IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 08

Civil Appeal No 228 of 2018 (Summons Nos 67 and 78 of 2019)

Between

TQU

… *Appellant*

And

TQT

… *Respondent*

In the matter of Divorce (Transferred) No 793 of 2015

Between

TQT

… *Plaintiff*

And

TQU

… *Defendant*

JUDGMENT

[Family Law] — [Matrimonial assets] — [Division]

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TQU
v
TQT

[2020] SGCA 08

Court of Appeal — Civil Appeal No 228 of 2018 (Summons Nos 67 and 78 of 2019)
Judith Prakash JA, Belinda Ang Saw Ean J and Woo Bih Li J
25 September 2019; 3 January 2020

25 February 2020 Judgment reserved.

Woo Bih Li J (delivering the judgment of the court):

Introduction

1 The sole issue on appeal appears straightforward: how should the court achieve a just and equitable division of matrimonial assets? Courts have long strived to reach a fair outcome on the facts of each case, and the factual matrix of the marriage before us has complicated the matter and made our task more challenging.

2 This is the appeal of the appellant husband ("the Husband") against the decision of the High Court judge ("the Judge") to award 75% of the matrimonial assets to the respondent wife ("the Wife"). Having heard the submissions of the parties, we reserved judgment. We now furnish our decision and the accompanying reasons.

Background

3 The Husband and the Wife were married on 6 March 1990.[1] Interim judgment of divorce ("IJ") was granted on 24 March 2016.[2] They have three children, a daughter and two sons, who were born in 1993, 1996 and 1998 respectively.[3]

4 Legally speaking, this was a marriage of 26 years. In reality, it is not disputed that the marriage broke down sometime in 2001, 11 years after the parties were married. In fact, the grant of IJ in 2016 was pursuant to the Wife's third application for divorce; her first application in December 2001 and second application in December 2010 had both been dismissed. That the marriage broke down sometime in 2001 is also evident from the numerous legal proceedings the parties have been embroiled in, including a criminal trial.

5 We raise this to highlight that although this was a long marriage, the facts relating to the breakdown of the marriage were highly unusual. First, as mentioned, the marriage broke down in 2001 even though IJ was granted only in 2016. Second, there was a negative value in the Wife's indirect contributions (see [130] to [132]). Third, the Wife herself acknowledged the absence of indirect contribution from her to the family from March 2010. We discuss the implications of the Wife's conduct below (at [128] to [134]).

6 The Husband is a medical doctor. He began his career with the Ministry

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1 Record of Proceedings ("ROP") Vol 2 p 9.

2 ROP Vol 2 pp 28–29.

3 ROP Vol 2 p 10.

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of Health in 1989, until he paid off his bond and set up a clinic as a sole proprietorship ("the Clinic") in April 1991, where he worked as the resident doctor until it closed down in 2003. The Wife, who was then working as an accountant, quit her job to work in the Clinic from the time it was set up until 2001. In 2001, the parties also set up a bubble tea shop within the same premises as the Clinic to generate income on the side, although this closed down within a year.

7 In 1989, prior to the marriage, the Husband's father passed away. It is not disputed that he was generous with the Husband and gave assets to the Husband during his lifetime and by his will. These included 500,000 shares and 35,000 shares in two family companies, "TQA" and "TQB", respectively. In 1993, during the marriage, the Husband incorporated a company named "TQCDE" and transferred 499,909 of his 500,000 TQA shares and all 35,000 of his TQB shares to TQCDE.[4] The Husband held approximately 90% of the 100,000 shares in TQCDE, while the Wife held approximately 10%. The Husband's mother held one of the 100,000 shares. The Husband's mother passed away in 2000 and, according to the Husband, he inherited even more assets upon her death. TQCDE was eventually liquidated in 2014. By then, the Husband's two sisters had become shareholders of TQCDE. When TQCDE was liquidated, its shares in TQA and TQB were distributed to its shareholders according to their shareholding at that time. Both the Husband and the Wife thereafter held shares in TQA and TQB directly.

8 The Wife left the matrimonial home on 1 September 2001. She filed her

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4 ROP Vol 3D pp 1137–1139.

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first divorce action on 14 December 2001 and, two weeks later, took the two sons to live with her. The first divorce application was dismissed in 2005, whereupon the Wife moved back into the family home with the two sons. Less than a year later, she moved out again and never moved back to live with the family. The two sons were shuttled between the two homes until March 2010, when they moved back in with the Husband, and there they have stayed. The Wife's second divorce action was filed on 27 December 2010 and dismissed in February 2015. The third divorce action, filed less than two weeks later, led to the grant of IJ and the ancillary matters proceeding below.

The parties' submissions and the decision below

9 During the marriage, the parties acquired properties in Singapore, China and Malaysia. The source of funds for these acquisitions is heavily disputed. According to the Husband, the properties were acquired with money given to him by, or inherited from, his parents.[5] The properties could not have been acquired with income from the Clinic as the Clinic was barely profitable while it was in operation.[6] Most of the properties therefore do not qualify as matrimonial assets and should be excluded from division. The Husband submitted that the Wife should only be awarded 3% of the properties he alleged were matrimonial assets.[7]

10 On the other hand, the Wife alleged that the properties were acquired

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5 ROP Vol 3G p 2059, para 81.

6 ROP Vol 3G pp 2096–2098, para 171.

7 ROP Vol 3H p 2118, para 224.

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with income earned from the Clinic.[8] As this was a long marriage of 26 years, she submitted that the starting point should be equal division of the matrimonial assets.[9] She submitted that an adverse inference should be drawn against the Husband for his conduct and failure to disclose assets, and she should be awarded 67% of the matrimonial assets.[10]

11 The parties appeared before the Judge on 24 September 2018. In his decision in *TQT v TQU* [2018] SGHCF 17 ("GD") on 15 November 2018, the Judge concluded that all the assets currently owned by the parties came from the Clinic, which was a "joint matrimonial venture": GD at [11]. He therefore concluded that each party should be entitled to 50% of the matrimonial assets: GD at [11]. The Judge also drew an adverse inference against the Husband for failing to shed light on the identity and value of the assets and gave effect to that adverse inference by adjusting the ratio of division by 25% in favour of the Wife, to reach a final ratio of 75:25 in favour of the Wife: GD at [11]. As the Judge could not identify the total value of the matrimonial assets, he ordered all ascertainable assets to be sold and divided in the ratio of 75% to the Wife and 25% to the Husband: GD at [11].

12 The parties returned before the Judge on 21 January 2019 because they could not agree on a draft order. On 28 January 2019, the parties signed a draft order ("the Draft Order") listing the assets to be sold,[11] which were identified as:

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8 ROP Vol 3G pp 1985–1989, paras 22–34.

9 ROP Vol 3G p 2015, para 79.

10 ROP Vol 3G pp 2015–2017, paras 84–85.

11 ROP Vol 4 pp 3–5.

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(a) Bukit Batok Housing Development Board ("HDB") shophouse;

(b) Eng Kong Place property;

(c) Lorong Pisang Raja property;

(d) Petir Road HDB flat;

(e) Liang Feng Mansion, Shanghai;

(f) Bukit OUG, Kuala Lumpur;

(g) Sun Island Club units, Shanghai;

(h) Wadihana, Johor Bahru;

(i) The Regalia, Shanghai;

(j) Hai Hong Plaza, Shanghai;

(k) the Wife's car;

(l) the Wife's Great Eastern Life policies;

(m) the Wife's shares in various listed companies;

(n) the Wife's shares in TQA and TQB;

(o) the Wife's three DBS accounts;

(p) the Wife's Central Provident Fund ("CPF") account;

(q) the Husband's NTUC Income policy;

(r) the Husband's shares in various listed companies;

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(s) the Husband's DBS account; and

(t) the Husband's CPF account.

13 These were the assets the Judge found to make up the matrimonial assets. This list did not include a property that the Husband used to own at Pender Court ("the Pender Court property") even though the Judge found that it was a matrimonial asset, as it had been sold in a collective sale in November 2010: GD at [9].

The parties' cases on appeal

14 The Husband raises several issues in this appeal:

(a) The Judge failed to determine the operative dates for determining and valuing the matrimonial assets. The operative date for determination should be 28 June 2010, the date from which both parties agreed the marriage had broken down, while the operative date for valuation should be March 2006, December 2001 or December 2010.[12]

(b) The Judge erred by including properties that were gifts from his parents or were no longer in existence as matrimonial assets. The Pender Court property in Singapore and the Liang Feng Mansion and the Regalia properties, both in Shanghai, China, were gifts from the Husband's mother, while the Hai Hong Plaza and Sun Island

12 Husband's case at paras 14–24.

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International Club properties were no longer in existence as of the operative date of determination of the matrimonial assets.[13]

(c) The Judge erred in his finding on the parties' direct contributions. The main source of the funds used to acquire the properties was the Husband's gifts or inheritance from his parents, which are solely attributable to the Husband, and not the income from the Clinic. Even if the funds had been from the Clinic, the Husband was the sole owner and resident doctor, and the income should be attributed solely to him.[14]

(d) The Judge erred in his finding on the parties' indirect contributions. The Wife was largely absent from the family after 2001, and prior to that she had the assistance of helpers and the Husband's mother. The Husband was largely responsible for care of the children, and the ratio of indirect contributions should be 90:10 in his favour.[15]

(e) The Judge failed to take into consideration the Wife's misconduct as she caused harm to the children and constantly embroiled the family in vexatious legal proceedings.[16]

(f) The Judge erred in his finding that equal division was appropriate prior to any adjustment as this was not a long single-income

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13 Husband's case at paras 25–32.

