalk property, no evidence was tendered on these alleged liabilities before this court on appeal. On the evidence before this court, I accept Mr Khoo's argument that the Husband and the Wife have all along lived on overdrafts of considerable magnitude – consistently around $2m from 1995 to 2007. *However*, it is clear that there was a *significant* increase in the total overdraft liabilities from 2007 to 2008, which in fact amounted to a *doubling* from approximately $2.36m in 2007 to more than $5m in 2008. While Mr Khoo contends that one of the reasons for this increase in overdraft liabilities was the Husband's investments in China, which were taken for the benefit of the family, the total sum of those investments only amount to around $1m and cannot account for the rest of the increase in overdraft liabilities.

71 I am unconvinced that the aggregate increases in the overdraft liabilities from 2007 to 2008 were incurred for the benefit of the family, and thus see no reason to depart from the starting point (as stated at [67] above) that the date for determining the liabilities on the Relevant Properties is the date of commencement of the divorce proceedings. Since Mr Khoo made no argument that the date of 31 July 2007, as opposed to 26 July 2007, would prejudice the Husband, I uphold the Judge's finding that the liabilities on the Relevant Properties are to be determined as at 31 July 2007. In other words, 31 July 2007 is the operative date for determining the NAV of the Relevant Properties.

72 With this finding in place, I now turn to assess whether the division of matrimonial assets by the Judge was just and equitable, which is Issue 4.

Issue 4

Overview

73 As noted earlier, the Judge divided the matrimonial assets as follows:

(a) the Matrimonial Home was divided in the proportion 35:65 in favour of the Husband; and

(b) the rest of the matrimonial assets – excluding: (i) the Matrimonial Home, (ii) the remainder of the shares in the Three Companies that were not registered in the Wife's name, (iii) the boat "Delightful Dream" and (iv) the Renault car given to Daniel as a wedding present – were divided in the proportion 25:75 in favour of the Husband.

As the parties are not appealing against the Judge's decision on the division of the Matrimonial Home, my references hereafter to "Matrimonial Assets" are to be understood as excluding the Matrimonial Home.

74 I will first state my findings with regard to the composition of the pool of Matrimonial Assets. In

my view, it is necessary to make two important changes to the composition of the pool of Matrimonial Assets. Firstly, as I have decided (see above at [62]) that the inter-spousal gift of the *Skeve* shares (which comprise 10% of the shares in Skeve) is a "pure" inter-spousal gift and is thus not a "gift" for the purposes of the Exclusion Clause, the Skeve shares will now enter the pool of Matrimonial Assets. This differs from the Judge's decision to exclude the Skeve shares from the pool of Matrimonial Assets (flowing from his decision on Issue 1 that all gifts were not matrimonial assets for the purposes of s 112(10)). Secondly, the Husband's 90% shareholding in Skeve will also be *included* in the pool of Matrimonial Assets, as the main asset held by Skeve was acquired during the marriage and thus satisfies s 112(10)(*b*) (see above at [62]). In this regard, I respectfully disagree with the Judge that *all* of the shares in *the Three Companies* that were registered in the Husband's name should be excluded from the pool of Matrimonial Assets. [note: 4] Of the shares in Hawick, Kelso and Skeve that were registered in the Husband's name (*ie*, the shares in the Three Companies which he did *not* give to the Wife), I find that only those shares in Hawick and Kelso that were registered in the Husband's name (which amount to 60% of the shares in each of these companies) should be excluded from the pool of Matrimonial Assets. This is because the main assets held by Hawick and Kelso (*viz*, #02-01 and #03-02, respectively, of Hampton Court) are traceable to the Husband's inheritance (see above at [61]).

75 I should add that while I have come to the same conclusion as the Judge that the Hawick and Kelso shares are *excluded* from the pool of Matrimonial Assets, I have done so for quite different reasons. The Judge was of the view that all gifts were excluded from the definition of "matrimonial asset" pursuant to the Exclusion Clause and that the Husband had not satisfied the "substantial improvement" exception. In contrast, I have found that the Hawick and Kelso shares constitute an inter-spousal "re-gift" of an inheritance and are thus non-matrimonial assets. I have further found that the "substantial improvement" exception is not applicable to the Hawick and Kelso shares.

The Wife's case

76 Ms Yap argues that there are a number of unascertained and unvalued assets. In particular, she submits that the Husband's assets in China would be practically impossible to ascertain as the Wife has neither knowledge of nor access to such assets. Ms Yap further argues that it would be impractical and expensive to value some of the disclosed assets individually, such as the Husband's antique and watch collection. Moreover, these assets are in the sole control of the Husband, and Ms Yap avers that the Wife would have difficulty gaining access to the assets. Ms Yap thus submits that in lieu of the award made by the Judge of 25% of the Matrimonial Assets (as delineated at sub-para (b) of [73] above) for the Wife, an award of 40% of the Costa Rhu property would be just and equitable. In other words, the Wife is willing to forego her claim to all the Matrimonial Assets apart from the Costa Rhu property.

