**IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE**

**[2023] SGCA 10**

Civil Appeal No 5 of 2022

Between

CLC

… *Appellant*

And

CLB

… *Respondent*

In the matter of Civil Appeal No 44 of 2021

Between

CLB

… *Appellant*

And

CLC

… *Respondent*

In the matter of Divorce (Transferred) No 1639 of 2019

Between

CLB

… *Plaintiff*

And

CLC

… *Defendant*

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# JUDGMENT

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[Family Law] — [Matrimonial Assets] — [Gifts]

# CLC
# v
# CLB

**[2023] SGCA 10**

Court of Appeal — Civil Appeal No 5 of 2022
Sundaresh Menon CJ, Judith Prakash JCA and Steven Chong JCA
11 August 2022

3 March 2023 Judgment reserved.

**Judith Prakash JCA (delivering the judgment of the court):**

## Introduction

1 The statutory regime for the division of matrimonial assets in s 112 of the Women's Charter 1961 (2020 Rev Ed) (the "Women's Charter") excludes assets that have been acquired by gift or inheritance from the matrimonial pool. The rationale for this is twofold: first, it recognises that the donor's intention may have been to benefit only the donee spouse and not the other spouse, given that the donor is usually related to the donee spouse; and secondly, it acknowledges the need to prevent windfalls accruing to the other party to the marriage, given that division is based generally on contributions made by the spouses during the marriage. Where, however, where the donee spouse manifests a clear and unambiguous intention to treat the asset so acquired as part of the family estate, a question arises as to whether the original rationale for excluding the asset from the matrimonial pool ought to still take precedence,

or whether the courts should give effect to the intention of the donee spouse. A further question is how such recognition of the intention of the donee spouse fits with the statutory regime in s 112.

2 In the present case, the respondent Husband had received monetary gifts from his father and had also inherited substantial sums from the father's estate. For convenience we refer to the monies received from these sources collectively as the "Gifted Monies". On the Husband's case, the Gifted Monies had flowed into several bank accounts and investment portfolios that were in his sole name (the "Disputed Assets"). The High Court Judge (the "Judge") found that even if the original source of the Disputed Assets had been the Gifted Monies, they had been co-mingled with other income and were thus no longer separately identifiable as having been derived from gifts and inheritance. She therefore included the Disputed Assets in the matrimonial pool. On appeal, however, the Appellate Division of the High Court (the "Appellate Division") found that the Gifted Monies had not lost their character as gifts. After considering the total value of the Gifted Monies and the total value of the Disputed Assets, the Appellate Division held that the Gifted Monies must have gone into the Disputed Assets.

3 On appeal to this court, the Wife emphasised that even if the Disputed Assets were traceable to the Gifted Monies, which she did not accept, the Husband had evinced a real and unambiguous intention to treat the Gifted Monies as part of the family estate. The Disputed Assets had thus lost their character as gifts. This appeal therefore raises the issues of (a) the interplay between s 112 of the Women's Charter and property law principles; and (b) what is required to trace an asset, particularly money in a bank account, to an asset acquired by gift or inheritance.

**Background facts**

4 The parties were married in September 2003. The interim judgment of divorce was granted in July 2019. The ancillary matters relating to the division of matrimonial assets were heard in January 2021 (the "AM Hearing"). Orders in respect of the ancillary matters were delivered on 23 March 2021 and full grounds of decision were issued on 24 June 2021 in *CLC v CLB* [2021] SGHCF 17 ("*HC GD*").

5 The main dispute in the appeal before the Appellate Division concerned the assets in six Australian bank accounts and investment portfolios which the Husband claimed were derived from gifts or inheritance from his late father, and should therefore be excluded from the matrimonial pool. To be more precise, the Disputed Assets are identified in tabular form in [8] below. The total value of these six accounts making up the Disputed Assets was S$3,801,862.53 as at the date of the AM Hearing.

6 On the Husband's case, the sources of the Disputed Assets were: (a) money from his father's Australian will (the "Australian Inheritance" and "Australian Will" respectively); (b) money from the winding up of a company, "[G] Inc" (the "[G] Money"); and (c) money from the sale of the shares of a company, "[H] Sdn Bhd" (the "[H] Money"). For completeness, we note that the Husband also received money from his father's Singapore will (the "Singaporean Inheritance"), under which he inherited a share in a property in Cairnhill Road and money in a DBS Bank account. It was not argued, however, that these sums had contributed to the Disputed Assets. The monies from these four sources were broadly referred to by the Appellate Division as the "Inheritance Monies" and amounted to a total of S$5,024,886.35.

7 The Husband also argued that another Australian bank account in his sole name, an ANZ Account No. ending 55 ("ANZ-55"), which was valued at S$10,602.11, should be excluded from the matrimonial pool, on the basis that it was a pre-marriage asset and the money therein was derived from the Australian Inheritance.

8 The accounts making up the Disputed Assets were:

| | **Account** | **Value at date of AM Hearing** |
|---|---|---|
| The Disputed Assets | Commonwealth Bank Account No. ending 29 ("CBA-29") | S$3.37 |
| | Charles Schwab Account No. ending 76 ("Schwab-76") | S$416,411.52 |
| | Charles Schwab Account No. ending 12 ("Schwab-12") | S$656,661.62 |
| | Commonwealth Securities Account No. ending 63 ("CSA-63") | S$838,104.28 |
| | Shaw and Partners (Australia) Account No. ending 15 ("Shaw-15") | S$1,081,409.97 |
| | SAXO Capital Markets Account No. ending 21 ("SAXO-21") | S$809,275.14 |

***The Australian Inheritance***

9 The Husband deposed that after his father's death on 6 March 2008, he inherited assets under various wills made by his father. Significantly, under the Australian Will, the Husband was beneficiary of 12.5% of the residuary estate in Australia, and trustee of his children's entitlement to 12.5% of the same. Pursuant to the Australian Will, he received S$132,693.42, comprising both his

and his children's entitlements. These monies were mixed with his existing funds in ANZ-55. From that account, monies were spent when the family made trips to Australia, and the funds were also intermingled with funds in the Disputed Assets.

10 The Wife did not dispute that the Australian Inheritance was placed in several of the Husband's trading and bank accounts in Australia, including ANZ-55, CBA-29, Schwab-12, CSA-63, and Shaw-15. She argued, however, that the monies which the Husband had transferred out of their joint bank accounts in Malaysia from September 2018 onwards must have been transferred into these accounts in Australia as well given, amongst other things, the large amounts totalling US$900,000 that were transferred out of the Malaysian accounts between December 2018 and April 2019.

11 Before turning to discuss the [G] and [H] Monies, it is relevant to note that the Husband had also argued for the following accounts or investments (the "Other Investments") to be excluded from the matrimonial pool, on the basis that they were pre-marriage assets or derived from gifts or inheritance:

| | **Account/Investment** | **Value as at date of AM Hearing** |
|---|---|---|
| | DBS Autosave Account No. ending 03 ("DBS-3") | S$7,463.37 |
| Husband's "Other Investments" | DBS Multiplier Account No. ending 42 ("DBS-42") | S$367,285.91 |
| | DBS Portfolio No. ending 60 ("DBS-60") | S$398,230.70 |
| | Malaysia UOB Account No. ending 75 ("UOB-75") | S$521.38 |

| | | |
|---|---|---|
| | UOB Kay Hian Securities Trading Account | S$42,883.50 |
| | UOB Kay Hian Securities Trust Account No. ending 34 | S$377,978.76 |
| | Orbit Securities (Tanzania) Account No. ending 18 ("Orbit-18") | S$96,695.91 |
| | Orbit Trust Account | S$4,433.87 |
| | [J] Placement shares | S$47,000 |
| | **Total** | **S$1,335,030.03** |

***Money from the winding up of [G] Inc***

12 The Husband deposed that his father had given him shares in [G] Inc before his marriage to the Wife. That was why the shareholding was listed as separate property in a pre-nuptial agreement that the parties had entered into on 15 September 2003. All proceeds from the liquidation of [G] Inc in 2006 were credited into a BNP Paribas Account No. ending 34 before being transferred to a BNP Paribas Account No. ending 48, and were subsequently distributed around October 2008 in accordance with his father's Memorandum of Wishes. The Husband's share of the distribution was S$519,411.93 (the "[G] Money"). This was "transferred to and mixed with the existing funds" in DBS-3. That account had been listed as separate property in the pre-nuptial agreement and was "excluded by agreement from being [a] matrimonial asset". The monies were also used to partially fund the balance price of a property identified as Property 2 which the parties had purchased during their marriage and which was registered in the Wife's name. The monies were additionally placed into the Disputed Assets as well as Orbit-18, the Orbit Trust Account, the [J] Placement Shares, DBS-42 and DBS-60.