14 Husband's case at paras 33–49.

15 Husband's case at paras 50–68.

16 Husband's case at paras 69–92.

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marriage, and the Husband's contributions far outweighed the Wife's contributions.[17]

(g) The Judge erred in drawing an adverse inference against the Husband and awarding the Wife an additional 25% of the matrimonial assets. The Wife also failed to make full disclosure.[18]

15 The Husband submits that the Judge should have used the classification methodology. He submits that the value of the foreign properties and the Singapore properties purchased before 2001 should be divided 95:5 in his favour, each party should retain the Singapore properties purchased after 2001 in their own name, and the value of all other assets should be divided 72:28 in his favour.[19]

16 In her respondent's case, the Wife denies that the Judge erred in the manner described by the Husband. She submits:[20]

(a) The correct operative date for determination of the matrimonial assets is the date of IJ, 24 March 2016.[21] The correct operative date for valuation of the matrimonial assets is the date of the hearing of the ancillary matters.[22]

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17 Husband's case at paras 93–109.

18 Husband's case at paras 110–112.

19 Husband's case at paras 125–126.

20 Wife's case at para 14.

21 Wife's case at para 18.

22 Wife's case at paras 21–22.

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(b) The Judge erred in his findings on the matrimonial assets only to the extent that he failed to include the sale proceeds from the Pender Court property.[23] The Husband did not provide any documentary evidence to support his submission that certain assets should be excluded, and the court should draw an adverse inference against him for his lack of full disclosure.[24]

(c) The Judge did not err in his finding on the parties' direct contributions. It was impossible for the Husband to acquire all the assets through inheritance, and they were derived from the Clinic and the bubble tea shop.[25]

(d) The Judge did not err in his finding on the parties' indirect contributions as both parties looked after the children equally, and the Wife assisted the Husband in matrimonial ventures.[26]

(e) The Judge did not err in drawing an adverse inference against the Husband and providing a 25% uplift for the Wife's share of the assets.[27]

Summons No 67 of 2019 and Summons No 78 of 2019

17 While the Wife did not file an appeal against the Judge's decision, she initially raised several new issues in her respondent's case. The Husband took

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23 Wife's case at paras 26, 38–45.

24 Wife's case at paras 28–36.

25 Wife's case at paras 56–57.

26 Wife's case at para 82.

27 Wife's case at para 106.

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out Summons No 67 of 2019 ("SUM 67") to strike out those paragraphs relating to the new issues, and the Wife then filed Summons No 78 of 2019 ("SUM 78") on 1 July 2019 to seek a "holistic review" of the Judge's orders. In her skeletal submissions for the Husband's appeal, she submits:

(a) The Draft Order dated 28 January 2019 deviated from the Judge's decision on 15 November 2018 in the following ways:[28]

(i) Although the Judge's decision mentioned the Pender Court property as a matrimonial asset which had been sold, neither the Pender Court property nor the sale proceeds were mentioned in the Draft Order.

(ii) The Judge's decision did not mention the Wife's share in TQA and TQB as a matrimonial asset but the Draft Order did. Moreover, the Draft Order did not then correspondingly include the Husband's shares in TQA and TQB.

(iii) The Judge's decision did not list the Petir Road HDB flat, owned by the Wife, as a matrimonial asset but the Draft Order did.

(b) The 25% uplift did not adequately account for the Husband's lack of disclosure.[29]

(c) The Husband failed to abide by alleged maintenance orders.[30]

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28 Wife's skeletal submissions at paras 53–67.

29 Wife's skeletal submissions at paras 68–70.

30 Wife's skeletal submissions at paras 71–72.

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(d) The Husband failed to repay loans of $148,000 that he took from the Wife.[31]

(e) The Judge's orders are unworkable.[32]

18 The Wife relies on O 57 rr 9A(5) and 13 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). Rule 9A(5) permits a respondent who has not appealed against the decision of the court below to contend that the decision should be varied or affirmed on other grounds in his respondent's case. In *L Capital Jones Ltd and another v Maniach Pte Ltd* [2017] 1 SLR 312 at [67], we held that under O 57 r 9A(5) of the Rules of Court, "a respondent is entitled, without filing a cross-appeal, to seek to persuade this court either to vary (in the event of a successful appeal) or otherwise to affirm the decision of the court below, relying on grounds that that court did not accept or rely on in reaching its ultimate decision." However, that rule does not permit the Wife to mount what is essentially a backdoor appeal against the decision of the Judge without following the proper procedure for an appeal.

19 Although the Wife submits that the Draft Order deviated from the Judge's original decision as it included the Wife's Petir Road HDB flat and her TQA and TQB shares, we are of the view that the Draft Order correctly included these assets as part of the matrimonial assets.

20 The Wife's Petir Road HDB flat was acquired during the marriage. Her TQA and TQB shares were also acquired during the marriage.

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31 Wife's skeletal submissions at paras 73–78.

32 Wife's skeletal submissions at paras 79–87.

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21 As we elaborate below, the Judge was correct to exclude the Husband's shares in TQA and TQB which were originally given to him by his father.

22 While the Draft Order did not include the Pender Court sale proceeds, the Judge had taken that exclusion into account in drawing an adverse inference against the Husband: GD at [11]. Whether the Judge was correct to do so is a separate point which we will address below.

23 It is also important to bear in mind that both parties approved the Draft Order. Thus they must have considered which assets were to be included or excluded in that order after the initial decision of the Judge on 15 November 2018.

24 It is not necessary to make any order on the Husband's application in SUM 67 as we will not allow the Wife to raise any new issue which is not covered by a cross-appeal from her. We also dismiss the Wife's application in SUM 78. We deal with costs below at [152].

The issue on appeal

25 The sole issue before us is the division of matrimonial assets.

26 We have said that we do not readily interfere with orders made by a court below pertaining to the division of matrimonial assets, as these are squarely within the trial judge's discretion (*BOR v BOS and another appeal* [2018] SGCA 78 ("*BOR v BOS*") at [1], citing *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 ("*TNL v TNK*") at [53]). To warrant appellate intervention, the trial judge's decision must be shown to be clearly inequitable or wrong in principle. We have also highlighted the need for counsel

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to do their part to assist the court in achieving a just outcome (*BOR v BOS* at [3]).

27 While the Wife appeared in person throughout these proceedings, the Husband was represented by counsel below, and though many issues were raised in relation to the value of the matrimonial assets, his counsel could not assist the court. Given the state of the evidence, the Judge had great difficulty determining the value of the matrimonial assets and his final order was for the sale of all ascertainable assets, and for the sale proceeds to be divided in the ratio of 75:25 in favour of the Wife: GD at [11]. Any order of the court must be workable and practical. While orders for the sale of all assets may be workable and practical in specific situations, such as where assets are liquid, a significant portion of the matrimonial assets before us consists of real property. The Judge's order placed the parties in the unenviable position of selling *all* their assets, including their homes, when retaining their homes would ordinarily be preferred as it avoids unnecessary disruption in their lives. The Husband and three children currently live in the Lorong Pisang Raja property while the Wife lives in the Petir Road HDB flat. To implement the court's order, they will have to uproot and start again. In addition, the Husband and the Wife will likely have to purchase new homes which will mean additional expense in terms of stamp duty and legal costs.

28 In order to avoid such disruption and expense and attempt to allow the parties to retain their homes, it is necessary to identify the matrimonial assets and their values so as to make adjustments to take into account the retention of the homes. The values will also provide an idea as to how much is involved in the division exercise. This is especially pertinent if the Husband has failed to disclose matrimonial assets held by him as we may then take into account the

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matrimonial assets disclosed to decide on the uplift to be given to the Wife for the Husband's non-disclosure.

29 As for how the matrimonial assets should be divided, the court is empowered to order the division of matrimonial assets by s 112(1) of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC"), which states:

> **112**.—(1) The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

30 The Judge's main holding is that the assets were acquired with income generated from the Clinic and, as this was a joint matrimonial venture, the proceeds should be attributed to both parties in equal proportions: GD at [11]. While we have said that marriage is an equal co-operative partnership of efforts (see, *eg*, *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*") at [20]; *BOI v BOJ* [2019] 2 SLR 114 at [20]), this does not mean that the contributions of both parties in a marriage are always equal. The court must have regard to all the circumstances of the case, including the extent of the contributions made by each party towards acquiring matrimonial assets and to the welfare of the family (ss 112(2)(*a*) and 112(2)(*c*) of the WC). We said in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*") at [22]:

> The ultimate objective of any approach towards the division of matrimonial assets is to accord due and sufficient recognition to each party's contribution towards the marriage… so that the outcome would, in the circumstances of each case, lead to a just and equitable division. …

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31 To that end, we set out a "structured approach" to recognise both parties' contributions to a marriage (*ANJ v ANK* at [22]):

> … [T]he court could first ascribe a ratio that represents each party's direct contributions relative to that of the other party, having regard to the amount of financial contribution each party has made towards the acquisition or improvement of the matrimonial assets. Next, to give credit to both parties' indirect contribution throughout the marriage, instead of giving the party who has contributed more significantly than the other an 'uplift' to his or her direct contribution percentage, the court should proceed to ascribe a second ratio to represent each party's indirect contribution to the well-being of the family relative to that of the other. Using each party's respective direct and indirect percentage contributions, the court then derives each party's average percentage contribution to the family which would form the basis to divide the matrimonial assets. Further adjustments (to take into account, *inter alia*, the other factors enumerated in s 112(2) of the WC) may need to be made to the parties' average percentage contributions …

32 The structured approach was affirmed in *BPC v BPB and another appeal* [2019] 1 SLR 608 at [70]. To be clear, it may not be appropriate in every case. For example, in *TNL v TNK* at [44], we highlighted that the structured approach may be inappropriate for long single-income marriages, where the court tends towards equal division of matrimonial assets. The Wife submitted that this was a long single-income marriage and so the structured approach was inapplicable, but we disagree. Both the Husband and the Wife worked at the Clinic during the marriage, and neither party was a full-time homemaker spouse until the Clinic was closed. We have also set out our reasons for not considering this marriage as a typical long one (see [5] above). We therefore found the present case to be an appropriate one for the *ANJ v ANK* structured approach, and we consider the parties' direct and indirect contributions during the marriage.