77 In the alternative, Ms Yap argues that there ought to be one more amendment to the pool of Matrimonial Assets. She submits that contrary to the Exclusion Clause (which expressly excludes inherited assets from the definition of "matrimonial asset"), the Judge included the Wife's inherited moneys (amounting to $373,000) in the pool of Matrimonial Assets when this sum should have been excluded. Ms Yap argues that this sum of money was deposited into the Wife's bank accounts, and still remains intact. She thus argues that the said sum should be excluded from the pool of Matrimonial Assets.

The Husband's case

78 In response, Mr Khoo states that the Husband has, in his Affidavit of Assets and Means, provided estimated values for the disclosed assets. While Mr Khoo accepts that the Husband has not

sought valuations for any of the four properties concerned (*viz*, the Riverwalk property, the Costa Rhu property, and #02-01 and #03-02 of Hampton Court), he argues that for the Husband to do so would be to put the cart before the horse, and that the properties should first be divided before they are valued. Mr Khoo also argues that if this court were to find against the Husband on the issue of whether or not the Hawick and Kelso shares are to be included in the pool of Matrimonial Assets (*vis-à-vis* Issue 1 and Issue 2) as well as on the issue of the operative date for determining the liabilities on the Relevant Properties (*vis-à-vis* Issue 3), the award of 25% of the Matrimonial Assets to the Wife would not be just and equitable, and the proportion should be lowered to 20% instead. As I have found against the Husband on these issues, I will address this argument below (at [84]).

79 In response to Ms Yap's alternative argument based on the Wife's inherited moneys (see [77] above), Mr Khoo notes that prior to the present appeals, the Wife did not seek to exempt her inherited moneys from the pool of Matrimonial Assets, and argues that it would be inequitable for her to now backtrack and present an entirely different case on appeal as far as the inherited moneys are concerned. Further or in the alternative, Mr Khoo submits that even if the Wife's inherited moneys are to be excluded from the pool of Matrimonial Assets, the "first in, first out" rule should apply to those moneys and the court should find that the same have already been expended. He thus argues that the sum of $373,000 should not be deducted from the pool of Matrimonial Assets.

My analysis and decision

80 It is well established that in dividing matrimonial assets, the court will take a broad-brush approach. In *Yeo Chong Lin*, this court opined that the division of matrimonial assets is "all about feel and the court's sense of justice" (at [81]). As it involves an exercise of discretion, an appellate court should not be too quick to interfere with the division ordered by a lower court. In order for an appellate court to disturb the division ordered by a lower court, it must be shown that the judge in the lower court "erred in law or … clearly exercised [his or] her discretion wrongly or … [took] into account irrelevant considerations or … failed to take into account relevant considerations" (see *Yeo Chong Lin* at [80]). In the present case, as my findings have altered the composition of the pool of Matrimonial Assets in two respects (as set out above at [74]), the factual matrix before me is now different from that which was before the Judge. I will thus consider the division of Matrimonial Assets afresh.

81 Although it is known what is excluded from the pool of Matrimonial Assets, this court is still faced with an undetermined pool of assets as there are undisclosed assets. As for the disclosed assets, there is deep disagreement between the Husband and the Wife as to the value of many of the assets. This is not an uncommon feature of matrimonial cases, and the law on the division of matrimonial assets exists precisely to deal with situations where the spouses are unable to come to an agreement as to the value of the assets concerned. Notwithstanding such difficulties, the court must endeavour to arrive at a just and equitable division of the assets concerned.

82 The first step in the division of matrimonial assets is to try, as best as possible, to ascertain what the pool of assets consists of, and I will thus first consider Ms Yap's alternative argument based on the Wife's inherited moneys. I agree with Mr Khoo that this is a new point which is sought to be introduced on appeal. Whilst this court has a discretion under O 57 r 9A(4)(*b*) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) to allow a new point to be argued on appeal, I am of the view that this discretion should not be exercised in favour of the Wife. The Wife mentioned the inherited moneys as early as 2008 in her Affidavit of Assets and Means filed on 28 October 2008 (specifically, at para 11.b thereof), [note: 5] but failed to raise the argument that these moneys should be excluded from the pool of Matrimonial Assets until the present appeals. In the light of this, there is no need for me to go on to consider Mr Khoo's argument based on the "first in, first out" rule (see [79] above).

83 I now turn to Ms Yap's main argument that the Wife should be awarded a 40% share of the Costa Rhu property in lieu of the Judge's award of 25% of the Matrimonial Assets (as delineated at sub-para (b) of [73] above). I am unable to accept this argument as it was probably premised on two findings by the Judge which I have departed from. First, in relation to Issue 1, I have departed from the Judge's ruling that: (a) inter-spousal gifts are "gifts" for the purposes of the Exclusion Clause; and (b) the Shares are thus the Wife's assets and not part of the pool of Matrimonial Assets. As I have found that the Skeve shares are part of the pool of Matrimonial Assets, this effectively means that the Wife will no longer have 100% ownership of the Skeve shares. Secondly, and on a related note, I have disagreed with the Judge's delineation of the assets which constitute the Matrimonial Assets. As I have included: (a) the Skeve shares, and (b) the Husband's 90% shareholding in Skeve as part of the Matrimonial Assets, the pool of assets to be divided has increased. On a simple mathematical analysis, as I have enlarged the denominator, it is quite clear that 40% of the Costa Rhu property will translate into a lower percentage of the Matrimonial Assets as delineated by me, compared to the Matrimonial Assets as delineated by the Judge (see sub-para (b) of [73] above). In other words, while 40% of the Costa Rhu property might have been approximately equivalent to or only slightly less than 25% of the Matrimonial Assets as delineated by the Judge, it will be much lower than 25% of the Matrimonial Assets as delineated by me at [74] above. I thus reject the Wife's argument that she should receive 40% of the Costa Rhu property in substitution of her claim over the rest of the Matrimonial Assets.