13 Before the Judge, the Wife did not submit on the [G] Money as such, but dealt with it as part of the Singaporean Inheritance (*HC GD* at [59]). Before the Appellate Division, however, the Wife accepted that the factual evidence from the Husband showed that when he received the [G] Money in 2008, it was deposited in DBS-3, not with the Disputed Assets. Thus, the [G] Money could not be traced to the Disputed Assets. This was because, during the whole period from 2009 to 2015 when the Husband received the [G] and [H] Monies, there were only two injections of funds into the six accounts comprising the Disputed Assets that were traceable to the Husband's inheritance: (a) once in 2008, in the amount of the Australian Inheritance into the Disputed Assets; and (b) after the marriage broke down in 2018, when their joint account in Malaysia (the "UOB Joint Account", as defined at [15] below) was emptied out and an unascertainable amount was deposited into the Disputed Assets.

14 The Wife also argued that, according to the Husband, his expenditure on the family's expenses in Singapore and the Singapore matrimonial properties were made from DBS-3. The Husband's DBS-3 account had also been credited by the Wife in a total amount of S$28,000 from 2007 to 2015. As the [G] Money had thus been co-mingled with other funds used for family expenses over the years to 2017, it was no longer separately identifiable.

***Money from shares in [H] Sdn Bhd***

15 The Husband deposed that he became the beneficial owner of the shares in [H] Sdn Bhd under a trust created by his father in 1998. Following his father's death, he received a total of S$3,541,240.77 (the "[H] Money") over several tranches between February 2010 and mid-June 2015. The first six tranches amounting to a total of S$3,519,419.80 were paid into a joint account shared with the Wife, UOB (Malaysia) Account No. ending 1619, which is now closed;

and the last tranche of S$21,820.97 was paid into another joint account, UOB (Malaysia) Account No. ending 8619, which at the time of the AM Hearing had a value of S$265.39. As the latter account was opened as a replacement for the former following the bank's procedural reforms, the accounts will be referred to interchangeably as the "UOB Joint Account". The Husband's position, however, was that although money was used from the UOB Joint Account during the marriage, it was not mixed with any money from the Wife during the entire marriage. He deposed that the reason for the UOB Joint Account was "simply to operate as a contingency plan such that should anything untoward happen to [him], the [Wife] and the children [could] access the funds for the support of the family after [his] demise".

16 The Husband submitted that the funds were subsequently deposited into UOB-75 and the UOB Kay Hian Securities Trading Account. Part of the money was also used to acquire his other assets such as the Disputed Assets as well as Orbit-18, the Orbit Trust Account, the [J] Placement Shares, DBS-42 and DBS-60.

17 The Wife's position was that the Husband's intention to share the [H] Money with the Wife and use it to provide for the family was "unambiguous and undisputed". The [H] Money was deposited into the UOB Joint Account and some amounts therefrom were subsequently transferred to joint fixed deposit accounts. During the marriage, money from the UOB Joint Account was used for the family's holidays in Malaysia and the Husband's expenses during his travels in Malaysia. The monies were kept in the UOB Joint Account and joint fixed deposit accounts until the marriage broke down in late 2018. Then the Husband transferred them to his sole bank accounts in Malaysia, Singapore and Australia, allegedly to "ringfence his monies in an attempt to transform the family's monies back to his inherited monies".

18 As with the [G] Money, the Wife contended that the [H] Money could not be traced to the Disputed Assets given that only two of the deposits therein could be traced to the Inheritance Monies. The [H] Money remained in the UOB Joint Account until the marriage broke down in 2018, at which point some of the money may have been placed in the Disputed Assets. But as there was no proper trail or accounting, it was impossible to ascertain whether the funds that went into the Disputed Assets were attributable entirely to inherited funds, having come from mixed sources of funds such as the Husband's investments between 2009 to 2018 and the UOB Joint Account.

## The decisions below

### *The decision of the High Court judge*

19 The Judge included the Disputed Assets in the matrimonial pool as the source of the monies in the various accounts was "not clear" (*HC GD* at [64]). She concluded that the Husband's own evidence on the [G] and [H] Monies supported the Wife's submission that the Australian accounts contained money from the parties' joint Malaysian accounts. But even if the [G] and [H] Monies were eventually transferred into the Australian accounts, the monies had been co-mingled and were "no longer separately identifiable" as the Husband's inherited assets. On the Husband's own evidence, the monies received from the Australian Will did not belong to him only, but partly belonged to the children as well.

20 In relation to the [G] Money, the Judge observed that it was not disputed that it was a pre-marital gift. Contrary to the Wife's contentions, this gift had not been substantially improved by her within the meaning of s 112(10)(*a*)(ii) of the Women's Charter. As for the [H] Money, the Judge noted that it was not co-mingled with any other monies and it was not disputed that the shares were

pre-marital gifts. Although the Husband had initially deposited the [H] Money into the UOB Joint Account, in the Judge's view, a deposit into a joint account was not sufficient in itself to evince the requisite "real and unambiguous" intention that it was to be part of the matrimonial pool. In any case, neither of the tests under s 112(10)(*a*) of the Women's Charter was satisfied on the facts. Thus, UOB-75 and the two UOB Kay Hian Securities accounts into which some of the [H] Money was later transferred were excluded from the matrimonial pool.

21 As for DBS-3, the Husband's evidence was that he used the account to "draw financial resources from his assets" and apply them towards the family's expenses as well as his own. But apart from a transfer of about S$28,000 from the Wife to this account over the course of the marriage, the bulk of the funds in the account was attributable to a pre-marriage asset or gift. The Judge found that the original pre-marriage monies had been co-mingled with other funds which were matrimonial assets and were no longer separately identifiable. In light of the Husband's intention to utilise the assets for and on behalf the family, the balance sum in the account (which was a small amount in relation to the overall pool of assets) was part of the matrimonial pool. As the Husband's Other Investments had been acquired using the [G] and [H] Monies and had not lost their character as gifts, however, these assets were to be excluded from the matrimonial pool.

22 In relation to the money from the Australian Will, the Judge noted that the main difficulty was that neither the Husband nor the Wife had in their respective written submissions distinguished the different accounts based on the sources of deposits. This meant the sources of the monies in the various accounts were unclear and how they related to each allegedly excluded asset was also unclear. She noted that while the Husband claimed to have deposited

the Australian Inheritance into ANZ-55, he did not go further to explain the source of his purported "existing funds" in the account or other accounts which funds were also "intermingled" with the S$132,693.42 (*HC GD* at [65]). Furthermore, it was not disputed that the monies in the account were used to meet the family's expenses.

23 The Judge found that ANZ-55 was a matrimonial asset as the Husband had the intention of using the monies in the account for the family. Both parties had at all material times operated on the common understanding that the monies therein were for the family's use. It was also "not necessary to trace the original source of the [monies]" as the monies from various sources were co-mingled (*HC GD* at [69]).

***The decision of the Appellate Division of the High Court***

24 On appeal by the Husband, the Appellate Division held that the Disputed Assets and ANZ-55 were to be excluded from the matrimonial pool. The court found it likely, based on the available evidence, that the Disputed Assets were derived from gifts or inheritance received from the Husband's father. Its decision is reported as *CLB v CLC* [2022] 1 SLR 658 ("*AD GD*")). Although the movement of the money was not supported by documentary evidence, the available evidence was consistent with the Husband's assertions on affidavit.

25 The Appellate Division was of the view that the numbers supported the Husband's case. The Husband had received a total of S$5,024,886.35 in the form of the Inheritance Monies, and the Judge had observed that the [G] and [H] Monies had been used to fund the Husband's Other Investments (which amounted to S$1,335,030.03 (see [11] above). There was a substantial amount of S$3,689,856.32 left over which must have gone somewhere, and that

"somewhere" must have been the Disputed Assets and ANZ-55, judging by the balances in those accounts of S$3,801,862.53 and S$10,602.11 respectively. The discrepancy between the Inheritance Monies and the sums in the two accounts could be explained by the interest rates applied to the bank accounts that the monies were kept in as well as the returns on the various investments that the Husband had made.

26 As regards the Inheritance Monies, the parties did not challenge the findings of the Judge before the Appellate Division and accepted that the [G] and [H] Monies had not lost their character as the gifts or inheritance received by the Husband. The Appellate Division was therefore satisfied that the Inheritance Monies did not lose their character as gifts or inheritance.

27 As for the Australian Inheritance, the Appellate Division disagreed with the Judge's view that it had lost its character as an inheritance as the Husband had shown a real and unambiguous intention for it to be part of the matrimonial pool. The Appellate Division considered that the parties' use of ANZ-55, which was a pre-marital asset, did not satisfy the requirement of ordinary usage under s 112(10)(*a*)(i) of the Women's Charter, such that the same was transformed into a matrimonial asset. Thus, the "mere fact" that the inheritance was deposited into ANZ-55 could not be a basis for inferring such an intention on the Husband's part for it to be treated as a matrimonial asset (*AD GD* at [20]).