33 In light of the foregoing, the issues that arise for this court's consideration are:

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(a) the operative dates for determining and valuing the matrimonial assets;

(b) the matrimonial assets and their value;

(c) the direct contribution ratio between the parties;

(d) the indirect contribution ratio between the parties; and

(e) any adverse inference to be drawn against either party.

Determination of matrimonial assets

34 To determine the matrimonial assets, we first identify the operative dates for determination and valuation.

Date of determination

35 In *ARY v ARX and another appeal* [2016] 2 SLR 686 ("*ARY v ARX*"), this court observed that the default position for the operative date to determine the matrimonial assets is the date that IJ is granted (at [31]), though the court may depart from the starting point where there are cogent reasons to do so (at [35]).

36 The Judge did not address the issue of the operative date for determination of the matrimonial assets in the GD. In the present appeal, the Husband submits that the matrimonial assets should be determined as of 28 June

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2010 because it is undisputed that the marriage had broken down by this date.[33] IJ was granted on the basis of four years' separation under s 95(3)(*e*) of the WC, and the Family Court judge found that 28 June 2010 was the relevant date of separation. On the other hand, the Wife submits that there is no reason to move away from the default date of IJ.[34]

37 We noted in *ARY v ARX* at [40]:

> … [T]he facts that the husband relies on are the ordinary factual concomitants of a failed marriage. If the husband's argument is accepted, then in almost every divorce the operative date will be that of the parties' separation. That, with respect, confuses the factual position with the position at law, which regards the parties as being in a subsisting legal union even though that union may have undergone factual disintegration.

38 To be clear, the events of this marriage and the circumstances of the parties' separation are far from ordinary, given the extent of conflict (see [4] and [5] above). At the same time, we recognise that the Wife's first two divorce actions were dismissed, and the parties remained in a legal albeit unhappy union. In the circumstances, we see no principled reason to depart from the default operative date, that is, the date of IJ, which was 24 March 2016.

Date of valuation

39 As confirmed by this court in *TDT v TDS and another appeal and another matter* [2016] 4 SLR 145 at [50], the default operative date for the valuation of matrimonial assets is the date of the first ancillary matters hearing, although the court retains the discretion to depart from this date where it is

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33 Husband's case at paras 19, 21.

34 Wife's case at para 18.

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warranted by the facts.

40 The Husband proposes three alternative dates for valuation of the matrimonial assets. They are, in order of his preference: (a) March 2006, the date the Wife intended to end the marriage (as stated in her second divorce action); (b) December 2001, when the Wife filed the first divorce action; and (c) 27 December 2010, when the Wife filed the second divorce action.[35] The Wife submits that there is no reason to move away from the default operative date of the first ancillary matters hearing.[36]

41 The three dates proposed by the Husband are all prior to the date of IJ, which we have already determined will be the operative date of determination of the matrimonial assets (at [38] above). It is not logical to set the operative date for valuation *before* the date of determination, as the purpose of identifying a date for valuation is to determine the value of the assets that are matrimonial assets. We see no reason to depart from the default position of the date of the first hearing. As the hearing before the Judge was on 24 September 2018, the appropriate date for the valuation of each property is as of 1 September 2018, this being a convenient date close to the date of the first hearing.

42 At this juncture, we highlight that the purpose of identifying an operative date for valuation is so that parties can provide *appropriate* valuations. The Judge could not identify the valuation of the matrimonial assets as neither party submitted any valuation at all, only scant evidence on how much each property had been acquired for. Given that the dates of acquisition go as far back as 1991,

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35 Husband's case at para 24.

36 Wife's case at paras 21–22.

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the purchase price may bear little resemblance to the value of each property as at the date of the hearing before the Judge, and this did not assist the court. The Husband, who was represented by counsel below, took the position that the court should decide on the operative date of valuation first before he submitted valuations. Hence, he was not in a position to assist the court below on the valuations at the time of the hearing.

43 We heard the Husband's appeal on 25 September 2019. On 18 October 2019, we directed the parties to obtain valuations for certain properties with such valuations to be as at 1 September 2018. The valuations were to be submitted by 3 January 2020. While both parties provided valuations for four properties located in Singapore, they did not provide any valuation for the properties located in China and Malaysia. We address the implications of this below. Furthermore, the valuations provided by both parties did not value the properties as at 1 September 2018 and most of the valuations were done in December 2019. Be that as it may, we have taken those valuations into account since neither side raised any further issues about the date of the valuations.

Matrimonial assets for division

44 Having identified the operative dates for determining and valuing the matrimonial assets, we now identify which assets are matrimonial assets and, further, determine their values. Unless otherwise stated, the value of each asset is set out in Singapore dollars.

Undisputed assets

45 The Judge included other assets held in each party's name as matrimonial assets and set out their valuations (GD at [5]):

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	Asset	Net Value ($)
Husband's Name	NTUC Income policy	22,277.98
	Shares in various listed companies	442,209.09
	DBS account -8886	6,235.47
	CPF	223,480.73
Wife's Name	Motor vehicle	5,455.00
	Three Great Eastern Life policies	485,053.00
	Shares in various listed companies	135,828.27
	DBS account -9130	9,946.87
	DBS account -0107	2,133.36
	OCBC account -0001	14,188.83
	CPF	69,218.79

46 The total value of these assets is $1,416,027.39. The Husband does not challenge the inclusion of these items or their valuation in his appeal,[37] and neither does the Wife in her case,[38] so we include them as matrimonial assets.

47 On the other hand, the parties disagree on the inclusion and valuation of several properties in Singapore, Malaysia and China:

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37 Husband's case at para 118.

38 Wife's case at para 125.

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	Asset
Joint Names	Liang Feng Mansion in Shanghai, China
Husband's Name	Pender Court property
	Bukit Batok HDB shophouse
	Wadihana in Johor Bahru, Malaysia
	Hai Hong Plaza in Shanghai, China
	Sun Island Club in Shanghai, China (two units)
	The Regalia in Shanghai, China
	Eng Kong Place property
	Lorong Pisang Raja property
Wife's Name	Bukit OUG in Kuala Lumpur, Malaysia
	Sun Island Club in Shanghai, China (one unit)
	Petir Road HDB flat

48 We address each of these properties later in the sequence in which they were acquired. The parties are also in disagreement about the nature of their shares in TQCDE, TQA and TQB, which we address at [90] below.

Pender Court property

49 The Pender Court property was not included in the list of matrimonial assets in the Draft Order. Nor were the sale proceeds from the collective sale included. In the absence of an appeal by the Wife, we need not consider the property or the sale proceeds for inclusion as matrimonial assets. However, as

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much has been said about it, we will make some observations on this property below.

50 The Pender Court property was acquired in 1986 for $315,000. This was approximately four years prior to the marriage.[39] The Husband submits that it was a gift from the Husband's father, who owned the company that developed the property and who also gave the Husband $315,000 to purchase the apartment.[40] The Judge did not accept this contention as the Husband did not provide any evidence in support of his claim (GD at [9]). However, the Wife in fact accepts that the unit was purchased with money from the Husband's father.[41] She nonetheless submits that this is a matrimonial asset as the parties lived in it as the matrimonial home from the date of the marriage to late 1991,[42] and she substantially improved the property by advertising it for rental, managing tenants and supervising maintenance.[43]

51 As the property was acquired before the Husband's father passed away in 1989, and the Husband tendered documentary evidence that his father gave him $315,000 on 30 April 1985,[44] it is more accurate to describe this acquisition as a gift than an inheritance. The matrimonial home is an exception to the general rule that gifts are not matrimonial assets (*Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)* [2006] 4 SLR(R) 605 ("*Chen Siew*

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39 ROP Vol 3E p 1249, para 101.

40 ROP Vol 3E p 1249, para 101.

41 ROP Vol 3A p 274, para 17; Vol 3F p 1734 para 50(ii).

42 ROP Vol 3A p 274, para 17.

43 ROP Vol 3A p 275, para 20.

44 ROP Vol 3B p 589.

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Hwee") at [62]). The property, though a gift, could have been transformed into a matrimonial asset under s 112(10) of the WC if it was used as a matrimonial home.