84 Section 112(2)(*h*) and s 114(1)(*a*) of the current Act, read together, permit the court to have regard to the property of the Wife in determining her share of the Matrimonial Assets. While the Wife is no longer awarded 100% of the Skeve shares, she nonetheless has the Hawick and Kelso shares (which consist of 40% of the shares in Hawick and 40% of the shares in Kelso) as part of her personal property, making her an effective part-owner of the two units of Hampton Court owned by Hawick and Kelso respectively. It also should not be forgotten that while the Wife has had to surrender her 10% shareholding in Skeve to the pool of Matrimonial Assets, the Husband has had to surrender his 90% shareholding in Skeve to that pool. All things considered, I find it just and equitable that the Wife should be awarded 25% of the Matrimonial Assets as delineated by me at [74] above. In the circumstances, I reject Mr Khoo's argument (see [78] above) that the Wife should receive only 20% of the Matrimonial Assets.

Issue 5

Overview

85 I come now to Issue 5, the final issue in the present appeals – *viz*, whether a lump sum maintenance should have been awarded in the court below instead of monthly maintenance, and, if so, what the lump sum should be.

The Wife's case

86 Ms Yap contends that a lump sum maintenance would allow the Husband and the Wife to obtain a clean break from each other. She argues that the Wife should be awarded a minimum sum of $256,128, derived from a multiplicand of $2,668 and a multiplier of eight years. Ms Yap derives the figure of $2,668 from Mr Khoo's submissions before the court below on monthly maintenance, arguing that the multiplicand for the purposes of the present appeals should be no lower than that which the Husband was willing to provide in the court below. As for the multiplier, Ms Yap points out that since the average life expectancy of women in Singapore now stands at 85 years, a multiplier of eight years already represents a discount from 19 years (the Wife is now 66 years old). Ms Yap further argues that there is no question that the Husband is able to pay a lump sum maintenance.

The Husband's case

87 On behalf of the Husband, Mr Khoo resists a lump sum order. He submits that a lump sum award would be too harsh on the Husband, given that the Husband is in debt. Although the Husband is currently still working, Mr Khoo opines that this might be the "home stretch" for the Husband, given that he is (like the Wife) already 66 years old. Mr Khoo submits, in the alternative, that if this court is minded to make a lump sum award, the multiplicand should be no higher than the sum of $2,000 ordered by the Judge as monthly maintenance, and the multiplier should be three years at the most. This works out to a maximum sum of $72,000. Mr Khoo relies on the decision of this court in *Ong Chen Leng v Tan Sau Poo* [1993] 2 SLR(R) 545 ("*Ong Chen Leng*") as a precedent for his method of calculating the multiplier. He also disputes Ms Yap's submission that the current average life expectancy of women in Singapore is 85 years.

My analysis and decision

88 I find that a lump sum order is appropriate for the following reasons. Pursuant to s 115(1) of the current Act, a maintenance order "may provide for the payment of a lump sum or such periodical payment as the court may determine". In *Lee Puey Hwa v Tay Cheow Seng* [1991] 2 SLR(R) 196 ("*Lee Puey Hwa*"), this court noted that compared to periodical payments, a lump sum order had the advantage of allowing for a clean break between the parties, and opined that a lump sum should thus be ordered where possible. I note the desirability of avoiding further litigation and acrimony between the parties, and will therefore exercise the court's power under s 115(1) to order a lump sum payment. In arriving at my decision, I have been guided by the following principles laid down in *Lee Puey Hwa* (at [9]):

> In deciding whether to order a lump sum payment, the court should consider the individual circumstances of the parties, particularly the needs of the wife and the obligations and responsibilities of the husband, in addition to his assets, his earning capacity and other available resources. In any case, an order for a lump sum should not be made if the husband does not have adequate cash or other capital assets which can be readily disposed of, or if the lump sum payment or the disposal of assets will effectively cripple his earning power.

It can be seen from the above extract that despite the advantages offered by a lump sum payment, the court will not make such an order if the husband is unable to make the payment, or if doing so would effectively cripple his earning power. While the facts in the present appeals disclose that the Husband has fairly substantial outstanding debts, it is submitted by Ms Yap that the Husband should not have difficulty making a lump sum payment of a reasonable figure. This begs the question of what a reasonable lump sum is.

89 In *Ong Chen Leng*, this court accepted (at [35]) that the method of quantifying an appropriate multiplier for a lump sum maintenance award should be:

> … a period of 17 years as a compromise between the average life expectancy of a woman (70 years) and the usual retirement age (65) of a Singapore male worker less the wife's present age which was 50.