28 Significantly, the Appellate Division observed that in so far as the Judge had relied on the co-mingling of funds to conclude that the monies acquired by gifts or inheritance were no longer separately identifiable as such, it was "unclear how [co-mingling] would lead to this conclusion" (*AD GD* at [22]). The Judge had apparently considered that co-mingling had the legal effect of transforming the Inheritance Monies into matrimonial assets; but there was

nothing in the Women's Charter that suggested such a possibility. It was also at odds with the Judge's finding in respect of the [G] Money that the Husband's act of initially depositing it in DBS-3 (which was found to be a matrimonial asset) before using it to fund some of his other investments did not preclude a finding that these investments were not matrimonial assets. The approach taken by the Judge in addressing the [G] Money was therefore to be preferred, *ie*, co-mingling did not affect the nature of the [G] Money. Furthermore, although it could be the case that the Judge was of the view that co-mingling made it unclear where the Inheritance Monies went, this was not relevant, since the court had already found that they had gone into the Disputed Assets. Consequently, the Appellate Division held that the Judge ought to have excluded the Disputed Assets from the matrimonial pool.

**The appeal**

29 On 6 December 2021, the Wife applied to this court for leave to appeal against the decision of the Appellate Division to exclude the Disputed Assets and ANZ-55 from the matrimonial pool. On 12 January 2022, this court granted the Wife leave to appeal on the following issues only:

> (a) Whether the statutory purpose and language of s 112(10) of the Women's Charter provide support in determining, with reference to the intention of the donee spouse, whether an asset acquired by him by way of gift or inheritance has lost its character as such and may therefore be regarded as a matrimonial asset?
>
> (b) What is required to trace an asset, in particular money in a bank account, to an asset acquired by gift or inheritance? In particular, where such money has been co-mingled with funds from other sources, which

party bears the burden of proving that the money that remains in the account, is traceable to the gift or inheritance in question?

30 We summarise the arguments of the parties on each of these issues, before setting out our views and applying them to the facts in the present appeal.

31 The Wife argues that although s 112(10) of the Women's Charter does not expressly provide for the possibility of an asset acquired by gift or inheritance losing its character as such, this is supported by, *inter alia*, a purposive reading of the provision, since it is the "essence of the partnership that gains and losses – even windfall gains – are *prima facie* shared and enjoyed between the partners". In this regard, the donee's intention is relevant in determining whether an asset acquired by gift or inheritance has lost its character as such. As for what the exercise of tracing requires, the Wife notes from the decision of the High Court in *Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)* [2006] 4 SLR(R) 605 ("*Chen Siew Hwee*") that the essential question is whether "the true nature of the gift remains intact" (at [64]). That is, according to the Wife, whether the asset although literally transformed "remains factually and in substance the same asset that was [the] gift". Furthermore, the Wife argues that the burden of proving that the money remaining in an account is traceable to a gift or inheritance would lie on the person who asserts so, *ie*, the donee spouse claiming that the asset is not a matrimonial asset.

32 The Wife submits that, applying these principles, the Disputed Assets had lost their character as gifts or inheritance. The Wife submits that it is undisputed that during the marriage, the Husband had utilised the Gifted Monies for the family and indicated as much in his correspondence with the Wife. The Husband had also kept the bulk of the gifts, *ie*, the [H] Money, in the UOB Joint

Account which he shared with the Wife until the marriage broke down. The conduct of the parties during the marriage had also departed from the terms of the pre-nuptial agreement (see [12] above) in which both parties agreed that they would not have a claim on each other's gifts and inheritance. The Gifted Monies received by the Husband had therefore been transferred and mixed in such a way as to demonstrate that they would objectively no longer be regarded as separate assets, and had therefore lost their character as such.

33 On the other hand, the Husband argues that the consideration of a donee's intention in determining whether a gift or inheritance has lost its character as such "overly stretches" the statutory definition of a matrimonial asset. That is, an asset is not a matrimonial asset if it originates from a gift but is a matrimonial asset despite its origin if it has been substantially improved by the non-donee spouse. The factoring of intentions into the statutory definition "muddies" the statutory definition and an investigation into the intentions of spouses by the court would be undesirable. He contends that, following the decision of this court in *USB v USA and another appeal* [2020] 2 SLR 588 ("*USB*"), the fact that an asset is not a matrimonial asset does not preclude the non-donee spouse from claiming an interest in it. Rather, that spouse may do so by having recourse to general property law principles. For example, the non-donee spouse could claim the existence of a common intention constructive trust or a gift.

34 As for what is required to trace an asset to one acquired by gift or inheritance, the Husband argues that the equitable approach of tracing value through substitutions should be adopted. He accepts that the party who asserts that an asset is not a matrimonial asset bears the legal burden of proving his assertion on the balance of probabilities. He argues, however, that once the donee spouse has produced *prima facie* evidence that the asset in question is

derived from a gift or inheritance, the evidential burden must shift to the non-donee spouse to prove that the value of the gift cannot be traced or that the gift is no longer traceable. Furthermore, if a donee spouse is able to prove that he or she was the beneficiary of a gift or inheritance but is unable to meet the evidential burden of tracing it to a currently owned asset, the court may take into account how the gift has lost its identity. For example, it could be recognised as a direct financial contribution towards the acquisition or improvement of matrimonial assets under the framework in *ANJ v ANK* [2015] 4 SLR 1043.

35 Applying these principles, the Husband argues that the Appellate Division did not err in finding that the Disputed Assets were derived from the Husband's inheritance. In this regard, it had correctly held that the act of co-mingling the S$5,024,886.35 received via gifts or inheritance from his father did not transform them into matrimonial assets. Even if the Husband had had any intention for these monies to be part of the matrimonial pool, he argues that such intentions have no place within the matrimonial framework. Furthermore, he submits that the monies were kept in the UOB Joint Account for convenience, rather than as a representation of his intention to divest himself of the beneficial interest in his inheritance. His correspondence with the Wife on their joint wealth also did not affirmatively show such an intention on his part. As for the monies in ANZ-55, which were indubitably from a pre-marital asset and inheritance, the Husband contends that it is incumbent on the Wife to prove what portion of the monies in the ANZ-55 account should be considered as a matrimonial asset, as opposed to her laying claim to the entire sum on the basis that the monies were co-mingled.

**Section 112(10) of the Women's Charter and the intention of the donee spouse**

36 In our view, although s 112(10) of the Women's Charter does not expressly provide for the intention of the donee spouse to bring non-matrimonial assets into the matrimonial pool, that does not preclude the courts from giving effect to such intention *apart from* the provision, in accordance with principles of property law. In other words, nothing in s 112(10) excludes the right of a spouse to deal with his or her personal asset in any way he or she wishes to deal with it, including by bringing it into the family estate.

37 The starting point is s 112 of the Women's Charter, which provides as follows:

> **Power of court to order division of matrimonial assets**
>
> **112.**—(1) The court has 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.
>
> …
>
> (10) In this section, "matrimonial asset" means —
>
> (*a*) any asset acquired before the marriage by one party or both parties to the marriage —
>
> (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
>
> (ii) which has been substantially improved during the marriage by the other party or both parties to the marriage; and
>
> (*b*) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,

> *but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or both parties to the marriage.*
>
> [emphasis added]

We shall refer to the words italicised in the above quotation from s 112(10) as the "Exclusion Clause".

38 In construing legislative provisions, the purposive approach as encapsulated in s 9A of the Interpretation Act 1965 (2020 Rev Ed) directs the courts to prefer an interpretation that advances the objects and purposes underlying that law (*Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 ("*Ting Choon Meng*") at [53] and [59]; *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37]). This involves: first, ascertaining possible interpretations of the text, with due regard to the context of that text within the written law as a whole; second, ascertaining the legislative purpose of the statute; and third, comparing the possible interpretations of the text against the purpose of the statue, preferring the interpretation which furthers the purpose of the written text.

39 The language of s 112(10) is silent on the issue of whether the "gift or inheritance" referred to in the Exclusion Clause should be interpreted as including in the matrimonial pool assets which may have been originally acquired by gift or inheritance, but which the donee spouse subsequently *intended to become* part of the matrimonial pool. What is clear, however, from the context of s 112(10) is that it provides for the "division of assets relating to *marriage*" (*USB* at [18]) [emphasis in original]. This is supported by the title of the provision which provides for the "power of court to order division of matrimonial assets", and the fact that s 112 falls within Part X of the Women's Charter, which relates to matters concerning the dissolution of marriage.

40 Section 112(10) therefore contemplates two ways in which an asset acquired by gift or inheritance may be included in the matrimonial pool. First, substantial improvement; secondly, use as the matrimonial home. These methods connect the subject property "sufficiently to the time of the marriage and the personal efforts of a husband and wife so that it is part of the partnership wealth" (Leong Wai Kum, *The Singapore Women's Charter: 50 Questions* (Institute of Southeast Asian Studies Publishing, 2011) at p 113). It remains unclear, however, as to whether the intention of a donee spouse may provide, in effect, a *third* way of bringing a gift or inheritance into the matrimonial pool.