52 The Husband submits that the parties never used the property as the matrimonial home.[45] Although they were legally married on 6 March 1990, their Chinese wedding took place on 2 March 1991 and the parties did not live together until their Chinese wedding, when they moved into the second floor of the Bukit Batok HDB shophouse immediately. The Husband tendered evidence that he collected the keys to the Bukit Batok HDB shophouse on 9 April 1991, shortly after the Chinese wedding. He submits that even if the parties lived in the Pender Court property in the interim period, this short period of time would not qualify the property as a matrimonial home. On the other hand, the Wife asserts that the parties lived in the Pender Court property from the date of the registration of their marriage on 6 March 1990 to late 1991,[46] which is a period of about one and a half years.

53 Neither party has tendered satisfactory evidence on this dispute. That is understandable, given that it concerns events which occurred nearly twenty years in the past, but we are left to deal with a gap in the evidence. We note that the Judge did not reach a specific finding on whether this property was used as the matrimonial home. As the property was a gift from the Husband's father, we think that the burden is on the Wife to produce evidence that it was used as the matrimonial home and transformed into a matrimonial asset. She has not

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45 ROP Vol 3G pp 2076–2079, paras 124–129.

46 Wife's case at para 42.

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discharged her burden by her bare allegations and accordingly she has failed to prove her assertion that the property was used as a matrimonial home.

54 Furthermore, the Wife also did not dispute the Husband's assertion that his mother and sisters were living in the Pender Court property even before and at the time the marriage was registered. Accordingly, it seems to us that the Pender Court property was used more as a home for the Husband's family rather than a matrimonial home. Thus, even if the parties had lived in the Pender Court property, it would have been a temporary measure while awaiting their home in the Bukit Batok HDB shophouse, and we do not think this would suffice to transform it into a matrimonial asset.

55 The Wife argues, in the alternative, that she made substantial improvements to the property as she was responsible for finding tenants and supervising maintenance works. She was, however, unable to provide any evidence of these alleged contributions.

56 The Pender Court property was sold in May 2010, and so it was no longer in existence as of the date of IJ. The Wife further submits that the sale proceeds should be clawed back as matrimonial assets for division,[47] but since there is no appeal by her and our view is that it is not a matrimonial asset, there is no basis for that submission. As mentioned, the Judge did take the sale proceeds into account when he drew an adverse inference against the Husband (GD at [11]). This was on the mistaken premise that the Pender Court property was acquired by both parties. The Judge should not have taken the sale proceeds into account.

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47 Wife's case at para 26.

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57 We pause to note that, had we found otherwise and included this property as a matrimonial asset, we do not think it would have affected our final conclusion. The Husband would have been credited with 100% of the direct contribution to this property. We do not think the Wife's bare allegation that she improved the property would have increased her indirect financial contribution.

Bukit Batok HDB shophouse

58 This shophouse was purchased in 1991 for $850,099.88 and remains in the Husband's name. The ground floor was used as the premises of the Clinic and the second floor was used as the matrimonial home from sometime in 1991 until 1995. Before the Judge, the Husband had argued that only the second floor should be considered a matrimonial asset as it was used as the matrimonial home,[48] but he did not make this argument in his appeal and appeared to concede that the above property was a matrimonial asset.[49] The issue before us concerns the valuation of the property.

59 The Husband tendered a valuation report by GB Global Pte Ltd ("GB Global") dated 23 December 2019, which valued the property at $3.8m.[50] The Wife tendered a valuation report by Estate Exchange Consulting dated 11 December 2019 that valued the property at $4.2m.[51] Unfortunately, the report tendered by the Wife was limited to a desktop valuation as it appears that the

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48 ROP Vol 3G p 2062, para 89.

49 Husband's case at para 108.

50 Letter from Husband dated 27 Dec 2019 at A19.

51 Letter from Wife dated 3 Jan 2020 at p 14.

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Husband refused to allow the valuer to inspect the interior of the property. We take the average of the two valuations and we value this property at $4m.

Wadihana in Johor Bahru, Malaysia

60 This property was purchased in 1993 in the Husband's name for approximately $300,000 and was the first in a string of overseas properties acquired by the parties. Before the Judge, the Husband claimed it is not a matrimonial asset as it was purchased wholly with gifts or inheritance, but in this appeal he appears to concede that it is a matrimonial asset.[52]

61 However, the Husband tendered evidence that this property was auctioned off in 2016 by the developer after the Husband failed to pay outstanding service charges. He produced a letter from a Malaysian law firm, Roy & Associates, dated 2 November 2016 stating that the property had been auctioned off on 24 October 2016 under the supervision of the Johor Bahru Magistrate Court.[53] This means that the property was in existence as of the operative date of determination of the matrimonial assets, 24 March 2016, and should be included as a matrimonial asset. However, the letter also states that this auction was pursuant to a judgment obtained against the Husband on 22 October 2013 for his failure to pay outstanding service charges. Although the disposition of this property occurred after the operative date of determination of the matrimonial assets, the Wife does not dispute the substance of the letter to the Husband's Malaysian lawyers. Nor does she suggest that the action was an act of dissipation or an attempt to keep the property out of the Wife's reach. In

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52 Husband's case at para 108.

53 ROP Vol 3F pp 1567–1568.

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the circumstances, we are satisfied that there is no useful purpose in determining the value of this property.

62 Nevertheless, there was no elaboration by the Husband as to the amount of the outstanding service charges or the price for which the property was auctioned off. In the circumstances we are of the view that it is insufficient for the Husband to tender the one letter only and expect the court to believe that there was no surplus. We are of the view that he did not disclose the surplus which ought to be part of the matrimonial assets.

Bukit OUG in Kuala Lumpur, Malaysia

63 This property was purchased in 1994 in the Wife's name for approximately $130,000. Similarly, while the Husband initially claimed this is not a matrimonial asset, he appears to concede that it is a matrimonial asset in this appeal.[54]

64 Both parties claimed to know nothing about the property. Although it is registered in the Wife's name, the Wife claims registration was never completed and she never received title to the property, as it was always managed by the Husband.[55] On the other hand, the Husband claims to have no knowledge of the current status of the property and submits that the Wife, as the registered owner, should enquire as to its status.[56] Each party was clearly in a position to find out

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54 Husband's case at para 108.

55 ROP Vol 3A p 260, para 10.

56 ROP Vol 3E pp 1267–1268, para 148.

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more about the status of the property, but neither party volunteered to do so. We directed parties to provide an updated status and valuation of the property.

65 On 3 January 2020, the Wife wrote in with copies of emails exchanged with the management office of the Bukit OUG property, which corroborated her allegation that the property title had not been issued to her.[57] The management office confirmed that the unit had been completed and fully paid up, but explained that as the developer had been wound up, parties would have to prove ownership to the liquidators. The Husband tendered evidence of two similar transactions of units in the same building, with prices ranging from RM410,000 to RM438,000 for smaller units, but did not propose a specific price.[58]

66 We accept the average of the two transactions of RM424,000 which, taking an exchange rate of, say, SG$1 = RM3, is the equivalent of $141,333.33. The property is legally owned by the Wife, and she will be able to take full ownership subject to showing proof of ownership to the liquidators.

Hai Hong Plaza in Shanghai, China

67 This property was purchased in 1995 in the Husband's name for $123,822.05. The Husband claims that he no longer owns this property as it was bought back by the developer sometime around 2000 due to strict exchange control laws in China, which made rental payments difficult.[59] He tendered a

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57 Letter from Wife dated 3 Jan 2020 at pp 46–48.

58 Letter from Husband dated 27 Dec 2019 at para D.6 and A32–A34.

59 Husband's case at para 30.

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letter from the developer's solicitors, Raymond Tan & Co, dated 17 April 1998 describing the buy-back guarantee provision.[60]

68 The Wife did not refute the Husband's claim that the property had been bought back by the developer. However, the Husband did not disclose the price at which this property was bought back.

69 The question then is whether this property (and the sale proceeds from the buy-back) was a matrimonial asset. As mentioned above, the Husband contended that all the properties (except for the Petir Road HDB flat) were purchased with money from gifts and inheritance from his parents while the Wife contended that they were bought with income from the Clinic. The Husband produced some receipts for his purchase of this property, with one for the balance of 30% of the purchase price and one for 70% of the purchase price. This does not necessarily mean that the money came from either of his parents. In the case of the other properties, *ie,* the Liang Feng and Regalia properties in Shanghai, China, the Husband managed to show that some payments came from a bank account that belonged to his Mother.

70 In the absence of further evidence, we cannot conclude that the Hai Hong Plaza property in Shanghai, China was bought entirely from gifts from either of his parents. The sale proceeds from the purchase by the developer are matrimonial assets and the Husband failed to disclose the sum.

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60 ROP Vol 3F p 1566.

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Sun Island Club in Shanghai, China

71 The parties acquired three units at the Sun Island Club Chalet in Shanghai, China in 1994 for $74,739 each; two were held in the Husband's name and one was held in the Wife's name. The Husband alleges that the entire acquisition was lost when Prime Supermarket Pte Ltd, the developer, was placed under a scheme of arrangement in 2000, and he tendered letters from the developer describing this scheme.[61]

72 As the Wife did not rebut the Husband's allegation, we accept that the three units were no longer in existence or had no value as of the date of IJ and are not matrimonial assets.