Applying this method to the present set of facts, if it is accepted that the average life expectancy of women in Singapore is 85 years (which I accept), [note: 6] the appropriate multiplier would be nine years (calculated by the formula [(85 + 65) ÷ 2] − 66). Therefore, even using the method proposed by Mr Khoo, it appears that Ms Yap has discounted the Wife's claim by seeking a multiplier of only eight years. I will therefore use eight years as the multiplier.

90 As for the multiplicand, I find that the Judge took into account all the relevant considerations in coming to an award of $2,000 as the monthly maintenance, and will thus use $2,000 as the multiplicand.

91 I would thus order a lump sum maintenance of $192,000 to be paid by the Husband to the Wife. As the Wife has been in receipt of monthly maintenance payments since the Judgment, I order that these sums be deducted from my lump sum maintenance award of $192,000. The remainder of the Wife's entitlement shall be paid by the Husband to her within three months from the date of this judgment.

Conclusion

92 For the above reasons, I would allow CA 17/2011 to the extent that the Wife will receive a lump sum maintenance, albeit of a lower sum than what she asked for. As for CA 21/2011, I would allow it to the extent that the Skeve shares are included in the pool of Matrimonial Assets.

93 I would order that the following properties – *viz*, (a) the Matrimonial Home, (b) #02-01 and #03-02 of Hampton Court (held by Hawick and Kelso respectively), (c) the Costa Rhu property and (d) the Riverwalk property – be valued (with 31 July 2007 as the operative date for determining the NAV of each property) and either sold to a third party or, alternatively, transferred by sale to the sole name of either the Husband or the Wife (and be divided in accordance with the proportions set out above (at [73], [74] and [84])). The valuation of these properties shall be completed within three months from the date of this judgment by an open market valuation carried out by a valuer jointly appointed by the parties or, if the parties cannot agree on such a joint appointment, by a valuer appointed by the court, for which purpose the parties shall have liberty to apply. The sale of the properties, whether to one of the parties or to a third party, is to take place within six months from the date of valuation.

94 Each party is to bear his or her own costs both here and below. There will be no order as to costs with respect to SUM 2864/2011. The usual consequential orders will apply.

Chan Sek Keong CJ:

95 I agree with the disposition of the present appeals as set out at [84] and [91]–[94] of the judgment of Justice Andrew Phang Boon Leong. In my judgment, I shall only address the issue of when inter-spousal gifts will become matrimonial assets as defined in s 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the current Act"). For ease of reference, I shall adopt the same abbreviations as those used by Phang JA.

96 Inter-spousal gifts are gifts given by one spouse to the other spouse during a marriage. An inter-spousal gift involves a giving by one spouse (the donor spouse) and an acquisition by the other spouse (the donee spouse). Such gifts, which are not uncommon in marriages, may be conveniently divided into two classes, namely – gifts of property acquired by the donor spouse: (a) before the marriage; and (b) during the marriage.

97 The relevant provisions of the former s 106 provided for certain assets to be divisible as matrimonial assets as follows (also reproduced at [20] above):

> **106.**—(1) The court shall have power, when granting a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any assets acquired by them

during the marriage by their joint efforts …

…

(3) The court shall have power, when granting a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any assets acquired *during the marriage* by the sole effort of one party to the marriage …

…

(5) For the purposes of this section, any references to assets acquired *during a marriage* include assets owned *before the marriage* by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

[emphasis added]

98 The former ss 106(1) and 106(3) applied only to assets acquired *during* the marriage by the joint efforts of both spouses (in the case of the former s 106(1)) or the sole effort of one spouse (in the case of the former s 106(3)). However, the former s 106(5) did away with the requirement of "effort" in asset *acquisition* in relation to assets owned by one party before the marriage ("pre-marriage assets"). The former s 106(5) deemed such assets to nonetheless have been acquired during the marriage, and thus form part of the pool of matrimonial assets, if they were substantially improved during the marriage by the other party or by both parties. In effect, the former s 106(5) replaced, in relation to pre-marriage assets, the requirement of "effort" in asset acquisition with the requirement of "effort" in the improvement of such assets during the marriage.

99 Thus, read together, the former ss 106(1), 106(3) and 106(5) meant that a pre-marriage asset given as a gift by one spouse ("H") to the other spouse ("W") during the marriage, although acquired by W during the marriage without any effort on her part, would nevertheless fall into the pool of matrimonial assets if it had been substantially improved during the marriage by H or by H and W's joint efforts. The condition or requirement that the asset be acquired by the sole effort of W or by the joint efforts of H and W (see the former s 106(3) and the former s 106(1) respectively) would not be applicable. Instead, the crucial requirement for the purposes of bringing the pre-marriage asset into the matrimonial pool was that after it was given by H to W as a gift, it was substantially improved during the marriage by H or by H and W's joint efforts. If this requirement were not satisfied, the pre-marriage asset concerned would belong to W absolutely. Accordingly, on this interpretation, pre-marriage assets given by the donor spouse to the donee spouse as an inter-spousal gift during the marriage would constitute matrimonial assets only if they satisfied the terms of the former s 106(5).