41 Turning then to the extraneous material, the relevant parliamentary material relating to s 112(10) is silent on the role of the intention of a donee spouse under the provision. In the *Report of the Select Committee on the Women's Charter (Amendment) Bill (Bill No 5/96)* (Parl 3 of 1996, 15 August 1996) (the "Select Committee Report"), the Select Committee set up to review the Women's Charter (Cap 353, 1985 Rev Ed) (the "1985 Women's Charter") considered suggestions that the definition of matrimonial assets should include: (a) gifts and inheritance that had been ordinarily used or enjoyed by the family, regardless of whether these had been improved upon by the other party; and (b) any gift given by one party to the other (at para 5.5.6). The Select Committee concluded, however, that there was no need to amend the definition. It was of the view that the provisions of s 112 which excluded gifts and inheritance not improved by the other party would "safeguard the interests of the party who acquired the assets especially in marriages of short duration" (at para 5.5.7). This indicates that Parliament's concern was to safeguard gifts and inheritance from third parties, rather than with spousal gifts *inter se*.

42 Furthermore, in the context of the division of matrimonial assets under s 112, the view was expressed during the Third Reading of the Women's

Charter (Amendment) Bill (Bill No. 5/96), that "it [was] not the intention for the body of case law built up over the years to be cast aside, but that it should continue to serve as a guide to judges in their decisions" (*Singapore Parliamentary Debates* (27 August 1996) vol 66 col 527 (Abdullah Tarmugi, Minister for Community Development)). Parliament, therefore, affirmed the law as it stood at the time without considering how it dealt with parties' intentions in the context of an alleged transformation of a gift or inheritance into a matrimonial asset or in relation to an inter-spousal gift.

43 Two cases predating the amendments made on 1 May 1997 to the 1985 Women's Charter (the "1997 Amendments") are relevant. The first is *Hoong Khai Soon v Cheng Kwee Eng and another appeal* [1993] 1 SLR(R) 823. There, about half of a sum paid towards a renovated property in Jalan Haji Salam (the HS property) was from the proceeds of sale of a property in Bedok Rise (the Bedok property). The HS property was purchased by the husband's father and transferred to the husband and his brother as tenants in common in equal shares. The Bedok property had been purchased earlier by the husband's parents and transferred into the joint names of the husband and his mother. The wife accepted that the husband's interest in the Bedok property was a gift from his parents. Following the marriage, the couple had lived with the husband's family at the Bedok property before moving out to a rented flat, before moving back in again and remaining there until their separation. This court considered that the husband's half share in the HS property was a matrimonial asset liable for division. It took the view that although the husband's interest in the Bedok property had been a gift, it "would be inimical to the concept of a matrimonial partnership if the source of funds for every asset acquired during marriage had to be shown to not originate from the generosity of a third party" (at [17]). There is force in the proposition that where a gift has been allowed to be used as a

property closely connected with the family, such as by serving as their matrimonial home, its original nature, *ie*, gift, ceases to be important (Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Edition, 2018) at para 16.014). That being said, it is clear from the recommendation of the Select Committee to retain the definition of matrimonial assets without expanding it to cover gifts and inheritance that had been ordinarily used or enjoyed by the family, that such use and enjoyment would not in itself suffice as reason to include these gifts or inheritance in the matrimonial pool.

44 The second relevant case is *Yeo Gim Tong Michael v Tianzon Lolita* [1996] 1 SLR(R) 633 ("*Yeo Gim Tong Michael*"). There, the issue before this court was whether a plot of land in the Philippines, which had been acquired during the marriage by the husband as a gift for the wife and registered in her name only, formed part of the matrimonial pool of assets. The wife contended that the land, being a gift to her, should be excluded from the division of matrimonial assets. The court held, citing *Wang Shi Huah Karen v Wong King Cheung Kevin* [1992] 2 SLR(R) 172 ("*Wang Shi Huah Karen*"), that "whatever might be the intention of the spouses as regards a gift between them at the time the gift was made", on divorce, the criteria for including such gift in the matrimonial pool for the purpose of the division of their assets under s 106 of the 1985 Women's Charter, "do not depend on or take into account their intention, express or implied" (at [12]).

45 Thus, this court held in *Yeo Gim Tong Michael* that in considering the issue of a gift in the division of matrimonial assets under s 106 of the 1985 Women's Charter, the starting point was whether the gift was property originally acquired during the marriage through the sole effort of the donor spouse or through the joint efforts of the donor and donee spouse. If the gift was acquired by the efforts of the donor spouse only, it would be considered a

matrimonial asset to be divided under s 106, notwithstanding that it was a gift from one spouse to the other. But where the gift originated from a third party, this would fall outside of the ambit of s 106. On the facts, therefore, as the land (and the house built on it) was originally acquired through the sole effort of the husband during the marriage, the value of the land, including the house, was taken into account in the division of matrimonial assets under s 106.

46 In our judgment, however, it is necessary to look further into whether the court in *Wang Shi Huah Karen* did indeed seek to lay down a principle to the effect that it is *irrelevant* that a spouse who had acquired an asset by gift or inheritance may have intended to transfer it by way of gift to the other spouse (in other words, "re-gift"), or include the said asset in the family estate. *Wang Shi Huah Karen* concerned the respective entitlements of the parties to the proceeds of sale of a matrimonial home under s 106 of the 1985 Women's Charter. As regards counsel for the wife's argument that there should be equality of ownership under s 106(2) merely because the parties purchased the property as joint tenants, Hwang JC held at [13]–[14] that:

> … This was to confuse the criteria for an application under s 56 of the Charter (where the court must determine the actual legal rights of the parties prior to divorce) with the criteria for an application under s 106 (where the court is making an equitable distribution of matrimonial assets notwithstanding the actual legal rights of the parties immediately prior to the divorce). Intention of the parties (whether actual or presumed) may be a relevant factor in determining actual legal ownership when the parties are still married (although the cases have shown that even in determining the issue of actual legal ownership, the courts will have regard to the ratio of actual financial contributions). However, on a divorce the court has power to, and usually does, redefine the extent of the parties' respective property rights. In a s 106 application, the criteria are those set out in s 106. *These criteria do not include the actual or presumed intention of the parties.* If a rationale is needed for the exclusion of intention as a criterion, it would be that normally the intention of the parties would have been formed on the assumption that the marriage would be and remain a going

> concern. If the parties had been asked what their intention was with regard to the [property] in the event of a divorce, it would be difficult to presume that they would necessarily have reasserted their wish (if such it ever was) that the property be divided equally. …
>
> The position might have been different if the parties had specifically addressed their minds to the ownership of the property after divorce … When it is possible to demonstrate that the parties had intended the property to be owned jointly in a particular ratio regardless of divorce, that ratio might be held to represent the legal rights of the parties in the property which they had agreed would remain in force notwithstanding the divorce, and the court might then be content to maintain the legal status quo and not invoke its powers under s 106. That, however, was not the situation in our case. …
>
> [emphasis added]

47 We make three observations. First, s 106 of the 1985 Women's Charter is different from s 112 of the Women's Charter in that the former stipulated a closed list of criteria for the court's consideration in the division of matrimonial assets. Section 106 provided that the court in ordering the division of matrimonial assets have regard to: (a) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets; (b) any debts owing by either party which were contracted for their joint benefit; and (c) the needs of the minor children (if any) of the marriage; and "subject to those considerations, the court shall incline towards equality of division". In contrast, s 112(2) provides for a list of non-exhaustive factors for the court to have regard to in deciding whether and how to exercise its "broad discretion" under s 112(1), with the overriding impetus being what is "just and equitable in all the circumstances of the case" (*NK v NL* [2007] 3 SLR(R) 743 ("*NK*") at [20]; *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 ("*Chan Tin Sun*") at [22]). The 1997 Amendments were therefore intended to enlarge and clarify the circumstances that a court was to take into consideration under s 112 to determine what was just and equitable (Select Committee Report at para 5.5.3). In that light, it would not necessarily be inconsistent with an assessment of what

is "just and equitable", for the court to take into account the intention of a donee spouse to include in the matrimonial pool assets that were originally acquired by gift or inheritance.

48 Secondly, in so far as the court in *Wang Shi Huah Karen* sought to draw a distinction between (i) the intentions of the parties in relation to the ownership of their properties during the subsistence of the marriage which might have an impact at the time of acquisition on the legal ownership of the same; and (ii) the irrelevance of their intentions in relation to division upon divorce, we respectfully disagree that the same has any bearing on the issue with which we are concerned. We are not concerned with intentions as to legal ownership but only with what the parties regarded or treated as matrimonial assets. In the context of a gift from a third party, the donee spouse's intention has no impact on acquisition of legal ownership. The relevant intention would only be formed after the acquisition, and that is the intention that could transform the gift into a matrimonial asset. In this regard, it is pertinent to recall the principle behind the division of matrimonial assets under s 112, that is, the "prevailing ideology of marriage as an equal co-operative partnership of efforts" (*NK* at [20]; *Chan Tin Sun* at [21]). This concept of marriage is supported by s 46(1) of the Women's Charter which provides that upon marriage, the husband and wife are "mutually bound to co-operate with each other in (a) safeguarding the interests of the union; and (b) caring and providing for the children".