The Regalia in Shanghai, China

73 This property was purchased in 1994 and is held in the Husband's name. The Husband submits that this is not a matrimonial asset as it was purchased with gifts from his mother.[62] He highlights that a sum of US$227,817 was withdrawn from his mother's account and submits that this was transferred to the property agent.[63] Unfortunately, the Husband did not provide a translation of the document and we are unable to conclude that this was the full purchase price. Again, we cannot conclude that this property was bought entirely from money given by his mother and so we include it as a matrimonial asset.

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61 Husband's case at para 30; ROP Vol 3F pp 1552–1553.

62 Husband's case at para 27.

63 ROP Vol 3F p 1554.

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74 We do not agree with the Husband's contention that this property should be excluded because he lost track of the property and does not know its current status. He said he did not wish to enquire about this property because it would revive bad memories.[64] While we are sympathetic to the stress of divorce proceedings, it is not open to a party to exclude an asset on such basis. We gave the parties an opportunity to obtain an update on the current status of the property and its valuation.

75 Neither party produced a valuation. The Wife did not address it in her letter to the court dated 3 January 2020. The Husband tendered a letter dated 12 February 2001 from attorneys in China that claimed that many units had been seized by the courts there,[65] but did not tender any evidence that the unit in his name had been seized. Given the state of affairs, we find no purpose in further attempting to determine the value of this property, but we address this in the adverse inference drawn against the Husband below (at [138]).

Liang Feng Mansion in Shanghai, China

76 This property was also purchased in 1994 and held in the joint names of the Husband and the Wife. Similarly, the Husband submits that it is not a matrimonial asset as it was purchased with gifts from his mother.[66] He highlights that there is evidence of a payment of US$137,116 from his mother's account, a figure that matches a letter dated 9 January 1995 requesting payment for the

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64 ROP Vol 3E p 1271, para 158.

65 Letter from Husband dated 27 Dec 2019 at A41.

66 Husband's case at para 27.

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property.[67] However, the letter refers to this as the "final instalment payment". There is no indication that the Husband's mother paid the other instalments. Also, the letter was addressed to both the Husband and the Wife, and the Wife tendered evidence of a receipt stating that both parties had made an instalment payment on 10 November 1994.[68] Even if this property was bought with money from the Husband's mother, we are of the view that it is a matrimonial asset as it was held in the joint names of the Husband and the Wife. We therefore find that this property is a matrimonial asset.

77 The Husband also initially submitted that he lost track of this property in the midst of the stressful divorce proceedings and did not wish to pursue this matter. We similarly directed him to obtain a current valuation of the property but he did not tender any evidence in this regard in his letter of 27 December 2019, save for emails from valuers declining the job. We see no purpose in further attempting to determine the value of this property, and we address the consequences of this at [138] below.

Eng Kong Place property

78 This property was purchased in 1995 for $1.82m and it is still held in the Husband's name. It is undisputed that it is a matrimonial asset as it was the matrimonial home from 1995 to 2007, when the Wife moved out permanently, and the Husband and children continued to live in it until 2010. The outstanding issue before us is its value.

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67 ROP Vol 3F pp 1559–1560.

68 ROP Vol 3B p 394.

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79 The Husband tendered a valuation report by GB Global dated 19 December 2019 that valued the property at $3.5m.[69] The Wife tendered a report by Estate Exchange Consulting dated 11 December 2019 that valued the property at $2.8m.[70] Again, this was a desktop valuation as the Wife's valuer did not have the opportunity to inspect the inside of the property, but we observe that the Husband's valuation is higher than the Wife's valuation, when it would theoretically be in his interest to produce a lower valuation. We will therefore adopt the valuation of $3.5m.

Petir Road HDB flat

80 The Wife acquired this property in 2007 for $159,000, after she moved out of the matrimonial home. As it was acquired during the marriage and the Wife does not claim it was purchased with gifts or inheritance, there is no reason to exclude it from the pool of matrimonial assets. The Wife claims that she borrowed $110,000 from her sister to acquire this property,[71] but this does not affect its status as a matrimonial asset.

81 In her application for "holistic review" of the Judge's orders, the Wife urged this court to exclude this property from division as she had to obtain special approval to purchase it under existing HDB rules. However, there was no appeal by the Wife. In addition, while the court retains a discretionary power to exclude assets where a valid reason is given (see *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR(R) 729 at [26]), this power should be

69 Letter from Husband dated 27 Dec 2019 at A6.

70 Letter from Wife dated 3 Jan 2020 at p 22.

71 ROP Vol 3A p 258, para 5.4.

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exercised sparingly. There is no principled reason to exclude this asset. In any event, the difficulty the Wife would face in obtaining another HDB flat weighs in favour of our decision to value the matrimonial assets and apportion them to allow each party to retain the assets held by that party, with any adjustment to be made in cash. We do this rather than order the sale of all assets.

82 When directed to provide valuations of the HDB flat, the Husband relied on an extract from the record of appeal that listed the resale prices for flats in the same area from March to October 2016, ranging from $268,000 to $300,000.[72] The Wife provided the same for flats in the same area from November 2018 to October 2019 ranging from $240,000 to $290,000.[73] While the resale prices do not differ significantly, we did direct parties to obtain valuations as at 1 September 2018, a date close to the ancillary matters hearing before the Judge below but, as mentioned, neither party obtained a valuation as at 1 September 2018. Taking the average of the resale prices in November 2018, we value the HDB flat at $260,500.

Lorong Pisang Raja property

83 The Husband acquired this property in 2010 in his sole name for $3.268m. He submits that this is not a matrimonial asset as it was acquired with unappropriated profits earned by TQCDE from dividends from shares in TQA and TQB, and those shares were acquired by gift or inheritance. Specifically, the Husband's version of events is that he borrowed against those unappropriated profits to purchase listed shares and then sold those listed shares

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72 Letter from Husband dated 27 Dec 2019 at A22.

73 Letter from Wife dated 3 Jan 2020 at p 39.

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to fund the purchase of this property.[74] Alternatively, he submitted that the court should exercise its discretion not to divide the asset.[75]

84 The evidence shows that from 1996 to 2010, TQCDE earned at least $8m in dividends from the shares it held in TQA, TQB and another family company known as "LCF". Theoretically, this was sufficient to purchase the property. While we address the issue of direct contributions below (at [104] below), we are satisfied that the Lorong Pisang Raja property is a matrimonial asset.

85 We reach this conclusion based on the application of the existing case law. First, the Husband was unable to provide any evidence to support his bare allegation about borrowing from TQCDE. While TQCDE's books were destroyed after it was liquidated in 2014, and presumably all evidence of loans with it, the liquidators' report did not mention that the Husband had borrowed against his shares. Also, the Husband could not even produce evidence of the purchase and sale of listed shares that would match up with the purchase of this property. As the source of funds was unclear, it is logically impossible to consider whether the original gift of shares to the Husband continues into this property (see *Chen Siew Hwee* at [58]).

86 Second, even assuming the Husband's version of events is true, we are not convinced that the property should remain a "gift". As noted in *Chen Siew Hwee* at [57], the correct approach to assets acquired by gifts is to inquire whether or not the transformation was accompanied by a voluntary intention on

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74 ROP Vol 3G pp 2092–2093, para 163.

75 ROP Vol 3G p 2099, para 174.

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the part of the donee of the gift (the Husband) that such transformation was for the purpose of integrating the gift into the matrimonial assets. By the Husband's own allegation, he borrowed against the unappropriated profits of TQCDE to purchase listed shares during the marriage. These shares were then sold, and the proceeds used to purchase this property in 2010.

87 The parties did not agree on the reason for the incorporation of TQCDE. The Wife's position was that the Husband incorporated TQCDE for the purpose of holding matrimonial assets, and he demonstrated this intention by giving her a share in TQCDE and promising to increase her share in future.[76] The Husband's position was that he incorporated TQCDE solely to hold his shares in TQA and TQB.[77] Assuming the Wife's version of events is true, it would seem that the incorporation of TQCDE demonstrated the Husband's intention to benefit the Wife and the family, in line with *Chen Siew Hwee* at [57]–[58]. Even if the Husband's position is true, we think that the loans and the purchase of the listed shares during the course of the marriage demonstrate the Husband's intention to utilise the assets "for and on behalf of the family" (*Chen Siew Hwee* at [57]). Furthermore, there was no reason for the Husband to incorporate TQCDE and inject the shares in TQA and TQB into TQCDE if he were to remain the sole owner of the shares. The fact that he then gave the Wife a share in TQCDE supports her argument that TQCDE was incorporated to hold matrimonial assets.

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76 ROP Vol 3A p 271; ROP Vol 3F p 1760.

77 ROP Vol 3E pp 1260–1261, para 128–129.

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88 We also do not accept the Husband's submission that the court should exercise its discretion to exclude this property as a matrimonial asset. No other reason was given by the Husband to exclude this property.

89 The Husband tendered a valuation report by GB Global dated 23 December 2019 that valued the property at $3.7m.[78] The Wife tendered a valuation report by Estate Exchange Consulting at 11 December 2019 that valued the property at $5m.[79] Again, the Wife's valuation was limited to a desktop valuation for the similar reason that she could not obtain access for her valuer to do an inspection. In the circumstances, we adopt the average of the two valuations and value the property at $4.35m.