100 The issue of inter-spousal gifts of pre-marriage assets was not addressed in *Yeo Gim Tong Michael* as that case was concerned only with inter-spousal gifts where the subject matter of the gift was property acquired by the donor spouse during the marriage. However, nothing in that decision would preclude the conclusion set out at [99] above. The court said as follows:

12 … In considering the issue of a gift in the division of matrimonial assets under s 106 [ie, the former s 106], *the starting point is whether the subject matter of the gift is property originally acquired during the marriage through the sole effort of the donor or the joint efforts of the donor and his or her spouse, the recipient*. If the property was so acquired during the marriage, it falls within sub-s (1) or (3) (as the case may be) of s 106, and depending on the circumstances would be taken into account in the division of matrimonial assets, *notwithstanding that it was a gift from one spouse to the other*. The spouse who made the gift would have no

doubt expended moneys in acquiring it. The fact that the gift was contemporaneously or immediately thereafter or later transferred to the other spouse does not affect the original acquisition of that gift. Such a gift was nonetheless acquired by the donor and not the recipient, and if it was acquired during the marriage it would fall within the class of assets covered by s 106. *However, where the subject matter of the gift is itself a gift from a third party, for instance from a parent of the donor, then the gift is not property acquired by the donor by any effort on his part and it follows that that property would not fall within s 106*. Gifts emanating from third parties to a spouse during his marriage have been held not to be assets acquired by him within the meaning of s 106: *Cheng Kwee Eng v Hoong Khai Soon* (D 1911/89) (unreported). [emphasis added]

101 The former s 106(3) was ambiguous in that it could apply to either: (a) pre-marriage assets of H gifted by H to W during the marriage, with W being the party who acquired the assets during the marriage ("situation (a)"); or (b) post-marriage assets acquired by H during the marriage ("situation (b)"). In the above passage from *Yeo Gim Tong Michael*, the court was only concerned with situation (b) as, pursuant to the former s 106(5), the requirement of "effort" in asset *acquisition* had no application in situation (a). It would make no sense to impose such a requirement in situation (a) as it would not matter how H acquired the pre-marriage assets before the marriage. Instead, in situation (a), what mattered for the purposes of bringing the pre-marriage assets in question into the matrimonial pool was that after W acquired those assets from H as a gift during the marriage, the assets were substantially improved either by H or by H and W jointly. In situation (b), the requirement of "effort" in asset acquisition mattered only because the former s 106(3) expressly prescribed it as a condition that had to be satisfied before the assets in question could be brought into the matrimonial pool. Thus, pursuant to the former s 106, assets given as inter-spousal gifts were part of the matrimonial pool if either: (a) the assets in question were acquired during the marriage by the sole effort of the donor spouse or by the joint efforts of both spouses (see *Yeo Gim Tong Michael* at [12]); or (b) the assets in question were acquired by H before the marriage, but were subsequently given by H to W as an inter-spousal gift (*ie*, the assets were acquired by W during the marriage) and were then substantially improved during the marriage by H alone or by H and W jointly (see the former s 106(5)).

102 The next issue is whether the new s 106 or the current s 112 (*ie*, the re-enacted version of the new s 106) has changed the scope of the former s 106 in relation to inter-spousal gifts. The current s 112(10) provides 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.

What the current s 112 expressly does, which the former s 106 did not do, is to provide a definition of "matrimonial asset", *ie*, an asset divisible between the parties upon divorce, separation or nullification of the marriage. The definition also does away with the requirement of "effort" by either or both of the spouses in acquiring any asset during the marriage, and divides assets which may potentially be matrimonial assets into two groups:

(a) assets acquired before the marriage, *ie*, pre-marriage assets ("Class A assets"); and

(b) assets of any nature acquired during the marriage ("Class B assets").

103 Class A assets were pre-marriage assets under the former s 106(5). They would include any assets acquired by one party before the marriage either by his or her own effort, or by way of a gift or inheritance. Such assets become matrimonial assets if: (a) they are substantially improved during the marriage by the other party or by both parties to the marriage (see the current s 112(10)(*a*)(ii)); or (b) they have been used by the parties or by one or more of their children for the purposes set out in the current s 112(10)(*a*)(i).

104 Class B assets include any assets "*of any nature*" [emphasis added] (see the current s 112(10)(*b*)) acquired during the marriage by either or both of the spouses. Therefore, Class B assets would include Class A assets which are given as an inter-spousal gift during the marriage as the assets in question would have been acquired by the donee spouse during the marriage. But, by reason of the Exclusion Clause, Class B assets which are acquired as an inter-spousal gift by the donee spouse would become matrimonial assets only if they are substantially improved during the marriage by the donor spouse or by both spouses, but not otherwise.

105 The phrase "any other asset of any nature" in the current s 112(10)(*b*) is not defined. However, since statutory words are intended to have meaning, this phrase is, in my view, intended to apply to any asset acquired by one spouse during the marriage, including any asset acquired by way of a gift (from a third party) or by way of inheritance. Such assets will form part of the matrimonial assets only if they are substantially improved during the marriage by the other spouse or by both spouses. In this respect, s 112(10) has expanded the scope of the former s 106, which had no application to assets acquired by way of a gift or inheritance during the marriage (see the passage from *Yeo Gim Tong Michael* quoted at [100] above).

106 My analysis above shows that as far as inter-spousal gifts are concerned, the scope of the current s 112 is broader than that of the former s 106 in several respects. Most notably (for present purposes), the current s 112 applies to all inter-spousal gifts of pre-marriage assets and post-marriage assets (including assets acquired by way of a third-party gift or inheritance). Such gifts will become matrimonial assets if they are substantially improved during the marriage by the other party or by both parties, but not otherwise.