49 Third, while it is true that the court has the power under s 112 to redefine the parties' respective property rights upon divorce, this does not mean that property law principles are irrelevant when the court is assessing the parties' rights to assets in the event of the dissolution of marriage. As observed by this court in *USB*, the ownership of assets falling outside the definition of matrimonial assets in s 112(10) would have to be determined in accordance with

general property law principles. Where a spouse who acquires a gift of property from a third party (which falls outside the definition for matrimonial assets) subsequently re-gifts the said property to the other spouse, there is no reason why the court should not give effect to that re-gift, as a manifested intention on the part of the donee spouse to divest himself or herself of any interest in that property in favour of the other spouse. In our view, this is equally true if the manifested intention is instead one which brings that gifted property into the family estate, with the effect that it would be incorporated into the matrimonial pool for division under s 112 of the Women's Charter.

50 Accordingly, with respect, we do not think that the court in *Yeo Gim Tong Michael* intended to lay down as a matter of general principle that the court cannot take into account the intentions of spouses regarding their assets. Moreover, in our view, the text in the Exclusion Clause is broad enough to cover any inter-spousal gift. This suggests that a gift from one spouse to another, in the sense of the donee spouse intending to divest himself or herself of all interest in the asset in favour of the other spouse, should be given effect to, no matter the source of the gift. This is even if, for example, the gift had been acquired during the marriage by the gifting spouse's own efforts and then given to the other spouse for the other's sole use whether to mark an occasion such as a birthday or as an *ad hoc* mark of affection or for any other reason. Where such a gratuitous intent has been established on the facts, the asset in question ought to be excluded from the matrimonial pool in favour of the recipient spouse. In our view, the policy of the law in this area should favour the intention of the parties: whether an asset is acquired by way of gift or by way of effort, where there is clear intent to treat it as a gift (or conversely, as a matrimonial asset, as alleged in the present case), it ought to be treated as such. This position is also not inconsistent with the implied rejection by the Select Committee of the

proposal that the definition of matrimonial assets cover, *inter alia*, any gift given by one party to the other.

51 We note that our present observations are at odds with the treatment of that particular category of inter-spousal gifts in *Yeo Gim Tong Michael* and the post-1997 Amendments decision of *Wan Lai Cheng v Quek Seow Kee and another appeal and another matter* [2012] 4 SLR 405 ("*Wan Lai Cheng*"). We will, however, leave this issue to be considered more fully on an appropriate occasion in the future. For present purposes, our view is that the intention of a spouse in relation to an asset acquired by way of gift or inheritance can be taken into account in determining whether that asset should still be considered as: (a) a gift to that spouse and taken out of the matrimonial pool; (b) as re-gifted to the other spouse and similarly excluded from the pool; or (c) as having lost its character of a gift and having been incorporated into the pool.

52 We briefly discuss *Wan Lai Cheng*, in which a differently constituted Court of Appeal had affirmed the distinction in *Yeo Gim Tong Michael* between gifts that were acquired by the effort of one or both spouses during the marriage; and gifts that were acquired from a third party. Building on that distinction, it held that inter-spousal gifts under the former category (which it termed "'pure' inter-spousal gifts") were not "gifts" for the purposes of the Exclusion Clause, and were included in the matrimonial pool without the need to satisfy any further condition, as they embodied the initial effort expended by the gifting spouse in acquiring the gift (at [40]–[41], [46] and [115]). The court was of the view that to hold otherwise would be to deny recognition to the gifting spouse of the initial effort expended by that spouse in the acquisition of the gift. Where a spouse has manifested an unequivocal intention to divest his or her interest in an asset in favour of the other spouse, however, it is not so clear that the court should nevertheless give precedence to the initial effort of the gifting spouse in

acquiring the gift. This observation follows from our view that the text in the Exclusion Clause may cover any inter-spousal gift.

53 As for inter-spousal gifts under the latter category, it was clear from s 112 of the Women's Charter that assets (except the matrimonial home) obtained by gift or inheritance were excluded from the matrimonial pool unless they had been substantially improved during the marriage by the non-recipient spouse or by both parties to the marriage. However, the *coram* in *Wan Lai Cheng* differed on whether the exception for substantial improvement could apply to inter-spousal gifts taking the form of a re-gift of an asset acquired by the gifting spouse by way of a third-party gift or an inheritance. The majority took the view that these remained as "gifts" for the purposes of the Exclusion Clause and would be excluded from the matrimonial pool, and the substantial improvement exception was not applicable to them. The majority reasoned that since such inter-spousal re-gifts were probably not envisaged by Parliament at the time when s 112(10) was enacted, there was an interpretive difficulty in ascertaining the "other" spouse for the purposes of the Exclusion Clause. Thus, the only approach to be taken was to hold that the substantial improvement exception was intended to apply only to third-party gifts and inheritance. The minority, however, thought that the substantial improvement exception could apply to such inter-spousal re-gifts, even if the assets had been originally acquired by way of a third-party gift or inheritance. In any event, the court observed that a spouse who received an inter-spousal re-gift (where the asset concerned was originally acquired by the gifting spouse by way of gift or inheritance) would therefore have that asset excluded from the matrimonial pool (subject to the differences in opinion regarding the operation of the substantial improvement exception). Any harshness from that result could be mitigated by taking the recipient spouse's non-matrimonial property into account pursuant to

s 112(2)(*h*) read with s 114(1)(*a*) of the Women's Charter, such as by making an order that the recipient spouse receive a smaller share of the matrimonial assets available for division.

54 The issue of inter-spousal gifts of assets acquired before a marriage did not arise for decision in *Wan Lai Cheng*. The court had, however, noted that such assets would not be part of the matrimonial pool unless they satisfied either the ordinary use or enjoyment requirement in s 112(10)(*a*)(i) of the Women's Charter, or the requirement of substantial improvement in s 112(10)(*a*)(ii) of the Women's Charter. Moreover, Chan Sek Keong CJ, who authored the minority decision, was of the view that such an inter-spousal gift would only become a matrimonial asset if it was substantially improved during the marriage by the gifting spouse or by both spouses (at [104] and [106]). This issue was considered more recently by the Appellate Division of the High Court in *CLS v CLT* [2022] 2 SLR 1043. The court there was of the view that these assets would also not be considered 'pure' inter-spousal gifts. It gave two reasons. Firstly, such a gift would have originated from a non-matrimonial asset and remained a non-matrimonial asset unless transformed. Secondly, this would be consistent with the tenor of the decision in *Wan Lai Cheng*, which sought to draw a line between assets which had been acquired by the effort of either spouse during the marriage, and those that were not. This would also be broadly consistent with the fundamental purpose of the division exercise in identifying all the material gains of the partnership.

55 Significantly, in *Wan Lai Cheng*, V.K. Rajah JA had cautioned against the court being too ready to treat a transfer of assets between spouses as gifts at [114]–[115]:

> … [While] most transfers of assets from one spouse to the other may appear to take the *form of gifts*, they may not *in substance*

> be so. Transfers of assets between spouses during a marriage may take place for an infinite variety of reasons, most of which are usually undocumented. Some transfers may take place purely for convenience, as when a spouse who is exposed to the vagaries of the business world places all the family assets in the name of the other spouse. At other times, transfers could be for the purposes of financial planning, or simply because of illness, old age or some other vicissitudes of life. Should all such transfers be characterised as "gifts" falling within the Exclusion Clause in s 112(10) of the current Act so as to take assets transferred (not being the matrimonial home) outside the matrimonial pool unless the "substantial improvement' exception is satisfied, especially when there is no evidence that the spouses have addressed their minds to the division of the assets concerned upon the failure of marriage? …
>
> In my view, it would be inequitable to *entirely* preclude the [gifting] spouse in such instances from claiming an interest in the transferred asset should the marriage subsequently fail. The reality is that most transfers of assets between spouses are not intended to be permanent renunciations by the [gifting] spouse of his or her beneficial interest in those assets. … I would add that although a "pure" inter-spousal gift is not a "gift" for the purposes of the Exclusion Clause and thus remains a matrimonial asset, where the [gifting] spouse clearly intends to permanently renounce his or her beneficial interest in the asset transferred (that is to say, when a "pure" inter-spousal gift is intended to be a true gift), the [gifting] spouse may be estopped from claiming any share in that asset when the court exercises its discretion in equitably distributing the pool of matrimonial assets.
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> [emphasis in original]

56 In our judgment, this passage reinforces the point that it is ultimately a question of fact as to what a donee spouse intended to do with their asset that was originally acquired by gift or inheritance. Thus, it is possible that transfers have been made for reasons of expediency or to avoid some unwanted financial liability. It is equally possible for a transfer to have been intended as a gift to the other spouse or as a complete divestment of the donee spouse's sole interest in the asset in favour of the matrimonial pool. Certainly, given the potential impact of a finding that a donee spouse did not intend to retain any interest in

the gift or inheritance, it is especially important that the court examine whether such intention has been manifested in a clear and unequivocal manner.

57 Furthermore, the concern expressed by Rajah JA appeared to be against a strict approach to inter-spousal transfers of assets that would preclude an explanation from the transferor spouse as to the true state of affairs. In as much as a transferor spouse is given the opportunity to explain the intention behind the apparent divesting of the asset by gift, the court is also entitled to examine the true intentions of the asset-holding spouse demonstrated by the way that spouse dealt with, and referred to, the assets during the marriage. On a related note, as we alluded to earlier, we do not think it an invariable requirement for a court, in giving effect to the intention of a spouse who was dealing with an asset acquired by way of gift or inheritance, to establish that that spouse had addressed their mind to the division of assets on the failure of the marriage. Moreover, the reference above to giving effect to a "true gift" is consistent with our view in that when s 112 is not applicable to the asset in question, ordinary property law principles may be applied.