Shares in TQCDE, TQA and TQB

90 TQCDE was incorporated in 1993 and liquidated in 2014. This was prior to the operative date of determination of the matrimonial assets, and so no TQCDE shares can or will be included as a matrimonial asset. The Wife's submission turns on her allegation that the Husband unilaterally reduced her shareholding by transferring part of his shares to his two sisters in 2003 and increasing the number of issued shares in 2006. She submits that these were acts of dissipation and the court should take this into account when drawing an adverse inference against the Husband.[80]

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78 Letter from Husband dated 27 Dec 2019 at A13.

79 Letter from Wife dated 3 Jan 2020 at p 29.

80 Wife's case at para 118.

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91 There are different issues. One is whether the Husband diluted the Wife's shareholding in TQCDE. There was no appeal by the Wife on this point. In any event, if the Husband had diluted her shares wrongly or without her approval, that is a different matter that should not be before the court hearing the ancillary matters proceeding. We proceed on the basis of the shareholding in TQCDE at the time that it was liquidated.

92 The other issue concerns what happened to TQCDE's assets upon its liquidation. When TQCDE was liquidated, its shares in TQA and TQB were distributed to the shareholders according to their shareholding at that time. The Judge included the Wife's shares in TQA and TQB within the pool of matrimonial assets, but accepted that the Husband's shares were not matrimonial assets as they were originally gifts from his late father. The Wife is prepared to accept that the Husband's TQA and TQB shares were properly excluded on condition that her shares are excluded too. We have already set out our reason for not entertaining the Wife's attempt to include the Husband's shares in TQA and TQB as matrimonial assets at [18] above. In any event, we are of the view that the Judge was correct not to include the Husband's shares in TQA and TQB as they originated as gifts from his father to him before TQCDE was incorporated. They were subsequently injected into TQCDE when this company was incorporated and later distributed to the Husband and to the Wife and the other shareholders of TQCDE upon its liquidation.

93 Unfortunately, the parties failed to provide any valuation of the Wife's shares in TQA and TQB. Notwithstanding that these are held in the Wife's name, they are shares in the Husband's family companies. Although the Husband suggested that the Wife did not want to pay her share of the cost of valuation, he could have obtained the valuation on his own if he wanted to.

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Total value of matrimonial assets

94 The total value of matrimonial assets for division is:

	Asset	Net Value ($)
Husband's Name	NTUC Income policy	22,277.98
	Shares in various listed companies	442,209.09
	DBS account -8886	6,235.47
	CPF	223,480.73
	Bukit Batok HDB shophouse	4,000,000.00
	Eng Kong Place property	3,500,000.00
	Lorong Pisang Raja property	4,350,000.00
	Sub-total (Husband's Name)	12,544,203.27
Wife's Name	Motor vehicle	5,455.00
	Great Eastern Life Policies	485,053.00
	Shares in various listed companies	135,828.27
	DBS account -9130	9,946.87
	DBS account -0107	2,133.36
	OCBC account -0001	14,188.83
	CPF	69,218.79
	Petir Road HDB flat	260,500.00
	Bukit OUG, Kuala Lumpur, Malaysia	141,333.33

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	Asset	**Net Value ($)**
	Sub-total (Wife's Name)	1,123,657.45
	Total	13,667,860.72

95 No valuation was furnished in respect of the following matrimonial assets or the proceeds of sale were not disclosed:

	Asset
Joint Names	Liang Feng Mansion, Shanghai, China
Husband's Name	The Regalia, Shanghai, China
	Wadihana, Johor Bahru, Malaysia
	Hai Hong Plaza, Shanghai, China
Wife's Name	Shares in TQA and TQB

Division of matrimonial assets

96 Having determined the matrimonial assets available for division, we now move on to the structured approach set out in *ANJ v ANK*. We summarised this approach in *BPC v BPB* at [70]:

> (a) first, ascribe a ratio that represents each party's direct contributions relative to those of the other party, having regard to the amount of financial contribution each party has made towards the acquisition or improvement of the matrimonial assets;
>
> (b) second, ascribe a second ratio to represent each party's indirect contribution to the well-being of the family relative to that of the other throughout the marriage; and

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(c) third, using each party's respective direct and indirect percentage contributions, derive each party's average percentage contribution to the family that would form the basis to divide the matrimonial assets.

97 As we recently reminded parties in *UYQ v UYP* [2020] SGCA 3, the structured approach must not be applied in a rigid, mechanistic and overly-arithmetical manner (at [3]). The role of the court is not to analyse every single allegation against the other party, but to focus on the major details to assist parties to find a way forward (at [4]).

Appropriate methodology

98 When applying the structured approach, the court may choose one of two methods – the classification methodology or the global assessment methodology – to achieve a just and equitable division of matrimonial assets (*AYQ v AYR and another matter* [2013] 1 SLR 476 ("*AYQ v AYR*") at [16]–[24]). In the GD, the Judge adopted the classification methodology rather than the global assessment methodology as he considered the Pender Court property separately from the remaining property (GD at [9]–[10]). He did so because the other assets were acquired after parties started working at the Clinic, and he concluded that parties' contributions to those properties could be assessed together. Pender Court had also been sold in a collective sale prior to the proceedings, and so only its sale proceeds were contested.

99 The Husband urges this court to use the classification methodology and identifies four classes:[81]

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[81] Husband's case at para 109.

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(a) Class A: Foreign properties;

(b) Class B: Singapore properties and shares acquired before 2001;

(c) Class C: Singapore properties acquired after 2001; and

(d) Class D: Other assets.

100 In the present situation, we find that the global assessment methodology is more appropriate. Both methodologies are consistent with the legislative framework of s 112 of the WC, and neither is superior to the other (*NK v NL* at [33]). The classification methodology may be suitable where an adverse inference is drawn against a party in relation to one class of asset, or where there is a clear reason to make a different calculation, under *ANJ v ANK*, in relation to one class of assets (*BNS v BNT* [2017] 4 SLR 213 at [32]).

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101 The Husband has not provided any reason to distinguish between these classes. There is no reason to distinguish between foreign property and Singapore property purchased before 2001, given the Husband's position that the items in both categories were purchased almost entirely with his gifts or inheritance.[82] As for his distinction between property purchased before and after 2001, his stated reason is that the court should consider the Wife's "negative indirect contribution" to the family and adjust the indirect contributions accordingly.[83] However, we have explained that in applying the classification methodology, the assessment of the parties' indirect contributions must remain the same across each class of assets and should not be calculated in a time-specific manner (*AYQ v AYR* at [23]).

102 On a general level, however, we found it useful to discuss the properties according to the time they were acquired in relation to the running of the Clinic. This was because, save for a sum of $100,000 towards the purchase of the Bukit Batok HDB shophouse, the Wife does not submit that she made any personal direct contribution to the acquisition of each property; rather, she submits that they were acquired with income from the Clinic. Whether the Clinic was in operation at the time of the acquisition may support or disprove her allegation. Yet we do not consider this an application of the classification methodology because there is insufficient evidence to clearly differentiate between the properties based on the time they were acquired. We bear in mind that the court exercises its discretion in broad strokes, particularly where the documentary evidence falls short of establishing the exact amount of monetary contribution

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82 Husband's case at pp 46–47, paras 114–116.

83 Husband's case at p 49, para 123.

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(*ANJ v ANK* at [23]).

103 We therefore apply the *ANJ v ANK* structured approach according to the global assessment methodology.

Direct contributions

104 The Husband's submission is that the properties were acquired with gifts or inheritance from his parents.[84] He therefore submits that he was solely responsible for the direct contribution towards all the properties, save for the Petir Road HDB flat.[85] The Wife's submission is that the properties were acquired from income derived from the Clinic.[86] She alleged that the Clinic was highly profitable and the Husband retained all the income from the Clinic. The Wife does not dispute that she contributed little financially from her own income.[87] On the other hand, the Husband alleges that the Clinic was never profitable as the Wife kept the income to herself.[88]

105 As we explained above, we found it useful to discuss the properties according to the time they were purchased on a general level, and we consider the matrimonial properties in chronological order: (a) the Bukit Batok HDB shophouse; (b) properties acquired when the Clinic was operational; and (c) properties acquired after the Clinic was shut down.

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84 Husband's case at para 34.

85 Husband's case at para 48.

86 Wife's case at para 57.

87 Wife's case at para 49.

88 Husband's case at para 49.

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Bukit Batok HDB shophouse

106 The Bukit Batok HDB shophouse was acquired in 1991, before the Clinic was opened. It operated out of the ground floor unit, and the loan was only paid off after the Clinic began operating. It was purchased for $850,099.88 and the Wife submits that she contributed $100,000 to that price. She relies on evidence of a $100,000 cheque that was deposited into the Husband's bank account on 4 February 1991.[89] The Husband denies this allegation, and indeed there is nothing that identifies the Wife as the source of funds for that cheque. She did not tender any evidence of a corresponding cheque stub or debit from her account.

107 The Husband's submission is that the purchase was funded by gifts from his father, including $300,000 in sale proceeds from a property in Far East Mansion that had been gifted to him by his father and sold in 1991.[90] We find that the evidence supports his allegation and, in any event, it seems more likely that the purchase was funded by gifts and inheritance rather than by the Wife as, at the time of the purchase, the parties were still in the early years of their careers.

108 The parties also took a loan of $200,000 in their joint names to finance the purchase of this property, which loan was redeemed in 1994. The Wife seeks credit for this loan, but she does not dispute that the Husband was singularly responsible for paying off the loan. We find that the Husband should be credited for the majority of the direct contributions used to acquire this property.

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89 ROP Vol 3A p 276, para 28; Vol 3B p 404.