V K Rajah JA:

107 I have read in draft the judgments of Andrew Phang Boon Leong JA and Chan Sek Keong CJ. In this judgment, I shall use the same abbreviations as those adopted by Phang JA. The crucial question in the present appeals is: does the word "gift" apply to transfers of assets from one spouse to another during the marriage? In addition, there is also the subsidiary question of whether the word "gift" extends to a "re-gift" during the marriage of a gift or inheritance (whether acquired before or during the marriage).

108 I pause here to make some prefatory remarks. Plainly, the word "gift" has often been employed inattentively in case law pertaining to the division of matrimonial assets. After all, not all inter-spousal acquisitions or transfers of assets are true gifts in the legal sense. Undoubtedly, there are many couples who hold all or most of the assets which they acquire during the marriage in just one name, without having had any serious prior discussion or agreement as to how those assets ought to be divided in the event that the marriage fails. Transfers can also take place for any number of legitimate reasons, sometimes purely for convenience, and either with or without any intention by the donor spouse to permanently renounce his or her entire beneficial interest in the asset concerned (see [115] below). The circulation of assets and/or changes in asset holding during a marriage ought not to remove assets from the matrimonial pool as the assets remain within the same "community". In my view, to exclude from the pool of matrimonial assets inter-spousal transfers of assets that were originally acquired during the marriage solely by the efforts of the donor spouse (or even by the joint efforts of both spouses) would be intuitively unreasonable. After all, such assets (or the resources employed to acquire them) are, by virtue of their acquisition during the marriage, already statutorily matrimonial assets without the need to satisfy any further conditions (see s 112(10)(*b*) of the current Act).

109 For ease of reference, I set out s 112(10) of the current Act below:

> (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]

110 In construing the true purport of a statutory provision, the court is directed by s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) ("the Interpretation Act") to prefer an interpretation that would promote the purpose or object underlying the written law over an interpretation that would not promote that purpose or object. In so doing, the court may have regard to, *inter alia*, parliamentary materials such as the relevant Select Committee report. This is especially necessary where the wording in a statutory provision is ambiguous or obscure (see s 9A(2)(*b*)(i) of the Interpretation Act); or where the ordinary meaning conveyed by the text of the provision, taking into account its context in the written law and the purpose or object underlying the written law, leads to a result that is manifestly absurd or unreasonable (see s 9A(2)(*b*)(ii) of the Interpretation Act).

111 The question before this court in the present appeals is: was it Parliament's intention, when

enacting s 112(10) of the current Act, that assets which are acquired during a marriage (and which are therefore statutorily matrimonial assets under s 112(10)(*b*)), as distinct from assets which are *prima facie* not matrimonial assets (such as assets acquired before a marriage, gifts and inheritances), should lose their "matrimonial" nature if they are transferred by the donor spouse to the donee spouse during the marriage? In resolving this conundrum, I have found the Select Committee Report on Bill 5/96 particularly instructive. The relevant extract of that report, which heralded the introduction of the new s 106(10) (now s 112(10) of the current Act), states as follows:

> 5.5 Division of matrimonial assets
>
> 5.5.1 Two issues on matrimonial assets were raised by a number of representors. One was on the principles for the division of matrimonial assets and the other was on the definition of "matrimonial assets".
>
> (a) Principles for the division of matrimonial assets
>
> 5.5.2 The Committee [*ie*, the Select Committee as defined at [24] above] notes that representors generally supported the provision in the Bill [*ie*, Bill 5/96] which allows the courts to divide matrimonial assets in a just and equitable way after taking into consideration all the circumstances of a case. This removes the dichotomy between assets acquired by sole effort and assets acquired by joint effort. A few representors had also suggested that the principle of "inclination towards equality" should be restored in the provisions. It was felt that the restoration of the principle of equality would send a powerful message that marriage is a partnership of efforts. Matrimonial property, being part of the "gains" or resources pooled together in the partnership, should therefore be shared equally. They were concerned that spouses who did not contribute financially to the assets would be placed at a disadvantage with the removal of the principle. It was also feared that the body of case law built upon the application of the current provisions would no longer be referred to by the courts, as it would signal to the courts that the courts need not incline towards equality when deciding on the division of assets.
>
> 5.5.3 Those who did not see the need to restore the principle of equality argued that the provisions of the Bill are far superior. The provisions allow the courts to divide the matrimonial assets in a just and equitable manner after taking into consideration all circumstances of the case, including a homemaker's contributions. The Bill has also enlarged and clarified these circumstances. As such it would seem inappropriate that the court would still be required to incline towards equality. It was also felt that any presumption towards equality would be less effective and could become a limiting factor to what might be just and equitable and work against the non-contributing spouse.
>
> 5.5.4 *The Committee, having considered the arguments, disagrees with the proposal to restore the principle of equality.* ***The Committee is of the view that any law that has to be enforced effectively must be devoid of inherent inconsistency.*** *The law must also provide for all cases, ie marriages of long as well as of short duration with their own set of circumstances. Where a marriage is of short duration with no children, the law must not put judges under constraint to incline towards equality when what is equal may not be just.* ***Since the provisions call for judges to take into account all circumstances and to order the division according to what is just and equitable and [since] the circumstances for consideration have also been enlarged and clarified, the provisions in the Bill are fair.*** The Bill also makes explicit the recognition of the home-making efforts of a spouse regardless of whether the spouse is working or

not.