58 The last key authority to be considered on the issue of the role of the intention of a donee spouse in relation to assets acquired by gift or inheritance is *Chen Siew Hwee*. There, it was held that an asset acquired by one party to a marriage at any time by way of gift or inheritance is excluded, by virtue of the language of s 112(10) of the Women's Charter from falling into the pool of matrimonial assets unless it was: (a) a matrimonial home; (b) substantially improved during the marriage by the other party or both parties to the marriage; or (c) no longer a gift.

59 *Chen Siew Hwee* concerned certain assets which were derived from shares which had been given to the husband prior to the marriage. Due to the

court-ordered liquidation of the companies, which the husband had no say in, the husband could not continue to hold the shares in their original form. He used the proceeds of the shares to acquire other assets. Andrew Phang J (as he then was) observed that such physical transformation of the shares was "merely literal" and in fact, under the circumstances, "forced"; and what the wife had to demonstrate was that "there was a real and unambiguous intention on the part of the husband that the present assets which had their original source in the shares were to constitute part of the pool of matrimonial assets" (at [57]) [emphasis in original omitted]. Any other approach would, in his view, "afford the wife an unjustifiable windfall" that would be at odds with the original rationale for the exclusion of gifts from the matrimonial pool (at [57]). Thus, where funds derived from a gift had been used to acquire a new asset, the new asset would qualify as a gift and be exempted from the matrimonial pool unless it could be shown that the spouse who originally received the gift had demonstrated an intention that the new asset should be considered part of the said pool (at [58]).

60 Moreover, even before enquiring into whether the nature of the new asset should be the same as that of the original asset, the court observed that it would in all cases be necessary to "consider whether the new asset is traceable to the assets which constituted the original gift … to begin with" (at [58]). Where such tracing was not available, for example, if it was unclear what the source of funds used to acquire the new asset was, it would be "*logically impossible*" to consider whether the new asset could still be a gift (at [58]) [emphasis in original].

61 On the facts, it was found that the subject assets were clearly traceable to the original gifts of shares that had been made to the husband from his father. These did not cease to be gifts despite the fact that the shares had been liquidated

and therefore no longer existed in their original form. Furthermore, the husband had at no time "indicated (in a clear and unambiguous fashion) that the shares (whether in their original or present forms) have ceased to be gifts from his father and have become part of the pool of matrimonial assets" (at [57]).

62 The observations in *Chen Siew Hwee* therefore indicate that two aspects must be examined when deciding whether an asset acquired by gift or inheritance has retained its character as such:

(a) The first is an evidential one: that is, whether the new asset is traceable to the assets which constituted the original gift.

(b) If so, then the second is undertaken: an investigation into the intention of the spouse who received the original gift. The inquiry is whether, if the gifted asset has been physically converted into a new asset, the donee spouse intended that the new asset retain the nature of the original gift, such that the new asset continues to be a gift within the meaning of the Exclusion Clause; or if it can be shown that the donee spouse had formed *a real and unambiguous intention* that the new asset (which was originally acquired by gift or inheritance) was to constitute part of the pool of matrimonial assets.

63 While the court in *Chen Siew Hwee* was concerned with a situation where the gifted asset had been physically transformed, the analysis in relation to the intention of the donee spouse equally applies even where there is no physical transformation of the gift or inheritance. In ascertaining the intention of that donee spouse, the court would have regard to the relevant circumstances like their conduct and correspondence, and acts such as registering the other spouse as a joint tenant of property or joint account holder in a bank account.

Thus, in *AAE v AAF* [2009] 3 SLR(R) 827, Belinda Ang J (as she then was) found, applying the approach in *Chen Siew Hwee*, that the husband's act of registering his wife as a joint tenant of the property, which had been purchased using proceeds from the sale of a gifted asset, strongly evinced his intention not to have it remain as a non-matrimonial asset. More recently, this court in *TQU v TQT* [2020] SGCA 8 ("*TQU*") affirmed that the "correct approach to assets acquired by gifts" was that stated in *Chen Siew Hwee*, *ie*, to inquire whether the transformation was accompanied by a voluntary intention on the part of the donee of the gift to integrate it into the matrimonial pool (at [86]). In *TQU* the husband had claimed that a property acquired in his sole name during the marriage was attributable to profits earned by a company ("TQCDE") from dividends from other company shares, which in turn had been acquired by gift or inheritance. The court held that even on his account, the property ought not to remain a "gift" for the purposes of the Exclusion Clause. This was because the husband's conduct in relation to the shares and dividends, including giving the wife an approximate 10% share in TQCDE, demonstrated his intention to utilise the assets "for and on behalf of the family" (*TQU* at [87], citing *Chen Siew Hwee* at [57]).

64 In sum, where one of the parties to the marriage has received a gift or inheritance but evinces an intention to deal with that asset by, for example, giving it to the other party or incorporating it into the family estate, it is not inconsistent with s 112 for the court to give effect to such intention. This is a matter of applying ordinary property law principles that are not excluded by the provision. A spouse who has a proprietary interest in a non-matrimonial asset naturally has the right to deal with that asset in any way the spouse wishes, including by bringing it into the matrimonial pool.

**The requirement of tracing an asset to one acquired by gift or inheritance**

65 As mentioned above, the question of the identifiability of an asset said to be acquired by gift or inheritance is one of evidence, *ie*, the new asset should be traceable to the asset which constituted the original gift (*Chen Siew Hwee* at [58]). This court has also clarified that such evidentiary questions are to be resolved by the burden of proof; that is, the party who asserts that an asset has been acquired through gift or inheritance and is therefore not a matrimonial asset bears the burden of proving this on the balance of probabilities (*USB* at [31]). On the other hand, where an asset is *prima facie* not a matrimonial asset (*eg*, a gift), the burden then lies on the party asserting that it is a matrimonial asset to show how it was transformed (*USB* at [32]).

66 As mentioned above, although the Husband accepts that it is for the party asserting that an asset is not a matrimonial asset to prove his assertion, he argues that once the donee spouse has produced *prima facie* evidence that the asset in question is derived from a gift or inheritance, the evidential burden must shift to the non-donee spouse, to prove that the value of the gift cannot be traced or that the gift is no longer traceable.

67 In our respectful view, there is no basis for the Husband's argument for a shifting of the evidential burden. First, the Husband has not proposed how such a negative ought to be proved by the non-donee spouse. It may not be realistic for the non-donee spouse to be expected to, for example, "pinpoint" a portion of money in an account that could fall within the definition of a matrimonial asset. Such evidence may simply not be available to the other spouse particularly if the bank account in question is only in the name of the donee spouse. Secondly, as the onus is on the donee spouse to adduce sufficient evidence to prove that any particular asset is traceable to an asset acquired by

gift or inheritance, it seems to us that in the absence of such evidence, it would quite naturally follow that the latter can no longer be traced. If, by his suggestion of a *prima facie* threshold (upon which the evidential burden shifts), the Husband means merely showing that the money from gifts or inheritance was initially received by him, this hardly goes towards establishing the links required for tracing the sums where these have been co-mingled with funds from other accounts. As for the Husband's submission that the court may take into account how a gift or an inheritance has ceased to retain its value even where a donee spouse cannot trace such gift or inheritance into a currently-owned asset, we think that that would depend on the extent to which the donee spouse proves the purposes to which the gift or inheritance was applied. Certainly, it could be proven, for example, that these amounted to contributions towards acquiring, improving or maintaining the matrimonial assets (s 112(2)(*a*)) or to the welfare of the family (s 112(2)(*b*)), and so be taken into account by the court in exercising its discretion under s 112(1) of the Women's Charter.

68 In *Chen Siew Hwee*, Phang J had stated, of the approach from tracing, citing *Ang Teng Siong v Lee Su Min* [2000] 1 SLR(R) 908 ("*Ang Teng Siong*"), that "where a spouse receives an asset by way of a gift or inheritance during the course of the marriage, '[the] owner of the gifted asset would have to show that it originated from the generosity of a third party in order to prevent it from being divided upon divorce'" [emphasis in *Chen Siew Hwee* omitted] (at [57]). It was acknowledged that even though *Ang Teng Siong* related to ascertaining the parties' respective contributions towards the purchase of a matrimonial home (which had in turn been purchased using proceeds of a previous matrimonial home gifted by the wife's father), the "general principles" therein applied (at [59]).

69 In this connection, it was held by this court in *Lee Yong Chuan Edwin v Tan Soan Lian* [2000] 3 SLR(R) 867 ("*Lee Edwin*") that the test is whether the "true nature of a gift remains intact" (*Lee Edwin* at [34]; cited in *Chen Siew Hwee* at [64]). In both *Lee Edwin* and *Chen Siew Hwee*, that was easily determined. The former concerned a gift of shares in family companies to the husband from his grandparents and father, with these companies later undergoing amalgamation exercises and the original shares eventually being exchanged for new shares in two other companies. As mentioned above, the latter concerned shares given to the husband by his father, which had been converted into other assets, including money in a bank account, following the court-ordered liquidation of the relevant companies (at [57]). Thus, in both cases, it was found that the shares (which, in *Chen Siew Hwee*, had been converted to other assets) constituted gifts that did not fall within the matrimonial pool.