90 ROP Vol 3E pp 1253–1254, paras 113–115.

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Properties acquired when the Clinic was operational

109 The parties acquired the following properties (at [114] to [117] below), which we have found to be matrimonial assets, between 1994 and 1995, when the Clinic was operational. These properties were acquired with upfront payment of the full purchase price.

110 The parties set up the Clinic in 1991. Though the Husband tendered tax statements to demonstrate that the Clinic was operating at a loss and to invite the court to infer that he relied heavily on gifts and inheritance, we agree with the Judge below that the Husband's tax liability does not accurately reflect his financial ability (GD at [10]). The Wife was also paid $6,000 a month as a clinic assistant, which we do not think is a true measure of her contribution and would have affected the Clinic's reported income. We doubt each party's claim that the other party singlehandedly siphoned off the Clinic income; both parties appear to have worked together to manage their tax liability. It may be that the Clinic was doing better than the Husband's income tax assessments suggest, certainly well enough to set up and maintain a second branch at Choa Chu Kang from 1993 to 1996, but it is unclear how much better.

111 The Judge found that the Clinic was a joint matrimonial venture, and its income ought to be attributed equally between both parties. While both parties worked at the Clinic, the Husband was the resident doctor and the Wife handled administrative matters. The Wife also had the assistance of nurses and other part-time staff. The Wife claims to have actively engaged in the affairs of the Clinic in various ways, such as by sourcing for clients and running errands. On the other hand, the Husband disputes her allegation and said she spent much time on the phone trading in shares and speaking to her friends. Without

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downplaying her efforts at the Clinic, we find that a greater portion of the Clinic income should be attributed to the Husband as he was the resident doctor.

112 As for the Husband's submission that he utilised gifts and inheritance, we highlight that parties acquired the assets discussed below (from [114] to [117]) with no mortgage loan, which shows that they had a large pool of financial resources to draw on. We find it likely that the assets were acquired with a combination of *both* the income from the Clinic and the Husband's gifts and inheritance from his parents. The gift and inheritance should be recognised as the Husband's direct contribution.

113 We now address the parties' submissions on each property.

(1) Liang Feng Mansion in Shanghai, China

114 This property was acquired in 1994. The Husband tendered evidence that a sum of US$137,116.80 was transferred from his mother's bank account to M/S Gallant Y.T. Ho & Co, the Hong Kong solicitors, on 11 January 1995, which matches a letter from Singaporean solicitors Ong Tan Nair & Kwek dated 9 January 1995 requesting payment of that exact sum for the property in question.[91] However, the Wife also tendered receipts that show the initial deposit for the purchase and the second instalment were received from the Husband and Wife.[92] We prefer the view that the property was funded by *both* a gift from the Husband's mother and Clinic income, and the Husband should be credited for a larger portion for this acquisition.

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91 ROP Vol 3F pp 1558–1559.

92 ROP Vol 3B p 394.

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(2) The Regalia in Shanghai, China

115 This property was acquired in 1994. The Husband tendered evidence that a sum of US$227,817 was transferred from his mother's bank account to China Land Property (HK) Ltd, on 11 July 1994.[93] He also tendered a receipt from Golden Horse Overseas Estate Services Pte Ltd dated 13 July 1994 that reflected that a sum of US$227,817 was received in his name.[94] The dates of these documents and the sum that they both reflect support his allegation that the property was to a large extent acquired with funds from his mother, which should be attributed to him.

(3) Bukit OUG in Kuala Lumpur, Malaysia

116 This property was acquired in 1994 for approximately $130,000. Although the Husband claims he paid the full purchase price for the property,[95] he tendered a handwritten note from the Wife listing the instalments paid towards the purchase price and receipts for the same instalment amounts that state that payment was received by the developers from the Wife.[96] In the circumstances, we find it more likely that the property was purchased with income from the Clinic. Nevertheless, as the resident doctor of the Clinic, the Husband must be credited with a bigger share in producing that income for the Clinic.

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93 ROP Vol 3F p 1555.

94 ROP Vol 3F p 1556.

95 Husband's case at para 38.

96 ROP Vol 3F pp 1544–1549.

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(4) Eng Kong Place property

117 This property was acquired in 1995 for $1.82m and was paid up on purchase. The Husband alleged that nearly the entire purchase was funded by gifts and inheritance from his father,[97] and pointed to evidence that he received $543,319.48 from his father's estate from May 1993 to November 1995.[98] However, that sum still falls far short of the full purchase price of the property. We prefer the view that this property was acquired with a combination of both his gifts and inheritance and the Clinic income. Nonetheless, we accept the Husband's argument that he should be credited for a larger portion of the cost of the acquisition of this property.

Properties acquired after the Clinic shut down

118 We have addressed each party's share of the Clinic income above for properties purchased from 1994 to 1995. As for later acquisitions, we are of the view that the Husband should be credited for a far larger share than the Wife. The Clinic closed in 2003 but the Wife had filed her first divorce action in 2001. In fact, from 2001 to 2004, the Wife filed multiple complaints against the Husband, many of which directly affected the Clinic's business. For example, in December 2001 she filed a complaint with the Singapore Medical Council that the Husband unlawfully sold medicine and bribed patients, which eventually led to the Husband being charged in court.[99] Such acts would have adversely affected the Clinic's income, and the Clinic was hardly a joint matrimonial venture by that time. To any extent that any part of the purchases

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97 Husband's case at para 43.

98 ROP Vol 3E pp 1265–1266, para 142.

99 ROP Vol 3E pp 1225–1226, paras 46–47.

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thereafter had been funded by the Clinic income, it should be solely attributed to the Husband.

119 In addition, the following assets were purchased several years after the Clinic shut down.

(1) Petir Road HDB flat

120 The Petir Road HDB flat was purchased in the Wife's sole name for $159,000 in 2007, after the marriage had broken down. The Husband alleges that it was purchased with maintenance he paid the Wife and matrimonial assets. However, he did not provide any evidence to support his submission that it was purchased with matrimonial assets other than the maintenance he paid the Wife. Even if the Wife had used part of the money from him, we are satisfied that this acquisition should be attributed solely to the Wife's contribution.

(2) Lorong Pisang Raja property

121 This property was acquired in the Husband's sole name for $3.268m in 2010, after the breakdown of the marriage. As discussed above at [83] to [88], we accept that this was a matrimonial asset based on what we found to be the Husband's intentions. We also accept the Husband's submission that this purchase was indirectly funded by the dividends and director's fees from TQA, TQB and LCF that he received through TQCDE (see [84]).

122 TQA, TQB and LCF were companies involved in real estate. The Wife alleged that she indirectly and directly contributed to these companies by managing rented properties and incurring ad hoc expenses for which she was

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not reimbursed,[100] which increased the value of these companies and, correspondingly, the value of TQCDE.[101] These remain her bare allegations, however, and we do not find that she has discharged her burden of proof.

123 While the Wife highlighted that there is no evidence in the TQCDE liquidation report to support the Husband's allegation that he had borrowed against his shares, TQCDE's records were destroyed in 2014. The available evidence may not support the Husband's allegation, but neither does it prove that the property was purchased mainly with funds from the Clinic's operations. Bearing in mind that this property was acquired many years after the Clinic was closed, and the substantial amounts that TQCDE received from the family companies, we find that the direct contributions to this property should be attributed far more to the Husband than to the Wife although we did not exclude it as a matrimonial asset.

Overall direct contribution ratio

124 The evidence tendered by the parties was piecemeal at best, as is only to be expected for acquisitions that occurred more than two decades ago. The court's duty in such a situation is to make a "rough and ready" approximation of the figures as best as it can to determine parties' direct contributions (*ANJ v ANK* at [23]). In conclusion, bearing in mind that the Clinic was not the sole source of moneys used to acquire most of the properties and that the Husband's gifts and inheritance were a source as well, and the point that the Husband was the resident doctor of the Clinic, the end result is that he will be credited with a

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100 ROP Vol 3A pp 270–271, paras 13.17(k)–13.17(m).

101 ROP Vol 3A p 269, para 13.17(e).

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larger share of the direct contribution for the properties acquired during the Clinic's operational years. Applying the broad-brush approach, we find that the ratio of the parties' direct contributions to the matrimonial assets is 90:10 in the Husband's favour.

Indirect contributions

125 The next step in the structured approach set out in *ANJ v ANK* is to assess the parties' indirect contributions to the family, which consists of both financial and non-financial contributions. Especially in such intangible matters, the court should exercise its discretion in broad strokes, bearing in mind that the values are necessarily a matter of impression (*ANJ v ANK* at [24]).

126 The Husband submits that the indirect contribution ratio between the parties should be 90:10 in his favour,[102] while the Wife submits that it should be equal.[103] The Husband further submits that the court should take into account the Wife's misconduct during the marriage.[104] The Judge had the opportunity to speak to two of the three children, and found that they did not speak ill of the Wife at all (GD at [7]). He therefore inferred that parties' indirect contribution to the family were equal.

127 We are heartened that the children, who are now adults, have moved on from the circumstances of their parents' separation and do not bear a grudge

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102 Husband's case at para 65.

103 Wife's case at para 82.

104 Husband's case at para 69.

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against either parent. We nonetheless find reason to disagree with the Judge's inference that both the Husband and the Wife looked after the children equally.