5.5.5 ***On the concern that existing case law would be disregarded with the new provisions, the Committee is of the view that the body of case law built up over the years would not be disregarded by judges, but would be used to guide the judges in their judgement.***

(b) Definition of "matrimonial assets"

5.5.6 Several representors suggested amending the definition of "matrimonial assets" to make it explicit that matrimonial assets include monies from the Central Provident Fund (CPF) accounts of parties to the marriage. A suggestion was also made for the inclusion of any gift or inheritance received that have been ordinarily used or enjoyed by the family regardless of whether these have been improved upon by the other party as part of the definition while another suggestion was for any gift given by one party to the other to be included.

5.5.7 The Committee has considered the various suggestions made and decides that there is no need to amend the definition in the Bill as it stands. The Committee is of the view that the definition in the Bill is sufficiently wide to allow the court to include parties' CPF as part of the matrimonial assets. *The Bill's provisions are fair and protect the interest of the non-contributing party and children where the marriage has been of a long duration while at the same time it safeguards the interest of the other party.* ***The provisions also exclude gifts and inheritance not improved by the other party and therefore safeguards the interests of the party who acquired the assets especially in marriages of short duration.***

[emphasis added in italics and bold italics]

112 It is clear from the above extract that the Select Committee was of the view that:

(a) The new s 106 (the then equivalent of s 112(10) of the current Act) was intended to remove the then existing dichotomy between assets acquired by the sole effort of one spouse and assets acquired by the joint efforts of both spouses. The new touchstone as to whether assets acquired before a marriage, gifts and inheritances (not being the matrimonial home) would become matrimonial assets was *substantial improvement* of those assets, gifts and inheritances by the other spouse, *ie*, the spouse who did not acquire the assets before the marriage or who was not the recipient of the gifts and inheritances. The new s 106(10)(*a*)(i) (now s 112(10)(*a*)(i) of the current Act), however, formed an exception to the need to show substantial improvement where assets acquired before a marriage (*other than* by way of a third-party gift or inheritance) were concerned.

(b) The same principles would be applicable to the division of matrimonial assets in relation to both short and long marriages.

(c) The body of case law built up over the years in relation to the division of matrimonial assets ought to be used to guide the courts in this area of the law.

(d) There was no need to amend the definition of "matrimonial assets" in Bill 5/96 so as to extend the concept of matrimonial assets to "any gift given by one party to another" (see para 5.5.6 of the Select Committee Report on Bill 5/96), or to "any gift or inheritance received

that ha[d] been ordinarily used or enjoyed by the family regardless of whether these ha[d] been improved upon by the other party" (see likewise para 5.5.6 of the Select Committee Report on Bill 5/96).

(e) The 1997 Amendments specifically excluded from the definition of "matrimonial asset" gifts and inheritances (not being the matrimonial home) that had not been substantially improved by the non-recipient spouse or by both spouses during the marriage. This would safeguard the interests of the recipient spouse, particularly in marriages of short duration.

113 In view of the Select Committee's pointed reference to the continuing applicability of the then prevailing case law, a court today should be slow to entirely disregard that case law unless it plainly conflicts with the letter and spirit of s 112(10) of the current Act. The then prevailing authority on the issue of whether "gifts" within a marriage were matrimonial assets was this court's decision in *Yeo Gim Tong Michael*, which held that *inter-spousal "gifts" of assets acquired during the marriage by either the sole effort of the donor spouse or the joint efforts of both spouses remained within the matrimonial pool*. Crucially, my perusal of the various detailed representations to, deliberations of and recommendations by the Select Committee reveals absolutely no dissent from the approach adopted by this court in *Yeo Gim Tong Michael*. This fact must be given considerable significance in construing s 112(10) of the current Act.

114 For my part, while I agree with that approach as well, I find the use of the term "inter-spousal *gifts*" [emphasis added] in this context unhelpful. Let me elaborate. As I alluded to at [108] above, while most transfers of assets from one spouse to the other may appear to take the *form of gifts*, they may not *in substance* be so. Transfers of assets between spouses during a marriage may take place for an infinite variety of reasons, most of which are usually undocumented. Some transfers may take place purely for convenience, as when a spouse who is exposed to the vagaries of the business world places all the family assets in the name of the other spouse. At other times, transfers could be for the purposes of financial planning, or simply because of illness, old age or some other vicissitudes of life. Should all such transfers be characterised as "gifts" falling within the Exclusion Clause in s 112(10) of the current Act so as to take the assets transferred (not being the matrimonial home) outside the matrimonial pool unless the "substantial improvement" exception is satisfied, especially when there is no evidence that the spouses have addressed their minds to the division of the assets concerned upon the failure of the marriage? The Judge seemed to think so (see the Judgment at [18], where he held that the transfer of the Shares to the Wife as part of the Husband's financial and estate duty planning exercise was a gift).