70 The Wife submits that this should continue to be the test, whereas the Husband argues that the equitable approach of tracing value through substitutions may apply. He submits that the first port of call should be to look at the value of the gift or inheritance and to identify the substitutions or transactions wherein that asset had changed in form. The next step would be to consider if the value of the gift or inheritance continues to persist in its variant forms and substitutions. The focus should be on the value which is the constant that is held by a person "before, through and after the substitution". Thus, as long as the value of the gift can still be identified, the gift continues to exist as such, even if the form has undergone a number of substitutions. It ceases to exist, however, if it has been expended.

71 In our judgment, the general approach to tracing as stated in *Lee Edwin* and argued for by the Wife should continue to apply. As marriage is an equal

co-operative partnership of efforts, it is inevitable that parties' assets may become intertwined or co-mingled during the course of their marriage. In the context of a long marriage, for example, it is unrealistic to expect the married couple to keep detailed records of their fund transfers over time (*UNE v UNF* [2018] SGHCF 12 at [89]). Nevertheless, we consider instructive the following principles that have been gleaned from the cases in other jurisdictions.

72 First, a party claiming that an asset has been acquired by gift or inheritance must adduce sufficient evidence to show linkage between a currently owned asset and an asset acquired by gift or inheritance (*C.M. v N.L.* [2020] BCJ No 8 ("*C.M.*") at [173]). Where money in a bank account is concerned, this could include details on the source of contributions into the account as well as the specific use of the withdrawals (*MacLean v MacLean* [2019] NSJ No 554 ("*MacLean*") at [23]). For example, in *MacLean*, the Nova Scotia Supreme Court found that the husband was unable to establish that certain monies in a bank account which the parties had agreed was a matrimonial asset should be returned to him, as they were inheritance monies. The court noted that there was no detailed accounting of the account, with other monies having been deposited therein from other sources, including the parties' joint chequing account. There were also times when the funds in the account fell below the amount of the inheritance monies, and various withdrawals over the years without specific accounting as to what had been done with them. The court observed that it was therefore impossible to assume that the disbursements from the account were done with matrimonial funds only, leaving the inheritance monies intact (at [19]).

73 In contrast, in *G.B. v L.R.* [2017] BCJ No 1523, which concerned pre-marriage assets, the British Columbia Supreme Court was satisfied, on the basis of detailed banking and investment records, that the husband had, to the wife's

advantage, undervalued his property that was traceable to his pre-marriage assets, and that it was not open to the wife to argue that all of the funds he had deposited in their joint bank account lost their character as excluded property and became hers (at [411]–[412], [415]–[418], [458] and [460]–[464]). Likewise, in *Laskosky v Laskosky* [1999] AJ No 131 ("*Laskosky*"), the Alberta Court of Queen's Bench accepted that, where the wife's inheritance funds were placed in the parties' joint account and applied to certain purchases, she had satisfied the onus of tracing most of her claim (at [66]). On the facts, these purchases were made immediately or not long after the funds became available for the transactions in question.

74 Second, equitable rules of tracing (as advocated by the Husband in the present case) may guide the court in tracing an asset, such as particular monies in a bank account, to an asset acquired by gift or inheritance (*C.M.* at [173]). That said, the tracing exercise is "not meant to be overly complicated or burdensome" (*C.M.* at [174]). Where it is asserted that an excluded property has changed character, each "link in the chain" required to trace the property into the currently-owned asset must be established (*C.M.* at [173]–[174]). This suggests "a common sense approach to tracing" dependent on sufficient linkage between a non-matrimonial asset and an asset existing at the time of divorce (*C.M.* at [173]).

75 Third, the court is entitled to draw reasonable inferences from evidence that is less certain or precise in order to do justice between the parties (*Shih v Shih* [2017] BCJ No 109 at [44]). However, it would not be sufficient to, for example, point to evidence of a decrease in one account that is concurrent with an increase in another and have the court draw the inference that funds can be traced from one to the other (*Liapis v Keshow* [2021] No BCJ 559 at [326]).

76 Fourth, the question of the co-mingling of matrimonial assets and assets acquired by gift or inheritance is a question of the identifiability of the latter (*S v W* [2006] 2 NZLR 669 at [57]). Thus, the use to which certain property is put cannot be a basis for co-mingling. Such co-mingling of the two types of assets in a bank account does not in itself mean that the latter type has ceased to retain its character as a gift or inheritance as such, although it is likely to make the task of tracing more difficult.

77 Fifth, where an asset acquired by gift has been dissipated or consumed, it would naturally follow that it can no longer be traced (*Chen Siew Hwee* at [58]; *Lovich v Lovich* [2006] AJ No 1271 at [44]).

**Application to the facts**

78 In our judgment, although the Husband did not provide evidence showing the precise links between the Inheritance Monies and the Disputed Assets, we agree with the assessment of the Appellate Division that "it was more likely than not that the Disputed Assets were derived from the Inheritance [Monies]" (*AD GD* at [11]). We also agree with the submission of the Wife, however, that the Disputed Assets and ANZ-55 had lost their character as gifts and inheritance, given the clear and unambiguous intention of the Husband to incorporate the monies therein into the family estate.

***Whether the Disputed Assets were traceable to the gifts or inheritance***

79 As a starting point, the Husband worked in a full-time job for only about two years during the marriage. After that, he was a stay-at-home investor or consultant. Crucially, his monthly income of about $22,799 was attributed to various accounts which were considered to be non-matrimonial assets on account of being traceable to the Inheritance Monies, as well as to the Disputed

Assets (which, on his case, were also traceable to those monies). The Wife's argument on co-mingling assumes less force in this context, since it would appear that most if not all of his present monies would be attributable to the Inheritance Monies.

80 The movement of the Inheritance Monies was, however, as the Appellate Division observed, "not supported by documentary evidence" (*AD GD* at [11]). Although the Husband has provided statements of accounts for some of the Disputed Assets, he did not state precisely when the accounts forming the Disputed Assets were set up. In his response dated 31 October 2019 to the Wife's request for discovery and interrogatories, in reference to requests for evidence and information on which year the investment accounts were opened and with what initial amounts, he objected to the production of these documents and stated that they "may no longer [be] within [his] possession, custody or power due to the effluxion of time". He further objected to the interrogatories on the basis that "this is irrelevant to the matters raised in the parties' [first affidavits of assets and means]" and that it was "not disputed that the investment accounts were opened during the marriage". In response to a request for discovery for, *inter alia*, copies of the bank account statements for the UOB Joint Account and evidence of the amount of monies used from the account from 2003 to 2019, he objected to the production of the same because "it was a joint account" and the documents sought were "within the [Wife's] own power to obtain".

81 In relation to the Australian Inheritance, the Husband has produced a trust account statement showing that the amount was transferred to him on 2 October 2009. However, he did not produce evidence to show how these co-mingled with funds in the Disputed Assets (after passing through, on his case, ANZ-55). Although the Wife apparently accepts that the Australian Inheritance

was placed in the Disputed Assets (*HC GD* at [68]; *AD GD* at [11(a)]), her position is that these were co-mingled with funds from the UOB Joint Account.

82 The Husband's case is that the [G] Money, which went into DBS-3, was later used to acquire the Disputed Assets. While the Husband provided a remittance advice slip showing that the [G] Money was to be credited to him via an account with BNP Paribas, he did not indicate at what stage it was deposited into DBS-3, much less point to evidence showing how the [G] Money went into the Disputed Assets. In particular, he did not point to evidence to show where any withdrawals from DBS-3 were accompanied by a setting up of the accounts which make up the Disputed Assets.

83 In respect of the [H] Money, which went into the UOB Joint Account and then, on the Husband's case, was used in part to acquire the Disputed Assets, the only statement of account provided for the UOB Joint Account was as at 31 August 2019. The Wife does not argue, however, that she had contributed to the UOB Joint Account (as opposed to DBS-3). She claims that the [H] Money was either transferred to joint fixed deposit accounts (which had $0 at the time of the AM Hearing) or kept in the UOB Joint Account until the marriage broke down in late 2018.

84 The Wife's case is that at that point, the Husband "began to try to ringfence the monies … and some part of these monies may have been placed into the Disputed Assets. But there is no proper trail or accounting, and it is impossible to ascertain whether the funds that went into the Disputed Assets are attributable entirely to inherited funds, as they come from a [*sic*] mixed sources of funds such as the Husband's investments between 2009 to 2018 and the UOB Joint Bank Account". As with the documentation for the UOB Joint Account, however, the only statements of account for the joint fixed deposit accounts

were as at 31 August 2019. She also argues that the money from the UOB Joint Account went into the UOB Kay Hian Securities Trust Account No. ending 34.