128 In practical terms, the Wife left the matrimonial home for the first time in 2001, when the children were between three and eight years old, and only lived with the family for brief periods thereafter. It is undisputed that their daughter lived with the Husband from that date onwards. Although their two sons moved back and forth between the care of the Husband and the Wife, they spent more time with the Husband and have lived with him since 2010. While the mere fact that the children lived with one parent more than with the other will not necessarily affect the court's assessment of indirect contributions, we find that this supports the Husband's submission that he was mainly responsible for caring for the three children. In particular, his evidence is that after the Clinic closed in 2003, he became a stay-at-home parent and cared for the children full-time, and this is supported by the close bond he has with the children until today.

129 The Husband raised numerous concerns about the impact of the Wife's care of the two sons and we had the opportunity to consider reports from psychologists and an appointed child representative. We need only note that the two sons appear to have had a difficult time when they lived with the Wife, and eventually returned to live with the Husband in about March 2010. Indeed the Wife acknowledged that her indirect contribution from March 2010 was zero.[105] The sons have not had any contact with the Wife since 2014.[106] The Wife accuses

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105 Wife's case at p 20.

106 ROP Vol 3F p 1781, para 187.

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the Husband of influencing and alienating the children from her, but she should recognise that she bears significant responsibility for the current state of affairs.

130 The Husband submits that a negative value should be ascribed to the Wife's indirect contributions due to her misconduct, as this court did in the case of *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 ("*Chan Tin Sun*") at [27] and [28]. Where one spouse not only fails to contribute to the marriage, but also engages in conduct that fundamentally undermines the co-operative partnership and harms the welfare of the other, the court can ascribe a negative value to his or her conduct (*Chan Tin Sun* at [27]). In *Chan Tin Sun*, the wife had systematically poisoned the husband for at least one year, and had been convicted and sentenced to one year's imprisonment for her actions. Even then, the court did not ascribe *no* value to the wife's contributions, but applied a discount of 7% to determine her share of the matrimonial assets.

131 The threshold for the court to ascribe a negative contribution is a high one, and conduct must be both extreme and undisputed (*Chan Tin Sun* at [25]). The intention is not to turn the ancillary matters hearing into another opportunity for parties to fling spurious allegations at one another. The power to divide matrimonial assets does not exist to serve a punitive function and all factors must be considered in a holistic manner (*Chan Tin Sun* at [28]). The court will also have regard to the conduct of both parties; where both sides are engaged in a mutually destructive exercise, it will not ascribe a negative value (see *UAP v UAQ* [2018] 3 SLR 319 at [82]).

132 However, the present case was an unusual example of marital breakdown because of the sheer extent of conflict from 2001 onwards. The Wife filed numerous complaints against the Husband with the authorities from 2001

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to 2004, with at least one complaint culminating in a 15-day criminal trial in the district court from February to June 2004. She accused the Husband of corruption and other regulatory offences, which contributed to the closure of the Clinic, the "joint matrimonial venture" that the Judge identified. The Wife testified as a prosecution witness in the criminal trial, and the district judge who heard the trial found her evidence to be "absurd and ludicrous" and concluded that she "was most eager to concoct evidence calculated to cause damage to the [Husband]". The judge rejected her evidence unreservedly. On the other hand, the judge noted that the Husband did not retaliate against the Wife even when he had the opportunity to do so. The Husband was eventually acquitted of the charge. These acts of the Wife amounted to harassment and undermined the co-operative partnership that marriage is intended to be.

133 Therefore, while we acknowledge that prior to the breakdown of the marriage in 2001, the Wife was involved in the care of the children and home and some recognition should be awarded to her for that, we are of the view that the Husband's indirect contribution was much more than the Wife's.

134 Applying the broad-brush approach, we find that the ratio of parties' indirect contributions to the family is 80:20 in the Husband's favour.

Weightage

135 The average of parties' direct and indirect contributions is as follows:

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	Husband (%)	**Wife (%)**
Direct contributions	90	10
Indirect contributions	80	20
Average ratio	**85**	**15**

136 Under the structured approach, the court may vary the weight assigned to direct and indirect contributions where appropriate, depending on factors such as the length of the marriage and the value of the matrimonial assets (*ANJ v ANK* at [27]). We see no reason to vary the weight of the direct and indirect contributions here, and we assign them equal weight to reach an average of 85% for the Husband and 15% for the Wife.

Adverse inference

137 The structured approach does not detract from the court's powers to draw an adverse inference against either party where he or she is found to have failed to make full and frank disclosure of the matrimonial assets (*ANJ v ANK* at [29]). To give effect to that adverse inference, the court may choose to give a value to the undisclosed assets or give a higher percentage of the disclosed assets to the other party (*Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157). In *BOR v BOS* at [75], we stated:

> The court should not draw an adverse inference unless (a) there is a substratum of evidence which establishes a *prima facie* case against the person against whom the inference is to be drawn; and (b) that person has some particular access to the information he is said to be concealing or withholding …

138 In the present circumstances, we agree with the Judge below that the circumstances warranted drawing an adverse inference against the Husband. We

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do not think he fulfilled his duty of full and frank disclosure to the Judge and this court, and he did not cooperate in providing further details of the assets or further valuations.

139 While we accept that some foreign properties were no longer in existence at the time of IJ as they had been disposed of (see [61], [68] and [72]), the Husband also failed to provide evidence of any returns he received upon disposal of the properties such as the sale proceeds of the Wadihana auction or the Hai Hong Plaza buy-back. The TQCDE liquidators' report also suggests that at the time of liquidation, he should have received $2,686,440.74 from TQCDE's surplus assets.[107] In the circumstances, we find it highly suspicious that he claims he only has a single bank account containing $6,235.47 (see [45] above). His explanation that he had forgotten or decided not to deal with the properties in Shanghai, China was contrary to common sense. We have not included the value of Liang Feng Mansion and the Regalia even though they are matrimonial assets as the Husband did not provide any valuation.

140 As for the valuation of the Wife's shares in TQA and TQB, we do not hold the absence of valuation against the Wife. As mentioned, the Husband could have obtained a valuation of such shares if he wanted to since these companies are companies of his family.

141 Coming back to the Husband's non-disclosure of matrimonial assets, the Judge saw fit to adjust the ratio between the parties by 25% in favour of the Wife. This was partly in consideration of the sale proceeds of the Pender Court property (see [56] above). As the Pender Court property is not a matrimonial

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107 ROP Vol 3C pp 621–622.

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asset, neither are its sale proceeds, and we do not include the sale proceeds of Pender Court to draw an adverse inference against the Husband.

142 We give effect to that adverse inference against the Husband by adjusting the ratio of division by 10% in the Wife's favour, to reach a final ratio of 75:25 in favour of the Husband.

Conclusion on the division of assets

143 Given the total value of matrimonial assets as $13,667,860.72 (see [94] above), the Husband is entitled to 75% or $10,250,895.54 and the Wife is entitled to 25% or $3,416,965.18. The Wife is to retain the assets in her sole name and the Husband is to retain those in his sole name. In addition, the Husband is to pay the Wife $2,293,307.73 within six months from the date of this decision so that this sum, together with the assets in her sole name amounting to $1,123,657.45 (see [94] above), amount to 25%. He is to pay this sum, after the set-off mentioned below, with interest on the net balance at 3% per annum from 1 December 2018 until the date of full payment to her, since the Judge's initial decision was on 15 November 2018 and the Wife has not received maintenance since December 2018.

144 Each party shall remove any caveat lodged by that party against any of the properties within 14 days from the date of this decision, except for the caveat on the Lorong Pisang Raja property which is addressed below.

145 The Wife is to remove the caveat on the Lorong Pisang Raja property within 14 days after receipt of the sum of $2,293,307.73 and interest.

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146 If any party fails to remove any caveat within the applicable deadline stated above, the Registrar of the Supreme Court may sign any document on behalf of that party to withdraw the caveat in question.

Maintenance

147 As the Judge awarded the Wife 75% of the ascertainable matrimonial assets, the Judge did not address the issue of maintenance and the Wife did not file an appeal against his decision. In any event, even though we have varied the Wife's portion to 25%, this still leaves her a substantial amount of the matrimonial assets and we see no reason to award her any maintenance.

148 Any order that the Judge may have made in respect of the sale of the Eng Kong Place property and an initial payment of $500,000 to the Wife, as alleged by the Wife, will cease to have effect, as that intended relief is no longer applicable in the light of our decision.

Access

149 The Wife also sought this court's assistance to arrange a meeting with her children. This is not part of the appeal before us. Furthermore, all three children are over 21 years of age and can make their own decisions about meeting her.

Conclusion

150 For the reasons set out above, we allow the Husband's appeal to the extent stated above.

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151 In *TNL v TNK* at [68], we noted that appeals will not be sympathetically received where the result is a potential adjustment of the sums awarded below that works out to less than 10% thereof. The Wife was originally awarded by the Judge 75% of the matrimonial assets and is now entitled to 25% instead.

152 We order the Wife to pay the costs of this appeal, SUM 67 and SUM 78 to the Husband fixed at $20,000 inclusive of disbursements, and the Husband may set this off against the sum he is to pay her. There will be the usual consequential orders. As for the costs of the ancillary proceedings below, the Judge had made no order as to costs and we will not vary that order.

Judith Prakash Judge of Appeal	Belinda Ang Saw Ean Judge	Woo Bih Li Judge

The appellant in person;
the respondent in person

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