115 In my view, it would be inequitable to *entirely* preclude the donor spouse in such instances from claiming an interest in the transferred asset should the marriage subsequently fail. The reality is that most transfers of assets between spouses are not intended to be permanent renunciations by the donor spouse of his or her beneficial interest in those assets. Inter-spousal transfers of assets acquired before or during a marriage by means *other than* through a third-party gift or inheritance should thus *not* come under the term "gift" in the Exclusion Clause in s 112(10) of the current Act; instead, the assets which are the subject matter of such transfers remain within the pool of matrimonial assets. In this regard, I agree with Phang JA that the word "gift" in the Exclusion Clause refers to a gift from a third party, and not a "pure" inter-spousal gift (as defined by Phang JA at [41] above). Indeed, as I noted at [112(d)] above, the Select Committee rejected a representation which proposed that the term "matrimonial assets" be extended to cover, *inter alia*, "any gift given by one party to the other" (see para 5.5.6 of the Select Committee Report on Bill 5/96). I would add that although a "pure" inter-spousal gift is not a "gift" for the purposes of the Exclusion Clause and thus remains a matrimonial asset, where the donor spouse clearly intends to permanently renounce his or her beneficial interest in the asset transferred (that is to say, when a "pure" inter-spousal gift is

intended to be a true gift), the donor spouse may be estopped from claiming any share in that asset when the court exercises its discretion in equitably distributing the pool of matrimonial assets.

116 In my view, Parliament intended to adopt a coherent approach in resolving the division of matrimonial assets, and the exceptional case should not be used to govern the application of this statutory provision in preference to the general. Besides, it seems to me eminently fair and reasonable that the overriding principle ought to be that an asset, once within the matrimonial pool, should always remain so unless it is given to a third party. While ownership of a matrimonial asset may change hands from one spouse to the other during a marriage, both spouses jointly remain co-owners of the entire pool of matrimonial assets, whether those assets are legally held jointly or severally. Why should the *mere circulation of an asset within and from the same pool* be, *without more*, considered as an act manifesting an intent to remove that asset permanently from that pool? The settled position of the courts prior to the introduction of s 112(10) of the current Act was that such circulation of matrimonial assets did not remove the assets concerned from the matrimonial pool, and I see no reason as a matter of both logic and fairness why this should not continue to be the case. Indeed, as I pointed out earlier, the Select Committee contemplated that this ought to be the position. Section 112(10) of the current Act is intended to define what assets are matrimonial assets from the outset, as well as when assets which are *prima facie* non-matrimonial assets can be brought into the pool of matrimonial assets, *ie*, through substantial improvement of the assets by the non-recipient spouse or by both spouses during the marriage, or (*vis-à-vis* assets acquired before a marriage other than by way of a third-party gift or inheritance) through family use or enjoyment of the assets while the parties are residing together. Section 112(10) of the current Act was not introduced to facilitate the change of what would, based on the status quo, be from the outset a matrimonial asset into a non-matrimonial asset. I should add that this pragmatic approach in construing s 112(10) also dispenses with the need for the court to laboriously inquire into the reason(s) as to why each asset is held in a particular spouse's name. Such an exercise will often prove both time-consuming and futile as most transactions involving such assets will not adequately reflect the spouses' intentions.

117 With regard to gifts from third parties and inheritances (not being the matrimonial home) acquired before and during a marriage, it is plain from the Exclusion Clause in s 112(10) of the current Act that such gifts and inheritances do not become part of the matrimonial pool unless they have been substantially improved by the non-recipient spouse or by both spouses during the marriage. As for subsequent transfers of such gifts and inheritances during the marriage to the non-recipient spouse (which Phang JA has referred to as inter-spousal "re-gifts"), I agree with Phang JA that such "re-gifts" are not matrimonial assets and the "substantial improvement" exception does not apply to them for the reasons set out in Phang JA's judgment at [56].

118 For the avoidance of doubt, I summarise my views. I agree with both Phang JA and Chan CJ that all inter-spousal transfers of assets of any nature acquired before and during a marriage by the donor spouse other than by way of a third-party gift or inheritance do not alter the original status of those assets as matrimonial assets (see [115] above). All gifts and inheritances received from third parties before and during a marriage (not being the matrimonial home) are not part of the matrimonial assets, regardless of whether or not they are subsequently transferred to the non-recipient spouse, unless the "substantial improvement" exception in s 112(10) of the current Act is satisfied.

119 I also agree with Phang JA's views and reasoning on the other issues raised in the present appeals. In the circumstances, I agree with the disposal of these appeals as set out at [84] and [91]–[94] above.

[note: 1] See Record of Appeal ("ROA") vol IIIB, p 1339.

[note: 2] See ROA vol IIIB, p 742.

[note: 3] See para 21 of the Appellant's Case (dated 18 April 2011) filed by the Husband for CA 21/2011.

[note: 4] See ROA vol I, p 26 at para e.

[note: 5] See vol 2, p 64 of the Core Bundle filed by the Wife on 18 April 2011 for CA 17/2011.

[note: 6] As at 2011, the Department of Statistics Singapore states that the life expectancy of females in Singapore is 84.3 years (see <http://www.singstat.gov.sg/stats/keyind.html> (accessed 30 July 2012)).

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