85 We note, however, that in so far as the Wife argues that the funds in the Disputed Assets were mixed with the Husband's investments between 2009 to 2018 and the UOB Joint Account, these were both substantially attributable to the Inheritance Monies. Those investments would have been derived from the Inheritance Monies. The Wife also accepts that she had not contributed to the UOB Joint Account. Furthermore, the UOB Kay Hian Securities Trust Account No. ending 34 was excluded by the Judge from the matrimonial pool on the basis that they were traceable to the [H] Money (*HC GD* at [56]), and the Wife did not challenge this finding before the Appellate Division or on appeal.

86 In the circumstances, it could as a matter of common sense be argued that both the Australian Inheritance and the [H] Money could be traced into the Disputed Assets. Furthermore, apart from the possible co-mingling of S$28,000 of the wife's money that she had contributed to DBS-3, it seems to us that there was in fact little co-mingling of the [G] Money, which had gone into DBS-3, and would have otherwise been a matrimonial asset. This is especially since, as mentioned above, the Husband's monthly income was attributed to various accounts which were considered to be non-matrimonial assets.

87 In any event, counsel for the Wife, Mr Yap Teong Liang conceded before us that it is not disputed that the Inheritance Monies had flowed into, *inter alia*, the UOB Joint Account and the Disputed Assets. It is also not disputed that the amount of the Husband's current assets (including the Disputed Assets and ANZ-55), at S$5,789,270.17, corresponds to the total value of the Inheritance Monies, or S$5,024,886.35. Thus, the Wife is not so much contesting whether the monies in the Disputed Assets and ANZ-55 were

traceable to the Inheritance Monies. Rather, her key contention is that the monies in the Disputed Assets and ANZ-55 were treated and dealt with as part of the family estate. We turn to this issue next.

***Whether the Husband's intention was that the Disputed Assets and ANZ-55 be treated as part of the matrimonial pool***

88 In our judgment, the Husband did demonstrate a clear and unambiguous intention to treat the Disputed Assets and ANZ-55 as part of the matrimonial pool. His correspondence with the Wife demonstrated that he viewed assets that he had acquired by way of gifts or inheritance as part of the family estate. As early as February 2007, before the Husband started receiving the Inheritance Monies, he had written an e-mail to the Wife with the title "Our Net Worth". There, he included under the list of "assets" an Australian property which had been a pre-marital gift from his father, as well as two properties that were in the names of the Wife (the "Singapore Properties") and had been purchased in 2004 and 2006. After listing their "[liabilities]", he stated that the "net worth" of S$4.4m meant that "there [was] plenty to ensure [the son's] and your future comfort".

89 Similar correspondence over the years referred to "our liquid assets" and "our net wealth". For example, in WhatsApp messages sent to the Wife on 18 April 2018, by way of encouraging her to spend less time at work, he stated that "[you] increase our net wealth by 13% if you work 10 years. You increase our net wealth by 7% if you work 5 years … would [such increase] change your lifestyle?". Furthermore, he questioned if the "measure of increasing net wealth [is] important to you given we can spend $8k a month and still have approx [*sic*] 75% of $11m remaining".

90 In another WhatsApp message sent to the Wife on 27 September 2018, he calculated their "total wealth" as being S$16m, comprising the Australian property and the two other properties at S$8m, "cash – [Husband] $2.5m", "equities – [Husband] $2.5m" and "[Wife] – $1m". This, he stated was "more than enough", and that "time (next 5 years with kids) [was] the real asset" in which they should invest. Pertinently, this S$5m that he attributed to himself corresponded to the amount of the Husband's then current assets, including the Disputed Assets and ANZ-55. It was therefore clear that the Husband had put forward the Disputed Assets and ANZ-55 to the Wife as part of their total wealth, as opposed to the same being his private assets.

91 Such intention can also be inferred from the fact that he had placed some of the Inheritance Monies into the UOB Joint Account. In *WFE v WFF* [2022] SGHCF 15, Choo J considered that where a property had been purchased in the wife's name prior to the marriage and funded by cash gifts from her father as well as her savings, the fact that she had transferred the sale proceeds from her personal bank account to the parties' joint bank account gave rise to a "rebuttable presumption … that she would share the sale proceeds with her [husband]" (at [9]–[10]). In that case the wife did not offer any alternative explanation for her actions and therefore was not able to rebut the presumption.

92 In our judgment, where one of the parties to a marriage places monies derived from non-matrimonial assets into a joint account with the other spouse which can be separately operated by each of them, a rebuttable presumption indeed arises that the transferring spouse intends to share the said monies with the other. This is because during the pendency of the joint account, both parties would have access to the money without restriction. It would then be for the party contending that the presumption ought not to apply to explain the reason for the arrangement. Here, the Husband's evidence was that the purpose of the

joint account was only to provide for the family if anything untoward were to happen to him. But we were not convinced by the explanation. Were this truly the case, this concern could have been dealt with in other ways, such as by provisions in a will. Such a presumption here is further supported by the various spousal communications in which the Husband had consistently referred to the parties' total wealth.

93 Furthermore, while part of the [H] Money, which was deposited into the UOB Joint Account, went towards the acquisition of the Husband's Other Investments, as shown by the subsequent withdrawals, a substantial sum remained in that account until 2018, when the marriage broke down. In late August 2018, the Husband transferred the amount of RM$300,000 to a Malaysian bank account in his sole name. The following month, he transferred RM$52,587.64 and RM$139,000 from the UOB Joint Account to other accounts in his sole name. Although the Husband's case was that the [H] Money also went into the Disputed Assets, the evidence is unclear as to whether this deposit took place before or after the said withdrawals. However, until that point, the Husband did not appear to "ringfence" the monies in the UOB Joint Account.

94 Although DBS-3 was registered in the Husband's sole name, the money from this account was used for the benefit of the family, including paying for the purchase and renovation works of the Singapore Properties. This was consistent with the Husband's treatment of his assets as part of the family estate in his correspondence. His case was that the account was a "conduit" from which he would draw on his assets to apply towards the family's expenses and his own. However, he has not pointed to transactions involving the account to demonstrate how this might have taken place, and so suggest that he did intend to keep his private assets separate from the family estate.

95 Similarly, the funds in ANZ-55 were used for the family's expenses when they visited Perth annually. We agree with the Appellate Division that such use of the monies in ANZ-55 would not suffice for its transformation from a pre-marital asset on the basis of ordinary usage or enjoyment under s 112(10)(*a*)(i) of the Women's Charter, which requires "usual and relatively prolonged" as opposed to "casual" use (*USB* at [24]; *AD GD* at [26]). ANZ-55 had received the Australian Inheritance, however, including money bequeathed to the children, but the Husband seems to have expended the money in the account without regard to the children's possible interest therein. Such use by the family of the monies in ANZ-55 is consistent with what we have found, namely, that the Husband demonstrated his clear and unambiguous intention that the Inheritance Monies were to be part of the family estate.

96 Indeed, the Husband's evidence, in relation to Property 2 which was purchased in the Wife's name, was that the parties would "[pool their] resources". He thus contributed a greater proportion of the funds used to purchase it. He also deposed that the Wife would sometimes ask him to make payments because her term deposits had yet to mature.

97 In sum, we are satisfied that the Husband clearly and unambiguously intended to treat the Inheritance Monies, part of which are now in the Disputed Assets and ANZ-55, as part of the family estate. These bank accounts and investment portfolios are therefore to be included into the pool of matrimonial assets available for division. We exclude from this amount only the children's inheritance of S$66,346.71 (being half the sum of S$132,693.42 received by the Husband in respect of the Australian Inheritance). Although we note that the Husband's Other Investments were excluded from the pool as having been derived from the Inheritance Monies, we do not disturb that aspect of the

Judge's decision, which was not appealed against in the Appellate Division nor contested before us.

***Ratio of division***

98 The net value of the matrimonial pool, now including the monies in the Disputed Assets and ANZ-55 but less S$66,346.71, is S$12,670,096.88. This amount excludes a sum of S$496,419 which the Judge had found was unaccounted for and which she added back to the pool, a finding that was reversed by the Appellate Division. It follows that the direct contribution ratio is as calculated by the Judge who had included these assets in the matrimonial pool, namely, 57:43 in favour of the Husband. Given the indirect contribution ratio of 55:45 in favour of the Wife, as found by the Judge and upheld by the Appellate Division, the overall ratio works out to 50:50. The total pool of matrimonial assets valued at S$12,670,096.88 is to be divided equally between the parties.

**Conclusion**

99 For the above reasons, we allow the appeal. The Husband is to pay to the Wife costs of S$50,000 inclusive of disbursements, in respect of the costs of the appeal and the leave to appeal application. The usual consequential orders shall apply.

Sundaresh Menon
Chief Justice

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Yap Teong Liang and Tan Hui Qing (TL Yap Law Chambers LLC) (instructed), Chen Yiyang (YY Lee & Associates LLC) for the appellant;
Chiok Beng Piow and Tan Wei En (AM Legal LLC) (instructed), Chuah Hui Fen Christine (Tan, Oei & Oei LLC) for the respondent.